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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 626 OF 2000
CUTTACK THIS THE 24th DAY OF August 2001

Bidyadhar Nayak

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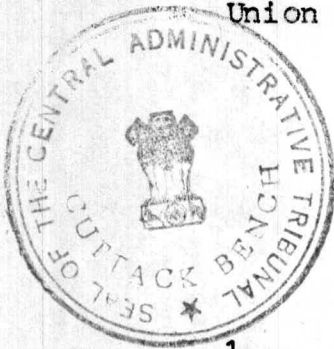
Applicant(s)

- Versus -

Union of India & Ors

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Respondents



(FOR INSTRUCTIONS)

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

Somnath Sonu
(SOMNATH SONU)
VICE-CHAIRMAN
24.8.2001

G. Narasimham
(G. NARASIMHAM)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 626 OF 2000
CUTTACK THIS THE 24th DAY OF August 2001

CORMA:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER(J)

.....

Bidyadhar Nayak,
S/O-Prahallada Nayak
At/P.O: Hindol,
District:-Dhenkanal.

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Applicant

By the Advocates

Mr.D.P.Dhalsamant

- V e r s u s -

1. Union of India,
Represented through the
Chief Post Master General,
Orissa Circle, Bhubaneswar.

2. Superintendent of Post Offices,
Dhenkanal Division,
Dhenkanal.

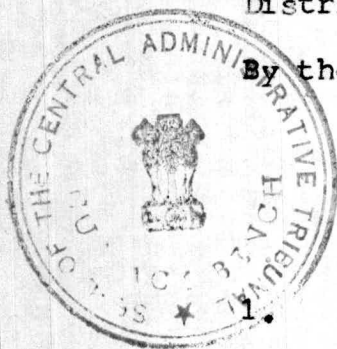
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Respondents

By the Advocates

Mr.A.K.Bose
S.C.

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Applicant while serving as Postal Assistant, Hindol by order dated 7.5.99 was transferred to Talcher College, Rani Park as Sub-Post Master. On being relieved from Hindol on 31.5.99, he remained on leave on medical ground from 1.6.99 ^{and his term 1-6-99} to 31.10.99 was sanctioned. While on leave, he submitted application dated 24.6.99 (Annexure-1) to consider his voluntary retirement. Thereafter, there was some correspondence between him and the Department. Ultimately pursuant to his representation dated 3.2.2000, he was permitted to ^{retire} ~~relieve~~ voluntarily with effect from 1.3.2000 fore-noon, vide order dated 23.2.2000, Annexure-6. But without being relieved, on 7.3.2000 he applied for sanction of Rs.12,000/- to enable him to go to Talcher on transfer and ^{like} ~~like~~ voluntary retirement there (Annexure R/9). Thereafter in supersession to order dated 23.2.2000, by order dated 24.4.2000 (Annexure-7) he was permitted to ^{retire} ~~relieve~~ voluntarily with effect from 1.5.2000 F.N, with direction that he would join at Talcher and be relieved there. But the applicant did not join at Talcher. His pension papers submitted in letter dated 30.10.2000 were returned to him in letter dated 2.11.2000 (Annexure-8) on the ground that he had not ^{retired} ~~relieved~~ from service. These facts are not in controversy.

2. Relief sought in this O.A. is as follows:

"The applicant be declared to be voluntarily retired from 24.9.99 and to quash the order dated 2.11.2000 under Annexure-8.

That the respondents be directed to pay the retiral benefit of the applicant with interest.

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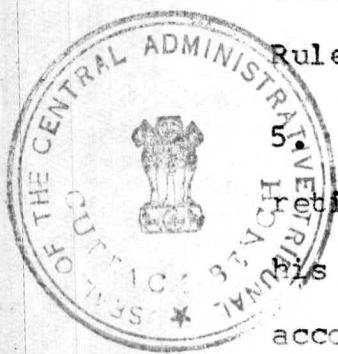
That any other order/orders as it would deem fit and proper to give the complete relief to the applicant".

3. In the counter, the Department vehemently oppose the prayer. But there is no controversy on facts. We have heard the counsel on records.

4. Applicant joined the service on 31.5.67. By 1999, he completed more than 31 years of service. Hence he has the right to seek voluntary retirement under Rule 48 (not Rule 48-A) C.C.S.(Pension) Rule 1972. This being so, under Annexure-7 dated 24.4.2000 it is deemed that he was permitted to retire under Rule 48 and not under Rule 48-A as mentioned therein.

5. Annexure-1 dated 24.6.99 is not a notice of voluntary retirement with effect from any date but an application to consider his voluntary retirement because of the order of transfer which according to him is not only illegal but also vindictive. Hence prayer for declaration that pursuant to this application, he is deemed to have voluntarily retired with effect from 24.9.99, cannot be acceded to, more so in view of his application dated 7.3.2000 for sanction of Rs.12,000/- to enable him to proceed to Tatcher on transfer.

6. As to the validity of letter dated 2.11.2000 (Annexure-8), we are afraid that the same cannot be sustained under law. The fact remains that the applicant did not resume duty after 31.5.99 and his leave from 1.6.99 to 31.10.99 had been sanctioned. Under Annexure-7 dated 24.4.2000, he was permitted to voluntarily retire with effect from 1.5.2000. Prior to 1.5.2000, the applicant did not with-draw his notice of retirement. On the otherhand, after 1.5.2000, he submitted pension papers. Hence



even if he did not join at Talcher, he is deemed to have retired voluntarily with effect from 1.5.2000, In case he has leave standing to his credit, if not, from the date of commencement of leave not due.

7. The Department are bound by the following Government instructions mentioned at pages 93 and 94 of Swamy's Pension Compilation, 14th edition.

"(I) Instruction to regulate voluntary retirement -

The following instruction while regulate the voluntary retirement of Central Government Servants:-

(i) Retirement without returning to duty while on LND-

If a Government servant ^{relieves} ~~relieves~~ under the scheme of voluntary retirement while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of leave not due and leave salary paid in respect of such leave not due shall be recovered as provided under Rule 31 of the C C S(Leave) Rules 1972.

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(V) Availing leave standing to credit alongwith the notice period:- A Government Servant giving notice of voluntary retirement may also apply, before expiry of the notice, for the leave standing to his credit which may be granted him to run concurrently with the period of notice. The period of leave, if any, extending beyond the date of retirement on expiry of notice but not extending beyond the date on which the Government Servant should have relieved on attaining the age of superannuation, may be allowed as terminal leave as per Rule 39(6) of the CCS(Leave) Rules, 1972".

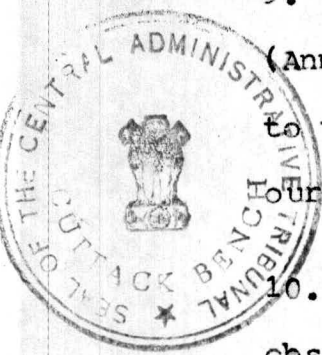
8. There is however nothing on record ^{regarding} ~~in~~ leave position of the applicant. It may be he had not applied for sanction of leave



if any alongwith the notice of retirement. Still the order dated 24.4.2000 (Annexure-7) permitting voluntary retirement with effect from 1.5.2000 ~~and this order as such~~ ^{with} without any condition (Direction in memo addressed to the applicant cannot form part and parcel of the order), there is no legal bar for the Department to treat the voluntary retirement of the applicant though either of the Government instructions quoted above, depending on his leave position.

9. In the result we quash the Department's letter dated.2.11.2000 (Annexure-8) addressed to the applicant and direct the Respondents to treat the voluntary retirement of the applicant in terms of our observation made above.

10. The O.A. is accordingly disposed of in terms of our observations and direction made above.


 (SOMNATH SOM)
 VICE-CHAIRMAN
 24.8.2001

24.8.01
 (G.NARASIMHAM)
 MEMBER (J)