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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO:488 OF 1989.

Date of decision : 19th October, 1990.

Bhikari Charan Nath

.. Applicant

Versus

Union of India and others

.. Respondents.

For the applicant : M/s. Dr. S.C.Dash, B.K.Patnaik,
R.C.Rout, Advocate

For the Respondents : Mr. D.N.Mishra, learned Standing
Counsel for the Railway
Administration.

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 ? No.
3. Whether Their Lordships wish to see the fair copy of the Judgment? Yes.

JUDGMENT

N.SENGUPTA, MEMBER (J), Briefly stated the facts are that the applicant was initially appointed as a Karigar Servant i.e. a Helper ~~to~~ the Refreshment Room under the Superintendent catering South Eastern Railway, Garden Reach, Calcutta. His was a transferable job. Subsequently he was promoted as a Cook and was posted as ~~such as~~ Tatanagar Railway Station Refreshment Room. There was an allegation against the applicant of having misbehaved with a superior and a complaint in the criminal court was filed which ended in conviction and sentence of fine of Rs. 250/- and the applicant paid the fine. The applicant was suspended vide order dated 11.9.78 (Annexure-4). After payment of the fine he represented to the concerned authority for taking him back to service by revoking the order of suspension. In spite of several representations, nothing happened till 19th March, 1985 when he was informed by the Manager, Refreshment Room, with ~~that~~ the approval of Deputy Chief Commercial Superintendent, Garden Reach South Eastern Railway, Calcutta, giving his instructions ~~that he was~~ to Tatanagar on 5.2.1985 directed the applicant to report ^{at Tatanagar} to duty on or before 20th March, 1985 (Vide annexure-6). Thereafter the applicant reported to duty on 21.3.85. But he was not allowed to join on the allegation that

he was still under suspension and the situation continues.

Hence this application for relief that the suspension order be quashed ~~as~~ malafide and illegal and for a direction to the Respondents to give him (the applicant) a posting order and to pay him arrears and salary from 6.9.1978 till the date of his re-instatement.

2. The stand of the Railway Administration is that the applicant was convicted for his misbehaviour and that he was under suspension. The suspension order was not revoked by the District Commercial Superintendent. The suspension order continues till today. Therefore, the application is misconceived. They have also raised the question of limitation.

3. We have heard Dr. S.C. Dash, learned Counsel for the applicant and Mr. D.N. Mishra learned Standing Counsel (Railway Administration) for the Respondents. On a perusal of the application and the counter filed by the Respondents, it is clear beyond doubt that the applicant reported to duty under the instructions of the Manager Refreshment Room Vide Annexure-6/a but he was not allowed to join. As has been stated above, it is the case of the Respondents that the suspension order continues till today. ^{Hence} ~~The~~ question of limitation will not arise.

4. The contention of Mr. Mishra ^{as} that there was no revocation of order of suspension by the appointing

authority, the suspension order would be deemed to be continuing. We would like to say that undoubtedly the Deputy Chief Commercial Superintendent (catering) is a authority higher to the appointing authority. In service law, a authority higher in rank possess almost the same powers as the appointing authority and this would be manifest by referring to the different provisions and also to the provisions of Article 311 of the Constitution of India where the expression used is "not below the rank of the 'appointing authority'". Mr. Mishra has further contended that the applicant did not submit any nonemployment certificate which is required under the Rules. We have no materials to say whether he was ever asked to produce such a certificate. Dr. Das has contended that a suspension order should not be allowed to continue for long and he has sought reliance on the decision of Madras Bench of this Tribunal in the case of M. Rathinasabapathy Vs. Divisional Manager and others reported in 1986 (2) SIR 535. On referring to para-3 of the reported judgment, it would be found that the applicant in that case was suspended on 19.10.82 and had been continued under suspension for over three years and in the circumstances referring to the Office Memorandum of the Ministry of Home Affairs dated 16.12.72 it was held that the order of suspension became ~~biased~~ after lapse of such a long period. There is also another

decision of the High Court of Orissa in the case of
Manasaranjan Das Vs. State of Orissa reported in 1973

(2) SLR 553. In that reported case on the initiation
of the criminal proceeding the petitioner before their
Lordships became liable to be suspended. But ~~there we~~
^{Their Lordships} ~~see~~ no justification in the continuance of the order of
suspension made in 1964 to have been kept alive until
1972. In the instant case, the suspension order was
passed ~~on~~ September, 1976 and continued till October, 1980
~~two~~
that is more than ^{twelve} years has elapsed in the meantime.

[Therefore, we have absolutely no doubt that the suspension
order should not be allowed to continue and accordingly
we quash the order of suspension and direct the applicant
to be reinstated within a month from the ^{date of} receipt of a
copy of the judgment. So we would direct payment the
subsistence allowance from the date of suspension till
20th March, 1985 and thereafter duty pay as he was not
allowed to join his duty.] In the circumstances we would
not like to saddle the Railway Administration with costs.

..... 19.10.90
VICE-CHAIRMAN

..... 19.10.90
MEMBER (JUDICIAL)



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