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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 198 OF 1991.

Date of decision: November 28, 1991.

Joddhadhar Das

.... Applicant

-Versus-

Union of India and others

.... Respondents

....

For the applicant

.... M/s. Devanand Misra,
Deepak Misra,
A. Deo. Panda,
Advocates.

For the Respondents

.... Mr. Aswini Kumar Misra,
Sr. Standing Counsel
(Central).

....

C O R A M:

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

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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? *Yes.*
 3. Whether His Lordships wish to see the fair copy of the Judgment? Yes.

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J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to be issued to the Opposite Parties to pay the allowance/monthly emoluments to the petitioner during the period when he was put-off from duty commencing from 13th February, 1988 to 12th June, 1989.

2. Shortly stated, the case of the Petitioner is that while he was working as an E.D.Packer, he was put-off from duty on 13th February, 1983 vide Annexure-1. A Departmental proceeding was initiated and ultimately the enquiry officer held that the charges could not be established and the disciplinary authority confirmed the findings of the enquiry officer and exonerated the Petitioner from the charges vide Annexure-3 dated 9th June, 1989 and reinstated the Petitioner, but directed that the period during which the Petitioner was put-off from duty to be treated as non duty and no allowance should be paid for the period. Hence this application was been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained ~~that~~ grant of arrear emoluments during the period, the Petitioner was put-off from during would amount to violation of the provisions contained in Rule-9(3) of the E.D.A(C&S) Rules, 1964

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which creates an impediment for such payment. Hence it is maintained that the case is devoid of merit and is liable to be dismissed.

4. I have heard Mr. A. Deo learned Counsel appearing for the Petitioner and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the Opposite Parties at a considerable length.

5. Mr. Deo learned Counsel appearing for the Petitioner submitted that in view of ~~the~~ ^{the} plethora of judicial pronouncements on the subject, this Bench should grant the emoluments ^{as} ~~prayed~~ ^{prayed} for. So far as the present issue is concerned no doubt Rule-9 postulates that no back wages are to be paid. At one point of time, the Cuttack Bench had taken the view that back wages is not payable during the period the Extra Departmental Agents are put off from duty but later the Bangalore Bench and the Madras Bench took an contrary view. The Madras Bench in the case of P.M. Rúsamma V. Inspector of Post Offices, Muvattupuzha and others reported in 1988 (7) Administrative Tribunal Cases 833 held as follows:

" It is settled that when the penalty of removal from service is imposed, the order putting the employee off duty, merges with the order of removal, but that when the penalty of removal from service is set aside on appeal, the order putting the employee off duty does not automatically revive. As a result of the reinstatement, the penalty of removal from service having been held to

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to be unsupportable and quashed on that ground it is open to the employee to claim restitution of the benefits which he would have been entitled to had he continued in service. It follows that in such a case, it is open to the employee not only to claim the remuneration for the period he is kept out of service as a result of the order of removal, but also for the period during which he was put off duty. This view has been recognised by the High Court of Kerala in K. Saradamma V. Senior Superintendent of Post Offices, it was held therein that the operation of sub-rule (3) of Rule-9 is only during the period of an employee is actually under suspension and only for the limited purpose of defeating his claim for payment during that period and that it cannot defeat or control the effect of the subsequent declaration about the nullity of the termination. We are in respectful agreement with the pronouncement. "

Later, in the case of Peter J.D'sa and another Vrs.

Superintendent of Post Offices, Udupi and others, reported

in 1989(9) Administrative Tribunals Cases 225, the

Bangalore Bench at paragraph 66 of the judgment

observed as follows:-

" We are in agreement with the ratio of the decision of that very High Court in Saradamma's case (referred to Madras Bench case). "

Further more, it was observed in paragraph 68;

" The ratio of the decision of the Kerala High Court in K. Saradamma's case relied on by Shri Achar (Vide para 47 above), with which we are in respectful agreement, is in keeping with the above view taken by us. "

At paragraph 69 of the judgment it is further observed as follows:

" In the light of what we have analysed and discussed above, we are convinced that Rule

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9(3) of the Rules, is violative of Article 14 of the Constitution, and needs to be struck down."

6. After the Bangalore Bench and Madras Bench took the above view, Cuttack Bench also followed the views taken by the Kerala High Court, Madras Bench and that of the Bangalore Bench in O.A. 64 of 1986 and OA 483 of 1989 disposed of on 22nd August, 1990 respectively and held that the Extra-Departmental Agents were entitled to back wages during the period they were out of service. Following the views expressed by the Cuttack Bench in the above mentioned judgments and that of the Kerala High Court, Madras Bench and Bangalore Bench, the Cuttack Bench has recently delivered a judgment in OA 261 of 1991 disposed of on 20th November, 1991. Therein the Division Bench has held that acquitted ~~once~~ of a particular E.D. Agent from the charges levelled against him and in consequence of which he is reinstated, the order putting off the E.D. Agent from duty is a nullity and therefore, the E.D. Agent is entitled to back wages. I have no other option but to follow the views propounded by the Division Bench of Cuttack, Bangalore and Madras.

7. In the present case, one would find that the enquiry officer held that the charges could not be established and this view was confirmed by the disciplinary authority who exonerated the

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Petitioner from the charges and directed reinstatement. Such reinstatement is bound to take effect from the date on which the Petitioner was put off from duty i.e. 13th February, 1988 and therefore, it would be deemed that the Petitioner was continuing in service from 13th February, 1988 and hence from equitable point of view, the petitioner is entitled to the emoluments which he would have ordinarily drawn if he would have been ^{on} duty and would have been continuing in service. Therefore, it is directed that the emoluments to which the Petitioner is entitled with effect from 13th February, 1988 till the date of reinstatement be paid to the Petitioner within 90 days from the date of receipt of a copy of the judgment .

8. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.



Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty,
23.XI.1991.

[Signature]
23.XI.91
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VICE CHAIRMAN