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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

9

Original Application No.196 of 1991

Read with

Misc. Application No. 255 of 1993

Date of Decision: 8.9.1993

Niranjan Patra

Applicant(s)

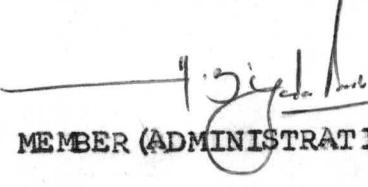
Versus

Union of India & Others

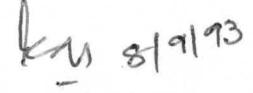
Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporter or not ? *NO*
2. Whether it be circulated to all the Benches of *NO* the Central Administrative Tribunals or not ?



MEMBER (ADMINISTRATIVE)



VICE-CHAIRMAN

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CUTTACK BENCH CUTTACK**

(10)

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Niranjan Patra **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. Aswini Kumar Mishra
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 application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order dated 26.9.1990 contained in Annexure-2, ordering removal of the petitioner from service.

2. Allegation against the petitioner was that he had obtained an order of appointment by practising fraud on the department viz. furnished a false certificate claiming himself as member of the Scheduled Caste. The petitioner was found to be guilty and was ordered to be removed from service, which is under challenge.

3. During the course of argument advanced by Mr. Deepak Mishra, learned counsel for the petitioner and

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Mr. A.K. Mishra, learned Standing Counsel, we find that an appeal preferred by the petitioner against the order of dismissal passed by the disciplinary authority on 26.9.1990 is pending before the Opposite Party No.3, i.e. the Director of Postal Services, attached to the office of the Chief Postmaster General, Bhubaneswar. It is really shocking to find that an appeal preferred by the petitioner soon after the order of conviction passed on 26.9.1990 has not yet been disposed of till the year 1993. However, we would direct that the appeal preferred by the petitioner be disposed of within 60 days from the date of receipt of a copy of this judgment. The Director of Postal Services should pay his personal attention to this matter and report compliance to the Registrar of this Bench that the appeal has been disposed of within the stipulated period. Thus the original application is accordingly disposed of leaving the parties to bear their own costs.

4. In Misc. application No.255 of 1993, the petitioner prays to grant him full back wages commencing from the period of the first order of removal to the date on which second order of removal was passed, or in the alternative to pay subsistence allowance to the petitioner within a stipulated period.

5. We have also heard Mr. Deepak Mishra, learned counsel for the petitioner and Mr. Aswini Kumar Mishra, learned Standing Counsel in this Misc. application.

6. The petitioner, while serving as Postal Assistant was chargesheeted and a disciplinary proceeding was initiated against him on an allegation that the petitioner

had practised fraud on the department and had obtained an order of appointment by filing a false certificate showing that he was a member of the Scheduled Caste. A regular enquiry was held and ultimately the petitioner was found to be guilty and he was ordered removal from service. This order was challenged before this Court which formed subject matter of Original Application No.79 of 1989. The Bench by its judgment dated 5.7.1990, remanded the case to the disciplinary authority with a direction that copy of the enquiry report should be given to the petitioner, and he should be heard personally. The disciplinary authority heard the petitioner in person and again by order dated 26.9.1990 removed the petitioner from service which is now under challenge in O.A. No.196 of 1991. This Misc. application arises out of O.A No.196 of 1991 with a prayer as mentioned above.

7. Mr. Deepak Mishra, learned counsel for the petitioner invited our attention to the provisions contained under Rule 10(4) of 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"

In view of the aforesaid quoted provisions, we are of opinion that the petitioner is entitled to subsistence allowance with effect from first date of order of dismissal till the second order of dismissal. Therefore, the amount to which the petitioner is entitled to be calculated and paid to the petitioner within 60 days from the date of receipt of a copy of this judgment. Thus the Misc. application No.255 of 1993 is accordingly disposed of.

No costs.

10/9/1993
MEMBER (ADMINISTRATIVE)
08 SEP 93

leg on 8/9/93
8.9.93
VICE-CHAIRMAN

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