

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.536 of 1992

Date of decision: May 20, 1993

Shri Netrananda Tripathy ... Applicant

-Versus-

Union of India and others ... Respondents

For the Applicant ... M/s. S.K.Mohanty &
S.P.Mohanty,
Advocates.

For the Respondents ... Mr.Ashok Mishra,
Senior Standing Counsel
(Central)

...

CORAM:

THE HONOURABLE MR.K.P.ACHARYA, VICE CHAIRMAN

...

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? ND
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

...

J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order of recovery contained in Annexure-2.

2. Shortly stated the case of the petitioner is that the petitioner has retired for the post of Sub Postmaster, Rourkela, on superannuation, with effect from 30th November, 1987 (F.N.). Vide Annexure 1 dated 26th November, 1990, the petitioner was served with a notice under section 7 of the Public Premises (Unauthorised Occupation) Act, 1971 by the Estate Officer-cum-Assistant Postmaster General General (Inv) in the office of the Chief Postmaster General to show cause as to why an order should not be passed requiring him to pay the arrear of rent together with simple interest amounting to Rs. 12,390.34. Normally, The petitioner was saddled with Rs. 12,390.34 which was sought to be deducted from the pension amount of the petitioner. This order was challenged in O.A.No.177 of 1990 disposed of on 27th September, 1991 by this Bench. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the petitioner has no justification to unauthorisedly occupy the quarters in question and therefore, rightly, penal rent was assessed

on him which should not be unsettled rather it should be sustained. It is further maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. S. K. Mohanty learned Counsel appearing for the Petitioner and Mr. Ashok Mishra learned Senior Standing Counsel (Central) for the Opposite Parties at a considerable length.

5. Mr. Ashok Mishra learned Senior Standing Counsel (Central) appearing for the Opposite Parties submitted before me that the petitioner has since vacated the quarters, in question, with effect from 30th December, 1989 but vehemently contended that the Petitioner having retired on superannuation with effect from 30th November, 1987 had absolutely no justification ~~on the part of the petitioner~~ to continue occupation of the said quarters unauthorised-ly beyond the permissible period for long two years thereby causing difficulties to other eligible persons. Hence according to Mr. Mishra learned Standing Counsel (Central) on no account, the penal rent should be quashed. Mr. S. P. Mohanty learned counsel appearing for the petitioner has brought to my notice the affidavit filed by Shri Netrananda Tripathy, Petitioner alongwith the original Radiotherapy treatment sheet issued by the Radiotherapist of the Acharya Harihar Regional Centre for Cancer Research and Treatment Society, Cuttack. Therefrom, it is evidently

clear that on 9th October, 1990, the petitioner's wife was suffering from Cancer. Mr. Mohanty learned counsel appearing for the petitioner further submitted that she ^{is} ~~has~~ since dead. It was further submitted by Mr. Mohanty learned counsel appearing for the Petitioner that with very ^{great} ~~very~~ difficulty wife of the petitioner could be brought to Cuttack for treatment at the risk of her life and she had been taken back to Rourkela as the doctors had also lost hope of any recovery and therefore, the petitioner had been under ~~the~~ mental tension, could not arrange any accommodation for his wife at any other place either at Rourkela or at Cuttack. Such being the state of condition of the wife of the petitioner, the petitioner was forced to keep his wife in the quarters in question. Therefore, Mr. Mohanty learned counsel appearing for the petitioner submitted that the court should take into consideration these extenuating and compelling circumstances and give necessary relief to the petitioner especially because the petitioner had not occupied the quarters, in question, as a ~~matter of~~ luxury but being compelled by the circumstances, without least intention of causing any inconvenience to any other employee. The fact that the wife of the petitioner died of cancer is admitted. The unimpeachable documents shows that the wife had been treated for cancer. There is no denial on this

account. These are certainly extenuating and compelling circumstances which would have been taken into consideration by the concerned authority before imposing penal rent, if at all these facts could be brought to the notice of the concerned authority. However, considering all the circumstances, stated above, despite objection raised by Mr. Ashok Mishra learned Senior Standing Counsel (Central) appearing for the Opposite Parties, I would quash the penal rent imposed on the petitioner for the aforesaid period and I would direct that the Petitioner would be liable to pay the ordinary rent (which he was paid for the said quarters during his service). It was told to me by counsel for both sides, that a sum of Rs. 5606.00 had already been realised from the Petitioner. The competent authority should calculate the ordinary rent and electrical charges payable by the petitioner (if any) and the total amount should be deducted from the above mentioned amount of Rs. 5606.00 and the balance amount should be returned to the petitioner within sixty days from the date of receipt of a copy of this judgment. If the normal rent and the electrical charges ^{exceeds} ~~exists~~ the amount of Rs. 5606.00 then the petitioner should be noticed and the petitioner should pay the amount within 30 days from the date of receipt of the notice failing which penal rent assessed on the petitioner shall ^{be realised} ~~continue~~.

6. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

[Signature]
20.5.93.
.....
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
20.5.93

