

NOTES OF THE REGISTRY

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Order dated 13.12.2001

None appeared for the applicant when called. No request has also been made on behalf of the applicant seeking adjournment. This being a matter of 1995 it is not possible to drag on the matter indefinitely. We also note that on earlier four occasions learned counsel for the applicant had not appeared. In view of this we have heard Shri B.Pal, learned senior counsel appearing for the respondents and also perused the pleadings.

In this O.A. the petitioner has prayed for a direction to respondents to treat her throughout in service since 6.1.1993. Her second prayer is for direction to respondents for allotment of duties to him. The third prayer is for direction to respondents to give her salary w.e.f. 6.1.1993 (wrongly typed as 6.1.1994). Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed.

The case of the applicant is that on the death of her father, her mother was appointed on compassionate ground under the railways, as a lady waterman in hot weather establishment on casual basis. Thereafter the applicant was appointed as a Khalasi in August, 1979. The applicant has stated that she was earlier proceeded against and punishment of removal from service was imposed on her. Her appeal was also dismissed. But on her filing a mercy petition orders were passed on 10.9.1990 to give her fresh appointment as Khalasi in

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Group D. Her grievance is that in spite of the above order she was not given any appointment order and ultimately Inspector of Works, Bhubaneswar appointed her as Khalasi on 7.12.1991, as mentioned by the respondents. Applicant has stated that she was transferred to Mancheswar on 28.8.1992 and even though she worked diligently at Mancheswar she faced immense difficulties after which she was transferred and posted at Bhubaneswar on 6.1.1993. It is stated that even though the applicant joined at Bhubaneswar she was not given any duty nor pay has been given to her from 6.1.1993. In the context of the above she has come up in this petition with the prayers referred to earlier.

It is not necessary to refer to all the averments made by the respondents in their counter. In the counter respondents have indicated as to how the period from 6.1.1993 has been dealt with. It is stated that on 6.1.1993 duty pay has been drawn for the applicant. From 7.1.1993 to 14.7.1993, it is stated that applicant was on unauthorised leave for 189 days and the same was treated as leave without pay and again on 15.7.1993 one day's pay has been drawn and thereafter from 16.7.1993 to 26.8.1993 (42 days) have been treated as leave without pay. Respondents have stated that from 28.8.1993 to 2.1.1994, the applicant absented herself from duty without submitting any leave application and therefore, this has been treated as unauthorised absent from duty. Applicant again joined on 3.1.1994

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and worked for three days, i.e. upto 6.1.1994. From 6.1.1994 she again remained on unauthorised absent and has since been continuing. In this respect disciplinary proceedings have been initiated against her. At the time of filing of counter disciplinary proceedings was still continuing. Respondents have made various averments with regard to progress of the disciplinary proceedings and how the notice was sent to the applicant. But it is not necessary to refer to all the details. At Pg. 8 & 9 of the counter respondents have indicated in detail the number of days from 1992-94, the applicant has remained away from her duties. In the context of the above, respondents have opposed the prayer of the applicant. From the above, it appears that the averment of the applicant that she has not been given any pay i.w.e.f. pay 6.1.1993 is not correct. As indicated above, for a few days from 6.1.1993 when she joined her duty, her duty pay has been drawn. For the rest of the period she had remained on unauthorised absent and for this the departmental proceedings have been initiated against her. Learned senior counsel for the respondents had no instruction with him if in the meantime disciplinary proceedings have been completed. In any case since the period for which the applicant wants her salary is the subject matter of the disciplinary proceedings, her entitlement to salary for the above period will have to be determined on the basis of the final outcome of the disciplinary proceedings.

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to the both
counsel
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At this stage the applicant cannot approach the Tribunal for an order with regard to payment of salary as that would be preempting the departmental proceedings which are in the hands of the disciplinary authority.

In the result, therefore, we hold that the applicant is not entitled to any of the reliefs prayed for in this O.A. which is accordingly ~~as~~ rejected, but without any order as to costs.

MEMBER (JUDICIAL)

J. Venkateshwaran
VICE-CHAIRMAN
13.12.2001