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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 195 of 1991

Read With

Misc.Application No. 258 of 1993

Date of Decision: 8.9.1993

Bijaya Kumar Hati Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? NO
2. Whether it be circulated to all the BENCHES of the Central Administrative Tribunals or not ? NO

MEMBER (ADMINISTRATIVE)
08 SEP 93

VICE-CHAIRMAN
8/9/93

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CENTRAL ADMINISTRATIVE TRIBUNAL
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Original Application No. 195 of 1991

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Misc. Application No. 256 of 1993

Date of Decision: 8.9.1993

Bijaya Kumar Hati	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)

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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 application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash Annexure-2 and to direct the opposite parties to reinstate the petitioner in service forthwith; and for a further direction to be issued to the opposite parties to pay the petitioner full back wages from the first date of dismissal till the second date of dismissal.

2. In the Misc.application No. 256 of 1993, it is prayed that appropriate direction be issued to the opposite parties to pay the petitioner full backwages for the

period commencing from the first order of removal to the date on which the second order of removal was passed, or in the alternative to pay subsistence allowance for the aforesaid period within a stipulated period.

3. It was alleged against the petitioner that while he was working as Postal Assistant, a chargesheet was filed against him on an allegation that he had obtained an appointment to the postal department by filing a forged certificate designating him as an Ex-serviceman. A full-fledged enquiry was held and the disciplinary authority came to a conclusion that the petitioner had practised fraud on the postal department and had obtained an order of appointment by filing a false certificate that he belonged to Ex-serviceman category. The disciplinary authority ordered removal of the petitioner from service on 1.3.1989 which formed subject matter of challenge before this Court in Original Application No. 80 of 1989. The Bench by its judgment dated 5.7.1990 remanded the case to the disciplinary authority for giving an opportunity to hear the petitioner and dispose of the proceeding according to law. This order was complied with by the disciplinary authority and the petitioner was ordered to be removed from service with effect from 30.5.1991. Hence this application with the aforesaid prayer.

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, appearing for the opposite parties.

6. We have already stated the main prayer of the petitioner putforward in this petition. We find no merit in the prayer, because, question of reinstatement in service and payment of full backwages does not arise when the Bench by its judgment passed in O.A.No.80 of 1989 directed that copy of the enquiry report should be supplied to the petitioner, and he should be heard personally. This direction was given in compliance with the principles of natural justice. Therefore, in view of the fact stated above, we do not deem it fit and proper to order reinstatement of the petitioner in service and payment of full backwages. Therefore, the prayer made by the petitioner to the above effect is devoid of merit and the application stands dismissed.

7. In Misc.application No.256 of 1993, we have also heard Mr.Deepak Mishra,learned counsel for the petitioner and Mr. Ashok Mishra,learned Standing Counsel appearing for the opposite parties.

8. Though it has been stated that full backwages should be given during the preiod commencing from the first order of removal to the date on which the second order of removal was passed, we cannot accede to this prayer in view of our opinion expressed in O.A. No.195 of 1991. But so far as payment of subsistence allowance is concerned, Mr.Deepak Mishra invited out attention to Rule 10(4) of the CCS CCA 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 into the merits of the case."

From the above quoted provisions it is clear that when a penalty of dismissal/removal or compulsory retirement is set aside or declared or rendered void in consequence of a decision of the Court, the Government servant is deemed to be under suspension during the period from the original order of dismissal/removal till the second order of dismissal or removal.

9. Therefore, in the present case, the petitioner is deemed to be under suspension from the date on which the first orderof removal was passed till the second order of removal and according to provisions contained under Rule10(4) of the CCS CCA Rules, the petitioner is entitled to subsistence allowance, which should be calculated and paid to the petitioner within 60 days from the date ofr eceipt of a copy of this judgment. Thus both the Original Application No.195 of 1991 and Misc.Application No.256/93 are accordingly disposed of. No costs.

8.9.93

MEMBER(ADMINISTRATIVE) VICE-CHAIRMAN

08 SEP 93

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

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH