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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.429 of 1988.

Date of decision : December 22, 1989.

Gobinda Chandra Sahu,
son of late Kartika Sahu, resident of
Kushapur, P.O.Baghala, Dist-Ganjam,
at present working as Branch Post Master,
Baghala, in the Office of the Senior
Superintendent of Post Offices, Berhampur,
District-Ganjam. ---

Applicant.

Versus

1. Union of India, represented through
Additional Post Master General, Orissa,
Bhubaneswar.
2. Senior Superintendent of Post Offices,
East Division, District-Ganjam.

... Respondents.

For the applicant ... M/s.A.K.Bose,
P.K.Giri, Advocates.

For the respondents ... Mr.Ganeswar Rath,
Sr. Standing Counsel (Central)

C O R A M :

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 His Lordship wishes to see the fair copy
of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J)

The applicant was the Branch Post-master of

Baghala Post Office in the district of Ganjam. There was an allegation against the applicant of wrong payment of money order and for that reason he was put off from duty. ~~besides a~~ ^{W.P.O.} First Information Reporter ~~had~~ filed ^{W.P.O.} alleging misappropriation by him. The police after investigation into the allegations in the F.I.R. ultimately submitted a final report stating that there was no material to proceed against the applicant in the criminal court. However, the departmental proceeding which was started in the year 1972 continued. In the meanwhile the applicant filed a writ petition in the Hon'ble High Court of Orissa being numbered as O.J.C.2772 of 1987 praying for quashing the order of suspension i.e. putting him off duty. He filed another writ application in the said High Court which was numbered as O.J.C. No.532 of 1980 for quashing the departmental proceeding and also prayed for an interim order. In that O.J.C. of 1980 the Orissa High Court observed that the departmental proceeding may continue but the final order in the proceeding would not be passed till the decision of the O.J.C. The applicant had also filed two other writs in the year 1979 being O.J.C. Nos. 782 of 1979 and 2782 of 1979. After the coming into force of the Administrative Tribunals Act, 1985, O.J.C. No. 2782 of 1979 was registered as T.A.26 of 1986. This T.A.26 of 1986 was disposed of by this Tribunal and it was ordered therein that the suspension order passed against the applicant on 16.7.1972 was set aside and the Department was directed that the

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applicant should be allotted duty forthwith. After the disposal of that T.A., O.J.C. No.532 of 1980 in which the High Court had ordered the disciplinary proceeding to continue but stayed the passing of the final order, ~~in that proceeding until further orders~~, was transferred to this Tribunal and was registered as T.A.No.100 of 1986 and in that T.A. this Tribunal passed order allowing the disciplinary authority to decide the disciplinary proceeding according to law. The disciplinary authority had appointed an Enquiring Officer whose finding was that the charge against the applicant was proved and with this finding the disciplinary authority agreed and passed order of removal from service with immediate effect vide Annexure 1. This order of the disciplinary authority was passed on 12.12.1986. Against this order of removal passed by the disciplinary authority the applicant carried the matter ^{to the Post-Master General,} ~~to the Post-Master General,~~ Orissa and the appeal was finally heard and decided by the Additional Post-Master General, Orissa, Bhubaneswar who by her order setaside the order of removal but directed that the applicant would not be entitled to any duty allowance for the period of his put off duty and for the period from the date of his removal to the date of his reinstatement. This order of the appellate authorities was passed ~~vide~~ Annexure-2. The relief that the applicant has claimed is for quashing the order at Annexure-2 so far as it relates to disentitling the applicant of any duty allowance for the period of his put off and from the date of his removal to the date of his reinstatement and for payment of other financial benefits for those periods without any break in his service.

Abdul Sattar

2. The respondents in their counter, have taken the plea that this Tribunal by their judgment in T.A.26 of 1986 gave opportunity to the Department to pass such orders as it deemed necessary with regard to the period of put off from duty and further that under Rule 9(1) of the Extra-Departmental Agents (Conduct & Service) Rules, the rules governing the service conditions of the applicant, the applicant is not entitled to any allowance for the period for which he was kept off duty. The other facts alleged in the counter being general denials of some of the allegations made by the applicant in his application need not be set out in this judgment.

4. The questions for consideration are whether in the facts and circumstances narrated above, can the applicant be debarred from getting any allowance for the period he was put off from duty and ^{the} implication of the order passed by the Additional Postmaster General, Orissa exercising appellate jurisdiction.

So far as the first question is concerned, it may be stated that no doubt Rule 9(1) of the E.D. Agents (Conduct and Service) Rules provides that an employee shall not be entitled to any allowance for the period for which he is kept off duty. The propriety of this rule came to be considered by some of the Benches of the Tribunal and one of such cases is reported in (1988) 7 ATC (Mad) 833 (P.M. Rusamma v. Inspector of Post Offices, Muvattupuzha and others). In that case it was held that when the period of put off duty is followed by removal and the order of removal is ultimately set aside by the appellate authority, the

employee is entitled to remuneration for the entire period from being put off duty until reinstatement. For what is going to be stated below, it is really not necessary to dilate at length, on the reasonings assigned by the Madras Bench of this Tribunal which decided that case. As has been stated above, this Tribunal in T.A.26 of 1986 set aside the order of suspension passed against the applicant on 16.7.1972 and there is no allegation, much less any proof, of any subsequent order putting the applicant off duty to have been passed. Therefore, in the instant case, it could safely be said that there was no valid order putting the applicant off duty. If a particular circumstance or fact is non-existent, time cannot be reckoned with reference to such non-existing fact. Therefore, I have no hesitation in saying that the order of the appellate authority so far as it concerns ~~to~~ the alleged period of put off duty, cannot be sustained. So far as the other part of the order is concerned, reference to the order itself would be pertinent. In paragraph 4 of the appellate order, the Additional Postmaster General, Orissa found that it was admitted by the applicant that under a bonafide mistake as to the identity of the person, he made payment to a wrong person and there was no allegation of wilful wrong payment with dishonest intention or for committing any fraud. The appellate authority further observed that the applicant was not quite careful or diligent in his work so as to guard against such wrong payment and it was a lapse on his part. This observation of the appellate authority cannot be said to be based on no material in view of the admission made by the applicant

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in the departmental proceeding. The appellate authority appears to have exercised her discretion after application of mind and that is why she set aside the order of removal and imposed the penalty of disentitling the applicant from getting any allowance for the period from his removal to the date of his reinstatement. I am quite alive to the principle that it is not for the Tribunal to substitute its own decision in the matter of punishment if it agrees with the departmental authorities about the finding of guilt. But here is a case where ^a legal question arises. Rule 7 deals with nature of penalties to be imposed on Extra-Departmental agents ; the first being recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders, the second is removal from service which shall not be a disqualification for future employment and the third is dismissal. Since these are the only three penalties provided for under the Rules which constitute ^a the complete code in themselves, it is not open to the disciplinary authority, and for that matter, to the appellate authority, to impose ^a the penalty different from the ones prescribed under the Rules. In that view of the matter, the impugned order of the appellate authority imposing the penalty of disentitlement of allowance cannot be sustained.

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5. In the result, the applicant succeeds and the impugned order at Annexure-2 is quashed so far as it relates to disentitlement of allowance to the applicant. The applicant should be paid the allowance for the entire

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period within four months from the date of receipt of a copy of this judgment. There would be no order as to costs.

Mehta, 1/1/89.
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 22, 1989/Sarangi.

