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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

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ORIGINAL APPLICATION NO. 640 OF 1993
Cuttack this the 4th day of August, 1999

(PRONOUNCED IN THE OPEN COURT)

Rajashree Bakshi

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
7.8.99

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ORIGINAL APPLICATION NO.640 OF 1993
Cuttack this the 4th day of August, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Rajashree Bakshi, aged about 45 years,
W/o. Late Surendera Bakshi, permanent
resident of Aska Street, Parlakhemundi
Dist: Gajapati - at present residing
(C/o. Paramananda Sahu, Thoria Sahi,
Mangalabag, Dist: Cuttack)

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Applicant

By the Advocates : M/s.Pradipta Mohanty
D.N.Mohapatra

-Versus-

1. Union of India represented by the
General Manager, South Eastern Railway,
Garden Reach, Calcutta-700043(West Bengal)
2. Senior Divisional Electrical Manager(G)
South Eastern Railway, Kharagpur(West Bengal)
3. Divisional Railway Manager(P)
Kharagpur, At/Po: Kharagpur
West Bengal

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Respondents

By the Advocates : M/s.B.Pal
O.N.Ghosh

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for his arrear dues including post-employment dues, like G.P.F., pension and gratuity by quashing the order of punishment, report of the inquiry and order of rejection of appeal made by him. During pendency of this Original Application, the petitioner passed away on 15.6.1999 and was substituted in order dated 29.7.1999 by his widow.

2. The case of the original applicant is that he joined as Wireman Gr.I under S.E.Railway on 11.1.1955 and worked as such till 9.9.1981. He suffered from Seizopharnia and mental disorder from 9.9.1981 till 19.5.1986. The petitioner has stated to have annexed a Certificate from the Govt. Doctor, Berhampur in support of his mental disorder ~~disorder~~ during the aforesaid period and the fact of his having become fit subsequently. This certificate stated to have been annexed as Annexure-1 was actually not annexed. In course of hearing learned counsel for the petitioner produced the original certificate without any objection from the learned senior counsel appearing for the respondents. According to applicant, because of mental illness, he along with his family came to Cuttack from Kharagpur and was under treatment of Specialist of S.C.B.Medical College. While they were at Cuttack, order of removal dated 13.3.1986 at Annexure-2 was received by the applicant along with copy of departmental proceeding and inquiry report. Applicant has stated that he has not

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received the charge sheet and from the enquiry report he learnt that he has been removed from service on the ground of his unauthorised absence from May, 1981 onwards. He filed an appeal which was rejected in order dated 31.7.1986 at Annexure-4. He filed a ^{revision} petition dated 30.8.1986 which is at Annexure-5. The applicant's case is that no order on ^{his} ~~revision~~ ^{petition} was received by him. Subsequently the applicant's wife, the present petitioner before us after substitution, filed a petition to Railway Minister for considering the case of the original petitioner, but without any response. That is how the original applicant has come up in this Application with the prayers referred to earlier.

3. Respondents in their counter have stated that original applicant was working as Skilled Wireman Gr.I under Electrical Foreman (North) Kharagpur. His date of appointment was on 11.1.1955 and as on 1.1.1981 he was getting pay of Rs.440/- and was staying in Railway quarters at Kharagpur. He was granted 11 days leave on average pay with effect from 10.4.1981 to 20.4.1981. A further extension of leave from 21.4.1981 to 30.4.1981 was also sanctioned to the applicant. But the applicant remained absent from duty with effect from 1.5.1981 without obtaining prior sanction of leave and he neither reported for duty nor did he submit any document in support of his inability to to attend duty. Accordingly, a major penalty proceeding was initiated against him. The charge sheet was sent to his address at Kharagpur by Regd.Post with A.D., but the same was returned by the Post Office undelivered with the endorsement "left without address". Thereafter the charge sheet was affixed in the Notice Board in the Office of

Electrical Foreman (North) Kharagpur and enquiry was conducted. The Inquiring Officer held him guilty of the charge of unauthorised absence from duty and on that basis, the impugned order of punishment of removal from service was passed on 31.3.1986 (Annexure-2). The respondents have stated that punishment order, along with the enquiry proceeding and enquiry report, was sent to the applicant in his home address at Mangalabag, Cuttack, Nursing Home Lane and the same was received by the applicant. The applicant ^{had} filed an appeal on 3.2.1986, in which he submitted that he was not mentally sound and medical certificate would follow. He further submitted an appeal on 4.6.1986 to take him back to duty on the ground that he was sick and mentally disturbed. This was not considered by the appellate authority and was rejected on 3.1.1986. The applicant submitted a revision petition on 30.8.1986 praying for revision of punishment. The Chief Electrical Engineer, Garden Reach, Calcutta, who was the revisional authority examined the matter and found nothing to set aside the order of the appellate authority and therefore, in revisional order dated 20.1.1988, punishment order was maintained. In the context of the above facts the respondents have opposed the prayer of the applicant.

J. Som. 4. We have heard Shri Pradipta Mohanty, learned counsel for the applicant and Shri B. Pal, learned senior counsel appearing for the respondents and also perused the records. Learned Senior counsel for the respondents has produced the proceeding file which has already been taken note of. In this Original Application the petitioner has prayed for his arrear dues as also G.P.F. pension and gratuity etc.

It is submitted by the learned senior counsel for the respondents that the applicant has not challenged the charge-sheet nor the enquiry nor the orders of the disciplinary authority and appellate authority as well on any ground. In view of this there is no case, according to learned senior counsel for the respondents to quash the disciplinary proceeding. We also note that in this case punishment order has been issued on 31.3.1986 and has been admittedly received by the applicant shortly thereafter. He has also filed an appeal and revision petition which have been rejected in 1986 and 1988. But the applicant has approached the Tribunal only in 1993. There is no mention in the Original Application about the reasons, because of which he could not approach the Tribunal earlier. There is also no petition for condonation of delay in filing this O.A. In view of this ^{except} we decline to quash the order of punishment to the extent indicated below.:

5. In this case we note that the applicant joined service in 1955 and till 30th April, 1981 he was in service. He remained on unauthorised absence from 1.5.1981 for long period. The applicant has stated in his revision petition that he suffered from mental illness and Seizopharnia and that is why he remained on leave and that because of the nature of temporary disability from which he was suffering during this long period, he was unable to inform the departmental authorities and filed leave applications from time to time. We find in his revision petition the applicant has mentioned that he was suffering from mental disorder. We have also seen the medical certificates which have been issued by Govt.

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Doctor about the mental disorder of the applicant. In consideration of the fact that the applicant suffered from mental disorder and also in consideration of the fact that he rendered service to the railways for about 26 years from January, 1955 till April, 1981, by this order of removal from service the entire benefit of the past service has been taken away from him. In consideration of this, while declining to interfere with the enquiry report and/or the disciplinary proceedings, we feel that in the instant case, ends of justice would be met if the punishment order is changed from order of removal from service to that of punishment of compulsory retirement from service with effect from 1.5.1981. We order accordingly. In that event the applicant would be entitled to pension taking his date of compulsory retirement on 1.5.1981 in view of his 26 years of service. We accordingly direct that pension payable to the applicant should be accordingly worked out and paid to the legal heir of the original applicant (the present applicant before us) within a period of 120 (One Hundred & Twenty) days from the date of receipt of this order. We make it clear that the applicant will not be entitled to any interest on the arrear amounts towards pension as the claim has arisen because of our order passed to-day. Accordingly gratuity amount should be calculated and paid to the legal heir (present applicant after substitution) within the period indicated above.

6. Before parting with this case, one more aspect has to be taken note of. The applicant in his petition has stated that he has not been paid the G.P.F. amount.

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The respondents in their counter have made no specific averment on this point. In view of this we direct that in case G.P.F. dues have not been paid to the applicant till date, then the same shall be paid within a period of 90 (Ninety) days from the date of receipt of copy of this order with 12% interest from 1.5.1981 till the date of actual payment. Payment of interest, however, will not arise, if in the meantime the G.P.F. dues have already been paid to the applicant.

7. In terms of observation and directions made above, the Application is disposed of, but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO

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(SOMNATH SOM)
VICE-CHAIRMAN
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