

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 16855 of 2012

Tapanidhi Das and another

.....

Petitioners

Mr. P.K. Mohapatra, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

23.03.2022

Order No.

4.

This matter is taken up by hybrid mode.

2. The petitioners have filed this writ petition seeking to quash the order dated 02.03.2012 passed in O.A. No. 910 (C) of 2007 under Annexure-6, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack has disposed of the original application as not allowed, by holding that the claim for compassionate pension, after removal from service, pursuant to order dated 08.02.1990, on the basis of departmental proceeding, cannot be entertained at that stage.

3. Mr. P.K. Mohapatra, learned counsel for the petitioners contended that the petitioners have been debarred from getting the benefits as due and admissible in accordance with law, due to an 'ex-parte' order of removal, as a result of which the entire family is suffering. Therefore, having failed to get any relief from the tribunal, the petitioners have approached this Court by filing the present writ petition.

4. Mr. A.K. Mishra, learned Addl. Government Advocate contended that petitioner no.1 developed with mental disorder and, therefore, he was removed from service. So far as pensionary benefit is concerned, as the petitioner had no qualifying service, such benefit has been denied to him and, as such, the tribunal is well justified in passing the order impugned, which does not warrant any interference of this

Court.

5. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was appointed as a Sepoy in the 3rd Battalion, OSAP on 16.04.1984. He suffered from mental ailment and remained absent from duties from 28.01.1989 to 11.02.1989. As he continued treatment, he submitted intimation to the Commandant from time to time for extension of leave. But, instead of allowing him further time for his mental treatment, the Commandant removed him from service in an 'ex-parte' departmental proceeding. Thereafter, when petitioner no.2, the wife of the petitioner-1, represented before the authority, the same was rejected, vide order dated 14.02.2005, stating that the petitioner no.1 has already been removed from service and, therefore, no pension can be paid to him. The wife-petitioner no.2 (Bilasini Das) filed O.A. No. 2153 (C) of 2005, which was disposed of vide order dated 28.02.2006, directing the opposite parties to consider her case for grant of pension or compassionate allowance, as per Rule-46 of the OCS (Pension) Rules, 1992. In spite of such order, the grievance of the petitioner no.2 for compassionate allowance, as per Rule-46 of the OCS (Pension) Rules, 1992, was rejected, vide order dated 08.09.2006. Though the husband of petitioner no.2 was fit at the time of entering into service, he developed mental disease during service, but, without allowing him retirement on invalidation, the opposite parties removed him from service on the basis of an 'ex-parte' inquiry for absence for a period of seven months only, whereas in view of his disease he should have been dealt with as per Rule-39 of the OCS (Pension) Rules, 1992. The Orissa Service Code envisages removal from service for absence beyond five years, whereas the petitioner no.1 has been removed from service on the basis of an 'ex-parte' disciplinary proceeding, when he remained absent for much less period. Thereby, claim was made before the tribunal for quashing of the order dated 08.09.2006, rejecting the claim

for payment of compassionate allowance for mental ailment of petitioner no.1, as well as order of removal of petitioner no.1, with a direction to grant pension in accordance with Rule-39 or Rule-46 of the Orissa Civil Service (Pension) Rules, 1992. But fact remains, though the petitioner no.1 was removed from service, but he has not challenged the same before the appropriate forum and, as such, the tribunal, while dealing with all aspects, held that the claim for compassionate pension after removal from service, pursuant to order dated 08.02.1990, on the basis of departmental proceeding, cannot be entertained at this stage, as it will be treated as stale claim, in view of abnormal delay in filing the same.

6. In the above view of the matter, this Court does not find any illegality or irregularity to have been committed by the tribunal so as to cause interference with the same. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Sukanta