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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.358 OF 1994

Cuttack this the 9th day of December, 1994

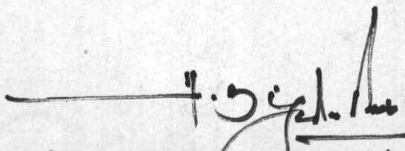
Smt.Krushna Priya Nanda Applicant.

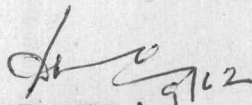
Vrs.

Union of India and others Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? *yes*


 (H. RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)


 (D.P.HIREMATH)
 VICE CHAIRMAN

09 Dec 94 .

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

Original Application No.358 of 1994

Cuttack this the day of December, 1994

CORAM :

THE HONOURABLE MR.D.P.HIREMATH, VICE CHAIRMAN
&
THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

..

Smt.Krushna Priya Nanda,
w/o late Amarendra Nanda,
aged about 60 years,
Prafulla Niwas, At-Mehendipur,
P.O.Chandini Chouk,
P.S.Lalbag, District-Cuttack

.... Applicant.

By the Advocates

...

M/s M.R.Panda,
D.K.Pani,
S.K.Sahu &
M.K.Nayak and
Mrs.M.K.Das.

Vrs.

1. Union of India, through the Secretary,
Revenue Department,
Government of India, North Block,
New Delhi.

2. The Chairman, Central Board of Direct
Taxes, Government of India,
North Block, New Delhi.

3. Commissioner of Income-Tax,
Orissa, Forest Park, Bhubaneswar,
Orissa

.... Respondents.

By the Advocate

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Mr.Aswini Kr.Misra.

...

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ORDER

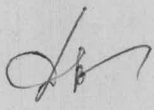
D.P.HIREMATH, VICE CHAIRMAN. The applicant herein was serving in the Income-Tax Department as Supervisor Grade-II being entrusted with the duty of recovery of tax in Cuttack Income-Tax Office. The departmental enquiry was ordered against her in respect of what the respondents called "certain financial irregularities". In contemplation of the disciplinary proceedings she was placed under suspension with effect from 31.8.1979. She filed her written statement of defence after the charges were framed and ultimately enquiry report was submitted to the disciplinary authority, and accepting the report of the enquiring authority on 25.2.1986 the punishment of compulsory retirement was imposed on her by the disciplinary authority. Her appeal to the appellate authority was not disposed of expeditiously. She filed Original Application No.298 of 1989 before this Tribunal when still the appeal was pending. Her main grievance was that she was not furnished with the copy of the enquiry report and this had resulted in failure of justice and to that extent, she was denied principles of natural justice.

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2. This Original Application No.298 of 1989 came to be disposed of by Division Bench of this Tribunal on 6.2.1992. The Tribunal relying

on a decision of the Supreme Court in the case of Union of India and others v. Mohd. Ramzan Khan (AIR 1991 S.C. 471) passed the final order as below :

"In view of the aforesaid observations of their Lordships of the Supreme Court we are of opinion that principles of natural justice have not been complied for not having given due opportunity to the applicant to make a representation against the findings arrived at in the enquiry report. Therefore, we do hereby remand this case to the disciplinary authority with a direction that within 30 days from the date of receipt of a copy of this judgment, he should furnish a copy of the enquiry report to the applicant, Mrs.K.P.Nanda, who, if so desires, may make a representation within 30 days from the date of receipt of the enquiry report to be submitted to the disciplinary authority and within thirty days from the date of receipt of the representation the disciplinary authority should finally dispose of the matter and give a personal hearing to the applicant Mrs.K.P.Nanda, if she desires. We hope and trust the disciplinary authority will give a reasoned order and in case the applicant is aggrieved by any such order, she is given liberty to approach this Bench, if so advised."


Thus the disciplinary proceedings went back to the disciplinary authority with the above direction, and at any rate, the disciplinary authority was required to complete the process of hearing within 90 days

from the date of the order and dispose of the matter finally. It is the case of the applicant that she made a representation as directed by this Tribunal on 10.4.1992. She, however, retired on attaining the age of superannuation in September, 1992. It may be mentioned here that the disciplinary proceedings are still pending with the disciplinary authority.

3. In this application she has prayed for the following reliefs :

- (a) to direct the respondents to sanction, draw and disburse her salary from the date of suspension till the date of superannuation deducting the amount paid to her by way of pension;
- (b) to direct the respondents to pay the dues of the applicant along with interest at prevalent rate;
- (c) to direct the respondents to give her all consequential service benefits as admissible under law.

According to her, she is entitled to these reliefs as the disciplinary authority did not dispose of the

proceedings before it within the time allowed by this Tribunal. Needless to say that by at least May, 1992 the disciplinary proceedings ought to have been concluded. As she has reached the age of superannuation during pendency of the proceedings and retired, the disciplinary authority cannot continue the proceedings against her. The order of punishment dated 25.2.1986 must be deemed to have lost its existence for all intent and purpose and, therefore, in the absence of any order contrary to her entitlement she would be entitled to all the back wages. She must be deemed to have continued in service notwithstanding the order of suspension passed against her. Roughly she has quantified her emoluments at Rs.3,20,000/- besides gratuity. The disciplinary proceedings protracted for over a period of seven years and ultimately the same was found to be legally infirmed. At the fag-end of her life she has become physically and mentally weak and requires her wages badly. She is also entitled to interest on the amount that is required to be paid to her.

4. The respondent No.3, the Commissioner of Income-Tax inter alia contended that the charges against the applicant were mainly with regard to

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financial irregularities committed by her when she was in service and prior to the date of suspension. While the position of law from the date of pronouncement of the decision in Ramzan Khan's case (supra) has been traversed with reference to later decision^s of the Supreme Court which is unnecessary to be dealt with at this stage, the principal counter statement is at paragraph 5 of his counter. As directed by this Tribunal, the enquiry report was served on her on 4.3.1992 through a special messenger, and while requesting for grant of earlier enquiry report she gave another petition on 16.4.1992 which was received in the office on 30.4.1992. Though she received the copy of the enquiry report on 4.3.1992 she did not make any representation within 30 days, but she filed her petition only on 16.4.1992 which was received by the disciplinary authority on 30.4.1992. She again made second ^{and} a/representation that she would exercise a valuable right in the disciplinary proceedings in view of a proceeding drawn up against her under Rule 14 of the C.C.A.Rules, ^{and} she required a copy of the said report for her information. Only after getting it, she would be able to make her submission and then to pray for documents or materials that were relied upon. By 11.3.1992

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she was supplied with the copy of the enquiry report and then she made a representation as per Annexure-2 and sought leave to submit her rejoinder, if necessary. She further stated that if the authority permitted her to get particulars of documents and evidence, she may be permitted to submit additional information in support of her plea of innocence. She, however, never filed her final explanation and as such it was difficult on the part of the disciplinary authority to take a positive decision in the matter. While these were the laches on the part of the applicant even after the case was remanded to the disciplinary authority, the respondent No.3 has also referred to certain constraints that he was faced with in April, 1992. There was change of disciplinary authority around this time as the Commissioner of Income-Tax who was earlier the disciplinary authority was transferred and the new Commissioner took over charge on 27.4.1992 and immediately thereafter he was away from the headquarters for 12 days in the following month to attend the conference of the Commissioners at Delhi and for other official duties. Since the representation was not put up before the disciplinary authority and since no final explanation

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was submitted by the applicant, he was not in a position to take any positive decision. It is also averred that she is not entitled to any back wages. The respondents also appear to be aware of the fact of her retirement ^{during the pendency of} on the disciplinary proceedings. Therefore, the respondent No.3 contends that the disciplinary authority could not have passed any orders since the applicant was superannuated after reaching the age of superannuation in September, 1992.

- According to him, the applicant would be deemed to have been placed under suspension in accordance with the provisions of the C.C.A.Rules and, therefore, she is not entitled to back wages as well as increments. Reinstatement cannot be claimed as a matter of right. He also refers to the observation of this Tribunal that she should not be reinstated and was not entitled to back wages. Her quantification of the emoluments at Rs.3,20,000/- is stoutly refuted. The entire period of the pendency of the disciplinary proceedings cannot be attributed to the negligence of the authorities ^{order of} since the punishment was passed by the disciplinary authority in February, 1986 itself. In view of her retirement during pendency of the proceedings, if any punishment can be imposed, it can only be by the President in consultation with the Union Public Service Commission.

5. It must be said that there is no controversy as to the events that occurred till the filing of this application. As the Tribunal set aside the punishment of compulsory retirement imposed by the disciplinary authority and remitted the matter back to the disciplinary authority, it is wholly unnecessary now to trace back the events leading to the final order that was passed in 1986 imposing punishment on her. It is, therefore, necessary to confine in this order to the facts after the Tribunal passed the order of remand. Though the respondents have contended that the Supreme Court has clarified the position emanating from the judgment in Ramzan Khan's case (supra) in the later decision, namely, that the decision cannot have retrospective effect, that technical plea now becomes purely academic in nature in view of the remand order being in force, the respondents accepting the same and the disciplinary authority furnishing to the applicant the copy of the report of the enquiring authority and receiving the representation of the applicant. We have thus to pick up the strings only from the date of the order of this Tribunal remanding the case to the disciplinary authority.

6. It is ^{not} ~~is~~ now in challenge that after the applicant retired in September, 1992, the disciplinary

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proceedings against her under the C.C.A. Rules for the purpose of imposing any of the penalties prescribed under the Rules cannot be continued. Even the respondents appear to have accepted this position when it is specifically pleaded in the counter that because of her retirement, the disciplinary authority could not have passed any order and that it is now the President who has to pass suitable orders in consultation with the Union Public Service Commission. The Civil Services (Classification, Control and Appeal) Rules authorise the imposition of a penalty only on a Government servant. A government servant as defined under the relevant rules is a person who is a member of the civil services of the State or holds a civil post in connection with the affairs of the State. Therefore, a person who is retired from government service cannot be considered as a government servant. Consequently no disciplinary proceedings against a retired government servant can be held under the rules. A mere pendency of a departmental enquiry does not stop the retirement of a civil servant. Thus enquiry continued beyond the age of superannuation is illegal. Therefore, if a disciplinary action

is sought to be taken against a government servant, it must be done before the official retires. What then should happen to the pending disciplinary proceedings can be assessed only with reference to the Central Civil Services (Pension) Rules, 1972. Rule 9 of the said Rules reads thus:

"9. Right of President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded

by the authority by which they were commenced in the same manner as if the Government servant had continued in service:


Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

- (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -
- (i) shall not be instituted with the sanction of the President,
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and
 - (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.



(6) For the purpose of this rule, -


(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court. "

7. Rule 9(2) of the Pension Rules is unambiguous, specific and definite. According to the learned counsel for the respondents, Mr.A.K.Misra, now that the applicant has retired during the pendency of the disciplinary proceedings after remand from this Tribunal, they are deemed to be proceedings under this Rule and, therefore, the question of quashing the proceedings does not arise. Mr.Panda appearing for the applicant maintained that on account of gross indifference on the part of the Department to conclude the proceedings within the time stipulated by the



Tribunal, the applicant is entitled to have the entire proceedings quashed. It is no doubt deplorable that the proceedings instituted as far back as in the year 1979 were concluded in the year 1992, i.e. 13 years after the applicant was placed under suspension, and ultimately the Tribunal found in Original Application No.298 of 1989 that the proceedings were required to be re-heard in view of Ramzan Khan's case (supra). As we have already pointed out, it is now besides the point if this Tribunal could have given retrospective effect to the decision in Ramzan Khan's case (supra) once the Department is now seized of the proceedings after remand. Therefore, we have now only to see whether non-conclusion of the proceedings within the stipulated time has entailed quashing of the proceedings even if they partake the character of an enquiry under Rule 9 of the Pension Rules.

7. In the case of O.P.Gupta v. Union of India and others (AIR 1987 S.C.2257) the Government servant was under suspension for 11 years, the departmental proceedings were kept pending for 20 years, the High Court had quashed the departmental proceedings which were pending for over 20 years with little or no progress as being wholly invalid and unfair, though the appellant was reinstated, the/competent authority to order reinstatement failed

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to make an order in terms of FR 54 after the appellant had been reinstated in service within a reasonable time. The relevant observations at paragraph 15 are as follows :

"... there is no presumption that the Government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension."

It may be mentioned here that though the Tribunal remitted the case to the disciplinary authority for re-hearing, it was made clear that the petitioner would not be entitled to reinstatement and shall not be entitled to back wages. It was submitted at the Bar that the applicant had approached the Supreme Court after this order was rendered by the Tribunal, but did not pursue it any further perhaps on account of her retirement. Be that as it may, it is now on record that the Tribunal clearly felt that she was

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not entitled to reinstatement at that stage, thereby making it clear that she continued to be under suspension.

8. In the case of Kishan Lal v. Union of India and others (1991 (8) SLR 580) the disciplinary proceedings were initiated in 1987 and had not yet been concluded when the petitioner approached the Tribunal on 15.11.1989 with a prayer that the departmental enquiry instituted against him may be quashed. Interim orders came to be passed on as many as three occasions, namely, 21.11.1989, 19.7.1990 and 11.10.1990, and no final orders were passed within the time limit prescribed in the order dated 11.10.1990. The respondents also did not seek extension of time in that regard. The Tribunal found that no satisfactory reasons were coming forth as to non-completion of the enquiry within the time allowed, and it set aside the impugned memorandum dated 18.6.1987 consisting of article of charge. Mr. Panda has argued that the facts of this case are attracted in the instant case as within the time allowed by the Tribunal the enquiry is not completed.


9. Similarly in the case of Subrata Chaki and others v. State of West Bengal and others (1985(3)SLR 530) and in the case of Manasranjan Das v. State of Orissa & others (1973(2) SLR 553) the Calcutta High Court and the Orissa




High Court deprecated the delay on the part of the disciplinary authorities not completing the enquiry expeditiously. They were, however, cases wherein the retirement of the Government servant did not intervene during pendency of the enquiry.

10. On behalf of the respondents Mr. Misra invited our pointed attention to the decision of the Principal Bench in the case of *Guru Dayal Singh v. Union of India and others* (1992(3) SLR 228) and particularly paragraph 6 of the report with regard to non-completion of the enquiry within the stipulated time and whether such non-completion would necessarily entitle the Government servant to have the proceedings quashed. The relevant observations are as under :

"In this case time for completing the enquiry was fixed as six months. The order does not convey that the right to hold the enquiry stands forfeited if the enquiry is not completed in six months. Having regard to the terms of the judgment dated 15.11.1990 which only fixed the time of six months, we are inclined to take the view that the Tribunal did not intend that if inquiry is not completed within a period of six months fixed by it, the respondents would have no competence or jurisdiction to initiate or conclude the inquiry after the expiry of the said period fixed by it. Hence, we have no hesitation in taking the view that the order of the respondents passed after the prescribed time cannot be regarded as one passed without jurisdiction."



In the earlier paragraph a hypothetical question was addressed to itself, namely, by taking a case where the Tribunal has directed the respondent to pay arrears of emoluments within the stipulated period. Would it be reasonable to hold that the arrears cannot be paid after the expiry of the stipulated period? On the other hand, can it then be said that the fixing of the time by the Tribunal is of no consequence and that the party is not obliged to comply with the directions within the stipulated period? It then proceeded to hold that when the Tribunal stipulates the period for doing a certain thing the party is bound to comply with the direction. If it acts in violation of such direction and delays compliance, the party does so at its own risk. It can be dealt with under the Contempt of Courts Act. The party is, therefore, obliged to comply with the stipulation regarding time. From this it does not necessarily follow that compliance after the stipulated period is without jurisdiction. That depends upon the terms of the order. When the order fixes the time for doing something, it is not proper to construe the direction as taking away the right to do it after the stipulated period. Whether the party is precluded from doing something after the stipulated period has to be gathered from the terms of the order read as a whole. If two views are possible, we should lean in favour of the view that the right is not taken away.



11. We have to examine the contention of the applicant that the entire proceedings should be quashed in the light of the ratio emerging from the aforesaid decisions. We cannot at the same time ignore the fact that the applicant retired during pendency of these proceedings.

12. In the case of State of U.P. v. Sri Aditya Narain Misra and others (1973(1) S.L.R. 679) Uttar Pradesh Civil Services Regulations, Regulation 351-A and Civil Services (Classification, Control and Appeal) Rules, Rules 49 and 55A came up for consideration before the Division Bench of the Allahabad High Court. Though the government servant retired on attaining age of superannuation before the final order came to be passed in the disciplinary proceedings, the punishment of adverse entry in the character roll of the government servant together with the direction to recover a certain sum and deduction of his pension by Rs.20/-per month came to be passed. The High Court found that after retirement the punishment of adverse entry in the character roll could not be passed, but the other directions were quite valid. A number of decisions came to be considered by the High Court before arriving at this conclusion, namely, no punishment under the Civil Services (Classification, Control and Appeal) Rules could be passed after the Government servant retired.

13. In the case of D.V.Kapoor v.Union of India and others (AIR 1990 SC 1923) the Government servant, an Assistant Grade IV of the Indian Foreign Service, Branch 'B', faced departmental enquiry for failure to attend duty on transfer and pending proceedings he sought voluntary retirement from service and by the order dated October 24, 1980 he was allowed to retire but was put on notice that the disciplinary proceedings initiated against him would be continued under Rule 9 of the Civil Services(Pensions)Rules,1972 ('Pension Rules', for short). The Supreme Court pointed out that Rule 9(2) of the Pension Rules provide that the departmental proceedings if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. Therefore, merely because the delinquent appellant was allowed to retire, the Government does not lack jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto. The disciplinary proceedings initiated under the

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Conduct Rules must be deemed to be proceedings under the Pension Rules and shall be continued and concluded by the authorities by which the proceedings have been commenced in the same manner as if the Government servant had continued in service. The only inhibition thereafter is as provided in the proviso namely "provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President". The other part of the judgment relating to withholding of the pension and powers of the President are not very much relevant for the purpose of this case.

14. Rule 351-A of the Pension Code enacted by the State of Andhra Pradesh is perhaps similar to Rule 9 of the Pension Rules. It empowers the State Government to reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specific period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. It has a proviso that such departmental

proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment shall, after the final retirement of the officer, be deemed to be a proceeding under this Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service. The Government servant attaining the age of superannuation during pendency of the enquiry against him was still considered to be a Government servant for the purpose of Rule 351-A of the Andhra Pradesh Pension Code. Rule 351-A, according to the Full Bench of the High Court, has the same effect and achieves the same result as an order passed under the Fundamental Rule 56 by which the services of a Government servant are continued after retirement for the purpose of concluding the disciplinary proceedings pending against him. Thus there is no direct or indirect conflict between the provisions of Article 351-A and the provisions of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act. (K. Satyanarayan v. The State of A.P. & another (AIR 1973 A.P. 223)).

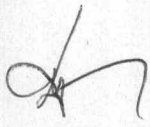
15. It thus follows that if the Government servant retires during pendency of the disciplinary proceedings, it does not automatically follow that the disciplinary proceedings get terminated without anything further and that no action can be taken against the delinquent Government servant. The only question that remains for our consideration is whether in view of the lapse on

the part of the disciplinary authority to complete the enquiry before the stipulated period, the entire proceedings should be quashed.

16. The Rajasthan High Court in the case of State of Rajasthan v. Sardara Ram (1979(3) SLR 245) clearly held, referring to Article 311 of the Constitution and Rule 170 of the Rajasthan Civil Rules with special reference to Rule 170(a) and (b)(i) and (ii) ~~that~~ that when a legal fiction is created, no doubtful effect must be given to it and it should be carried to its logical conclusion. The legal fiction created in proviso to clause(a) of Rule 170 of the Rules is that such departmental proceeding, if instituted while an officer was in service, whether before his retirement or during his re-employment shall, after the final retirement of the officer, be deemed to be a proceeding under this rule. It will, therefore, mean that by legal fiction the proceedings have been duly instituted under this rule and, therefore, there is no occasion for proviso (b)(ii) of rule 170 of the Rules to come into play. Proviso to clause (b) of Rule 170 related to those proceedings which were to be instituted after the retirement of an officer. Rest of the points urged before the High Court with regard to institution of proceedings in respect of any event which took place more than five years before the institution of such proceedings are not of any relevance for the purpose of this case.

Even Mr.Panda,who relied on this decision, pointed out that the Rajasthan High Court did take the view that the pending disciplinary proceedings could be continued but only for the purpose of which Rule 9(2) of the Pension Rules has been enacted.

17. The counter filed by the respondent No.3 points out how the applicant was still contemplating to file her final reply. At paragraph 6 of the counter it is specifically urged that she also pointed out that if the authority permitted her to get particulars of documents and evidence she may be permitted to submit additional information pointing her innocence. Thus this Tribunal should appreciate that the applicant has not submitted her final explanation and therefore, it was difficult on the part of the disciplinary authority to take a positive decision in the matter. This stand taken by the respondent No.3 has not been controverted during arguments. It is pertinent to note that even about four months after expiry of ninety days stipulated by the Tribunal, the applicant retired and though under Rule 9(2) of the Pension Rules the disciplinary proceedings could have been continued as proceedings for the purpose of the Pension Rules, no action appears to have been taken in that behalf. When this petition came to be filed



for the reliefs claimed therein, nearly two years had elapsed after the earlier Original Application was disposed of by this Tribunal. Unless the Tribunal comes to the conclusion that the respondents were grossly negligent or indifferent in continuing the proceedings even under Rule 9 of the Pension Rules, it would not be just and proper to quash the entire proceedings. It is particularly so in the instant case as the applicant's counsel submitted during arguments that the applicant had paid Rs.19,000/- to the Government and that she was now taking steps to claim refund of the said amount. It is ^{the} a case of the Department that the disciplinary proceedings were initiated on account of certain financial irregularities and we are not in a position to know the charge against the applicant as neither of the parties has made available a copy of the article of charge. Something, however, could be made out from a copy of the representation sent by the applicant as per Annexure-2 made available to us in which she referred to the allegation of defalcation of Rs.4010/-, non-presentation of three challans amounting to Rs.7613/-, non-accounting of receipt of Rs.2839/-, and she being guilty of making procedural irregularities, etc. It is ^{thus} just₂ patently clear that finding has to be

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rendered with regard to the liabilities sought to be fastened on the applicant with regard to various amounts she is alleged to have come across in her official capacity. Under these circumstances, even though the enquiry was not completed within the stipulated time and when the applicant did not take recourse to the proceedings under the contempt rules as pointed out by the Principal Bench in the case of Guru Dayal Singh (supra) it does not necessarily follow that the disciplinary authority loses its jurisdiction to enquire into the charges. For the reason that the allegations are with regard to the finances handled by the applicant, this is not a fit case wherein we should quash the entire proceedings. In the event of the disciplinary authority coming to the conclusion that the applicant is guilty of grave misconduct or negligence during her period of service, the President has a right to take action under Rule 9 of the Pension Rules. In our view, the respondents should be precluded from continuing the disciplinary proceedings under the Civil Services (Classification, Control and Appeal) Rules, but the proceedings must, however, be permitted to be continued under Rule 9 of the Pension Rules to the logical conclusion. This action should not be protracted endlessly as the respondents have slept over the matter for nearly two years after this Tribunal decided the earlier application of the applicant with specific directions. It would be reasonable to specify

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certain time limit for concluding the enquiry beyond which the respondents should be refrained from doing so. With these observations we proceed to pass the following order :

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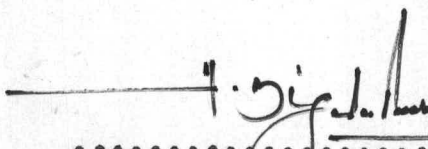
The petition is partly allowed.

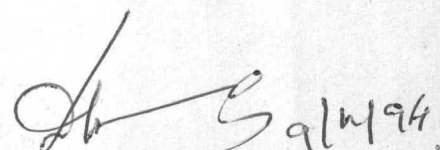
The respondents are restrained from continuing the disciplinary proceedings against the petitioner under the Civil Services (Classification, Control and Appeal) Rules, her suspension is set aside, and she shall be deemed to have been reinstated on the date she was kept under suspension. She is entitled to all the service benefits including increments as if she was in service till her superannuation, and the same shall be quantified within three months from the date of receipt of copy of this order and shall be paid to the petitioner. The proceedings, however, shall continue under Rule 9 of the Pension Rules, and the disciplinary authority shall complete the enquiry within four months from the date of receipt of copy of this order with whatever material available on record including the representations filed by the petitioner, and the petitioner shall not be entitled to file any further representation before the disciplinary

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authority. She, however, shall be given a personal hearing on a date to be fixed not later than thirty days from the date of receipt of copy of this order. In the event of the proceedings not terminating within four months as directed above, they shall be deemed to have been quashed. No order as to costs.


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MEMBER (ADMINISTRATIVE)
09 DEC 94


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VICE-CHAIRMAN

A.N.Nayak/P.S.