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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 261 of 1991.

Date of decision: November 20, 1991.

Babaji Charan Panda ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. P.V. Ramdas,
B.K. Panda,
B.K. Rao, Advocates.

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

C O R A M:

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

A N D

THE HONOURABLE MR. J. C. ROY, VICE-CHAIRMAN

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

(41)

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THE HONOURABLE MR. J. C. ROY, MEMBER (ADMINISTRATIVE)

J U D G M E N T

K. P. ACHARYA, V.C., The applicant was appointed as an Extra-
Departmental Delivery Agent in the year 1961 and was
posted in Sainkul Sub-Office in the district of Keonjhar.
The applicant was put off from duty with effect from
21.12.1985 vide Annexure-1 and thereafter a departmental
proceeding commenced against the applicant. In the
disciplinary proceeding the enquiring Officer found the
charges to have been established and the disciplinary
authority concurred with the findings and removed the
applicant from service. The applicant filed an application
under section 19 of the Administrative Tribunals Act, 1985
which formed subject matter of O.A. 177 of 1988 and it was
disposed of on 20.2.1990. The Bench quashed the order of
removal and remanded the case for enquiry afresh.

✓
K.P.

Accordingly, a fresh enquiry was conducted and the enquiring Officer held that the applicant was not guilty of the charges which was confirmed by the disciplinary authority vide his order dated 1.10.1990 and the applicant was exonerated from the charges and the applicant, by virtue of the orders passed by the higher authority joined the said post on 1.10.1990. The applicant now claims back wages for the period he was put off from duty and was out of service till the date of reinstatement, and he also claims refund of Rs.1854/- which was deposited by him.

2. In their counter, the respondents maintained that the applicant is not entitled to refund of Rs.1854/- because the amount credited by the applicant has already been paid to the remitter basing on the admission of the applicant in Annexures-R/2, R/3, R/4 and R/5. It is furthermore maintained that in view of the provisions contained in Rule 9 of the Extra-Departmental Agents (Conduct and service) Rules, 1964 the applicant is not entitled to back wages during the period he was out of duty. Hence, there being no merit in the case, it is liable to be dismissed.

3. We have heard Mr. P.V. Ramdas, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents at a considerable length.

4. Before we deal with the entitlement of the applicant to back wages during the period he was out of service, for the sake of convenience we propose to deal with the refund of Rs.1854/- which has been claimed by

the applicant. Incidentally it may be stated that the applicant has not filed any documentary evidence to substantiate his contention that Rs.1854/- was paid by the applicant. But from the averments finding place in the counter it can be well-concluded that the applicant had paid the said amount. In paragraph 2 of the counter, it is stated as follows:

" After the volunteer credit of defrauded amount of Rs.1840/- by the applicant to the Govt. on 21.12.85, the Tahasildar Anandapur preferred claims over the 15 MOs along with M.O. commission and the amount of Rs.1854/- being the value of 15 defrauded MOs of Rs.1800/- and commission of Rs.54/- was sanctioned in favour of the Tahasildar, Anandapur(O) and the amount was paid to the Tahasildar also. Thus the amount credited by the applicant has already been paid to the remitter basing on the admission of the applicant in Annexure-R-2, R-3, R-4 and R-5. "

The same thing has been repeated in paragraph 6. In paragraph 7 the respondents maintained that there was no record to show that Rs.1840/- was recovered from the applicant and therefore in Annexure-4 the applicant was asked to intimate the orders asking the applicant to credit Rs.1840/-. The averments made in paragraph 7 of the counter, runs contrary to the averments made in paragraphs 2 & 6. The payment by the applicant is admitted and furthermore it is stated by the applicant in paragraph 5 of his application that this amount was taken from the applicant and was deposited under U.C.R. on 21.12.1985. Had the applicant been found guilty of the charges, certainly he would be liable to pay the said amount. But once the applicant had been found to be not guilty of the charges, he cannot be made to reimburse the amount

✓ however much there may be some admissions by the applicant

during preliminary investigation because the enquiry officer and the disciplinary authority must have taken into account this fact and after taking into account they have held the applicant to be not guilty of the charges. Therefore we do not find any merit in the contention of Mr.A.K.Misra, learned Senior Standing Counsel(CAT) for the respondents that the applicant is not entitled to the refund of the amount of Rs.1854/-. We are of opinion, that the applicant is entitled to refund of Rs.1854/-.

5. Next, coming to the question of payment of back wages, at one point of time this Bench was of opinion that Rule 9 of the E.D.Agents(Conduct and Service) Rules creates a bar for payment of pack wages but later the Bangalore Bench and the Madras Bench took a contrary view. The Madras Bench in the case of P.M.Rusamma 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 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. Sr. Superintendent of Post Offices, it was held therein that the operation of sub-rule (3) of Rule 9 is only during the period 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;

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

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

6. Though, as stated earlier, the Cuttack Bench had taken a different view but after the judgments of Bangalore Bench and that of Madras Bench came into existence, the Cuttack Bench have in its judgments passed in O.A.64 of 1988 and O.A.433 of 1989, dated 22.8.1989 and 9.2.1990 respectively held that the Extra-Departmental Agents were entitled to back wages during the period they were out of service. These judgments (mentioned above) have not yet been set aside by the Apex Court and therefore this stands as a good law on the field. We are in respect-ful agreement with the view taken by the Madras Bench, Bangalore Bench and the Cuttack Bench. Therefore, we hold that in the present case the applicant having been acquitted of the charges, is entitled to back wages with effect from the date he was put off from duty

till reinstatement. Finally, we would say that the amount to which the applicant is entitled as back wages be calculated and paid to the applicant along with the sum of Rs.1854/- within 100 days from the date of receipt of a copy of this judgment.

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

[Signature]
 20.11.91
 MEMBER (ADMINISTRATIVE)

[Signature]
 20-11-91
 VICE-CHAIRMAN

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 November 20, 1991/Sarangi.

