

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.267 of 1990.

Date of decision : July 14, 1992.

Aviram Jagadeb ... Applicant.

## Versus

Post-Master General and others ... Respondents.

For the applicant,.. M/s. G.C. Mohapatra,  
J. M. Patnaik,  
N. B. Das, Advocates.

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

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C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. M. Y. PRIOLKAR, MEMBER (ADMN.).

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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 ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to be issued to the respondents to disburse back wages to the applicant from 18.11.1968 to 31.12.1980.

2. Shortly stated, the case of the applicant is that while he was functioning as Extra-Departmental Branch Post Master of Brahmania Post Office in the district of Puri, a charge sheet was submitted against him under section 409, Indian Penal Code with an allegation that he had misappropriated a sum of Rs.246.46 paise. The Trial court convicted the applicant under section 409, I.P.C. and sentenced him to undergo Simple Imprisonment for one month. The judgment was carried in appeal to the learned Sessions Judge, Puri who upheld the judgment and sentence passed against the applicant. The revisional jurisdiction of the Hon'ble High Court was invoked and ultimately the judgment was set aside by the Hon'ble High Court. The applicant filed a representation for reinstatement and the applicant was reinstated on 12.10.78. The adversary of the applicant, Shri Chandra Sekhar Champati filed a writ petition under Article 226 of the Constitution of India before the Hon'ble High Court of Orissa which formed subject matter of OJC 1604 of 1978. Vide order dated 11.12.1978 the Hon'ble High Court restrained the respondents in that case not to allow the applicant to join and ultimately the writ petition was dismissed on 28.10.1980. Despite the reinstatement order the applicant was not allowed to join because of the  
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restraint order. Hence, this application has been filed with the aforesaid order.

3. In their counter, the respondents maintained that the applicant is not entitled to back wages because of the bar created under Rule 9 of the Extra-Departmental Agents (Conduct & Service) Rules, 1964. Hence, according to the respondents there is no merit in this case which should stand dismissed.

4. We have heard Mr. J. M. Patnaik, learned counsel for the applicant and Mr. A. K. Misra, learned Senior Standing Counsel (CAT) for the respondents. The applicant has been acquitted by the High Court in regard to the criminal case. Therefore, he is ordinarily entitled to back wages with effect from the date he was suspended from service till the date of reinstatement. There are plethora of judicial pronouncements. In many of the Benches of the Central Administrative Tribunal Rule 9 was not treated as a bar for grant of back wages. Though this Bench at a certain point of time took the view that Rule 9 creates a bar but in view of the latter judgments of different Benches this Bench also took the view that Rule 9 does not create a bar. Hence, back wages were given to aggrieved parties by this Bench. In such circumstances we do not find any merit in the contention of Mr. A. K. Misra that the applicant is not entitled to back wages in view of the provisions contained in Rule 9.

5. It was next contended by Mr. A. K. Misra that the High Court having stayed the operation of the order of reinstatement the applicant should not be made entitled to

back wages from 11.12.1978 to 28.10.1980. We are not in agreement with the submission of Mr.A.K.Misra because for no fault of the applicant, he was disallowed to join. It was by virtue of the restraint order issued by the High Court and ultimately the O.J.C. being devoid of merit was dismissed by the High Court. Therefore, we would direct that the applicant is entitled to backwages from the date on which the applicant was suspended till 31.12.1980. The amount be calculated and paid to the applicant within 120 days from the date of receipt of a copy of this judgment.

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

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**MEMBER (ADMINISTRATIVE)**

Central Administrative  
Cuttack Bench, Cuttack  
July 14, 1992/Sarangi.

