

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO:316 OF 1988.

Date of decision: October 10, 1990.

Bhaskar Chandra Pallai

.... Applicant

- Versus -

Union of India and others

.... Respondents.

For the applicant

: M/s. Devanand Misra,
Deepak Misra,
R.N.Naik, and
Anil Deo, Advocate

For the Respondents

: Mr. Tahali Dalai, Learned
Additional Standing
Counsel (Central).

C O R A M:

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

A N D

THE HON'BLE MR. N.SENGUPTA, 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? *yes*.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N.SENGUPTA, MEMBER (J),

The question for consideration in this application is whether when the removal from service of an Extra Departmental Branch Post Master (E.D.B.P.M.) is set aside can he be entitled to emoluments. It is unnecessary to traverse all the facts alleged in the application and the reply of the Respondents, suffice it to say that there was a disciplinary proceeding against the applicant and in that proceeding the enquiry Officer opined that the applicant could not be found guilty of the charge of fraud but the Disciplinary Authority disagreeing with the finding of the Enquiry Officer inflicted the punishment of the removal. Against this order of removal the applicant filed O.J.C. No.1461 of 1981 in the High Court of Orissa which stood transferred to this Tribunal and was registered as TA 159 of 1986. In that TA this Tribunal passed an order exonerating the applicant from the charges and directing the reinstatement of the applicant to his post forth with and for payment of the emoluments which he was entitled to. The applicant has been reinstated but he has not been paid anything for the period from the date of his being put off duty in 1977 till his reinstatement in January, 1987. The

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Respondents have contended that according to the Rules governing the conditions of service of the E.D. Agents, the applicant is not entitled to any amount. In para 2(a) of their counter the Respondents have stated that the applicant was put off duty on 19.5.1977, was removed from service on 20.6.1980 and after the order passed by this Tribunal, he reported to duty on 10.1.1987, though this Tribunal's order in the above mentioned TA was passed on 7th November, 1986.

2. We have heard Mr. B.S.Tripathy, the learned Counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the Respondents. Mr. Dalai has repeatedly drawn our attention to the provisions of Rule-9 of the E.D.Aagents (Conduct and Service) Rules, 1964 and has contended that in view of the statutory provisions, the applicant's claim for the period he did not actually work is misconceived. On the other hand Mr. Tripathy for the applicant has urged that Rule-9 of the E.D.Aagents (Conduct and Service) Rules, 1964 is artificial and is ultra vires of the provisions of the Constitution of India. On referring to Rule-9 it would be found that when an E.D. Agents is put off duty, he is not entitled to any allowance or payment. We need not go into the question of vires of the provisions of Rule-9 of the above said Rules, all that we need to say is that if a person is wronged, he must have a remedy. If the order of removal from service was found

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to be unsustainable it has to be deemed that it did not exist in the eye of law at all. Under the provisions of Section 28 of the Administrative Tribunals Act no Court or Tribunal other than the Administrative Tribunal established under the provisions of the Administrative Tribunals Act, 1985 can have power to entertain any litigation concerning a service matter. Therefore, for claiming damages for illegal or improper removal or dismissal from service, the injured has to file an application in the Administrative Tribunal. To repeat once again, the order of removal of the applicant from service was held by this Tribunal to be unsustainable, therefore there cannot be any doubt about an injury having been caused to the applicant by the passing of the order of removal by the disciplinary authority. So, the applicant would be entitled to damages for such illegal removal. Had there not been the order of removal which was set aside by this Tribunal, the applicant would have continued to serve and get the emoluments attached to the post of E.D.B.P.M. that the applicant was holding before his removal from service. Of course it is the law that a person who suffers an injury must take all steps to minimise injury. According to the Respondents the job of the applicant as E.D.B.P.M. was only a part time one and they have not alleged any omission on the part of the applicant to take proper steps. of the applicant as E.D.B.P.M. was only a part time one. Though the order in T.A. 159 of 1986 directing reinstatement was passed by this Tribunal

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in T.A. 159 of 1986 in November, 1986 the Department issued the necessary order of reinstatement on 2.1.1987 and ~~they have not alleged any omission on the applicant to take steps~~. Therefore, the applicant would be entitled to compensation the measure of which would be the allowance which the applicant would have drawn had he not been removed from service from 20.6.1980 till 2.1.1987.

3. So far as the period from the date the applicant was put off duty till he was removed from service is concerned, the respondents case stands on an entirely different footing. A person who enters into service is governed by the Rules of that service, it has already been stated above that Rule-9 of the E.D. Agents (Conduct and Service) Rules, 1964 provides that an E.D. Agent would not be entitled to any payment during the period he is put off duty. We have already stated that we do not feel it necessary to examine the vires of Rule-9, we may say that Rule-9 cannot be struck down in its entirety as invalid. The applicant was put off duty as allegations of fraud were made against him and as the allegations were of a serious nature, it would not have been advisable for any prudent man to allow the applicant to continue to function without having ^a probing enquiry into the allegations. Therefore, putting the applicant off duty had a justification and accordingly for the period the applicant was put off duty he cannot claim any

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compesantion or allowance.

4. For the reasons mentioned above we would direct the Respondents to pay the applicant ~~as~~ ^{have} compensation the amount that the applicant would be got from 20.6.80 till 2.1.1987 had he not been removed from service. The application succeeds in part and success being partial, parties to bear their respective costs.

B.Mohanty 10.10.90
.....
VICE-CHAIRMAN

Mea Esq 10.10.90
.....
MEMBER (JUDICIAL)



Central Administrative Tribunal,
Cuttack Bench, Cuttack/K.Mohanty