

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.**

O.A.No.337 of 1988

Date of decision - 29th August, 1989

Mrs. Nirmala Choudhury,  
W/o late Shyama Sundar Choudhury,  
C/o Sri R.K.Choudhury, Advocate,  
Plot No. 4069, Sriram Nagar,  
Bhubaneswar- 751 002 (Orissa).

..... **Applicant**

Versus.

1. Union of India, represented through Secretary, Ministry of Home Affairs, Central Government, New Delhi.
2. Secretary, Department of Home, Government of Orissa, Orissa Secretariat, New Capital, Bhubaneswar.
3. Secretary, Department of General Administration, Orissa Secretariat, New Capital, Bhubaneswar.
4. Secretary, Department of Finance, Orissa Secretariat, New Capital, Bhubaneswar.
5. Secretary, Department of Law, Orissa Secretariat, New Capital, Bhubaneswar.

..... Respondents

M/s. Ashok Mohanty, R.K.Choudhury,  
Sisir Das and B.K.Bal, Advocates ... For Applicant

Mr. K.C. Mohanty, Government Advocate  
for State.

... For Respondents 2 to 5.

Mr. C.A. Rao, Additional Standing Counsel (Central).

... For Respondent No. 1.

C O R A M :

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SEN GUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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#### JUDGMENT.

N. SEN GUPTA, MEMBER (JUDICIAL). The widow of one late Shyamasundar Choudhury claims for reckoning the period of practice as a Lawyer as a part of qualifying service under Rule 36 of the Orissa Pension Rules ( for short, the 'Rules').

2. The undisputed facts are that late Shyamsundar Choudhury was appointed as an Assistant Public Prosecutor on 8.4.1960 and under the conditions of service he was appointed later as the Deputy Superintendent of Police in the Orissa Police Service Class II. Subsequently he was promoted to the Indian Police Service cadre on 27.7.1978. He continued in service till 31.7.1985 when he retired on superannuation. After retirement late S.S. Choudhury made a representation to add five years of practice as a Lawyer prior to his appointment as Assistant Public Prosecutor to his qualifying service in relaxation of the provisions under Rule 36 of the Rules for the purpose of pensionary benefits and this was rejected by order dated 23.5.1988 at Annexure-2. Thereafter Sri Choudhury died and so his widow has approached this Tribunal for the relief that late S.S. Choudhury during his life time asked A representation to the Government who have taken the stand that as Sri Choudhury's appointment was prior to the date i.e. 23.11.1962, the cut-off

*W.M. 1/9/4*

date mentioned in Rule 36(1) of the Rules, Sri Choudhury was not entitled to add the period of practice to his qualifying service. The further ground is that the Orissa Pension Rules apply only to the Orissa State Government servants and not to the persons belonging to All India Service and in this connection Rule 3 of the Rules has been relied on.

3. We have heard Sri Ashok Mohanty, learned counsel for the applicant, Sri K.C. Mohanty, learned Government Advocate for the Orissa Government and Sri C.A. Rao, learned Additional Standing Counsel for the Central Government. Sri K.C. Mohanty has urged that in view of the categoric ~~xxx~~ provisions of Rule 3 of the Rules, Sri Choudhury could not have claimed the benefit of Rule 36. His contention is that it has been expressly mentioned in clause (a) of Rule 3(1) of the Rules that the rules shall apply to all persons except the members of All Indian Services. That at the time of his retirement Sri Choudhury was a member of All India Service is undisputed. It is to be seen whether by this clause Sri Choudhury could be deprived of getting the benefit, if available to him otherwise, of Rule 36(1) of the Rules. In this regard, Sri Ashok Mohanty has drawn our attention to Rule 8(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. Under that sub-rule, any period of service under the Central or a State Government rendered by a member of the Service prior to his appointment to the Service shall count as qualifying service under those rules to the extent to which such service would have counted as qualifying service for pension under the rules applicable to him prior to his appointment to the Service. (Emphasis added).

*Mr. S. S. S. / Mr. G. F.*

He has also drawn our attention to the instructions of Government of India in their letter No.29/68/6-AIS(II) dated 7th April, 1962. This instruction is that under sub-rule (2) the service rendered by an officer under the Central or State Government shall count as a qualifying service for the purpose of pension etc. to the extent admissible under the rules applicable to him prior to his appointment to the Indian Administrative/ Police Service. In other words, the services rendered by him prior to the appointment to the Indian Police Service shall be treated according to the pension rules of the Central or the State Government as the case may be, which were applicable to him prior to such appointment and as in force at the time when he retires from service. (underlining is for emphasis). In this connection, it has been urged by Sri K.C.Mohanty learned Government Advocate for the State that at the time when Sri Choudhury retired from service, the Orissa Pension Rules could not have been ~~not~~ applicable to him. Therefore these instructions have no application to the present case. With great respect to Sri Mohanty, we are unable to persuade ourselves to agree with this contention, because the relevant portion would go to show that the rules which were applicable to him prior to this appointment to the Indian Police Service, if are in force in that service at the time when the incumbent retires, those rules can be made applicable for the limited purpose as stated in paragraph-11 to be found at Part-I Fifth Edition at page 15 of the All India Services Manual.

*Mem Encl  
29/8/89*

4. The next contention advanced by Sri K.C.Mohanty is that Rule 36(1) does not in terms apply to a person who was appointed prior to 23.11.1962 as the language is that a person appointed to a service or a post under the Government after 23.11.1962 may add to his service qualifying for superannuation. Sri Mohanty contends that since this language is imperative, it would apply to only persons who are appointed after 23.11.1962 and not otherwise. Sri Ashok Mohanty has urged that the Government on being satisfied that in individual cases some hardship would be caused, had the power to relax the provisions of the rules and he has further drawn our attention to the fact that in the case of one R.N.Nanda the relaxation was in fact made and this has been admitted by the State Government in their counter in para-13. In this regard it has been contended by Sri K.C.Mohanty that the case of Sri Nanda stood on a different footing inasmuch as he was not promoted to <sup>an</sup> All India Service cadre and he retired as a member of the Orissa Police Service. This is not really a distinction because as has been referred to above, the Government of India letter quoted above, makes it clear that if any rule of the State Government to which the incumbent belongs is in force at the time of retirement of a member of Indian Police Service, the benefits of the rules of the State Government should be extended to him. We are, therefore, of the opinion that as admittedly Sri Choudhury was aged 33 years at the time of his appointment as Assistant Public Prosecutor and as there is no dispute that Sri Choudhury had put in more than five years of practice at the Bar and the practice at the Bar was one of the conditions

*Not in order*  
29/8

for appointment as Assistant Public Prosecutor, the benefit of Rule 36(1) of the Rules would apply to the case of Sri Choudhury as in the case of Sri Nanda. We would direct that this order be implemented within four months from the date of receipt of a copy of this judgment.

5. In the result, the application is allowed, but in the facts and circumstances of the case, there shall be no order as to costs.

*Member* 27.8.89.

MEMBER ( JUDICIAL )

B. R. PATEL, VICE-CHAIRMAN.

I agree.



*Arvind* 29.8.89  
.....  
VICE - CHAIRMAN.

Central Administrative Tribunal,  
Cuttack Bench, Cuttack,  
The 29th August, 1989/ Jena, Sr.P.A.