

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.217 of 1990.

Date of decision : July 11, 1991.

Bhagyadhar Rout ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. Devanand Misra,
Deepak Misra, R. N. Naik,
A. Deo, B. S. Tripathy, Advocates.

For the respondents... Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT).

10

C O R A M :

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

— 30 —

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

JUDGMENT

N. SENGUPTA, MEMBER (J) The applicant was working as an Extra-Departmental Branch Post Master at Champatipur Branch Post Office. While working as such E.D.B.P.M., he was put off duty with effect from 5.5.1986 and a proceeding under Rule 8 of the P & T Extra-Departmental Agents (Conduct and Service) Rules, 1964 was initiated against him. After an enquiry by the Assistant Superintendent of Post Offices, Cuttack North Division, a report was submitted to the Disciplinary authority i.e. Respondent No. 3 and the said respondent after going through the report of enquiry took the view

that the applicant could be reinstated in service but he would not be entitled to any allowance for the period he was put off duty. The applicant has prayed for a direction to pay him the back wages from the date he was put off duty till he was reinstated in service.

2. The respondents in their reply in counter have contested this claim of the applicant and have averred that the applicant committed misappropriations of Rs.5/- each from two pass books and temporary misappropriation of Rs.3000/- from the passbook having account number 56585 for a period of three months. Besides this, he committed irregularities in showing a deposit of Rs.30/- in Pass book No.56468 without any deposit having been made.

3. Mr.A.K.Misra, learned Senior Standing Counsel (CAT) for the Postal Department has very strenuously urged that the applicant having been found guilty, there is no justifiable cause to allow him the wages for the period he did not really work. On the other hand, it has been argued by Mr.Deepak Misra, learned counsel for the applicant, that once the disciplinary authority was satisfied that the applicant was to be reinstated in service, it was not open to him to disallow the wages/allowances for the period he was kept out of duty. The applicant was proceeded against on four sets of charge, charge No.1 related to the irregularity in showing a deposit of Rs.30/- in the pass book No.56468, 2nd and 3rd articles related to misappropriation of Rs.10/- in all from two pass books and the last charge was regarding a temporary misappropriation of Rs.3000/-. The enquiry officer, as may be found from Annexure-R/2, found that the charges of permanent

*Memorandum
11-7-91*

misappropriation under articles 2 and 3 had not been proved. But in making entries in those pass books the applicant did not exhibit proper devotion to duty as expected of him. The fourth article was found to have been not proved. The first article of charge was found to have been proved. No challenge has been made against the findings recorded by the enquiry and disciplinary authorities. Therefore, the findings remain as they are. Mr. Deepak Misra has contended that the Rules do not provide for imposition of a penalty other than the ones mentioned in Rule 7 of the 1964 Rules. That may be true. But there is ~~xx~~ another Rule relating to the allowances for the period an Extra-Departmental agent ~~is~~ out of duty. Under Rule 9(3) of the said Rules it has been provided that an employee shall not be entitled to any allowance for the period for which he is kept out of duty, during the pendency of an enquiry into an allegation of misconduct against him. This Tribunal has no doubt held that where the allegations were unfounded the order putting off duty may not be sustainable and as such, sub-rule (3) of Rule 9 cannot be called in aid by the Department to refuse payment of allowance for the period an agent was kept out of duty. But here is a case where the applicant was found guilty of impropriety in his conduct and in fact one of the articles of charge was proved.

Sept 11. 71 In such circumstances, it cannot be said that the order putting the applicant off duty was wholly unjustified. Such being the facts of the case, Rule 9(3) of the P & T ED Agents (Conduct & Service) Rules would have its full play and the

applicant cannot be allowed any allowance. No costs.

Central Administrative Tribunal
Cuttack Bench, Cuttack.
July 11, 1991/Sarangi



Meenakshi 11/7/91
Member (Judicial)