

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No.194 of 1991

Date of Decision: 8.9.1993

Subas Chandra Das

Applicant (s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Ans*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *Ans*

MEMBER (ADMINISTRATIVE) 08 SEP 93

VICE-CHAIRMAN

8.9.93

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

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Original Application No. 194 of 1991

Read with

Misc. Application No. 257 of 1993

Date of Decision: 8.9.1993

Subas Chandra Das **Applicant**

Versus

Union of India & Others Respondents

For the applicant M/s. Devanand Misra
Deepak Misra
A. Deo, P. Panda
Advocates

For the respondents: Mr. Ashok Mishra
Sr. Standing Counsel
(Central Government)

C O R A M:

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

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR .K.P.ACHARYA, VICE-CHAIRMAN, In this Original Application under Section 19 of the Administrative Tribunals Act,1985, the petitioner prays to quash the order contained in Annexure-2 and to direct the opposite parties to reinstate the petitioner in to service and a further prayer to direct the opposite parties to give full backwages to the petitioner.

2. In Misc. Application No. 257 of 1993, it is prayed that the petitioner be paid full backwages or in the alternative to pay subsistence allowance for the aforesaid period within a stipulated period.

3. In this case the petitioner was serving the
Postal Department as Postal Assistant. A chargesheet was

✓ delivered to him making an allegation that he had practised

fraud on the postal department and had obtained an appointment on the basis of false certificate that he was a member of the Scheduled Caste. A fullfledged enquiry was held; and the petitioner was dismissed from service either on 27.1.1989 or on 1.3.1989. The matter was carried to this Court challenging the order of dismissal which formed subject matter of Original Application No. 78 of 1989 disposed of on 5.7.1990. The Bench quashed the order of removal and directed the Superintendent of Post Offices (the Dsciplinary Authority) to give a personal hearing to the petitioner. The disciplinary authority has disposed of the matter and had ordered removal of the petitioner from service, which is now under challenge.

4. In their counter the opposite parties maintain that the case being devoid of merit is liable to be dismissed.

5. We have heard Mr. Deepak Mishra, learned counsel for the petitioner and Mr. Ashok Mishra, learned Standing Counsel.

6. The only point urged before us by Mr. Deepak Mishra is that though the Bench had given a direction ~~for~~ to hear the petitioner in person, nothing appeared from the impugned order that the disciplinary authority had given a personal hearing to the petitioner. In such circumstances, not only the directions of this Bench has been violated, but there is a violation of principles of natural justice.

7. On the other hand, Mr. Ashok Mishra, learned Standing Counsel submitted that some time be given to him

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to take instructions as to whether the petitioner was personally heard or not. Since there is no mention in the impugned order that a personal hearing was given to the petitioner, any oral submission cannot be supplemented. Therefore, we would hold that a personal hearing not having been given to the petitioner, he has been prejudiced. Hence we would quash the order of removal and remand the case to the Sr. Superintendent of Post Offices, Bhubaneswar Division (OP No.3) with a direction that a personal hearing should be given to the petitioner. We would direct the petitioner to appear before the Sr. Superintendent of Post Offices (OP No.3) on 22.9.1993 and after hearing the petitioner in person, the Sr. Superintendent of Post Offices would pass orders according to law. In case the Superintendent of Post Offices is absent on 22.9.1993, the petitioner would again appear on 23.9.1993 and on the said date the petitioner should be heard.

8. Since a copy of the judgment is being immediately forwarded to the Sr. Superintendent of Post Offices, the Superintendent should not remain absent from his office on 22.9.1993 unless some other ^{vis} _{by} vigorous measure occurs. The Superintendent of Post Offices should bear in mind that if the petitioner is not heard on 22nd instant, then the Government will be loaded with payment of subsistence allowance for a further period. Therefore, all efforts should be made by the Sr. Superintendent of Post Offices to hear the petitioner personally on 22.9.1993 and ^{he} _{should} pass final orders according to law by 29.9.1993.

9. The petitioner shall not be entitled to be

reinstated or any backwages.

10. While considering the prayer in Misc. Application No.257 of 1993, Mr.Deepak Mishra, learned counsel for the petitioner invited our attention to the provisions contained under Rule 10(4) of the C.C.A. C.C.S. Rules which runs thus:

"(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going to the merits of the case."

From the above quoted matters it is crystal clear that a Government servant, whose dismissal or removal from service has been set aside or rendered void by a Court of Law, the concerned Government servant should be treated to be under suspension from the first date of order of removal till the second date of order of removal and is entitled to subsistence allowance. In the present case, the provisions contained under Rule 10(4) applies ~~square~~ ^{ken} to the facts of the case. Since there is a serious dispute regarding the date of first

removal of the petitioner from service, we do not propose to mention any date, but we would direct the opposite parties that the petitioner is entitled to subsistence allowance with effect from the first date of order of removal from service till the final orders are passed by the disciplinary authority. For the present, the amount, to which the petitioner is entitled to from the first date of order of removal from service till the second date of order of removal from service be calculated and paid to the petitioner within 60 days from the date of receipt of a copy of this judgment. Thus both the Original Application No.194 of 1991 and Misc.application No.257 of 1993 are accordingly disposed of leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)
08 SEP 93

1.5.1
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 8.9.1993/B.K. Sahoo

