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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.917 of 2010

Cuttack this the 26<sup>th</sup> day of October, 2017

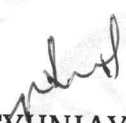
Smt.Annapurna Nayak...Applicant

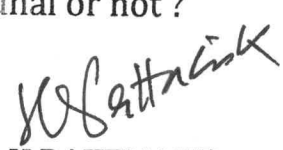
-VERSUS-

Union of India & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓

  
(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

  
(S.K.PATTNAIK)  
MEMBER(J)

I authorise Sr. Secy to  
Hh. the member Mr. H. Sarangi  
to pronounce the judgment  
on our behalf  
S.K. Pattanaik  
23/10/17

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CENTRAL ADMINISTRATIVE TRIBUNAL  
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O.A.No.917 of 2010

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CORAM:

HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)  
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Smt.Annapurna Nayak, aged about 70 years, W/o. late Bata  
Krushna Nayak, AT-Jeypur, PO-Jayapur, PS-Tihiri, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant  
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Govt. of India, Ministry of  
Communications, Department of Posts, Dak Bhawan,  
Sansad Marg, New Delhi-110 001
2. Chief Post Master General, Orissa Circle, Bhubaneswar-  
751 001
3. Superintendent of Post Offices, Bhadrak Division,  
Bhadrak-756 100
4. Sub Divisional Inspector (Postal), Bhadrak East Sub  
Division, Bhadrak-756 100

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

Applicant is the widow of Shri Bata Krushna Nayak, who  
was working as Extra Departmental Delivery Agent (EDDA)  
under the Sub-Divisional Inspector (Postal), Bhadrak Sub-

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Division (Respondent No.4). Her husband was put under off duty on 20.06.1990 and a charge sheet was issued to him under Rule-8 of EDA(Conduct & Service) Rules, 1965 on the allegation that he had shown payment in respect of three Money Orders by forged signature of the payee. After due statutory inquiry, applicant's husband was removed from service by Respondent No.4 in his order dated 30.11.1991. Applicant's husband filed an appeal against this order with the Superintendent of Post Offices, Bhadrak Division (Respondent No.3). Since it was not disposed of within six months from the date of appeal, he filed O.A.No.420/92 before this Tribunal. The Respondents filed their counter-reply to the O.A. and stated that the Appellate Authority (Respondent No.3) had disposed of the appeal on 11.11.1992 with a direction for de novo proceedings from the stage of examination of prosecution witnesses and for obtaining opinion of GEQD in respect of Article of Charge Nos. I and II. Respondent No.4 commenced de novo proceedings vide order dated 10.2.1994 against the applicant's husband. During the pendency of the O.A., the husband of the applicant was granted subsistence allowance with effect from 13.1.1997. Applicant's husband, however, did not participate in the de novo inquiry since his O.A. was pending before this Tribunal. This Tribunal disposed of O.A.No.420/1992 on 9.2.2000 with the following orders.


"Imposition of punishment of removal from service is in no way disproportionate to the gravity of

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charge No.1, even assuming charge Nos. 2 and 3 have not been established. We are, therefore, not inclined to interfere with this penalty. In the result, we do not see any merit in this application which is accordingly dismissed, but without any order as to costs".

Applicant's husband challenged this order of the Tribunal before the Hon'ble High Court of Orissa in O.J.C.No.13587/2000. During the pendency of the Writ Petition, the Respondents filed their counter-affdiavit in which they had stated that in view of the de novo inquiry, the Disciplinary Authority vide its order dated 27.1.2000 had dismissed the applicant from service. The Hon'ble High Court vide their order dated 25.7.2005 quashed the order of removal dated 30.11.1991, the order of dismissal dated 27.1.2000 and the order of this Tribunal dated 9.2.2000. However, the Hon'ble High Court gave liberty to the respondents to initiate fresh departmental proceedings against the applicant, if so advised. During the pendency of the Writ Petition, applicant's husband had crossed the age of superannuation. He, therefore approached the Superintendent of Post Offices, Bhadrak Division (Respondent No.3) praying that in view of the Hon'ble High Courts' order, he may be paid back wages with effect from 20.6.1990 the date of his superannuation along with all retirement benefits. Since no action has been taken on his representation dated 9.11.2005, applicant has filed the present O.A. praying for the following reliefs:

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- i) That the respondents be directed to pay the back wages for the period from 20.06.1990 till date of superannuation of the applicant.
  - ii) That the respondents be directed to release ex-gratia to the applicant with 12% interest.

2. Applicant has based his prayer on the ground that once the order of removal/dismissal has been set aside by the Court of Law, her husband is entitled to get all the wages for the period he has been illegally kept out of job. She has also submitted that the inaction on the part of the respondents in payment of back wages for the period from 20.6.1990 till the date of superannuation and the non-release of retirement benefits to her husband and subsequently to the applicant is bad in law and is violative of Articles 14 and 16 of the Constitution of India.

3. It is found from the records that since the original applicant in the O.A. died on 14.10.2013, his wife filed Misc. Application No.281/2017 praying for her substitution and the Misc. Application No.282/2017 for condonation of delay in filing substitution petition. This Tribunal vide order dated 24.5.2017 condoned the delay and allowed the substitution petition.

4. Respondents in their counter filed on 8.3.2011 have opposed the claim of the original applicant mainly on the ground that although the Hon'ble High Court had ordered that it will be open for the respondents to initiate fresh disciplinary proceedings against the petitioner, if so advised, there was no



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direction by the Hon'ble High Court regarding conferment of financial benefits to the applicant. Moreover, the applicant's husband's date of superannuation was 9.8.2003 when he attained 65 years of age. Since there is no provision in the service rules of the EDAs to conduct disciplinary proceedings against the EDAs beyond their retirement, the order of the Hon'ble High Court dated 25.7.2005 was not capable of being implemented. Shri B.K.Nayak, the original applicant had never approached any departmental authorities for payment of financial benefits to him after the disposal of OJC No.13587/2000 vide order dated 25.7.2005. Therefore, there is no cause of action arising out of the Hon'ble High Court's order dated 25.7.2005 against the respondents and the applicant has wrongly approached this Tribunal with the present O.A.

5. We have heard the learned counsel for both the parties. For reasons of clarity, it is necessary to quote the orders of the Hon'ble High Court in OJC No.13587/200 dated 25.7.2005 as under:

"4.Before proceeding further, it is necessary to peruse the provisions of Section 19(4) of the Administrative Tribunals Act, 1985. For convenience, the said provisions are reproduced hereunder:

"19.Applications to Tribunals;

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(4) Where an application has been admitted under Sub-section (3), every proceeding under the relevant service rules as to

redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules".

5. No doubt, in view of the above-quoted provisions, all proceedings pending with the departmental authority stand abated after the admission of the Original Application by the Tribunal, which was admitted on 28.01.1992 and notice was also issued. But, if the higher authority had passed an order directing de novo enquiry for certain reasons disagreeing with the proceeding and punishment order, the same should have been treated as part of the pleadings of the opposite parties, and in such circumstances the Tribunal should have treated it as admission of the opposite parties regarding lacuna in disciplinary proceedings, as it was binding upon them. The Superintendent of Post Offices in the said order dated 11.11.1992 had pointed out that in respect of Charge of Article No.1, specimen L.T.Is (Ex.S-4) were sent for opinion of the G.E.Q.D. with the disputed document, i.e, L.T.Is. But the person whose L.T.Is were obtained and marked as Ext.S-4 was not examined to prove his L.T.I. Est.S-4 neither bore any identification nor witnessed by any one. The document (Ext.S-4) was attested by a person who was working under the Investigating Officer and thus was a part and parcel of the investigating team. Further, he did not know the name of the husband of the payee nor the name and village of her father. He was also not a resident of the village of the payee nor was the village of the payee within the delivery jurisdiction of the branch office of that person. When Ext.S-4 itself was disputed, how could it be treated as admitted without getting it proved ? Therefore, it could not have been said that the Charge of Article No.I was proved beyond doubt. More so, when the opposite parties in their counter affidavit have stated that it is a fact that the payee whose L.T.Is. were taken in Ext.S-4 did not



attend the enquiry. The order of the appellate authority was also mentioned in paragraph-6 of the counter affidavit wherein it has been stated that the appellate authority was not convinced with the findings of the I.O., and, therefore, de novo proceedings were ordered. It has also been stated that since de novo proceedings were ordered by the appellate authority, the case would be decided by the Disciplinary Authority on completion of the de novo proceedings on its merit. Therefore, the Tribunal had no occasion to consider the merits of the case vis-à-vis the impugned order of punishment of removal from service in view of the admission of the opposite parties that the matter required de novo enquiry. Further, since the Superintendent of Post Offices admitted the lacuna in the enquiry proceedings and decided to hold de novo enquiry, the impugned order of removal from service was liable to be set aside. During the pendency of the O.A. before the Tribunal the opposite parties could not have started de novo proceedings. Therefore, the de novo proceedings started and decided ex parte and the order passed on that basis is null and void in view of section 19(4) of the Administrative Tribunals Act.

6. In view of the above mentioned facts and circumstances, the impugned judgment and order passed by the Tribunal is not sustainable in the eye of law and the same is quashed. The order of punishment of removal from service dated 30.11.1991 as well as the order of dismissal from service passed on 27.01.2000 after holding de novo ex parte enquiry during the pendency of the O.A. before the Tribunal, is also quashed. It will be open for the opposite parties to initiate fresh disciplinary proceedings against the petitioner, if so advised".


6. Perusal of the above judgment makes it clear that the Hon'ble High Court had examined the merits of the case and decided that the de novo proceedings started ex parte and the order passed on that basis is null and void. The impugned




judgment and order passed by this Tribunal and the order of punishment of removal dated 30.11.1991 as well as the order of dismissal from service dated 27.1.2000 were quashed by the Hon'ble High Court. The Hon'ble High Court had observed that it will be open for the respondents to initiate fresh disciplinary proceedings against the petitioner if so advised. This observation of the Hon'ble High Court cannot be taken as a direction. The Respondents have not initiated fresh proceedings on the ground that there is no provision after retirement for initiating fresh proceedings against the category of employees to which the applicant belongs. In the absence of fresh disciplinary proceedings, it stands to reason that the orders of the Hon'ble High Court quashing both the impugned order of removal from service dated 30.11.1991 and the order of dismissal from service dated 27.1.2000 need to be implemented. In view of that the respondents have no choice except to regularize the service of the applicant's husband and pay back wages from 20.6.1990 till the date of superannuation.

7. Under the circumstances, the O.A. is partly allowed. The Respondents are directed to pass necessary orders for payment of back wages from 20.6.1990 till the date of superannuation of applicant's husband and release the admissible benefits on superannuation as per rules in favour of the applicant within a period of two months from the date of receipt of this order. It is; however, made clear that the subsistence allowance paid from

- 13.01.1997 shall be adjusted against the back wages to be paid to the applicant. No order as to costs.

  
(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

BKS

  
(S.K.PATTNAIK)  
MEMBER(J)

