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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 160 OF 2011

Cuttack, this the 25th day of February, 2014

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

.....

Smt. Gupteswari Devi,
aged about 67 years,
Wife of Late Balajinath Padhi,
At present residing at
L.I.G.-141, Stage-1,
Nilakantha Nagar, BRIT Colony,
Housing Board, Berhampur, Dist-Ganjam.

.....Applicant

Advocate(s).... Mr.P.K.Padhi,

VERSUS

Union of India represented through

1. The Chief Post Master General,
Odisha, Bhubaneswar,
Dist-Khurda.
2. Director of Postal Service,
Odisha, Bhubaneswar,
Dist-Khurda.
3. Senior Superintendent of Post Offices,
Cuttack City Division, At/Po/Dist-Cuttack.
4. Director of Accounts (Postal),
Office of the Director of Accounts (Postal),
At/PO/Dist-Cuttack.

..... Respondents

Advocate(s)..... Mr.U.B.Mohapatra,



ORDER

A.K. PATNAIK, MEMBER (JUDL.)

This Original Application has been filed by the Applicant (Smt. Gupteswari Devi, wife of Late Balajinath Padhi) praying for the following relief:

- “i) Direct the Respondents to release the arrear pay and allowances accrued in favour of the husband of the applicant concerning period from 1.6.78 to 31.7.96;
- ii) Direct the Respondents to calculate and release the differential pensionary benefits and other retrial benefits in favour of the applicant taking into consideration the entire period of service rendered by the husband of the applicant i.e. 38 years 9 months 7 days.
- iii) Direct the Respondents to finalise the amount of family pension of the applicant and to release the differential amount thereof forthwith;
- iv) Issue a direction to the Respondents to award interest @18% P.A. on the arrear amount.”

2. It is the specific case of the Applicant that the dispute is the offshoot of the order passed by the Division Bench of this Tribunal in OA No. 165 of 1993 upheld by the Hon'ble High Court of Orissa in WP (C) No. 1761 of 2003.

3. By filing counter, the Respondents have stated that the husband of the applicant namely late Balajinath Padhi while working as Postal Assistant Choudhury Bazar Post Office under Cuttack City Division remained absent from duty unauthorizedly with effect from 31. 05. 1978 without production of any application for leave or any medical

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certificate form authorized medical practitioner. Despite a series of correspondence the ex-official neither turn up to duty nor produced any leave application in prescribed format and any medical certificate from authorized medical practitioner for his absence from duty. By the above acts the husband of the applicant late Padhi remained absent from duty unauthorizedly without prior permission with effect from 31.05.1978 to 20.04.1979 and overstayed leave with effect from 21.04.1979. For the prolonged unauthorized absence from duty, the ex-official was proceeded against under Rule-14 of the CCS (CC&A) Rules, 1965 vide Sr. Supdt. of Post offices Cuttack City Division memo No.B-750 dated 18.02.1980. Consequent upon finalization of Departmental Proceedings the ex-official late Padhi was awarded with punishment of removal from service with effect from 21.04.1979 (i.e. the date from which he deserted his duty) vide memo No.B-750 dated 07.10.1980. Against the order of punishment of removal passed by the disciplinary authority, an appeal was preferred by the ex-official which was rejected vide memo dated 06.08.1983. After a long gap of ten years, challenging the said order of punishment of removal, the ex-official filed OA No.165/1993 before this Tribunal which was dismissed by this Bench vide order dated 11.08.1999. Being aggrieved, the ex-official filed OJC No.1046/1999 in the Hon'ble High Court of Orissa. The Hon'ble High Court of Orissa vide

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order dated 21.03.2002 remanded the case to this Tribunal for disposal on merit. This Tribunal while disposing of the Original Application set aside the removal order with direction to give all consequential service benefits to the applicant and allowed the O.A. vide order dated 09.08.2002. In the meantime the ex-official Sri Padhi expired on 13.02.2005. Soon after disposal of the case and receipt of the order copy of the Hon'ble High Court of Orissa, life time arrears of pension @ Rs.1304/- with other admissible allowances thereon for the period from 01.08.1996 to 13.02.2005 was paid to the wife of the ex-official (Applicant) on 11.04.2007. Family pension @1290/- per month with other admissible allowances thereon with effect from 14.02.2005 was sanctioned and paid to the applicant. Further case of the Respondents is that all the other pensionary benefits like provisional DCRG, final DCRG, CGEGIS and final GPF amount were also sanctioned and paid to the eligible family members of the deceased official after following due procedure. As per the decision of the Hon'ble Apex Court reported in 2006 (1) SCSLJ-105- Baldev Singh Vrs. Union of India and others in Civil Appeal No.3892/1999, one official is not entitled to the pay and arrears for the period he had not worked. In the instant case the ex-official remained absent from duty unauthorizedly from

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31.05.1978 to 20.04.1979 and overstayed the leave from 21.04.1979. For the prolonged unauthorized absence from duty, he was proceeded against under Rule-14 of the CCS (CC&A) Rules, 1965 and after finalization of proceedings he was awarded with punishment of removal from service with effect from 21.04.1979 (i.e. the date from which he deserted his duty). In the instant case prior to removal from service the ex-official had remained unauthorizedly absent from duty. Consequent upon quashing of the removal order by this learned Tribunal the period of unauthorized absence from duty deemed to be regularised till his deemed superannuation/retirement. Therefore, as per the settled principles of law, the entire period from the date of unauthorized absence till the date of deemed superannuation/retirement was to be treated as "no work, no pay". In strict compliance to the order of this Tribunal passed in O.A. No.165/1993, all the admissible pensionary benefits and family pension for the period of qualifying service was calculated and sanctioned in favour of the applicant and other eligible family members of the ex-official. In the meantime, alleging non-implementation of the order dated 09.08.2002; the ex-official late Sri Padhi filed CP No.10/2003 before this Tribunal. The respondents, by incorporating all the above facts, filed their detailed show cause. This Bench having gone through the case in great detailed and having convinced by

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the submissions of the alleged contemnors dropped the CP vide order dated 30.06.2009. It has further been submitted that since the cause of action of the present Original Application has already been set at rest the same is not maintainable. Further, though the order of the Tribunal has been implemented since 2007 and the CP was dropped in 2009, the present O.A. filed after long lapse of time is not maintainable.

4. By filing rejoinder, the Applicant refuted the stand taken by the Respondents by reiterating the plea taken in the OA.

5. Heard Mr.P.K.Padhi, Learned Counsel for the Applicant and Mr. U.B.Mohapatra, Learned Senior CGSC appearing for the Respondents. After conclusion of hearing on 28.11.2013, the Learned Counsel for respective parties have filed written note of submissions in support of their arguments.

6. It is not in dispute that the husband of the Applicant approached this Tribunal in OA No. 165 of 1993 which was dismissed vide order dated 11.08.1999 on the ground of limitation. The aforesaid order of dismissal by this Tribunal was challenged by the husband of the Applicant before the Hon'ble High Court of Orissa in OJC No. 10246 of 1999 and the same was allowed and the matter was remitted back to this Tribunal for rehearing on merit.

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7. In compliance of the order of the Hon'ble High Court of Orissa, the OA was reheard and disposed of by the Division Bench of this Tribunal on 09.08.2002. Relevant portion of the order dated 09.08.2002 is quoted herein below:

“...As it appears further, that Appellate Authority also did not look into these aspects of the matter. Had the Appellate Authority examined all aspects of the matter, then it would have got an opportunity to remit the matter to the Disciplinary Authority to give natural justice to the Applicant.

In the aforesaid premises, we are inclined to hold that the removal order passed against the Applicant is not sustainable; for it was passed in gross violation of the principles of natural justice. Therefore, while setting aside the removal order passed against the Applicant, way back 07.10.1980, we direct the Respondents to give all consequential service benefits to the Applicant. In the result, therefore, this Original Application is allowed. No costs.”

8. Alleging non compliance of the order of this Tribunal dated 09.08.2002, CP No. 10 of 2003 was filed by the husband of the Applicant. In the meantime, the Respondents challenged the order dated 09.08.2002 of this Tribunal before the Hon'ble High Court of Orissa vide WP (C) No. 1761 of 2003. While the said Writ Petition was pending before the Hon'ble High Court the husband of the Applicant expired on 12.02.2005. Therefore, the present applicant along with other legal heirs were substituted in the matter. The Hon'ble High Court was pleased to dismiss the aforesaid Writ Petition on 12.4.2006 by observing as under:

“In view of the above, we see no ground to interfere with the impugned judgment and order passed

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by the Tribunal. Therefore the Writ Petition is dismissed. No order as to costs.”

9. Though the Writ Petition was dismissed and the Respondents neither complied with the order of this Tribunal nor filed any show cause in the pending CP and only on 03.03.2008, the Senior Superintendent of Post Offices (Respondent No.3) filed the show cause stating therein that the Department has decided to implement the order and in furtherance to the said decision the Department have carried out the direction of this Tribunal. Accordingly, the CP was closed by this Tribunal on 30.06.2009.

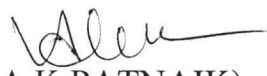
10. The whole stand of the Respondents is that the husband of the applicant is not entitled to financial benefits for the period he was out of service (from 07.10.1980 to the date of death i.e. 12.2.2005) on the principle of ‘no work no pay’. But I see no force in the aforesaid stand of the Respondents as the direction of this Tribunal in earlier OA was to pay all the consequential service benefits to the husband of the applicant. By going through the order passed by the Division Bench of this Tribunal, I found that a categorical direction was issued to the Respondents to give all consequential service benefits to the husband of the Applicant which was upheld by the Hon’ble High Court of Orissa and in the show cause filed by the Respondents in the CP it was specifically



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stated that the Department have decided to implement the order, I sitting single, after taking into consideration all the submissions advanced by the respective parties cannot deviate from the specific direction issued by the Division Bench of this Tribunal which was upheld by the Hon'ble High Court of Orissa. I hereby direct the Respondents to implement the order without any slightest deviation in its entirety by paying the Applicant all the dues payable to her husband in compliance with the earlier direction of this Tribunal given OA No. 165 of 1993 dated 09.08.2002 which has attained its finality due to the judgment of the Hon'ble High Court of Orissa passed in WP (C) No.1761 of 2003. All exercise shall be completed within a period of 60(sixty) days from the date of receipt of copy of this order.

11. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judicial)