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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO: 414 OF 1988

Date of decision: 5.4.1991

Golak Chandra Nayak

Applicant

Versus

Union of India and others

Respondents

For the applicant

: M/s D.P.Dhalsamant,
A.K.Kanungo,
Advocates

For the Respondents

: Mr.Tahali Dalai, Additional
Standing Counsel (Central)

C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment? Yes.
2. To be referred to the reporters or not? *yes*
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

JUDGMENT

B.R.PATEL, VICE CHAIRMAN: The applicant was retired on superannuation on 2.2.1983 as Extra Departmental Delivery Agent (EDDA), Sorisia Branch Office in account with Danpur Sub Office in the District of Cuttack on the assumption that his date of birth was 2.2.1918. On an appeal the Sub-divisional Inspector (Postal), Salipur i.e. Respondent No.4 rescinded this order accepting the date of birth to be 11.4.1921 vide Annexure-2. The applicant's grievance is that he was without work from 2.2.1983 to 22.2.1983 for no fault of his. The applicant was put off duty vide; Memo dated 9.7.1983 (Annexure-3) on the ground that a case in respect of criminal offence was under enquiry. Later Respondents in their counter affidavit have admitted that no criminal offence was under enquiry but certain other allegations which were under enquiry. The applicant has moved the Central Administrative Tribunal (the Tribunal), Cuttack Bench to quash the put off order



dated 9.7.1983; to allow him the pay and allowances for the period from 3.2.1983 to 22.2.1983; to treat the period from 9.7.1983 i.e. the date of put off duty to 11.4.1986, the date of his superannuation as duty and allow him the pay and allowances and issue a direction to the Respondents to pay him immediately ex-gratia gratuity as per his entitlement.

2. The Respondents in their counter affidavit have maintained that the applicant committed a number of serious irregularities by accepting deposits from the Savings bank depositors and even entering withdrawals from the Savings bank account and that the 'past monetary verification of the applicant has not been completed yet' and on completion of such verification he would be proceeded against departmentally. They have further maintained that since the applicant has not rendered satisfactory service he could not be granted any exgratia gratuity, as grant of such gratuity is governed by certain conditions laid down in Director General (Posts and Telegraphs) letter a copy of which is at Annexure- R/9 to the counter.

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3. We have heard Mr. D.P.Dhalsamant, the learned Counsel for the applicant and Mr. Tahali Dalai the learned Additional Standing Counsel (Central) for the Respondents and perused the relevant records. We agree with Mr. Dhalsamant that for no fault of his the applicant was prevented from doing his duty from 3.2.1983 to 22.2.1983 and we direct that he should be paid for this period whatever emoluments he was proportionately entitled to. As regards, the petitioner's prayer for payment of his emoluments during the period, he was put off duty i.e. from 9.7.1983 to 11.4.1986 the date of his superannuation we agree with Mr. Dalai that Rule-9 of the Posts and Telegraphs EDA (Conduct and Service) Rules, 1964 do not visualise such payment. We are therefore, unable to grant the applicant this relief. We have however, noticed from the averments made in the counter that the Department has been investigating the counter into certain allegations of irregularities committed by the applicant since July, 1983 and they have stated in their counter that Departmental proceeding will be initiated against the applicant on completion of the verification. Mr. Dhalsamant has very strenuously



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urged that there is no justification for keeping the enquiry pending for long seven years. The inordinate delay, according to Mr. Dhalsamant, makes it abundantly clear that there is no serious allegation against the applicant and as such there is no justification for prolonging the agony. Mr. Dhalsamtn has placed before us our judgment in Original Application No.200 of 1988 which was delivered on 8th September, 1988. Though the facts in both the cases are distinguishable the point of similarity is the inordinate delay in initiating and conducting the Disciplinary Proceeding. In Original Application No.200 of 1988, the applicant who was an Extra Departmental Delivery Agent working in Babujung Branch Post Office within the district of Cuttack was put off from duty on 22.9.1978 on a contemplated proceeding and the proceeding was initiated on 10.9.90 on an allegation of mis-appropriation. The enquiry was closed on 30.2.1982 when the applicant was asked to submit the written statement which was submitted on 16.9.1982. Thereafter no orders were said to have been passed and the petitioner was languishing without

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a job. In that judgment in paragraph-5, we have held that

"We are of opinion that there has been gross injustice done to the petitioner by making the democle's sword to hang on him for the last ten years due to utter carelessness and negligence of the disciplinary authority. We cannot perusade ourselves to swallow for a moment that the petitioner should be made to face harassment because of non-traceable of the file in question which is not only due to the negligence of the disciplinary authority or the Inquiry officer but it is against all cannons of equity, justice and fair play "

and whatever may be the reasons for the inordinate delay in the present case of prolonging the investigation and the initiation of the disciplinary proceeding, we are of the view that all this time when the investigation and threat of Departmental Proceeding have been going on the applicant has been suffering mentally even though he has retired as long back as 11.4.1986. We hold that it is unjust and iniquitous to keep a retired employee under the shadow of the democle's sword and prolong his agony indefinitely. The very fact that the Department has taken as long as seven years to complete even the investigation makes us believe that in fact there were no serious irregularities committed by the applicant. We are therefore, of the opinion that the matter should not be allowed to dragon further pointlessly and that if the Departmental proceeding has

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not been finalised as on today it should not proceed ^{further} against the applicant and whatever pensionary benefits like ex-gratia gratuity is admissible to him should be paid to him within two months from the date of receipt of a copy of this judgment. As mentioned above, the Respondents have taken the stand that no ex-gratia gratuity would be paid to the applicant as his se vice was not satisfactory. We do not accept this contention of the Respondents because this contention is based on various irregularities which have been listed in the counter and investigation into which was not completed when the counter was filed on 26th May, 1989. Now that we have decided that no disciplinary proceeding should go on if it has not been finalised as on today, we direct that the service rendered by the applicant should not be treated as unsatisfactory and he should be paid the ex-gratia gratuity as admissible under the Director General's instructions vide Annexure-R/9.

4. The application is accordingly disposed of leaving the parties to bear their own costs.

M. S. E. P. L.
..... 5.4.91.
MEMBER (JUDICIAL)

B. K. Mohanty
..... 5.4.91
VICE-CHAIRMAN

Central Administrative Tribunal, Cuttack Bench/K. Mohanty.

