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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. No.64 of 1986

Decided on 22nd August, 1989.

Pravash Chandra Mahapatra,
Son of late Brundaban Mohapatra,
E.D. Packer, Mangalabag S.O.,
Mangalabag, Cuttack.

... Applicant

Versus

1. Union of India, represented by
Postmaster General, Orissa,
New Capital, Bhubaneswar.
2. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack.
3. Sub-Divisional Inspector (Postal),
Cuttack North Sub-Division, Cuttack.
4. Sub-Postmaster, Mangalabag,
Cuttack.

.... Respondents

M/s. P.V. Ramdas and Manoranjan Sahu ... For Applicant

Mr. A.B. Misra, Senior Standing
Counsel (Central) For Respondents.

C O R A M :

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN.

1. Whether reporters of local papers may be allowed
to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
3. Whether His Lordship wishes to see the
fair copy of the judgment? Yes

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J U D G M E N T.

B.R. PATEL, VICE-CHAIRMAN.

The admitted facts are that the applicant is an Extra-Departmental Packer (E.D.Packer) appointed on 31.3.77. On 1.3.84 he was put off duty and on 9.4.84 proceedings were initiated on the charge that he availed of leave for more than 180 days, within the continuous period of one year. The charge was enquired into by an Enquiry Officer who came to the finding that the applicant was not guilty of the charge. The enquiry report was submitted to the disciplinary authority ^{who by} ~~with~~ his order dated 16.2.1986 (Annexure-2 and Annexure-R/6) while agreeing with the findings of the Enquiry Officer exonerated the applicant of the charge and reinstated him in service with immediate effect. In this application the applicant has prayed for payment of salary and allowances from 1.3.84 to 18.2.86 when he joined the service on reinstatement.

2. The respondents in their counter affidavit have maintained that three persons had to be engaged by the Department to manage the work of the applicant during the period he was put off duty. Being a part-time employee, the applicant was not entitled to any salary at all but the allowances for the period he actually worked and moreover, no allowance is payable to the Extra-Departmental Agents under Rule 9(3) of the Extra-Departmental Agents (Conduct and Service) Rules, 1964 when they are kept off duty on the principle 'no work no pay'. In short, they have maintained that -

" There is no provision for payment of allowances to an E-D Agent during the period of absence from service. The question of payment of allowance to the applicant during the period of his non-duty i.e. from 1.3.84 to 18.2.86 does not arise."

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3. I have heard Mr. P.V.Ramdas, learned counsel for the applicant and Mr. A.B.Misra, learned Senior Standing Counsel for the Central Government, and carefully perused the relevant papers. Mr. Ramdas has brought to my notice a judgment of the Madras Bench of the Central Administrative Tribunal in the case of P.M.Rusamma v. Inspector of Post Offices, Muvattupuzha and others, reported in (1988) 7 ATC-833. In that case the applicant who was an Extra-Departmental Branch Postmaster was put off duty and later on enquiry into the charges framed against her, she was awarded a penalty of removal ^{from} ~~of~~ service. However, on appeal, the appellate authority set aside the penalty and directed reinstatement of the applicant, pursuant to which she joined the duty. She on joining duty represented to the competent authority for treating the period during which she ^{was} put off duty, as duty/service for all purposes, but her representation was rejected and thereafter she moved the Madras Bench for relief. In that case, the Madras Bench held that sub-rule (3) of Rule 9 of the ^{Posts and Telegraphs} Extra-Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as the 'Rules') was only that an employee cannot claim anything in the way of subsistence allowance during the period when he is put off duty as a regular Government servant governed by the Fundamental Rules is entitled to. Relying on a judgment of the High Court of Kerala in K.Saradamma v. Sr. Superintendent of Post Offices reported in ILR(1983) 2 Ker 741, the Madras Bench held that operation of sub-rule (3) of Rule 9 of the Rules is only during the period an employee is actually under suspension and only for the limited purpose of defeating his claim for payment during that period and that it cannot defeat

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or control the effect of the subsequent declaration about the nullity of the termination and declare the applicant entitled to have the period when she was put off duty treated as period spent on duty and for consequential benefits. In the case before me, on enquiry, the applicant was found to be innocent and the disciplinary authority has reinstated him in service. Mr. Ramdas has also cited the judgment of the Orissa High Court in the case of Ramachandra Panigrahi v. Superintendent of Post Offices, Balasore Division and others reported in 1985(1) SLR 81. In that case, the petitioner who was an Extra-Departmental Branch Postmaster, was put off duty pending enquiry into the allegations of misconduct against him. He was found guilty on enquiry and removed from service. In para-2 of their judgment, the High Court have said that though a large number of prayers had been made in the writ petition, at the hearing, Mr. Ramdas, learned counsel for the petitioner confined the writ petition only with respect to one prayer. Mr. Ramdas had contended that the order dated 2.2.1976 putting the petitioner off duty lapsed on the date the order of removal was passed, i.e., on 5.10.1976. The appellate authority having directed a de novo enquiry in the eye of law, it must be held that the order of termination was set aside by him though the appellate authority had not specifically stated so in his order. In that view of the matter, according to Mr. Ramdas, the petitioner must be deemed to be continuing in service notwithstanding the de novo proceeding against him being continued and was entitled to all consequential benefits on that basis. In para-4 of the judgment, the High Court have observed as follows :

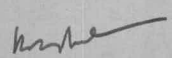
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" An order under Rule 9(1) of the Rules putting an employee off duty pending enquiry into allegation of misconduct presupposes continuance of relationship of master and servant. It is somewhat akin to an order of suspension in a case of civil servant, the only difference being that under Rule 9(1) the concerned employee who has been put off duty is not entitled to any subsistence allowance during the period, but nevertheless, the relationship of employer and employee continues. When an order of termination is passed, the said relationship comes to an end necessarily, therefore, the order putting the employee off duty lapses with the order of termination. ..."

Their Lordships have also held that the order of termination must be held to have been set aside by the appellate authority and in paragraph-6 of their judgment, Their Lordships further held that the petitioner must be deemed to be continuing in service and will be entitled to all consequential benefits.

4. Mr. A.B.Misra, learned Senior Standing Counsel (Central) has reiterated the grounds taken in the counter affidavit by the respondents. He drew my attention to a judgment of the Hon'ble Supreme Court in the case of The Managing Director, U.P.Warehousing Corporation and others v. Vijay Narayan Vajpayee reported in AIR 1980 S.C.840 and contended that according to this judgment, the High Court should only quash the order of termination but should not order payment of backwages to a Government employee. According to Mr. Misra, since the applicant is not a workman under the Industrial Disputes Act and it is not a matter under consideration of the Industrial Tribunal or Labour Court, no back wages can be awarded by the Tribunal, in view of the ratio of the judgment of the Supreme Court referred to above vide paragraphs-18 and 19. I have gone through the paragraphs-18 and 19 of the aforesaid judgment of the Supreme Court. In the case before me, the applicant has not sought any relief against any



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order of termination of service. He has sought specific orders for 'payment of salary and allowances from 1.3.84 to 18.2.86' and I will have to give my decision on this prayer of the applicant. The aforesaid judgment ^{therefore} does not apply to this case. Moreover, under section 14 of the Administrative Tribunals Act, 1985 the Central Administrative Tribunal has been vested with the jurisdiction, powers and authority in relation to all service matters concerning a member of All India Service or a person appointed to any civil service posts of the Union or a civilian appointed to any defence services or to a post connected with defence. Section 3(q) of the Administrative Tribunals Act, 1985 defines 'service matters' the relevant portion of which reads thus :

"(q) "service matters", in relation to a person, means all matters relating to the conditions of his service 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, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects -

(i) remuneration (including allowances), pension and other retirement benefits ;

(ii) x x x x x x

(iii) x x x x x x

(iv) disciplinary matters; or

(v) any other matter whatsoever ; "

This makes it abundantly clear that adjudication of claim for remuneration including allowances comes squarely under the jurisdiction of the Tribunal. It is immaterial whether the claim arises out of disciplinary matters or otherwise.

5. Mr. Misra has also referred to the judgment of Kerala High Court in the case of Joseph D. Kattampally v. Union of India and others reported in 1980(3) SLR page 726.

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In that case the petitioner had prayed for a declaration that Rule 9 of the Rules " to the extent it denies subsistence allowance is unconstitutional, discriminatory, ultra vires and void". In that case he had admittedly availed of leave for more than 180 days. In this application no such prayer has been made and as such that judgment will not apply to this case. Further Mr. Ramdas has brought to my notice a judgment of Bangalore Bench of the Central Administrative Tribunal which has struck down the Rule 9(3) of the Rules being violative of the provision of Article 14 of the Constitution of India. Mr. Misra has also cited a judgment of the Supreme Court reported in 1988(3) S.L.R.434, Gurnam Singh v. State of Punjab and another. The facts of that case are different from the facts of this case. In their judgment, the Supreme Court have said -

" In this background we are of the view that the appellant who had already suffered a second round of prosecution and has been out of service for about 14 years following the conviction should not be further punished. In these circumstances, we set aside his dismissal and direct the State to restore his service."

Mr. Misra has further cited a judgment of the Allahabad Bench of the Central Administrative Tribunal in the case of Union of India and others v. Uma Shankar Singh and others. The judgment in that case does not apply to the present case as the facts are clearly distinguishable. The main question in that case was whether any action could be taken against the plaintiff for his participation in the demonstration held outside the office of the Divisional Superintendent, Varanasi on 3.10.78 without holding a disciplinary proceeding and as such it is clearly

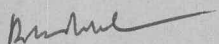
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distinguishable from the facts of the present case. Mr. Misra has also averred that the judgments of the Madras Bench and Bangalore Bench of the Central Administrative Tribunal are not binding on this Bench. Mr. Ramdas, on the other hand, has asserted that ordinarily such judgments are binding and drew my attention to the following observation of the Central Administrative Tribunal, New Bombay Bench, in the case of Vijay Kumar Srivastava and others v. Union of India and others reported in ATR 1987(1) C.A.T.233, wherein the New Bombay Bench have held as follows :

" Although there is no provision in the Act or the Rules which directs that the view expressed earlier shall be binding on all the Benches of the Tribunal, ordinarily it is binding. Judicial discipline requires that if a Bench of coordinate authority has expressed a view, another Bench of the Tribunal should not pronounce a judgment taking a different view and if it is unable to agree with the view expressed earlier, to avoid conflict of judgments the case should be referred to a larger Bench. While requiring conformity with the earlier judgments, conflicts with judicial freedom, conflicting judgments create confusion and render implementation of the orders difficult, if not impossible. Compliance of direction in one would result in contravention of the direction in the other. Judicial pronouncements should avoid creating such a situation. ..."

This was a judgment by the larger Bench consisting of Hon'ble Chairman of the Central Administrative Tribunal, and Vice-Chairman and Member of the New Bombay Bench. I am in respectful agreement with the views of the larger Bench in this matter and hold that the judgment of the Madras Bench in the case of P.M.Rusamma v. Inspector of Post Offices, Muvattupuzha and others (supra) applies to this case. I agree with the Madras Bench in their view that sub-rule (3) of Rule 9 of the Rules operates only during the period when an E.D. Agent is put off or kept off duty and such E.D. Agent cannot claim anything by way of subsistence allowance



during this period but it cannot control the effect of subsequent orders reinstating the E.D. Agent in service. On such reinstatement he should be entitled to usual allowances payable. The Bangalore Bench of the Central Administrative Tribunal in the case of Peter J. D'sa v. Union of India, in O.A.Nos.553 to 556 of 1987, 987 to 990 of 1987 and 185 to 187 of 1988, have struck down the Rule 9(3) of the 1964 Rules as violative of Article 14 of the Constitution of India. After a comprehensive examination of the legal aspect and analysing the relevant judgments of the Supreme Court and the High Courts, in paragraph-72 of their judgment, the Bangalore Bench has struck down Rule 9(3) of the 1964 Rules as unconstitutional but they have directed the Government of India to make payment of subsistence allowance to the applicants according to rules to be framed in the light of observations made by the Bench. For ^{proper} appreciation of the conclusion of the Bench in this regard, I would like to quote paragraph-72 (i) of the judgment which runs as follows :

" 72. In the result, we make the following orders and directions :

- (i) We strike down Rule 9(3) of the 1964 Rules, as violative of Article 14 of the Constitution of India. But, notwithstanding the same, the Government of India is directed to re-examine the matter in its entirety, and frame a new set of Rules, providing for payment of Subsistence Allowance, with due regard to the unique nature of the EDA service and all other relevant matters, and make payment thereof to the applicants in conformity with those Rules. We grant a period of 4 months to the Government of India to frame the new set of Rules and 3 months thereafter to make payment to the applicants in conformity with those Rules. "

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No information has been furnished as to the stage of implementation of the judgment of the Bangalore Bench. But since in the case before me no prayer has been made about the constitutionality or otherwise of Rule 9(3) of the Rules and it is confined only to payment of salary and allowances for the period the applicant was put off duty, I will not go into the constitutionality aspect of the rule and confine myself only to the relief sought by the applicant.

6. In this case, no penalty was imposed on the applicant. During enquiry itself the department came to know that the allegations were unfounded. He was fully exonerated of the charge and reinstated in service. This is a circumstance which has weighed with me beside the interpretation of Rule 9(3) of the Rules. I would like to make it clear that the applicant is not a full time Government servant and he is not entitled to any salary in the way of Government servant is entitled to.

7. Mr. Misra has also drawn my attention to the judgment of this Bench in Transferred Application No.305/86 delivered on 4.3.1987. It has been held in that judgment that the Rules do not prescribe payment of backwages during the period when the petitioner was put off duty. I agree with Mr. Misra that originally the judgment of this Bench will be binding on this Bench. But in this case no interpretation of any rule has been given unlike the cases cited above.

As indicated above, I am in agreement with the Madras Bench in their judgment in the case of P.M.Rusamma referred to above so far as interpretation of Rule 9(3) of the Rules is concerned. Relying on that judgment and also

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the judgment of Orissa High Court in the case of Ramachandra Panigrahi v. Superintendent of Post Offices referred to above, I would direct that the allowances admissible to an E.D.Packer should be paid to the applicant for the period from 1.3.84 when he was put off duty till 13.2.86 when he resumed his duties on reinstatement in service.

8. The application is accordingly disposed of. There shall be no order as to costs.



Amalendu 22.8.89
.....
VICE - CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.

The 22nd August, 1989/ Jena, SPA.