

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 181/1998  
Cuttack this the 16th day of May, 2000

Ganga alias Gangadhar Nayak ... Applicant(s)

-VERSUS-

Union of India & Ors. ... 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*

*J. S. Dhaliwal*  
(J.S.DHALIWAL)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 181 OF 1998  
Cuttack this the 16th day of May, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI J.S.DHALIWAL, MEMBER (JUDICIAL)

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Ganga alias Gangadhar Nayak  
S/o. Late Loka allias Loka Nayak  
Vill - Ranaposi, P.O.L Gengutia  
Dist : Dhenkanal

Working as Gangman under P.W.I.,  
Baranga, S.E.Railway, Bhubaneswar

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By the Advocates

Applicant

M/s.P.K.Chand  
D.Satapathy

-VERSUS-

1. Union of India represented through  
General Manager, S.E.Railway,  
Garden Reach  
Calcutta (West Bengal)
2. The Divisional Railway Manager  
S.E.Railway, Khurda  
Khurda Road, Dist: Khurda
3. The Permanent Way Inspector (P.W.I.)  
South Eastern Railway, Baranga  
Dist: Cuttack
4. The Assistant Engineer (North (AEN))  
S.E.Railway, Bhubaneswar  
Dist: Khurda

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*S. Som,*  
By the Advocates

Respondents

Mr. D.N.Mishra  
Standing Counsel  
(Central)

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O R D E R

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MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the departmental authorities to accept his notice of voluntary retirement and to give him the retirement benefits.

2. In this 1998 matter in spite of large number of adjournments respondents did not file their counter. On 10.2.1999 at the instance of learned Standing Counsel Shri D.N.Mishra four weeks time was allowed to file counter and the matter was posted to 4.5.1999 for hearing. It was also made clear that if counter is not filed then on 4.5.1999 the matter would be heard even in the absence of counter. Thereafter a large number of adjournments have been given but counter has not been filed. Learned counsel for the petitioner has also taken two adjournments. Ultimately on 6.10.1999 it was noticed that counter has not been filed and the matter was posted to 4.11.1999 for final disposal at the admission stage. The matter came up on 18.4.2000, even by that time counter was not filed and therefore the matter was adjourned to this day peremptorily to be taken up even in the absence of counter.

3. To-day Shri D.N.Mishra, learned Standing Counsel for the respondents wanted further four weeks time to file counter which was strenuously opposed by the learned counsel for the petitioner. As enough opportunities have been given to respondents to file counter further time cannot be allowed. The prayer for time to file counter is, therefore, rejected and the matter is taken up for hearing.

4. The case of the applicant is that he is a Gangman, who was appointed in 1965 and was working diligently. But later

on due to his illness he could not perform his duties. For this his services were dispensed with. He filed an appeal before the higher authorities and under their orders he was given a fresh appointment in the post of Gangman. From Annexure-1 it appears that he was given a fresh appointment sometime after 24.9.1990. The applicant has not indicated the precise date on which he was given fresh appointment. His case is that again from 1994 he suffered from illness and was unable to attend to his duties. Thereafter he applied for voluntary retirement, but no orders were passed on his prayer for voluntary retirement. Instead the departmental authorities <sup>initially</sup> started a minor penalty proceedings, against the applicant for his unauthorised absence which was subsequently dropped and the major penalty proceedings were initiated against him. The applicant has stated that he does not know the present stage of the major penalty proceedings and if the same has been concluded no final order either exonerating him or punishing him has been passed by the departmental authorities and/or communicated to him. In the context of the above facts the applicant has come up with the prayers referred to earlier.

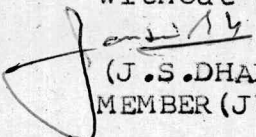
5. As in this case, respondents inspite of notices have not filed counter we have necessarily to go by the averments made in the Original Application. Shri P.K.Chand, learned counsel for the petitioner, has in the course of hearing, submitted a copy of the charge sheet in the major penalty proceedings which we find that the charge sheet has been issued on 30.6.1995. It is submitted by the learned counsel for the petitioner that he does not know if the major penalty proceedings is still pending or any final order has been



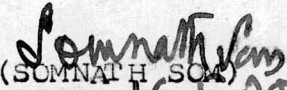
passed. Learned Standing Counsel is naturally not in a position to enlighten us on this point. As the charge against the applicant in the major penalty proceedings is only one and that too simple in nature relating to unauthorised absence from duty w.e.f. 24.5.1994, in case this proceeding is still pending for the last five years without being finalised this period of delay itself is sufficient ground for quashing this disciplinary proceedings. In view of this it is ordered that if the disciplinary proceedings initiated in letter dated 13.6.1995 are still pending till to-day, then these are quashed on the ground of delay. As a consequence of quashing of the disciplinary proceedings -respondents are also directed to consider the notice given by the applicant for his voluntary retirement and take decision if the same is pending within a period of 90 (Ninety) days from the date of receipt of this order.

As earlier noted, we do not know in this case whether the disciplinary proceedings have in the meantime been completed and/or final orders have been passed. In case the disciplinary proceedings have been completed and final orders have been passed imposing some penalty on the applicant then the applicant will be free to approach the Tribunal in case he has any grievance with regard to such punishment. In such eventuality above order will not have any effect.

With the above directions the O.A. is disposed of, but without any order as to costs.

  
(J.S. DHALI WAL)  
MEMBER (JUDICIAL)

B.K.SAHOO//

  
(SOMNATH SAHA)  
VICE-CHAIRMAN