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O.A. No.709/06

ORDER DATED 23rd JUNE, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

This Original Application has been filed by the applicant with the following prayers:

- "i) ... to admit this application.
- ii) To direct the Respondents to accord proper placement of the petitioner in the seniority list and promotion to the higher posts w.e.f. the date of promotion of his juniors and accord all financial benefits accordingly.
- iii) To quash the order as per Annexure-6 with reference to the Seniority and promotion."

2. Short facts which lead to filing of this O.A. are as follows:

While the applicant was working as Khalasi Helper on initiating disciplinary proceeding against him and on completion of such proceeding, he has been dismissed from service as per order dt. 01.09.93 (Annexure-A/1). The said order had been challenged by the applicant in O.A. No.327/99. After the pleadings were completed, the Tribunal heard the Ld. Counsel for the parties at length, and as per order dated 04.11.04 this Tribunal held as follows:

"...In this case also we have no doubt that the allegation against the applicant was not so grave as to render him liable to the stern punishment not definitely when no enquiry was made into the alleged misconduct or without affording any

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opportunity to him to defend his case. The lack of judiciousness in the decision making process is writ large in this case and therefore the order of dismissal dated 01.09.1993 passed by the disciplinary authority vide Annexure-R/2 must be quashed and we order accordingly. The Respondents are also directed to reinstate the applicant in service and treat the period from 20.02.1994 to 15.05.1999 as medical leave on the strength of medical certificate submitted by the applicant and the remaining period till the date of his reinstatement as leave as due to and admissible. The Respondents shall comply with this order within thirty days from the date of receipt of copy of this order."

Against the said order the Department had filed OJC No.10619/01 and the Hon'ble High Court of Orissa on hearing the parties set aside the order dated 25.04.01 passed by this Tribunal and directed this Tribunal to reconsider the case on merit and accordingly the order has been passed on 04.11.04, in which this Tribunal had directed the reinstatement of the applicant in service. Thereafter the applicant filed representations before the authorities as evidenced from Annexure-A/4 dated 31.05.05. However, the said representation was considered and the applicant was reinstated in service with all benefits except for his seniority and promotion in accordance with the law. So, the applicant further represented the matter. However, as per Annexure-A/6 order the claim of the applicant for promotion and seniority has been rejected on the ground that the judgement of this Tribunal passed in O.A. No.327 of 1999 contained no direction for

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fixation of seniority and granting promotional benefits to the applicant. Aggrieved by that order, the present O.A. has been filed. The Original Application has been admitted by this Tribunal and notice has been ordered to the Respondents. In reply a counter has also been filed for and on behalf of the Respondents in which the stand taken is that even in the judgement of this Tribunal passed in O.A.327/99 and the judgement of Hon'ble High Court in OJC No.10619/01 there is no direction to fix seniority of the applicant and grant him promotional benefits.

3. We heard Mr. O.N. Ghosh, Ld. Counsel for the Respondents and perused the averments made in the O.A. and other documents produced before us. Neither the applicant nor his Counsel is present in the Court today. It is the case of the applicant that since removal order has been set aside by this Tribunal and reinstatement of the applicant has been ordered along with all service benefits, as directed in Paragraph 11 of the order dated 04.11.04 the applicant is entitled for restoration of his seniority as well as his promotion w.e.f. the date of the promotion of his juniors. The only objection seen from the counter is that this Tribunal has not directed to consider the case of the applicant for promotion or to restore his seniority and the applicant has not made party any of his juniors who have got promotion during the pendency of the O.A as well as removal period of the applicant.

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4. We have considered these contentions of the applicant as well as the Respondents.

5. Admittedly, the disciplinary proceeding initiated against the applicant has been quashed by this Tribunal as there was no evidence to proceed against him and to award punishment as had been imposed by the disciplinary authority. If so, it is the obligation of the Department to consider the case of the applicant for restoration of his seniority over the juniors. The applicant is also entitled for all his service benefits including promotion to the higher posts. However, as per the contention raised in the counter, since the applicant has not made none of his juniors as party to the O.A., it is only proper for this Tribunal to give direction to the Respondents to consider the applicant's representation for fixation of his seniority and promotional benefits on giving notice to his juniors who have got promotion. However, it is seen that as per the order of this Tribunal the applicant has to submit leave applications along with medical certificates for regularizing the period of absence and the Respondents have to duly consider the same.

6. With the above observation and direction this O.A. is allowed by setting aside Annexure-A/6 order. Respondents shall consider the entire case within a reasonable time, at any rate within 90 days, on giving sufficient notice to

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juniors of the applicant who have already been promoted regarding restoration of seniority of the applicant. Ordered accordingly. No costs.

Choudhury
(C.R. MOHAPATRA)
ADMN. MEMBER

Thankappan
(K. THANKAPPAN)
JUDICIAL MEMBER

Kalipeshwar/C.M.