

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/00834 of 2014
Cuttack this the 19th day of June, 2017

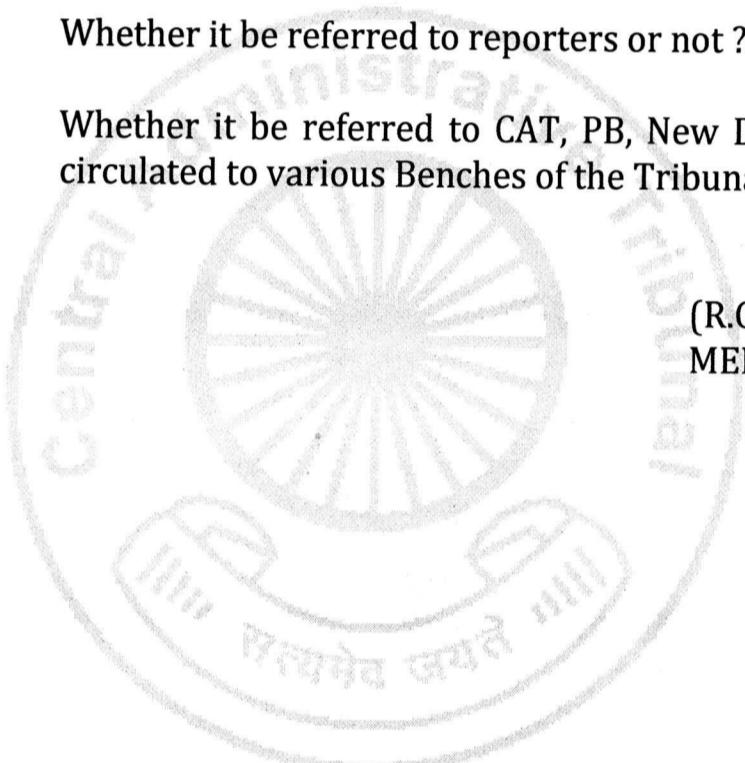
Abhaya Kumar Parija....Applicant

-Versus-

Union of India & Ors.

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? **No**
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not **No**


(R.C.MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A.No.260/00834 of 2014
Cuttack this the 19th day of June, 2017

CORAM:
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Abhaya Kumar Parija, aged about 42 years, S/o. Kandueri Ch.Parija of Vill-Khambakul, PO-Sangrampur, PS-Balikuda, Dist-Jagatsinghpur, - presently working as HSG-I, Head Sorting Asst.(HAS), Cuttack RMS/2B, StationBazar,Cuttack

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda
3. Director Postal Services (Hqrs.), Office of the Chief Post master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751 001
4. Head Record Officer, RMS North Division, Cuttack-753 001

...Respondents

By the Advocate(s)-Ms.S.Mohapatra

ORDER

R.C.MISRA, MEMBER(A):

Applicant in the present O.A. is working as HSG-I, Head Sorting Assistant(HAS) under the Department of Posts. In this Original Application under Section 19 of the A.T.Act, 1985, he has approached this Tribunal for the following relief.

R.C.MISRA

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- i) To admit the O.A.
- ii) To quash the Charge Memo dated 03.09.2014(Annex.A/3)
- iii) To quash the order No.Vig./3-10/2014 dtd. 10.11.2014(Annex.A/5) passed by the Disciplinary Authority and Memo No.ST/54-04/2014, dtd. 06.04.2015(Annex.A/9), passed by the Appellate Authority.
- iv) To pass any other order/orders as deemed fit and proper for the ends of justice.

2. The short facts of the matter are that the applicant was proceeded against under Rule-16 of the CCS(CCA) Rules, 1965 and a Memorandum of Charge dated 3.9.2014 was served upon him. The statement of imputations contained only one Article of Charge to the effect that the applicant allowed one Narayan Dash, MTS Group-C to continue beyond the date of retirement, i.e., 28.2.2014. The date of birth of said Shri Das was originally recorded as 29.2.1945 and subsequently, on 4.1.2001, the same was corrected as 29.2.1956. According to originally recorded date of birth the applicant was to retire at the end of February, 2014 whereas if the corrected date of birth had been taken into account, the retirement would have retired at the end of February, 2016. Applicant is stated to be in charge of maintenance of service book of the said Narayan Dash and he, only on 26.2.2014, just two days before the retirement of Shri Dash as per the originally recorded date of birth, referred the matter to SSRM 'N' Division, Cuttack that the correction of date of birth should be enquired into. The applicant new fully well

that such inquiry will take a long time and therefore, he should have referred the matter much earlier so that the matter could have been resolved by the authorities before February, 2014. Since the matter was referred only two days' before the retirement of Shri Dash, it was enquired into by the vigilance and the disciplinary proceedings were also initiated against said Shri Dash, who finally retired on 22.8.2014. It has been alleged that due to lack of supervision on the part of the applicant, Shri Dash could continue in service beyond his normal date of retirement thus, burdening the public exchequer.

3. Applicant on receiving the Memorandum of Charge submitted a detailed representation to Respondent No.3 on 9.10.2014, who after considering the same, passed an order dated 10.11.2014 imposing punishment of reduction of applicant's present pay by one stage for a period of three years without cumulative effect and also ordered recovery of Rs.50,000/- in 10 equal monthly installments @ Rs.5000/- per month from his pay. Being aggrieved by this order, applicant has approached this Tribunal seeking for relief as quoted above.

4. Opposing the prayer of the applicant, respondents have filed a detailed counter. They have submitted that since the applicant failed to maintain devotion to duty, he had rightly been proceeded against and ultimately, he was imposed with



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punishment, after following the due procedure of rules. Respondents have stated that the O.A. being devoid of merit is liable to be dismissed.

5. Having heard the learned counsel for both the sides, I have perused the records including the rejoinder to the counter filed by the applicant as well as the written notes of submissions filed by the parties concerned.

6. It reveals from the record that the entire gamut of the case is concerning the date of birth and follow up action in the matter of retirement of Shri Narayan Dash, MTS, Group-C. It is to be noted that originally the date of birth of Shri Dash had been recorded as 29.2.1954, which was later on ~~was~~ corrected as 29.2.1956 in the year 2001. It appears that the applicant of this O.A. had no action in the matter of correction of date of birth. He, however, brought this correction to the notice of the higher authorities only two days before the date of retirement, i.e., 28.2.2014 of Shri Narayanan Dash, based upon the originally recorded date of birth, i.e., 29.2.1954. The contention of the applicant is that various official records indicate that the date of birth of Shri Narayan Dash as 29.2.1956 and therefore, he could not have allowed Shri Dash to go on retirement on 29.2.2014 in an automatic manner. It also is apparent from the record that the Department started a disciplinary proceedings against the said Narayan Dash and the SSRM Cuttack 'N' Division allowed him to retire from service with effect from



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22.8.2014. The further development that had taken place is that against this order of retirement, Shri Narayan Dash had moved this Tribunal in O.A.No.690 of 2014. This Tribunal after adjudicating the matter observed that there could not be 29th day in the year 1954 as the same was not a leap year and recording of this date as date of birth was bona fide mistake and, therefore, the Department ought not to have retired the applicant when at one point of time based on the aforesaid assertion the date of birth of the applicant was changed to 29.02.1956. Therefore, the Tribunal came to a conclusion that the retirement of the applicant from service vide order dated 22.8.2014 was unjustified and hence, the Tribunal quashed the impugned order of retirement. However, it was also directed that since after 22.8.2014 Shri Narayan Dash had not worked under the Department, on the principle of no work no pay, the applicant was not entitled to any back wages. The Department of Posts challenged this order before the Hon'ble High Court of Orissa in WPC No.3835 of 2016. During pendency of this Writ Petition, based on the advice of the Ministry of Communications, the local authorities of the Department of Posts prayed for withdrawal of the said Writ Petition filed against the orders of this Tribunal and also dropped Rule-14 proceedings against Shri Naryan Dash. At the same time, the Department also implemented the orders of the Tribunal in

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extending the service and consequential benefits in favour of Shri Naryan Dash upto 29.2.2016.

7. The case made out by the applicant is that after this decision of the Tribunal as well as withdrawal of the Writ Petition filed before the Hon'ble High Court against the orders of this Tribunal ~~makes~~, it was made clear that the date of retirement of Shri Narayan Dash was 29.2.2016 and not 29.2.2014 and therefore, there was no scope on the part of the respondents to proceed against the applicant and the imputations of charge that he allowed the said Naryan Dash to ^{continue in} ~~retire from~~ service beyond 29.2.2014 is vague and unspecific as no culpability on this score could be attributed to the applicant. Accordingly, it has been contended that the Department itself having admitted the date of birth of Shri Narayan Dash to be 29.2.1956, there exists no charge as such against the applicant.

8. In the written notes of submission applicant has enclosed copy of order dated 8.2.2017 issued by the Department of Posts communicated to Shri Narayan Dash in which it has been indicated that the order dated 16.2.2016 passed by the Tribunal has been implemented accepting the date of birth as 29.2.1956 instead of 29.2.1954 for which the date of superannuation of ex official was changed to 29.2.2016. It has been further indicated that the President has ordered that the disciplinary proceedings against Shri Dash vide Memo dated 22.8.2014 which was converted to Rule-9 proceedings be dropped.

9. I have considered the rival submissions. In the instant case the whole structure of disciplinary proceedings initiated against the applicant rests upon the fact that he allowed Shri Narayan Dash to continue in service beyond the date of his retirement i.e., 29.2.2014, his date of birth being 29.2.1954. However, the fact remains that the date of retirement with effect from 22.8.2014 of Shri Narayan Dash having been challenged, this Tribunal in O.A.No.690/2014 filed by Shri Dash held that retiring the applicant from service vide order dated 22.08.2014 was unjustified and since the applicant has retired with effect from 22.08.2014 and admittedly he did not work thereafter, on the principle of no work no pay applicant is not entitled to any back wages, however, the period will be counted for all other purposes. From this, it is quite clear that the Tribunal came to a conclusion that the date of birth of Shri Narayan Dash was 29.2.1956 instead of 29.2.1954. If it is so, the charges leveled against the applicant that he allowed Shri Narayan Dash to continue in service beyond 29.2.2014, in my considered opinion, is baseless and unfounded. In view of this, the charge memo dated 03.09.2014(A/3) is quashed and set aside. Resultantly, the consequential orders passed by the disciplinary authority as well as the appellate authority vide A/5 and A/9, respectively are quashed and set aside. Accordingly, the respondents are directed to grant the

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consequential benefits in favour of the applicant within a period of ninety days from the date of receipt of this order.

10. In the result, the O.A. is allowed as above, with no order as to costs.

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

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