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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 641 OF 1996

Cuttack this the 16th day of April/2003

Smt. Purnima Gahir

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

FOR INSTRUCTIONS

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

M.R. Mohanty
(M.R. MOHANTY) 16/04/03
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 641 OF 1996
Cuttack this the 16th day of April/2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLR SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

Smt. Purnima Gahir, 38 yrs.,
W/o. Late Dayanidhi Gahir,
At/PO-Rajmoter, Via: Dharmagarh
Dist: Kalahandi

...

Applicant

By the Advocates

M/s. P.K. Padhi

VERSUS

1. Union of India represented by it's Chief Post Master General (Orissa Circle), At/PO-Bhubaneswar, Dist-Khurda-751 001
2. Director of Postal Services (Berhampur), O/O. Postmaster General (Berhampur Region) At/PO-Berhampur, Dist: Ganjam (O)
3. Superintendent of Post Offices, Kalahandi Division, At/PO-Bhawanipatna, Dist-Kalahandi

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Respondents

By the Advocates

Mr. B. Dash, A.S.C.
Mr. A.K. Bose, S.S.C.

O R D E R

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MR. B.N. SOM, VICE-CHAIRMAN: This Original Application was filed by Dayanidhi Gahir, formerly E.D.B.P.M., Rajmoter Branch Office in account with Dharmagarh S.O. The original applicant having passed away on 7.4.1998, his wife Smt. Purnima Gahir filed Misc. Application No. 1153/02 seeking permission of the Tribunal for being substituted to contest the case. The prayer was allowed and accordingly, Smt. Purnima Gahir, wife of late Dayanidhi Gahir is prosecuting this case.

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2. The facts of this case are that the applicant's husband was placed under put off duty on 15.4.1993 in contemplation of initiation of disciplinary proceedings under Rule-8 of E.D.A. (Conduct & Service) Rules and accordingly^a/charge sheet was issued on 19.8.1993. The Inquiry Officer submitted his report on 30.7.1994 wherein he did not find the charge^aproved against the charged official. A copy of the inquiry report was supplied to the charged official and he was asked to submit his defence statement. Thereafter on 18.7.1995, Respondent No.3, without giving any notice to the applicant's husband differed from the findings of the Inquiry Officer and passed the order of removal from service. The decision of the disciplinary authority (Res.No.3) was upheld by the appellate authority (Res.2).

3. The Respondents have argued that the disciplinary authority had supplied the inquiry report to the applicant's husband before the disciplinary authority passed his order and his order was a reasoned one stating why he had disagreed with the findings of the Inquiry Officer. The appellate authority also, it is further stated, had **elaborately** dealt with the deficiencies in the inquiry report and upheld the decision of the disciplinary authority in differing with the findings of the Inquiry Officer. They have highlighted that the character and antecedents of the applicant's husband were not far from suspicion and that the applicant's husband was involved in many cases/departmental proceedings. Respondents have further stated that the applicant's husband had admitted

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in writing at the time of preliminary enquiry that he had forged the signature/thumb impression of the payee. The learned counsel for the applicant strongly refuted the arguments of the Respondents by stating that the disputed signature/LTI had never been sent for examination by the **forensic** expert. Further that when the Inquiry Officer could not hold the charges proved and the disciplinary authority having decided to differ with the findings of the Inquiry Officer, it was incumbent on the part of the disciplinary authority to notice the ^{to have his say} applicant ~~with~~ regard to his disagreement and the disciplinary authority having not done so, violated the principles of natural justice. Shri Padhi, Advocate for the applicant further stated that the action of the Respondents 2 and 3 is also violative of the settled principles of law as laid down by the Hon'ble Apex Court in the case of Narayan Mishra vs. State of Orissa. Shri Padhi further stated that the husband of the applicant was entitled to protection under Article 311(b) of the Constitution.

4. We have given our anxious considerations to the issues raised in this Original Application ~~as to~~ whether the disciplinary authority could have differed from the findings of the Inquiry Officer without giving notice to the charged official. The entire question revolves round the principles of natural justice and its application. With regard to status of E.D. Agent, we ~~are~~ **agree** ~~to~~ **with** ~~the~~ the view expressed by the

learned counsel for the applicant that an E.D. Agent is entitled to protection under Article 311(2) of the Constitution. An E.D. Agent is definitely a holder of the civil post and the Hon'ble Apex Court has defined a post as "a service or an employment". An E.D. post is a service or an employment under the State. But an E.D. Agent, though a servant does not belong to civil service. E.D. Conduct Rules though prescribes the procedure to be followed in the matter of disciplinary proceedings but by virtue of an executive order, D.G. Posts has instructed the concerned authorities that they should generally follow the procedure as laid down in the CCS(CCA) Rules. We need to keep these fine distinction in view for the sake of justice and fair play. In the instant case, the Respondents have argued that although the disciplinary authority did not disclose to the charged official his intention to disagree with the Inquiry Officer and the reasons thereof, the reasons were given in his order. The very same question has been answered by the Apex Court in Narayan Mishra case (supra) as referred to by the learned counsel for the applicant. Their Lordships in that case observed by not drawing the attention of the charged official of the intention of the disciplinary authority to differ with the Inquiry Officer, he had acted against "all principles of fair play and natural justice". They observed "if the Conservator of Forests wanted to use them he should have apprised him of his own attitude and given him adequate opportunity" Since that opportunity was not given, the order of the

Conservator of Forests modified by the State Government cannot be upheld". This being the law settled by the Apex Court, we shall abide by that order and accordingly, this application must succeed.

5. In the normal circumstances we would have remitted the matter back to the disciplinary authority for complying with the principles of natural justice, i.e., for issuing notice to the charged official to have his say and/or to enable him to effectively make representation with regard to disagreement of the disciplinary authority on the findings of the Inquiry Officer. But in the instant case, as the charged official is no more there, there is no other alternative for us but to quash the disciplinary proceedings, and we order accordingly. While quashing the disciplinary proceedings, we are conscious that the deceased (charged official) had in his written statement before the S.D.I.(P) Dharamgarh admitted about the payment of money order on 11.4.1992, long after the death of the payee. Thus, the disciplinary proceedings against the deceased (charged official) are being quashed due to technical lacunae in the proceedings. We, therefore, feel that the ends of justice would be met if the Respondents will pay to the widow (applicant) whatever terminal benefits were due and admissible to her husband on his death on 7.4.1988 (after 23 years of service). Accordingly, this O.A. succeeds. No costs.

Jabaut
(M.R. MOHANTY) 16/04/03
MEMBER (JUDICIAL)

B.N. SOM
(B.N. SOM)
VICE-CHAIRMAN

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