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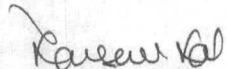
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No. 465 of 2006
Cuttack, this the 28th day of September, 2007.

Kartikeswara Nayak Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not??


(TARSEM LAL)
MEMBER(ADMN.)


(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

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Cuttack, this the 28th day of September, 2007.

C O R A M:

THE HON'BLE **DR.K.B.S.RAJAN**, MEMBER (J)
A n d
THE HON'BLE **SHRI TARSEM LAL**,MEMBER(A)

Kartikeswar Nayak, aged about 68 years (Retired GDSBPM), S/o.Late Manguli Nayak of Village/Post: Baliyhari, PS: Kanpur, Dist. Cuttack.

..... Applicant.

By legal practitioner: Ms.B.K.Biswal, Advocate.

-Versus-

1. Union of India represented through the Chief Postmaster General, Orissa Circle, At/Po: Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices, Cuttack South Division, 15, Cantonment Road, Cuttack-1, Town/Dist. Cuttack.

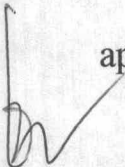
...Respondents.



By legal practitioner: ~~M~~S.Mohapatra, ASC

ORDERDR.K.B.S.RAJAN, MEMBER(J):

The applicant, while serving as EDBPM in Ratapat B.O., was, in June, 1984, put off duty on account of certain alleged misappropriation and departmental proceedings as well as criminal proceedings were initiated against him. The criminal proceedings culminated in to conviction by the Trial Court and soon after, the department has dismissed the applicant from service on 13-02-1991, on account of the said conviction. Appeal before the High Court in the criminal case ended in setting aside of the conviction and acquittal of the applicant. When the applicant had requested for reinstatement and the same rejected by the respondents and the departmental proceedings revived, the applicant moved OA No. 433/98 and the Tribunal, by order dated 08-06-2000 directed the respondents to complete the departmental proceedings within six months. Request for further time was rejected by the Tribunal. The applicant thus came to be reinstated into service on 13-07-2001. By



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03-04-2002 the applicant superannuated. Period of put off duty was regularized by the respondent vide Annexure A-6 order dated 26-10-2004. The applicant was entitled to a sum of Rs 30,000/- towards severance allowance and a further sum of Rs 18,000/- as ex-gratia amount. Respondents, denied, vide Annexure A-8 order dated 14-03-2006, payment of Rs 30000 on the ground of adjustment of an amount of Rs 30000/- on the basis of order passed by the State Consumer Disputes Redressal Commission, Cuttack vide Annexure A-9 dated 18-08-2003. The applicant has come up against the aforesaid adjustment.

2. Respondents have contested the OA. According to them the State Commission having stated that the amount due by the Department to a general public be realized from the applicant who had misappropriated the amount, they had done the same. Applicant has filed the rejoinder in which he had stated that the State Commission had indeed, modified its Annexure A-9 order by Annexure A-11 order to the extent that any recovery from the

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applicant should be only after the departmental proceedings are over.

3. Counsel for the applicant argued that the applicant superannuated from service in 2004 and the Departmental proceedings were not pending against him. His period of put off duty had also been duly regularized and the High Court had acquitted him. Thus, there is no scope of any recovery on account of the decision of the State Consumer Disputes Redressal Commission.

4. On the other hand, the counsel for the respondents has argued that since the State Commission has held that the amount should be realized from the applicant, the same was so done.

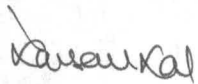
5. Arguments were heard and documents perused. There is no finding either in the departmental proceedings or in the Criminal proceedings about the due payable by the applicant. The applicant thus, as on the date of his superannuation ought to have been paid the amount of severance allowance in full. The State

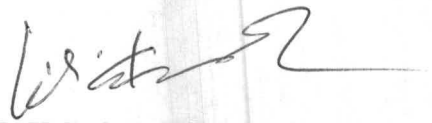
Commission cannot be held to be the judicial forum to render a finding about misappropriation if any by the applicant. Had the State Commission felt that some amount should be due from the applicant to be paid to the party which has approached the Commission, nothing prevented the Commission to directly make an order to the effect that the applicant shall pay to the party concerned the amount. Again, in its later modification order the Commission had held that any amount recoverable from the applicant should be only after the decision in the departmental proceedings. True, departmental proceedings cannot be initiated against the applicant after his superannuation. Had the applicant been still in service Departmental proceedings could have been commenced and concluded on priority basis and if so held that the applicant is liable to make good the loss, the department could have taken recourse to adjust the amount from the applicant. That is not the case here. Thus, the only course available to the Department is to file a civil suit for recovery. The applicant is entitled to the withheld amount of Rs 30,000/-. To safeguard their interest, the

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Department may take an indemnity bond from the applicant before disbursing the amount to the applicant.

6. In view of the above, the **OA is allowed**. Annexure A-8 order dated 14-03-2006 is hereby quashed and set aside. The respondent shall pay the amount of Rs 30,000/- to the applicant within a period of two months from the date of receipt of this order. Though interest has been claimed, as the withholding of the amount is not deliberate but for a reason believed to be justified, no interest is admissible to the applicant. No cost.


(TARSEM LAL)
MEMBER(ADMN.)


(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

KNM/PS