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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.103 OF 1998

Cuttack, this the 9th day of September, 1998

Bipin Bihari Das                   .....                   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 Tribunal or not? *no*

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *98*

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**CORAM:**

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

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Bipin Bihari Das,  
aged about 58 years, L.S.G.Postal Assistant,  
Cuttack G.P.O (Retired),  
s/o Anam Charan Das,  
At-Chauliaganj, Matha Sahi,  
P.O-Nayabazar, Dist. Cuttack ..... Applicant

By the Advocates - M/s Pradipta Mohanty  
D.N.Mohapatra  
G.C.Satapathy &  
Smt.J.Mohanty.

Vrs.

1. Union of India,  
represented by the Director General (Posts),  
Dak Bhawan,  
Ashoka Road,  
New Delhi.
2. Chief Post Master General,  
Orissa Circle,  
Bhubaneswar,  
At/P.O-Bhubaneswar, Dist.Khurda.
3. Director Postal Services, Bhubaneswar  
Region, At/PO-Bhubaneswar, Dist.Khurda.
4. Senior Superintendent of Post Offices,  
Cuttack City Division,  
At/PO/Dist.Cuttack-1 .... Respondents

By the Advocate - Mr.Ashok Mohanty,  
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of  
Administrative Tribunals Act, 1985, the applicant has  
prayed for quashing the departmental proceedings

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initiated against him in Memo dated 25.9.1997 at Annexure-1 and consequently giving a direction to the respondents to pay all the post-retirement benefits to the applicant within a particular time.

2. The facts of this case, according to the petitioner, are that while the applicant was working as L.S.G.Assistant in Cuttack G.P.O., he was the Circle Secretary of All India Postal Employees Union. He was due to retire on superannuation 31.10.1997. He was served with a chargesheet on 25.9.1997 under Rule 14 of C.C.S.(CCA) Rules, 1965 and was asked to submit his explanation within ten days from the receipt of the chargesheet. The petitioner submits that there were two charges. The first charge was that he falsely allured Shri Bidyadhar Barik to provide a job to his son Basanta Kumar Barik and he took payment of Rs.2000/- from Bidyadhar Barik. He also indicated his involvement in the matter of appointment of Shri Basanta Kumar Barik in a post card letter written by him and thereby he committed grave misconduct. The second charge was that while he was working as a postal official in Cuttack City Division, he asked one Anirudha Patra to pay the amount for arranging invalidation certificate from the office of C.D.M.O. by means of gratification in respect of father of Shri Anirudha Patra. He also falsely allured Shri Anirudha Patra to provide compassionate appointment to him and the applicant indicated his involvement in the above matter through two post card letters written by him, and thereby he committed grave misconduct. The petitioner submits that the charges are vague and the allegations relate to his work as the trade union Secretary. There is nothing in the charge relating to any commission or omission with regard to his official duties. But as he is a disciplined Government servant, he submitted an explanation which is at Annexure-2. In his explanation, he denied the concocted allegations against him and pointed out the

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various circulars under which the union activity of an employee does not come within the purview of C.C.S.(Conduct)Rules, 1964. He also stated that being a Union Secretary, he is sometimes required to take up reasonable and unreasonable requests of the employees who are members of Union with the higher authorities and such employees being misguided might have made false allegations against the applicant. He also stated that the allegations relate to the years 1990 and 1994, and the charges have been framed against him only in September 1997. It is further submitted that one Shri Abhaya Charan Patnaik, a Divisional Secretary and other office bearers of the Union were jealous with his union work and they made the false allegations under the persuasion of one R.K.Sahu, the then Sub-Divisional Inspector (Postal), Kujanga, in letter dated 25.11.1994 to another Union leader Shri K.Adinarayan, the Editor of Postal Life. In that letter, it was mentioned that while the applicant was Divisional Secretary of Cuttack South Division Branch had cheated the union members and exploited them like anything giving false assurance. This allegation was forwarded by respondent no.4 to the applicant calling upon him to submit the explanation. The petitioner submitted a reply vide his letter at Annexure-6. It is further stated that at the relevant point of time one R.K.Sahu was S.D.I.(P), Kujanga, against whom serious allegations were made regarding demand and receipt of illegal gratifications. The matter was also raised before the Tribunal in OA No.130 of 1995. Because of this, Shri Sahu became vindictive and set up certain members of the Union to make false allegations against the petitioner. The petitioner further states that the Tribunal in their order dated 1.3.1995 passed in OA No.130/95 directed Chief Post Master General to take action with regard to the allegations against Shri

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R.K.Sahu for demanding and receiving illegal gratification. The applicant further states that after retirement he is still holding the office of leadership of the Union and as such, he is immune from such disciplinary actions relating to work as Union leader. The applicant further states that the allegations came up against him because of disputes between Union members which were later on resolved and the persons who wrote complaints against the applicant realised their mistakes and requested in their various letters addressed to respondent no.2 with copies to D.D.G., Vigilance, New Delhi, and the applicant, requesting the departmental authorities to drop the proceedings as the allegations were made by them against the applicant at the instance of Shri R.K.Sahu. These letters of the concerned persons are at Annexure-8 series. Thereafter, the applicant requested respondent no.2 to drop the proceedings as the complainants have withdrawn their allegations and there were no laches in course of his discharge of official duties and he has not caused any pecuniary loss to the Department. But the proceedings were not dropped. It is also stated that his post retirement dues have been withheld and thereby he is suffering. In view of the above, he has come up in this application with the prayers referred to earlier.

3. The respondents in their counter have submitted that the two charges have nothing to do with the union work of the applicant. They have stated that while the applicant was working as Postal Assistant, College Square Sub-Post Office in Cuttack City Division during the period from 1990 to 1994, Shri Abhaya Ch. Patnaik, AIPEU, P-IV and ED Employees Union, Cuttack South Divisional Branch, brought serious allegations against him regarding his involvement in corruption and

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exploitation of E.D.staff. Initially, Abhaya Ch.Patnaik submitted an allegation against the petitioner in his letter dated 10.10.1994 but did not adduce any evidence in support of the allegation. But again Shri Abhaya Ch.Patnaik in his letter dated 25.5.1995 came up with specific complaints and evidence in support of the allegations. He submitted complaints of Shri Bidyadhar Barik, EDMC, Dhanua and Shri Anirudha Patra, EDMC, Singhpur, Nalakani B.O., along with other information in which both Bidyadhar Barik and Anirudha Patra had lodged complaints that Shri Bipin Bihar Das, the applicant allured them with false assurance of giving service in Postal Department and the applicant had taken cash payment to provide such appointments. Regarding Charge No.1, which relates to the matter dealing with Bidyadhar barik, the respondents have stated that Bidyadhar Barik in his complaint alleged that the applicant took payment of Rs.2000/- from him in presence of one Satyanarayan Barik to arrange a job for his son. Later on the applicant refunded a sum of Rs.500/-, but did not refund the balance Rs.1500/-. When Bidyadhar Barik demanded return of the rest amount, the applicant informed that he had refunded the rest amount to Satyanarayan Barik who denied to have got refund of the amount from the applicant. Satyanarayan Barik produced a post card letter received on 18.1.1991 from the applicant in the name of Basanta Kumar Barik, c/o Satyanarayan Barik, wherein an instruction was given to Basanta Kumar Barik by the applicant to come urgently and join at Kaliaboda Post Office. This letter written by the applicant to Basanta Kumar Barik was referred to the handwriting expert with specimen handwriting of the applicant, and the handwriting expert opined that this post card letter

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was written by the applicant. Similarly, Anirudha Patra, EDMC, Singhpur, Nalkani EDBO, alleged that the applicant took Rs.3000/- from him with the assurance to procure an invalidation certificate in respect of his father and to arrange a job for him. In support of his allegation, Anirudha Patra produced a post card letter addressed to Dayanidhi Mohapatra of village Chhatua, the brother-in-law of the applicant, with information to intimate Anirudha Patra to arrange money for procurement of an invalidation certificate from the office of C.D.M.O., and accordingly, Anirudha Patra paid Rs.1000/- to the applicant. Although father of Anirudha Patra got retirement from the post of EDMC because of the invalidation certificate, Anirudha Patra could not get compassionate appointment as the same was rejected by the Circle Relaxation Committee. The applicant communicated this information to Anirudha Patra through another post card letter and according to the assurance given by the applicant, he again paid the balance Rs.2000/- to the applicant in presence of Akhaya Kumar Mohanty, EDBPM, Singhpur Nalkani B.O.. The applicant did not refund the amount received by him. The two post card letters written by the applicant were sent to the handwriting expert and the handwriting expert opined that the post card letters have been written by the applicant. Accordingly, the respondents have stated that the departmental investigation reveals that the applicant accepted illegal gratifications and involved himself in the appointment affairs of Anirudha Patra and Bidyadhar Barik by falsely alluring them although it was none of his business. In view of this, the respondents have stated that he has violated CCS (Conduct) Rules, 1964 and the action of the applicant has nothing to do with his Union activity and therefore, the proceedings have been rightly initiated

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against him. The respondents have further stated that R.K.Sahu, the then S.D.I.(P), Kujanga, had no role to play with the initiation of departmental proceedings against the applicant. The respondents have stated that they have received the letters at Annexure-8 series, but they did not find any justification to drop the proceedings. The Enquiring Officer had been appointed and it is for the Enquiring Officer to take a view about the guilt or otherwise of the applicant. The respondents have further stated that retirement benefits as permissible under Rule 69 of CCS (Pension) Rules, 1972 have been granted to the applicant, and he is getting provisional pension. On the above grounds, they have opposed the prayers of the petitioner.

4. The applicant in his rejoinder has stated that in the charges served on him, cases of Bidyadhar Barik and Anirudha Patra were mentioned. Both these persons wrote letters to Chief Post Master General stating that at the behest of R.K.Sahu, the then S.D.I.(P), who was their superior authority, they had filed the false complaints. These two letters of Anirudha Patra and Bidyadhar Barik have been enclosed to the rejoinder at Annexures 10 and 11. The applicant has further stated that when the original complainants have withdrawn the allegations, there was no reason for the respondents to continue the departmental proceedings. On the above grounds, he has reiterated his prayers.

5. We have heard Shri Pradipta Mohanty, the learned counsel for the petitioner, and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records. The learned counsel for the petitioner has filed a memo of citations with xerox copy of certain decisions which has also been taken note of.

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6. The first point urged by the learned counsel for the petitioner is that the allegations against the petitioner relate to his Union activity and in accordance with the circular dated 16.10.1995 of Department of Posts printed in **Swamy's Compilation** departmental proceedings should not have been initiated against him for this. In this circular, it has been laid down that legitimate union activity that does not violate CCS(Conduct) Rules, 1964 and Posts & Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964 or other rules or instructions governing the concerned employees, should not lead to disciplinary action against the employee. From the charges against the petitioner, we find that the allegations against the petitioner are that the applicant gave false promises to one Bidyadhar Barik to provide a job to his son Basanta Kumar Barik and in that connection he took payment of Rs.2000/- from Bidyadhar Barik. The second allegation is that he asked one Anirudha Patra to pay some amount for arranging invalidation certificate from C.D.M.O. In the detailed statement of imputations, these two charges have been indicated in much greater detail, but it is not necessary to go into further details of these. The applicant in his rejoinder has submitted that both Anirudha Patra and Bidyadhar Barik have withdrawn the allegations and their letters are at Annexures 10 and 11 of the Rejoinder. We have gone through these two Annexures and we find that in both these letters Shri Barik and Shri Patra have stated that some amount was paid to the Circle Union in token of donation for their kind co-operation but not for personal benefit of the applicant. From these documents, it is clear that Bidyadhar Barik and Anirudha Patra paid certain amounts. In their original complaints they have

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specifically stated that they paid these amounts to the applicant. In their letters withdrawing the allegations they have stated that the amounts have been paid to the Union and not for the personal benefit of the applicant. Moreover, prima facie it has been mentioned in the chargesheet that the applicant wrote letters with regard to providing job to the son of Bidyadhar Barik and to Anirudha Patra. Obviously, providing job to an E.D. employee's son or obtaining invalidation certificate from C.D.M.O's office for Anirudha Patra's father so that on invalidation retirement of Anirudha Patra's father, he would be given a job are not prima facie matters which can be termed as Union activity. We take note of the fact that these charges are at present being enquired into by an Enquiring Officer, and in the enquiry the applicant has taken the stand firstly that the allegations are false and secondly these are connected with his Union activity. The Enquiring Officer is yet to come a finding if these two charges relate to the Union activity of the applicant. In view of this, nothing we have said so far should have any influence on the Enquiring Officer who should come to his finding independently and unbiased by any observation made by us. Having said this, we hold that prima facie charges do not reveal matters which can be called legitimate Union activity. This ground of the petitioner necessarily fails.

7. The second point taken by the learned counsel for the petitioner is that the two complainants Bidyadhar Barik and Anirudha Patra having withdrawn their allegations, the disciplinary authority should have dropped the proceedings, and continuing the proceedings even after his retirement has resulted in harassment to him. Here again we feel that this is a matter which has to be looked into by the Enquiring Officer. It is a fact

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that the entire disciplinary proceedings were initiated on the complaints made by Bidyadhar Barik and Anirudha Patra who have subsequently withdrawn their allegations vide Annexures 10 and 11 which have been referred to by us earlier. But this again is the matter which should be urged by the applicant before the Enquiring Officer.

8. The respondents have enclosed copies of three post card letters allegedly written by the applicant and they have stated that on examination by the handwriting expert it has been opined that these post card letters have been written by the applicant. These are also matters which the Enquiring Officer has to take note of. In view of this, we hold that because of withdrawal of the allegations, there is no case for the Tribunal to quash the departmental proceedings against the petitioner. It has also to be borne in mind that in the matter of disciplinary proceedings, Tribunal does not act as an appellate authority and the Tribunal can only interfere at the stage, when the enquiry is pending, if even on the basis of the charges no misconduct is made out. It is the case of the petitioner that the charges relate to his Union activity which contention has already been rejected by us. This contention of the learned counsel for the petitioner that the disciplinary proceedings should not be allowed to continue after the original complainants have withdrawn their allegations is, therefore, held to be without any merit and is rejected.

9. The third contention of the learned counsel for the petitioner is that the disciplinary proceedings have been initiated against him at the fag-end of his service career. Factually, this is

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correct. The applicant retired on superannuation on 31.10.1997 and the charges were issued against him on 25.9.1997. The respondents have stated in their counter that the alleged lapses relate to the period from 1990 to 1994 and after the complaints were received in 1995, a departmental investigation was conducted. The opinion of the handwriting expert was called for and all this took time and that is how they have explained the delay in initiating the departmental proceedings in September 1997. Under the circumstances of the case, we hold that the delay is reasonable because before initiation of the departmental proceedings, the departmental authorities should have checked up if the post card letters allegedly written by the petitioner have actually been written by him or not. This is what they have done. There is also no rule which says that towards the end of one's service career disciplinary proceedings should not be initiated. As a matter of fact, disciplinary proceedings can be initiated even after a person's retirement subject to certain conditions and, therefore, this contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

10. The next contention of the learned counsel for the petitioner is that there has been considerable delay in finalising the proceedings and on that ground the proceedings should be quashed. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of The State of Madhya Pradesh v. Bani Singh and another, AIR 1990 SC 1308. In that case, their Lordships of the Hon'ble Supreme Court have held that

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when the Department was aware of involvement of the officer in the alleged irregularities and there was inordinate delay of more than twelve years in initiating disciplinary proceedings against him and there was no satisfactory explanation for the inordinate delay in issuing the charge memo, the disciplinary proceedings are liable to be quashed. The facts of the above case are clearly distinguishable from the facts of the present case. Here the allegations were received in May 1995 vide Annexure-R/2 and the departmental authorities made enquiries into the matter and all this took time. Therefore, on the basis of law as laid down by the Hon'ble Supreme Court in **Bani Singh's case (supra)**, the departmental proceedings against the petitioner cannot be quashed because of long delay in finalising the proceedings.

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11. It is further submitted by the learned counsel for the petitioner that because of non-finalisation of the departmental proceedings, the applicant is suffering insofar as his retiral dues have not been paid to him. The respondents have indicated in their counter that the applicant is getting provisional pension and his gratuity has been held up. It is submitted by the learned counsel for the petitioner that because of the long delay in finalisation of the proceedings against him, he should be paid the gratuity. In support of his submission, the learned counsel for the petitioner has relied on a large number of cases and these are referred to below. In the case of Smt. Alaka Roy v. State of Orissa, represented through the Principal Secretary, Education Department, Orissa Secretariat Building, Bhubaneswar, 1996 (1) OLR 43, it was held by the Orissa Administrative Tribunal that where charges on

disciplinary proceedings were served nine days before retirement, and pension and gratuity and other post-retirement benefits were not paid even after more than six months of retirement, and loss to State Exchequer may not be more than Rs.50,000/- and the contribution of the applicant to the loss would not exceed 50% even if all the charges are proved, 50% of the gratuity, i.e., Rs.25,000/- should be paid to the applicant forthwith and the balance Rs.25,000/- should be invested in a nationalised Bank so that in the event the applicant is found not guilty, profits arising out of such investment can be paid to her. The learned counsel for the petitioner has also relied on the decision of the Tribunal in OA No.6 of 1994 (J.Majhi v. Union of India) where pending finalisation of departmental proceedings it was ordered that 50% of the gratuity should be released. Similarly, in OA No. 430/94 (Dukhishyam Sethi v. Union of India) the Tribunal ordered on 21.7.1994 that pending conclusion of disciplinary proceedings 90% of the gratuity should be released in favour of the applicant. The next case relied upon by the learned counsel for the petitioner is Devendra Nath Kuanr v. Secretary to Government of Orissa, Panchayati Raj Department, Bhubaneswar and seven others, 82(1996) CLT (OATC) 45, where the Oissa Administrative Tribunal directed that pending finalisation of the departmental proceedings, provisional gratuity should be paid. The learned counsel for the petitioner has also relied on an interim order passed by the Tribunal in OA No.229 of 1998, which is still pending, wherein it was ordered that 50% of the DCRG and Leave Encashment should be paid to the petitioner pending completion of the departmental enquiry

after taking necessary security from the petitioner in that case. The respondents in their reply have pointed out that according to Rule 69 of CCS (Pension) Rules, no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. This is subject to the proviso that where departmental proceedings have been instituted for imposing minor penalty, payment of gratuity can be authorised. The respondents have further stated that the applicant has already been released provisional pension in accordance with Rules. But in view of the specific provisions of Rule 69 of CCS (Pension) Rules, gratuity cannot be sanctioned in his favour. We have considered the submissions made by the learned counsel for both sides on this point in view of the undoubted hardship which is being caused to the petitioner in withholding his gratuity because of Rule 69 of CCS(Pension) Rules and also in view of the fact that it can be reasonably presumed that even after conclusion of the enquiry and even if the charges against the petitioner are held proved, his entire gratuity is not certainly going to be forfeited. It is obvious that because of the pendency of the departmental proceedings, the petitioner is being denied payment of dues which ultimately will come to him. We are unable to authorise sanction of gratuity because of specific provision of Rule 69 of CCS (Pension) Rules. But in view of the undoubted hardship of the petitioner on this account, it is ordered that the respondents should complete the enquiry within a period of 60 (sixty) days from the date of receipt of copy of this order. In case, the petitioner does not co-operate in the enquiry without sufficient cause, the enquiry should be held exparte.

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In case the petitioner asks for time before the Enquiring Officer, the time asked for by the petitioner and if allowed by the Enquiring Officer should be added to the period of sixty days indicated by us. After the enquiry is completed within sixty days, the final orders on the proceedings should be passed within another 30 (thirty) days. With the above direction, this prayer of the applicant is disposed of.

12. In the result, therefore, the Original Application is disposed of in terms of the observation and direction contained in paragraphs 6 to 11 of this order. There shall be no order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN  
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