

ORISSA HIGH COURT: CUTTACK

AFR

W.P(C) NO. 28791 OF 2019

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Dr. Surendranath Behera Petitioner

-Versus-

Union of India and others Opp. Parties

For Petitioner : Mr. S.K. Padhi, Senior Advocate,
appearing along with M/s. S.M.
Mohanty, S. Rout and J.P. Patri,
Advocates

For Opp. Parties : Mr. P.K. Parhi, DSGI, appearing
along with Mr. S.S. Kashyap,
Central Government Counsel.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE B.P. SATAPATHY**

Date of Hearing : 16.11.2022 :: Date of Judgment : 24.11.2022

DR. B.R. SARANGI, J. This is a case in which the petitioner, while working as Senior Divisional Medical Officer, East Coast Railway, Bandamunda, was involved in commission of offences under Section 13(1)(d) read with Section 13(2) and Section 7 of the Prevention of Corruption Act, 1988 on the

basis of a trap, in which he was caught red handed by the CBI while taking a sum of Rs.1000/- as illegal gratification for writing prescription for a railway employee. On the basis of complaint, R.C. Case No.3 of 2008 was registered in the Court of the learned Special Judge, CBI, Bhubaneswar, which formed the subject matter of trial in T.R. No. 33 of 2008. While the matter was so pending, the petitioner was issued with a memorandum of charge on 09.01.2009. Consequentially, an order of punishment was imposed against the petitioner by the disciplinary authority withholding 100% of the monthly pension on permanent basis and forfeiting the entire gratuity admissible to the petitioner, which is in commensurate with the gravity of misconduct committed by him, proved beyond reasonable doubt. In the meantime, the learned Special Judge, CBI, Bhubaneswar, vide judgment dated 22.12.2012, honourably acquitted the petitioner. Therefore, the petitioner filed a review petition on 18.02.2013 to the President of India along with a copy of the judgment of the CBI Court with a prayer to review the order passed by the disciplinary authority in the

departmental proceeding, which was rejected vide order dated 19.03.2014 and communicated to the petitioner vide letter dated 21.03.2014. Against the said order, the petitioner filed O.A. No. 260/00105 of 2015 before the Central Administrative Tribunal, Cuttack Bench, Cuttack. After hearing the counsel for the respective parties, the Tribunal reserved the order on 24.04.2019 and pronounced the same on 30.07.2019, affirming the order of punishment and dismissing the original application filed by the petitioner.

2. The back-ground facts, which culminated into initiation of the above noted proceedings, are that a complaint was received from one Sri Uday Singh Swaiyan, Safaiwala, South Eastern Railway Hospital, Adityapur on 23.02.2008 alleging that he attended Railway Hospital, Bondamunda and met the petitioner, the then Senior Divisional Medical Officer, Railway Hospital, Bondamunda, for his treatment with prescription memo. The petitioner saw the prescription memo and checked Sri Swaiyan but asked him to come to his residence next day evening where he would further examine him properly and give medicine. At

the same time, it is alleged that the petitioner advised him to attend his residence with a sum of Rs.1,000/- so that he can give treatment and prescribe medicine. On the basis of the written complaint received from Sri Uday Singh Swaiyan, a criminal case, vide FIR RC 0152008A0003, was registered on 24.02.2008 by the Superintendent of Police, CBI, Bhubaneswar against the petitioner under Section 13(1)(d) read with Section 13(2) and Section-7 of the Prevention of Corruption Act, 1988. As per the complaint, the CBI planned a trap in his railway residence on 24.02.2008 during the proposed evening. The CBI team and the complainant reached at the residence of the petitioner at about 19.00 hours evening. The complainant entered the drawing room of the bungalow of the petitioner and handed over the tainted G.C. notes amounting to Rs.1,000/- (rupees one thousand) only to the petitioner and the CBI caught the petitioner red handed. On the basis of such complaint, RC Case No.03 of 2008 was registered in the Court of the learned Special Judge, CBI, Bhubaneswar, and on being charge sheeted, the

accused stood trial in T.R. Case No.33 of 2008 in the Court of the learned Special Judge, CBI, Bhubaneswar.

2.1 A Major Penalty Charge Memorandum dated 09.01.2009, signed by General Manager, South Eastern Railway was issued to the petitioner under Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on the charges of demanding and accepting gratification of Rs.1,000/- from Sri Uday Singh Swaiyan on 24.02.2008. The Charge Memorandum dated 09.01.2009 was issued by the General Manager, South Eastern Railway to the petitioner. The list of the relied upon documents, on the basis of which the Departmental Proceeding was initiated against the petitioner, was supplied to the petitioner. Basing upon the same, the petitioner filed his written statement of defence denying the charges mentioned in the memorandum and expressed his willingness to engage a defence counsel to defend his case. The petitioner sought certain additional documents. The Inquiry Officer supplied only one document, i.e., Muster Roll of the complainant for the month of February, 2008 together with the report why he was at

Bondamunda on 23.02.2008 and 24.02.2008 was supplied. But other documents, which were not relevant to the charges framed, were not supplied to the petitioner. The Inquiry Officer was vested with certain powers, including admission of witnesses, supply of documents, admission of additional documents submitted during inquiry etc.. While exercising such power, the Inquiry Officer was to indicate the reason, which has been done in the present case. The petitioner was posted in Dongaposi Railway Hospital. But to conduct an inquiry, the Inquiry Officer intimated the petitioner the date of hearing before holding every hearing. The preliminary hearing was held on 15.09.2009, on which date the petitioner was absent. On 07.10.2009, regular hearing was held and the petitioner was intimated well in advance, but he was absent on that date. Next regular hearing was fixed and held on 21.10.2009, on which date the petitioner was present along with his defense counsel. Thereafter, next regular hearings were held on 22.03.2010, 23.03.2010, 16.04.2010 and final regular hearing was fixed and held on 14.05.2010, on which date the petitioner and his defense counsel were

present, and inquiry was concluded. On 07.10.2009, the petitioner and the complainant, i.e., the prosecution witness were absent. One Sri Akhil Mohan Panda-Prosecution Witness-2 and Sri Arnarnedra Sahoo-Prosecution Witness-3 were examined and their statements were duly recorded and shown to the petitioner during subsequent hearing, when the petitioner was present with his defense counsel. The petitioner was also allowed to cross-examine the witnesses examined during the last sitting. Ultimately, the inquiry officer submitted his report on 03/16.08.2010, which was served upon the petitioner by the Chief Medical Superintendent, ★ Chakradharpur, vide ★ letter dated 19/20.1.2011, calling upon the petitioner to submit his final representation against the findings made in the inquiry report. In response thereto, the petitioner submitted his representation dated 01.02.2011 addressing the General Manager, South Eastern Railway, Garden Reach, Kolkata. After going through the inquiry report submitted by the Inquiry Officer, based upon the articles of charges, documents relied upon and examination of the prosecution

witnesses, the Railway Board, vide order dated 21.11.2012, imposed the penalty of withholding 100% of the monthly pension on permanent basis and forfeiting the entire gratuity admissible to the petitioner.

2.2 In the meantime, R.C. Case No.3 of 2009, which was registered on the basis of the complaint in the Court of the learned Special Judge, CBI, Bhubaneswar, and which formed the subject matter of trial in T.R. No 33 of 2008, was decided and the judgment was rendered on 22.12.2012 holding that the prosecution has miserably failed to prove its case against the accused-petitioner beyond all reasonable doubt. Therefore, the Court found that the petitioner is not guilty of the offence Under Section 13 (1)(d) read with Section 13 (2) and Section 7 of the Prevention of Corruption Act, 1988 and accordingly honourably acquitted him under Section 248(1) Cr.P.C.

2.3 The petitioner, after getting order of acquittal from the learned Special Judge, CBI, Bhubaneswar on 22.12.2012, filed a review petition on 18.02.2013 to the President of India, along with a copy of the judgment of the

CBI Court, with a prayer to review the order passed by the disciplinary authority in the departmental proceeding, which was rejected vide order dated 19.03.2014 as communicated to the petitioner vide letter dated 21.03.2014. Against the said order, the petitioner filed O.A. No. 260/00105 of 2015 before the Central Administrative Tribunal, Cuttack Bench, Cuttack. After hearing the counsel for the parties, the Tribunal reserved the judgment on 24.04.2019 and pronounced the judgment on 30.07.2019, affirming the order of punishment and dismissing the Original Application filed by the petitioner. Hence, this writ petition.

3. Mr. S.K. Padhi, learned Senior Counsel appearing along with Mr. S.S. Mohanty, learned counsel for the petitioner vehemently contended that the, on the basis of the complaint lodged, the CBI registered a case against the petitioner under Section 13(1)(d) read with Section 13(2) and Section 7 of the Prevention of Corruption Act, 1988 on the basis of trap, in which the petitioner was caught red handed while taking a sum of Rs.1000/- as illegal gratification for writing prescription for a railway employee. As such, R.C.

Case No.3 of 2009 was registered in the Court of the learned Special Judge, CBI, Bhubaneswar, which formed the subject matter of the trial in T.R. No 33 of 2008. After due adjudication the petitioner was honourably acquitted vide judgment dated 22.12.2022. While the matter was subjudice before the learned Special Judge, CBI, Bhubaneswar, a departmental proceeding was initiated against the petitioner and the petitioner was issued with a memorandum of charge on 09.01.2009. Basing upon the charge, the order of punishment was imposed by the disciplinary authority withholding 100% of the monthly pension on permanent basis and forfeiting the entire gratuity admissible to the petitioner vide order dated 19.12.2012.

3.1 It is further contended that standard of proof in both the cases though different, still then for the self-same fact if the petitioner has been acquitted honourably, in that case the disciplinary authority could not have imposed such a penalty, which is harsh in nature and, as such, the said penalty cannot sustain in the eye of law. It is further contended that in view of acquittal of the petitioner for the

self-same charge in T.R. No. 33 of 2008, vide judgment dated 22.12.2012 passed by learned Special Judge, CBI, Bhubaneswar, acquitting the petitioner honourably, the petitioner filed a review petition on 18.02.2013 before the President of India, along with a copy of the judgment of the CBI Court, stating that for the self-same charges when the petitioner has been honourably acquitted from the criminal charge, there is no valid and justifiable reason to impose a penalty in the departmental proceeding. Therefore, such penalty which has been imposed by the disciplinary authority should be set aside. But the review application was rejected, vide order dated 19.03.2014, which was communicated to the petitioner on 21.03.2014. Thereby, it is contended that the same is an outcome of non-application of the mind and, therefore, seeks for interference of this Court.

3.2 It is also contended that once the learned Special Judge, CBI, Bhubaneswar, vide judgment dated 22.12.2012, has honourably acquitted the petitioner by going through the evidence available on record with the finding that the prosecution has failed to prove the demand and acceptance

of the illegal gratification, which has been brought on record by the defence in cross-examination, where the complainant himself has admitted that another person was present in the room of the accused-petitioner, when he entered into the room of the accused-petitioner, and that it is a fact that the accused-petitioner had refused to accept money from him towards the fees. But the disciplinary authority, without taking note of such evidence and without waiting for the finality of the result in the criminal case filed by the CBI before the learned Special Judge, CBI, Bhubaneswar, vide order dated 19.12.2012, imposed the penalty of withholding 100% of monthly pension and forfeiture of entire gratuity admissible to the petitioner. The record clearly indicates that the disciplinary authority communicated the order on 19.12.2012, whereas the learned Special Judge, CBI, Bhubaneswar, for the self-same charge acquitted the petitioner honourably vide judgment dated 22.12.2012, which was three days after the order of punishment was communicated to the petitioner. It is further contended that since the petitioner has been honourably acquitted by the

learned Special Judge, CBI, Bhubaneswar, then the reviewing authority, on the basis of the application filed by the petitioner on 18.02.2013, should have applied his mind and reviewed the order passed by the disciplinary authority. Therefore, the order passed by the reviewing authority suffers from non-application of mind.

3.3 He further contended that there is gross violation of principles of natural justice while conducting the inquiry and imposing penalty by the disciplinary authority. It is contended that the petitioner was not provided with the relevant documents relied on by the Inquiry Officer, such as duty charge of the complainant, statement of the complainant, copy of the written sanction for conducting the raid, copy of the statement of witness from Railway Muster Roll of the complainant which were required by the petitioner and applied for at different stages of inquiry. Therefore, due to non-supply of relevant documents for the purpose of just adjudication of the case, principles of natural justice has been violated.

3.4 He further contended that even though the disciplinary authority has accepted the nomination of defence counsel on 17.06.2009, but the same was intimated to the petitioner on 05.10.2009 and in the meantime the Inquiry Officer conducted ex-parte inquiry on 15.09.2009. More so, the Inquiry Officer did not ask for his defence as per Rule 9(19) of RS (D&A) Rules, 1969 nor afforded an opportunity to the petitioner to give his oral statement. After completion of examination of P.W.4, the Inquiry Officer closed the inquiry and recorded the oral statement of the petitioner without letting the petitioner to submit the same in writing. Thereby, showing an undue haste, the disciplinary proceeding was concluded, which amounts to gross non-compliance of principles of natural justice.

3.5 It is further contended that due to non-examination of defence witnesses and non-adducing of evidence by the petitioner, the order so passed by the disciplinary authority cannot sustain in the eye of law. It is further contended that there is disproportionate of punishment for alleged level of misconduct for accepting

illegal gratification of Rs.1000/-, for which reason penalty of withholding 100% monthly pension and forfeiture of entire gratuity was imposed, which is arbitrary and unreasonable. More so, for the self-same charges if the petitioner has been honourably acquitted by the learned Special Judge, CBI, Bhubaneswar, there is no valid and justifiable reason to impose such penalty. Thus, it is contended that the same cannot sustain in the eye of law.

3.6 To substantiate his contention, learned Senior Counsel appearing for the petitioner has relied upon the judgments in ***R.P. Kapur v. Union of India***, AIR 1964 SC 787, ***Inspector General of Police & Others v. S. Samuthiram***, (2013) 1 SCC 598, ***State of Rajasthan v. Heem Singh***, 2020 SCC Online SC 886, ***Kashinath Dikhsita v. Union of India and others***, (1986) 3 SCC 229, ***State of Uttar Pradesh v. Mohd. Sharif***, (1982) 2 SCC 376, ***Shankar Dass v. Union of India and others***, AIR 1985 SC 772, ***Union of India and others v. Giriraj Sharma***, AIR 1994 SC 604, ***Subash Chandra Sahu v. Union of India***

and others, 2019 (I) OLR 728 and **Chantamani Padhi v. Management of UCO Bank**, 2017 (II) OLR 465.

4. Mr. P.K. Parhi, learned DSGI appearing along with Mr. S.S. Kashyap, learned Central Government Counsel appearing for the opposite party-Railways does not dispute the factual matrix, as delineated above, and rather contended that a major penalty proceeding was departmentally drawn under Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on the charges of demanding and accepting gratification pursuant to Memorandum of Charges dated 09.01.2009. He, however, refuted the allegation that the petitioner was not supplied with the documents. Rather, the petitioner was allowed all reasonable opportunities to defend his case. He further contended that the enquiry took place on 15.09.2009, 07.10.2009, 21.10.2009, 21.03.2010, 23.03.2010, 16.04.2010 and 14.05.2010. The petitioner was also permitted to take the assistance of his defence counsel. The petitioner and his defence counsel were present and enquiry was concluded. As such, during the course of enquiry the petitioner never complained by filing any

application. Consequentially, the enquiry was conducted by the Inquiry Officer and a report was submitted on 03/16.08.2010 which was served upon the petitioner, basing upon which he submitted a representation on 01.02.2011. Accordingly, the Railway Board, vide order dated 21.11.2012, imposed penalty of withholding of 100% of monthly pension on permanent basis and forfeiting the gratuity. Thereby, no illegality or irregularity has been committed by imposing such penalty.

4.1 He further contended that after honourable acquittal in the criminal case vide judgment dated 27.12.2012, even though the review was filed, but the same was rejected on the ground that the law is well-settled that the standard of proof required in a criminal case and in a disciplinary proceeding is distinctly different. Where in a criminal case punishment is to be imposed on conviction of the accused “beyond all reasonable doubt”, in case of departmental proceeding punishment can be imposed on the delinquent on the basis of “preponderance of probabilities”. In a criminal case the accused is to be punished for criminal

misconduct whereas in a disciplinary proceeding of this nature the punishment can be imposed for the act of unbecoming of a government servant. Thereby, he contended that the action of the authorities is well justified and, as such, there was no procedural irregularity by which non-observance of principle of natural justice would result in defeating the course of justice and it is not a case of no evidence, thereby the scope of judicial review of a disciplinary proceeding is very limited and in a judicial review the Court is not exercising or sitting in appeal over the order of punishment. It is further contended that strict standard of proof or applicability of Evidence Act stands excluded in a departmental enquiry. Thereby, the punishment imposed by the authority is well justified, which does not require any interference by this Court. As such, the Tribunal is well justified by dismissing the Original Application filed by the petitioner against the imposition of penalty imposed by the disciplinary authority.

4.2 To substantiate his contention, learned DSGI appearing for the Railways has relied on the decisions in the

cases of ***Pandian Roadways Corporation Ltd v. N. Balakrishnan***, (2007) 9 SCC 755, ***Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd. Haldia and others***, (2005) 7 SCC 764, ***Shashi Bhushan Prasad v. Inspector General, Central Industrial Security Force and others***, (2019) 7 SCC 797, ***The State of Karnataka and Anr v. Umesh***, Civil Appeal Nos. 1763-1764 of 2022 disposed of on 22nd March, 2022 and ***State of Rajasthan and others v. Heem Singh***, Civil Appeal No.3340 of 2020 disposed of on 29th October, 2020.

5. This Court heard Mr. S.K. Padhi, learned Senior Counsel appearing along with Mr. S.S. Mohanty, learned counsel for the petitioner and Mr. P.K. Parhi, learned DSGI appearing along with Mr. S.S. Kashyap, learned Central Government Counsel appearing for the opposite party-Railways in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. Before delving into the merits or demerits of the contentions raised by the respective parties, this Court deemed it proper to examine the judgment and order impugned delivered by the Tribunal and it is found that the Tribunal heard the Original Application and reserved it for judgment on 24.04.2019, but the impugned judgment and order was delivered on 30.07.2019, i.e. after more than three months' time. None of the counsels appearing for the parties raised this question that the judgment was delivered contrary to Rule-105 of The Central Administrative Tribunal Rules of Practice, 1993 and, as such, the said judgment cannot sustain. Therefore, this Court proceeded to examine whether the Tribunal is justified to keep the order reserved on 24.04.2019 and pronounce the same on 30.07.2019, i.e., after three months and six days from the date of reserve.

7. It is of relevance to note that to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of

any local or other authority within the territory of India or under the control of the Government of India or of any Corporation (or society) owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto, the Parliament had enacted “Administrative Tribunals Act, 1985”, hereinafter to be referred as “1985 Act”.

7.1 Chapter-IV of 1985 Act prescribes the procedure. Section-19 deals with applications to Tribunals. As per Section-19 (1), subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. For filing of such applications before Tribunal under Section 19 of the 1985 Act, other requirements under sub-sections (2), (3) and (4) are to be complied with.

7.2 Section 22 of the 1985 Act deals with procedure and powers of the Tribunals, which reads as follows:-

"22. Procedure and powers of Tribunals.--(1) A Tribunal shall not be bound by the procedure laid down in the

Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and [after hearing such oral arguments as may be advanced].

(3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;*
- (e) issuing commissions for the examination of witness or documents;*
- (f) reviewing its decisions;*
- (g) dismissing a representation for default or deciding it ex parte;*
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and*
- (i) any other matter which may be prescribed by the Central Government."*

7.3 Whereas, it was expedient to frame unified and consolidated Rules of Practice, for which the Central Administrative Tribunal, in exercise of the powers conferred by Section 22 of the Administrative Tribunals Act,

1985 (Central Act 13 of 1985) and all other powers thereunto enabling it to frame Rules to regulate its own practice and procedure, made the Rules of Practice in supersession of all the existing orders, regulations and notifications, called the “The Central Administrative Tribunal Rules of Practice, 1993” (hereinafter to be referred as “1993 Rules”).

Chapter-XVII of the 1993 Rules deals with pronouncement of the order. Rule 105 reads as follows:-

“105 Pronouncement of order .--(a) The Bench shall as far as possible pronounce the order immediately after the hearing is concluded.

(b) When the orders are reserved, the date for pronouncement not later than 3 weeks shall be fixed. The date so fixed shall not be changed except after due notice to all parties/counsel.

(c) Reading of the operative portion of the order in the open Court shall be deemed to be pronouncement of the order.

(d) Any order reserved by a Circuit Bench of the Tribunal may be pronounced at the principal place of sitting of the Bench in one of the aforesaid modes as exigencies of the situation require.”

7.4 A bare perusal of the aforementioned rule would go to show that under sub-rule (a) of Rule 105, it has been specifically provided that the Bench shall as far as possible pronounce the order immediately after the hearing is concluded. Sub-rule (b) provides that when the orders are

reserved, the date for pronouncement not later than three weeks shall be fixed. Thereby, a mandate has been put on the Tribunal that in the event of reserving any order, the Tribunal has the obligation to discharge its responsibility by pronouncing the final order within three weeks. Per chance the Tribunal could not able to pronounce the order of the reserve matter within three weeks, then it owes a responsibility to give notice to all the parties/counsel for change of dates. Meaning thereby, if the date so fixed for the reserved order to be pronounced within the period of three weeks is changed, then it should be brought to the notice of the parties. But, the same has not been adhered to in the present case, because the matter was heard and reserved for orders on 24.04.2019, without fixing the date of pronouncement within a period of three weeks. As such at the caprice and whims of the Tribunal the order was delivered on 30.07.2019, long after expiry of three months, that too without giving any notice to the parties/counsel. As such, the date was changed for pronouncement of judgment after three months, without giving notice to the parties/counsel and the

same was done at the caprice and whims of the Tribunal, though the Tribunal is duty bound to deliver the order in a reserve matter within the period of three weeks.

7.5 The law is well settled in the case of **Taylor V. Taylor**, (1875) 1 Ch. D. 426 that “where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.” The said principle has been followed subsequently in **Nazir Ahmed v. King Emperor**, AIR 1936 PC 253, **State of Uttar Pradesh v. Singhara Singh**, AIR 1964 SC 358, **Dhananjay Reddy v. State of Karnataka**, AIR 2001 SC 1512, **Chandra Kishore Jha v. Mahabir Prasad**, AIR 1999 SC 3558, **Gujrat Urja Vikas Nigam Ltd. v. Essar Power Ltd.**, AIR 2008 SC 1921, **Ram Deen Maurya v. State of U.P.**, (2009) 6 SCC 735.

8. May it be noted that by applying Rule-105 of the 1993 Rules this Court has already delivered a judgment in the case of **Nityananda Barik v. Union of India and others** (W.P.(C) No. 16659 of 2014 disposed of on 05.05.2022) holding that the Tribunal has acted contrary to

the aforementioned provision. Therefore, the order passed on 30.07.2019 under Annexure-12 cannot sustain and same is liable to be quashed and is hereby quashed.

9. In view of the factual matrix, as mentioned above, and also the rival contentions raised by learned counsel for the parties by relying upon their respective judgments, the matter is remitted back to the Central Administrative Tribunal, Cuttack Bench, Cuttack for its re-adjudication by giving due opportunity of hearing to all the parties. Needless to say that this Court has not expressed any opinion on the merits of the case itself nor has given any opportunity to either of the parties to add any other document, rather the matter shall be decided on the materials available on the record itself and the order shall be passed strictly in compliance of Rule-105 of the 1993 Rules. Since it is an old case of the year 2008 and in the meantime 14 years have passed and the petitioner has been deprived of getting the pensionary benefits because of the order passed by the disciplinary authority, the Tribunal shall make all endeavor to dispose of the matter as early as possible, preferably within

a period of three months from the date of communication of this judgment.

10. Thus, the writ petition is disposed of. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

B.P. SATAPATHY. I agree.

(B.P. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 24th November, 2022, Arun/GDS

