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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 494 of 2007

Cuttack, this the 21st December, 2010

Baikunthanath Panda Applicant

-v-

UOI and others Respondents

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THE HON'BLE MR. C.R. MOHAPATRA, MEMBER (A)

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THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

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Applicant having been visited with the punishment of removal from service in culmination of departmental proceedings initiated against him under Rule 8 EDAs (Conduct & Service) Rules, 1964, he preferred appeal under Annexure-A/5 dated 05.03.2004 which was much after the period provided in the Rules for making appeal against an order of punishment. This is the reason, for which the Appellate Authority rejected the appeal on the ground of being barred by time instead of looking into the matter on merit and communicated the decision to the Applicant under Annexure-A/6 dated 28th January, 2005. As it appears, being aggrieved by the said order of rejection, he preferred representation under Annexure-A/7 followed by another two representation by his

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wife under Annexure-A/8 & A/9. Since no decision was communicated on the said representations the applicant has approached this Tribunal in the present OA seeking to quash the charge sheet under Annexure-A/1 dated 18.2.2000, order of removal under Annexure-A/4 dated 29.9.2003, the order under Annexure-A/6 dated 28.1.2005 and to direct the Respondents to reinstate the applicant with all consequential benefits.

2. Respondents filed their counter inter alia objecting to the contentions raised by the Applicant in support of his prayers made in this OA. But despite due and adequate opportunity no rejoinder has been filed by the Applicant.

3. Heard Learned Counsel for both sides and perused the materials placed on record. On a bare look to the order of the Appellate Authority we do not feel it necessary to go into the merit of the matter as in a number of cases in the past this Tribunal has quashed the order rejecting the appeal preferred by the employee not on merit but on the ground of limitation. One such cases of this Tribunal is in the case of **Pranab Kumar Jena v Union of India and others** [OA No. 736 of 2006].

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“6. During hearing learned Counsel for the Applicant relying on the order under Annexures-A/3 & A/4 has contended that since the merit of the matter has not been examined by the authority with whom power has been vested to undo the wrong committed in the decision making process, in all fairness, the Respondents may be directed to decide the matter on merit instead of rejecting it on the ground of hyper-technicality rule of law of being barred by time of making the revision/mercy petition by the Applicant. There was no much stress given to the above submission by the Learned Counsel appearing for the Respondents. **It is trite law that justice must not be done but appears to be done and hyper-technicality rule of law of limitation should not stand on the way of dispensation of justice. (emphasis supplied).**

7. In the light of the above discussion, since merit of the matter has not been considered by the authorities on the revision/mercy petition filed by the Applicant especially when the applicant has been visited with the punishment of removal from service which has direct nexus with Article 21 of the Constitution of India, the order under Annexures-A/3 & A/4 are hereby quashed and the matter is remitted back to the Respondent No.2 to consider and dispose of the revision/mercy petition of the applicant on merit, without being influenced by the stand taken in the counter, in a reasoned order within a period of 90(ninety) days from the date of receipt of this order and communicate the result thereof to the applicant within a period of 15(fifteen) days thereafter. There shall be no order as to costs.”

4. In view of the above, we quash the order of the Appellate Authority under Annexure-A/6 dated 28th January, 2005 and without expressing any opinion on the merit of the matter, remit the matter back to the Appellate Authority for

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reconsideration of the Appeal of the Applicant on merit in a reasoned order within a period of 45 days from the date of receipt of the order and communicate the decision to the Applicant within the time stipulated above.

Incidentally we may mention that ^{the} replaced Rule came into existence in the year 2001 whereas the Disciplinary Authority imposed the punishment under Annexure-A/4 dated 29th September, 2003 under Rule 8 of EDAs (Conduct and Service) Rules, 1964. Therefore, this aspect should also be looked into by the Appellate Authority while considering the appeal of the Applicant, as directed above.

5. In the result this OA stands disposed of with the observation and direction made above. No costs.

V.K.
(A.K.PATNAIK)
MEMBER(JUDL.)

C.R.MOHAPATRA
(C.R.MOHAPATRA)
MEMBER(ADMN.)