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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No. 393 of 1988.

Date of decision : March 8, 1990.

Kulamani Das ... Applicant.

Versus

Union of India and another... Respondents.

For the applicant ... Mr. B. K. Behura,  
Advocate.

For the respondents ... Mr. Tahali Dalai,  
Addl. Standing Counsel (Central)

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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)

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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

N. SENGUPTA, MEMBER (J) The applicant was proceeded against in a disciplinary proceeding in 1982. In that disciplinary proceeding the Senior Superintendent of Post Offices, Bhubaneswar passed an order of removal from service on 7.7.1982. Against that order the applicant preferred an appeal which was eventually heard by Additional Post Master General, Orissa Circle. The Additional Postmaster General

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set aside the order of removal and directed a de novo enquiry. Thereafter, a notice of enquiry was served on the applicant by Senior Superintendent of Post Offices, Bhubaneswar, i.e. Respondent No.2 but the applicant had not been reinstated in service in accordance with the orders passed by the Additional Postmaster General. For this the applicant approached this Tribunal by filing Original Application No.187 of 1988. This Tribunal passed orders on 7.9.1988 observing that the applicant was entitled to be reinstated in service and directed that the applicant's back wages calculated according to the Rules from the date he was removed from service was to be paid to him within three months. The applicants case further is that after the judgment of this Tribunal, an order purported to be under Rule 10(4) of the Central Civil Services(Classification, Control and Appeal)Rules deeming to have been suspended was passed and he has not been paid the wages that he is entitled to, in terms of the orders of this Tribunal in the previous application. Making these allegations, the applicant has prayed for declaring the order of the Senior Superintendent of Post Offices(Respondent No.2) dated 19.9 .1988 that the applicant is deemed to have been under suspension as void and the same be quashed.

2. The respondents in their counter besides alleging other facts have maintained that the order dated 19.9.1988 was in accordance with the Rules and particularly in accordance with the guiding principles as stated in the

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Postal guide. According to the respondents the order of removal was set aside by this Tribunal in its judgment in the earlier application. Therefore, Rule 10(4) of C.C.S.(C.C.A.) Rules would apply.

3. We have heard Mr. B.K. Behura, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. The questions that arise for consideration in this application are, (i) whether was the applicant's removal from service set aside by this Tribunal, (ii) whether is it open to the respondents to say that the applicant was deemed to have been under suspension in view of clear direction of this Tribunal to pay him the back wages in accordance with the Rules and (iii) whether the applicant is entitled to the relief of quashing the order dated 19.9.1988 and consequential benefits flowing from such quashing. Rule 10 of the C.C.S.(C.C.A.) Rules, bears on the question of suspension. Admittedly, the applicant had not been under suspension prior to the commencement of the proceeding and rightly the respondents had taken recourse to sub-rule (3) of Rule 10 of the said Rules. It has already been stated above, that the first order of removal was appealed against by the applicant to the departmental appellate authority who by her order set aside the order of removal and directed de novo enquiry. Once, the order is set aside it cannot have any legal existence. Therefore, the contention of the respondents that only by the order of this Tribunal the order of removal was

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set aside by Respondent No.2 is wholly without substance. It is also pertinent to note that in the previous application what the applicant prayed for was not only to set aside the order of removal but to direct that he is entitled to back wages from the date of the order of removal from service. This Tribunal allowed the prayer of the applicant and made it clear that once the order of removal is set aside its necessary effect is that the incumbent is reinstated in service. Therefore, we are clear in our mind that sub-rule (4) of Rule 10 cannot apply to the facts of the present case as the essential requirement for the applicability of that sub-rule is that the order of removal imposed upon a Government servant must have been set aside or declared or rendered void in consequence of or by a decision of a court of law which is not the case here.

4. The respondents admittedly have not carried the previous matter in appeal to the Supreme Court. Therefore, the order passed in the previous application has become conclusive. By that order this Tribunal directed payment of back wages to the applicant. Mr. Dalai wants to take shelter under the expression "under the Rules" in the direction given by this Tribunal in the previous application. He has invited our attention to Annexure-R-6 to the counter and has contended that the person must be deemed to have been under suspension. Annexure-R-6 deals with five contingencies i.e. (i) where continuance in office will prejudice investigation, trial or any

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enquiry; (ii) where continuance in office of the Govt. servant is likely to seriously subvert discipline in the office in which he is working; (iii) where his continuance in the office will be against the wider public interest; (iv) where a preliminary enquiry revealed a prima facie case justifying criminal or departmental proceedings, which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service; and (v) where he is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

5. The only clause which may have the semblance of applicability would be clause (iv) i.e., where there may be prima facie case justifying punishment of dismissal, removal or compulsory retirement from service. But this cannot be the justification in passing an order under Rule 10(4) of the C.C.S. (C.C.A.) Rules. Nowhere in the counter have the respondents stated that they purported to act under that clause. Apart from that, these are guiding principles. These are meant to provide guidelines, and <sup>are</sup> in the nature of executive instructions. The C.C.S. (C.C.A.) Rules are a complete code in themselves and situations and contingencies in which a person may be suspended are covered. It was open to the Department to pass an order of suspension under sub-rule (3) of Rule 10 when the departmental proceeding started and since they did not do so we do not find that there was any justification for nor did the Department in fact invoke Clause (iv) of the guidelines.

Member  
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6. For these reasons we quash the order at Annexure-A/4 i.e. the order of deemed suspension passed on 19.9.1988. Since the suspension is quashed as a necessary corollary the other consequential benefits as ordered in our previous judgment are to be paid. This judgment be implemented within a period of two months from the date of receipt of a copy of it.

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Vice-Chairman

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.....8.3.90  
Member (Judicial)

