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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No.114 OF 1986

Date of decision ... November 4, 1987.

Sri Anil Kumar Das, son of Sri Govinda Prasad Das,
E.D.Branch Postmaster, Krishna Nagar Branch Office,
Via- Iswarpur, Dist- Cuttack.

...

Applicant.

Versus

1. Union of India,
represented by the Postmaster General,
Orissa Circle, Bhubaneswar, Dist- Puri.

2. Superintendent of Post Offices,
Cuttack Division, Cuttack.

...

Respondents.

Mr. P.V.Ramdas, Advocate ...

For Applicant.

Mr. A.B.Misra, Sr. Standing
Counsel (Central) ...

For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be
allowed to see the judgment ? Yes .

2. To be referred to the Reporters or not ? *NO*

3. Whether Their Lordships wish to see the
fair copy of the judgment ? Yes .

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J U D G M E N T

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant claims back wages from 10.12.1975 to 24.1.1986.

2. Shortly stated, the case of the applicant is that he was appointed as an Extra Departmental Branch Post Master in Krishna Nagar Branch Office within the district of Cuttack, on 17.6.1972. On 10.12.1975 the applicant was put off from duty as there was contemplation to draw a departmental proceeding against him on certain allegations of mis-conduct. Charges were framed against the applicant and after due inquiry the applicant was found to be guilty and the disciplinary authority vide his order dated 26.3.1976 removed the applicant from service. Being aggrieved by this order of removal, the applicant invoked the extra ordinary jurisdiction of the Hon'ble High Court of Orissa by filing an application under Article 226 of the Constitution praying therein to quash the order of removal and this forms the subject-matter of O.J.C. No. 863 of 1978. After hearing the case on merits, the Hon'ble High Court vide its judgment dated 16.9.1985 quashed the order of removal passed by the competent authority and directed reinstatement of the petitioner. By order dated 26.12.1985 the competent authority reinstated the petitioner into service and the petitioner actually joined the service on 25.1.1986. In this application, the applicant claims back wages from 10.12.1975 to 24.1.1986.

3. In their counter , the respondents resist the claim of the applicant on the ground that Rule 9 of the Extra- Departmental Delivery Agent Conduct & Service Rules does ^{not} permit grant of back wages to any employee who has been put off from duty and therefore it was further maintained by the respondents that the application being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.V.Ramdas, learned counsel for the applicant and the learned Sr. Standing Counsel Mr. A.B.Misra at some length. At first Mr. Ramdas contended that there being conflicting views on the question of granting back wages to a postal employee who has been put off from duty under Rule 9, this case should be referred to a larger bench for decision. In support of his contention, Mr. Ramdas relied upon a judgment of the Hon'ble Chairman, Central Administrative Tribunal reported in A.T.R. 1987 (1) CA.T. 233 (Bijoy Kumar Sribastab and others v. Union of India and others). We have absolutely no dispute on this proposition of law advanced by Mr. Ramdas gaining support from the judgment of Hon'ble Chairman but in the present case Mr. Ramdas was not successful in pointing out a decision which is in conflicting to our decision that a postal employee is not entitled to back wages on which he was put off from duty till reinstatement as Rule 9 creates a bar. Such being the position, we are of the view that the principles laid down

by the Hon'ble Chairman in the aforesaid judgment have no application to the facts of this case and the contention raised by Mr. Ramdas.

5. As a second ^{stream} stream to his bow, Mr. Ramdas, learned counsel for the applicant relied on a judgment of Hon'ble Orissa High Court forming subject-matter of O.J.C.No. 375 of 1978 disposed of on 24th November, 1983 (Rama Chandra Panigrahi v. Superintendent of Post Offices, Balasore Division and others). A similar question came up before the Hon'ble High Court in which the petitioner before Their Lordships had been put off from duty on a contemplated proceeding and ultimately in the inquiry the petitioner was found to be guilty and removed from service . Rule 9 of the E.D.D.A. Conduct Rules was under consideration before Their Lordships. The distinguishing feature is that the appellate authority set aside the order of removal passed by the disciplinary authority and remanded the case for denovo inquiry. After the matter was ordered to be enquired into denovo, no further order putting off the petitioner (before Their Lordships) from duty was passed by the appropriate authority and therefore Their Lordships held that by virtue of the fact that the order of the disciplinary authority was set aside by the appellate authority and a denovo inquiry was ordered, the order putting off the petitioner from duty automatically lapses ^{and} it would be deemed as if the applicant was in active service from the date on which the applicant had been put off from duty .This is a distinguishing feature

so far as the present case is concerned and therefore with great respect to Their Lordships, we are not inclined to apply the principles laid down by Their Lordships in the aforesaid case to the facts of the present case. It was further contended by Mr. Ramdas that Their Lordships having ordered that the petitioner before Their Lordships would be entitled to consequential benefits, this Bench should accept that position and award benefits to the present petitioner. True it is, that the Division Bench has ordered grant of consequential benefits to the petitioner before Their Lordships but it does not necessarily mean consequential/financial benefits especially in view of the bar created under Rule 9 and in addition to the above even if it is construed that consequential benefits would include consequential financial benefits, then such benefit was given to the petitioner because the order putting off the petitioner from duty automatically lapses by virtue of the removal order having been set aside. In such circumstances, we do not think just and proper to make a departure from our views already taken that under Rule 9, an Extra-Departmental Delivery Agent would not be entitled to back wages during the period which he had been put off from duty. But the only prayer of the petitioner argued by Mr. Ramdas to the extent that the petitioner is at least entitled to his back wages from 16.9.1985 to 24.1.1986 needs serious consideration. According to Mr. Ramdas as soon as the proceeding was quashed by the High Court on 16.9.1985 the petitioner is deemed to be innocent

with effect from 16.9.1985 as the dirty linen pending against him was completely washed away by virtue of the judgment passed by the High Court and therefore, according to Mr. Ramdas, the petitioner should be deemed to have been reinstated on duty since 16.9.1985 especially because the put off duty order passed by the competent authority automatically lapses on 16.9.1985 by virtue of the judgment passed by the High Court quashing the order of removal. In order to repudiate this argument, learned Sr. Standing Counsel Mr. Misra contended before us that even though the put off duty lapses and automatically stands vacated by virtue of the judgment of the High Court passed on 16.9.1985 yet the petitioner under Rule 9(3) is kept off from duty till the date on which he joined the service i.e., on 25.1.1986. While so contending, learned Sr. Standing Counsel submitted before us that the only entitlement of the petitioner is being continuity of service and nothing more. This argument of the learned Sr. Standing Counsel carries no weight with us because by giving the benefit of continuity of service to the petitioner, it would be deemed as if he was on duty with effect from 16.9.1985 and secondly so far as the argument of the learned Sr. Standing Counsel to the extent that the petitioner was kept off from duty under Rule 9(3) is concerned, we have not found a single scrap of paper in which orders have been passed by the competent authority keeping off the petitioner from duty under Rule 9(3) and therefore, we find no merit in the aforesaid contention of the learned Sr. Standing Counsel.

6. In view of the aforesaid discussions, we would hold that the petitioner is deemed to have been reinstated with effect from 16.9.1985 and he is accordingly entitled to his back wages till 24.1.1986. The emoluments to which the petitioner is entitled to as per the above directions be paid to the petitioner within three months from the date of receipt of a copy of this judgment.

7. Thus, the application is partly allowed leaving the parties to bear their own costs.

Agreed
XI-87.
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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, *Agreed*



Agreed
.....
Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench.
November 4, 1987/Roy SPA.