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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 813 of 2012
Cuttack, this the 3rd day of January, 2013

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

Shri Harish Chandra Nayak,
Aged about 69 years,
At/Po/Ps-G.Udayagiri,
Dist. Kandhamal,
Odisha-762100

....Applicant

(By Advocates :Mr.P.K.Padhi,Mrs.J.Mishra)

-VERSUS-

Union of India represented through –

- 1 The Secretary cum Director General of Posts
 Dak Bhawan,
 Sansad Marg,
 New Delhi-110116.
2. Secretary,
 Government of India,
 Department of Pension and Pensioner's Welfare,
 New Delhi-110 001
3. Chief Post Master General,
 Odisha Circle,
 At/Po.Bhubaneswar,
 Dist.Khurda-751 001.
4. Superintendent of Post Offices,
 Phulbani Division
 At/Po.Phulbani,
 Dist. Kandhamal-762 001.
5. Sub Divisional Inspector (Postal),
 Baliguda Sub Division,

All

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At/Po.Baliguda,
Dist. Kandhamal,
Pin-762 103.

.....Respondents

(By Advocate : Mr.P.R.J.Dash)

O R D E R (oral)

A.K.PATNAIK, MEMBER (J):

According to the Applicant, on 29.2.1964, he joined as ED Night Watchman in the G.Udayagiri Sub Post Office. After abolition of Night Watcher Post, he was adjusted in the same Sub Pot Office as ED Messenger. Thereafter, he was selected and appointed as a Gr.D in which post he joined on 11.11.1994 and while working as such he retired on reaching the superannuation w.e.f. 30.06.2003. He applied for sanction of minimum pension which having not been considered he approached this Tribunal in OA No. 69 of 2005. This Tribunal disposed fo the said OA on 31st March, 2006 by directing the Respondents to consider the representation. As it appers the Respondents considered the grievance of the applicant but rejected the same on the ground that as against ten years qualifying service for grant of minimum pension, the applicant had put in only 08 years, 07 months and 7 days in the departmental cadre. Hence as per the Rules he is not entitled to the minimum pension as prayed for by him. This order of rejection dated 03.03.2011 has been impugned by the Applicant in this OA with prayer to quash the order of rejection dated 03-03-2011 (Annexure-A/9), to direct the Respondents to count the ED service towards qualifying

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period for release of the pension and pensionary benefits and resultantly to direct the Respondents to release the minimum pension from the date of his retirement/with effect from 01-07-2003.

2. Heard Mr. P.K.Padhi, Learned Counsel for the Applicant and Mr. P.R.J.Dash Learned Additional Standing Counsel appearing for the Respondents.

3. Similar matter came up for consideration before the Madras Bench of the Tribunal in OA No.1264 of 2001 (M.R.Palaniswamy v Union of India and others). The Madras Bench of the Tribunal held/directed the Respondents/Postal Department to consider a scheme for giving weightage for certain percentage of service rendered as an ED Agent for reckoning the same as a qualifying service for the purposes of pension in respect of persons who get absorbed or promoted against regular Group D posts in the Department which would enable such employees to get the minimum Pension. The Department challenged the said order of the Madras Bench of the Tribunal before the Hon'ble High Court, ~~Madras~~ in WP No.45465 of 2007/WPMIP No.66391 of 2007. The Hon'ble High Court of Madras while upholding the order of the Madras Bench of the Tribunal directed for sanction of at least the minimum pension by bringing the shortfall of service from ED employment. Being aggrieved by the said order, the Respondent-Department of Posts filed appeal before the Hon'ble Apex Court and the

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Hon'ble Apex Court in order dated 17.10 .2008 dismissed the appeal preferred against the aforesaid order. In compliance of the aforesaid order, the DOP&T issued instruction dated 99-3/08-Pen dated 09-10-2009 in the light of the order passed by the Madras Bench of the Tribunal.

4. Praying for shortfall of service from ED employment towards qualifying service for sanction of the minimum pension OA No.310 of 2010 was filed before this Tribunal by another employee of the Postal Department namely Gouranga Ch. Sahoo. The said OA was disposed of on 21st March, 2011 by the Division Bench of this Tribunal.

Relevant portion of the order is quoted herein below:

"4. Heard Learned Counsel for both sides and perused the materials placed on record. Admitted fact of the matter is that ten years qualifying service is a mandatory requirement for granting pension and pensionary benefits after retirement and if it is held that the applicant is not entitled to count the strike period and the training period towards qualifying service, the applicant is short of qualifying service to get pension and pensionary benefits. No record has been produced by the Applicant that the strike period has been regularized by the Respondents nor has he produced any Rule or Government of India instruction or law in support of his stand that the training period ought to have been taken into consideration for the purpose of counting the qualifying service of an employee although conscience says that when the applicant was sent for in-service training the training period ought not to have been excluded for counting towards qualifying service. Be that as it may, without going into the above controversy of the matter, as it appears from Annexure-A/10, the Madras Bench of the Tribunal held/directed the Respondents/Postal Department to consider a scheme by giving weightage for certain percentage of service rendered as an ED Agent for reckoning the same as a qualifying service for the purposes of pension in respect of persons who get absorbed or

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promoted against regular Group D posts in the Department which would enable such employees to get the minimum Pension. The Department challenged the said order of the Madras Bench of the Tribunal before the Hon'ble High Court, Chennai in WP No.45465 of 2007/WPMP No.66391 of 2007. The Hon'ble High Court of Madras while upholding the order of the Madras Bench of the Tribunal directed sanctioning at least the minimum pension by bringing the shortfall of service from ED employment. Being aggrieved by the said order, the Respondent- Department of Posts filed appeal before the Hon'ble Apex Court and the Hon'ble Apex Court in order dated 17.10. 2008 dismissed the appeal preferred against the aforesaid order. In compliance of the aforesaid order, the DOP&T issued instruction dated 99-3/08-Pen dated 09-10-2009 in the light of the decision, as aforesaid. This position has not been disputed by the Respondents in their letter of rejection or even counter but have stated that since that case relating to Mr.M.R.Palaniswamy applicant therein, the benefit of the said decision or order cannot be extended to the Applicant. This logic of the Respondent-Department cannot stand in the eyes of law because it is trite law that as a benevolent employer, the authority cannot create a situation compelling each and every employee to approach the Court for the same relief as has been granted to another employee on the same subject. Once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons (Ref: **Maharaj Krishan Bhatt and Another Vs State of Jammu and Kashmir and others** (2008) 2 SCC (L&S) 783). In view of the law propounded above, the applicant is entitled to the benefit as has been extended to Mr.Palaniswamy (surpa). Hence, Respondents are hereby directed to bring such of the shortfall period of service from the ED employment of the Applicant to count for the purpose of minimum period of ten years qualifying service of the Applicant and accordingly sanction and pay the pension and pensionary benefits to the Applicant from the date of his retirement forthwith preferably within a period of 60(sixty) days from the date of receipt copy of this order; failing which, the Applicant shall be entitled to 6% interest on the arrear pension and pensionary dues from the date of his retirement till actual payment is made and the Respondents are free to recover the interest amount from the officer who would be found responsible for causing delay in payment.

5. In the result, for the reasons recorded above, this OA stands allowed to the extent stated above by leaving the parties to bear their own costs."

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5. The aforesaid order of this Tribunal was challenged by the Department before the Hon'ble High Court of Orissa in WP (C) No. 11665/2011. But the same was dismissed vide order dated 06.12.2011 by the Hon'ble High Court of Orissa. Thereafter, the Department challenged the matter before the Hon'ble Supreme Court of India in CC No.14722/2012. The same was also dismissed by the Hon'ble Supreme Court on 03.09.2012.

6. It appears that the Respondents rejected the grievance of the applicant in order dated 03.03.201 without taking into consideration the development took place meanwhile. This being a matter of payment of pension and the applicant is now 69 years; I do not feel inclined to keep this matter pending awaiting the reply of the Respondents especially in view of the decisions cited above. Resultantly, the order of rejection dated 03-03-2011 (Annexure-A/9) is hereby quashed and the matter is remitted back to the Respondent No.1 to give consideration to the grievance of the applicant with reference to the orders cited above and communicate the decision in a reasoned order to the Applicant within a period of two months from the date of receipt of copy of this order. OA

is disposed of.

There shall be no order as to costs.

✓ All

✓ All
(A.K.Patnaik)
Member (Judicial)