

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.434 of 1988.

Date of decision: March 31, 1989.

Sri Kedarnath Samal, aged 35 years, son of Sri Banshidhar Samal, serving as Extra Departmental Mail Carrier, Talapada Post Office in Keonjhar Postal Division, At Daitari Mines, P.O.Talapada, Dist-Keonjhar, C/o Sri S.Kr.Mohanty, Advocate, Chandi Road, Cuttack.8. ...

Applicant.

Versus

1. Union of India, through its Secretary, Postal Dak Bhawan, Sansada Marg, New Delhi-110001.
2. Superintendent of Post Offices, Keonjhar Division, Keonjhargarh, Dist.Keonjhar.
3. Inspector of Post Offices, Ghatgaon, Dist.Keonjhar.
4. Mrutyunjaya Panda, aged about 27 years, son of Laxman Panda, At/P.O.Machharanka, Via-Singla, District-Balasore, at present working as Extra Departmental Mail Carrier, Talapada Sub-Post Office, ViaJajpur Road, District-Keonjhar.

Respondents

For the applicant ... M/s.S.Kr.Mohanty,
S.P.Mohanty, Advocates.

For the respondents 1 to 3 : Mr.A.B.Mishra,
Senior Standing Counsel(Central)
Mr.Tahali Dalai,
Additional Standing Counsel (Central)
For the respondent no.4. . .M/s.Devanand Misra, Deepak Misra,
R.N.Naik, A.Deo, B.S.Tripathy,
Advocates.

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.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for quashing the order contained in Annexure-3 dated 16.11.1986 removing the applicant from service.

2. Shortly stated, the case of the applicant is that he was appointed as Extra-Departmental MailCarrier at Talapada Sub Post Office within the District of Keonjhar and was performing his duties with effect from 11.5.1977. According to the charge, the applicant wilfully and unauthorisedly remained absent on 13.9.1985, for which a departmental proceeding was initiated against him and after due enquiry the applicant was been ordered to be removed from service. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that due to the absence of the applicant public were very much inconvenienced and all works of the Post Office was hampered and the disciplinary authority very correctly took a view by removing the applicant from service which would be a lesson to others and therefore, it should not be unsettled and in no circumstances it should be set aside. Further it is maintained on behalf of the Respondents that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. S.P. Mohanty, learned counsel for the applicant, Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for Respondent Nos. 1 to 3

and Mr. Deepak Misra, learned counsel for the respondent No.4 at some length. In the charge it is stated that the applicant was absent on 13.9.1985 but the disciplinary authority in second paragraph of his order contained in Annexure-3 states as follows :

" The said Shri Samal had not applied for leave but wilfully absented himself from duty for the period from 13.9.85 to 14.9.85. "

Though the charge states that the applicant was wilfully absent for one day only yet the disciplinary authority takes a view on the basis of certain facts which are at least incorrect to the extent that it does not form subject matter of the charge. Law is well settled that we have to strictly go by the charge itself and we cannot deviate from the same. Therefore, we take that the applicant was absent only for one day. The applicant has been punished on his own admission that he was absent for 13.9.1985 but the reasons for his absence were not properly considered by the concerned authority in its real context. The applicant pleaded that he was absent from duty under unavoidable circumstances because his wife ~~fell~~ suddenly ill and immediate treatment was necessary. We think this is a most reasonable explanation and in ordinary course one would give preference to the treatment of his wife rather any other work. If the disciplinary authority would have gone strictly by the charge that the applicant was absent for one day only, we think the disciplinary authority would not have taken such a harsh view. The disciplinary authority incorporating incorrect facts has been swayed away by those incorrect facts and has passed such harsh

order clearly disproportionate to the gravity of the offence. Therefore, we do hereby set aside the order of the disciplinary authority removing the applicant from service and we direct that the applicant should be reinstated into service within one month from the date of receipt of a copy of this judgment. If any leave is due to his credit, then 14.9.1985 should be adjusted towards such leave.

5. Learned counsel for the applicant strenuously urged before us that the applicant should be made entitled to his back wages. In the peculiar facts and circumstances of this case, which should not be treated as precedent, because of the special feature appearing in this case, we direct that within three months from the date of receipt of a copy of this judgment, the applicant should be paid his back wages with effect from the date from which he was put off from duty. We have given such a direction or we have accepted the prayer of the applicant to the above effect because we feel that it was not at all just and expedient in the interest of justice on the part of the disciplinary authority to order removal of the applicant from service and therefore we feel that the applicant should be given his back wages.

6. Before we part with this case, we must say that Mr. Deepak Misra vehemently urged before us that Respondent No. 4, Mrutyunjaya Panda has been working in the same capacity in the said Post Office with effect from 9.9.1986 and by virtue of this judgment, the applicant being

reinstated, Mrutyunjaya Panda is bound to vacate the post of Extra-Departmental Mail Carrier. In such circumstances, a prayer was made on behalf of Respondent No.4 for a direction to adjust him in similar ~~post~~ post. Since Respondent No.4, Mrutyunjaya has worked in the Talapada Sub Office for a longer time without any blemishes, we would direct that Mrutyunjaya Panda should be adjusted in some other Post Offices as early as possible.

7. Thus, this application stands allowed, leaving the parties to bear their own costs.

K. G. Sarangi
31.3.89
.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree:



Anand
31.3.89
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 31, 1989/Sarangi.