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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.24 OF 1998
Cuttack this the ~~10th~~ day of November, 1998

Rama Chandra Panigrahi

Applicant(s)

-Versus-

Union of India & Others

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

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN 10.11.98

(Signature) 10.11.98
(G.NARASIMHAM)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO.24 OF 1998
Cuttack this the 10th day of November, 1998

CORAM:

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

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Rama Chandra Panigrahi
aged about 67 years,
S/o.Late K.C.Panigrahi
At/PO:Kalasuni
Via:Ranital
Dist:Bhadrak

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Applicant

By the Advocates : M/s.P.V.Ramdas
P.V.B. Rao

-Versus-

1. Union of India represented
by the Director General (Posts)
Dak Bhawan, New Delhi-110001
2. Chief Postmaster General,
Orissa Circle,
Bhubaneswar-751001
3. Superintendent of Post Offices,
Bhadrak Division,
Bhadrak-756 100

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Respondents

By the Advocates : Mr.Ashok Mohanty,
Sr.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application under Section 19 of the Administrative Tribunals Act, 1985, praying for payment of full ex-gratia and Productivity Linked Bonus, the applicant who was appointed as Branch Post Master in Village Kalasuni under Bhadrak Postal Division on 23.10.1961, retired on superannuation on 21.3.1994. He was put off duty from 9.2.1976 in a departmental proceeding and finally awarded punishment of removal on 31.1.1984. This Tribunal in O.A. No.47/86 by order dated 14.9.1990 quashed this order of removal and consequently the applicant was reinstated in service. When he was not paid backwages during the period of put off duty till his reinstatement, he moved this Tribunal in O.A. No.142/95 which was disposed of on 12.2.1996 with a direction to the respondents to pay backwages during this entire period which was ordered to be treated as duty. In this disposed of Original Application there was also a prayer for payment of ex-gratia, but this Tribunal did not pass any order in that O.A. observing that it was entirely unconnected with that O.A..

Representations of the applicant (Annexures-2 and 4) dated 21.1.1997 for payment of full ex-gratia and Productivity Linked Bonus did not yield any result. Hence this application.

2. Facts are not in controversy. The stand taken by the respondents that since he had not physically attended to duty during put off duty period, he would not be entitled to payment of Productivity Linked Bonus and full

ex-gratia. The applicant was paid Rs.5060/- only towards ex-gratia gratuity and Rs.2140/- only towards Productivity Linked Bonus for the years 1991-92, 1992-93 and 1993-94, i.e., from the date of reinstatement to the date of retirement on superannuation. The point at issue is whether the applicant is entitled to ex-gratia during the period when had not physically worked. According to learned Senior Standing Counsel Shri Ashok Mohanty appearing on behalf of the respondents, as per the circulars the applicant is entitled to these benefits. The contention of Shri P.V.Ramdas, learned counsel for the petitioner on the other hand is that since the entire period has been treated as duty, he is deemed to be on duty and as such he is entitled to these benefits.

3. We have heard the learned counsels of both sides at length and taken note of their submissions and also perused the record. Annexure-R/1, i.e. circular dated 16.1.1968 provides that payment of ex-gratia gratuity to E.D.Agents, who have put in not less than 10 years of continuous service and whose services have not been terminated otherwise than for unsatisfactory work or as a measure of disciplinary action or in consequence of they are being appointed in a regular post under the P & T Department, the maximum amount payable is Rs.6000/- or 16½ months basic allowances last drawn, whichever is less. Continuous service has been described in that circular to mean only to such continuous service rendered in any capacity as an E.D.Agent. Admittedly, the applicant has not been removed for unsatisfactory work or ceased to work as E.D.Agent on being appointed in a regular post under the P & T Department. It is true that he was put

off duty in a disciplinary proceeding and the disciplinary authority ultimately passed penalty of removal from service, but this order of removal has been quashed by this Tribunal in Original Application No.47/86 and consequently the applicant was reinstated in service. In O.A. 142/95, this entire period of absence from duty was ordered to be treated as duty at different points of time. Thus this Tribunal not only quashed the order of penalty of removal passed in the disciplinary proceeding, but also directed to treat the entire period till reinstatement as on duty. Quashing of penalty order of removal would imply that the misconduct imputed against the applicant in the disciplinary proceeding did not stand the scrutiny of law and accordingly it would be deemed that the applicant had not committed any misconduct as alleged in the proceeding. In other words for the purpose of calculating ex-gratia gratuity, the order of removal passed in the disciplinary proceeding has to be ignored. Admittedly the applicant had put in more than 10 years of continuous service from the date of his joining in the post till his retirement on superannuation. We, therefore, have no hesitation to hold that the applicant under the departmental circular is entitled to maximum gratuity amounting to Rs.6000/- or 16½ months basic allowances last drawn for each completed year of service, whichever is less.

4. As^L, the payment Productivity Linked Bonus, the department in their circular dated 14.8.1998 clarified that qualifying service for the purpose of this bonus was

the same period for which the applicant was eligible for payment of ex-gratia gratuity; provided the applicant has personal contribution in productivity of the department. Since the applicant had no personal contribution in productivity, he would not be entitled to this bonus. Had there been no disciplinary ^{proceeding} / initiated against the applicant and had he not been put off duty, in normal course he must have made personal contribution in productivity of the department. By initiating the proceeding and putting him off duty, the department prevented the applicant from making any personal contribution to the productivity although he was willing to do so. This proceeding, as the orders of the Tribunal declared as non-est and the entire period has been treated as duty. In AIR 1991 SC 2010 (Union of India vs. K.V. Janaki Raman), the Hon'ble Supreme Court held that normal rule of "No Work No Pay" is not applicable to cases where an employee is completely exonerated in criminal/disciplinary proceeding as in such cases, the employee willing to work is kept away from the work by the authorities for no fault of his. Such cases are not cases where the employee remains away from work of his own reason although the work is offered to him. In view of this legal position the applicant cannot be blamed by the department that he had no physical contribution in productivity of the department during the relevant period. We, therefore, hold that the applicant is entitled to this bonus, even for the period prior to 1991-92 from the day this bonus, under the rules was payable.

5. In view of our discussion above, we direct the respondents to pay the balance ex-gratia gratuity and amount towards Productivity Linked Bonus to the applicant within sixty (60) days from the date of receipt of copy of this order. In the result the application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *11.98*

B.K.SAHOO

10.4.98
(G.NARASIMHAM)
MEMBER(JUDICIAL)