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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 53 of 1991

Date of Decision: 24.2.1994

Narahari Rout

Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

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

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MEMBER (ADMINISTRATIVE)

24 FEB 94

24.2.94
VICE-CHAIRMAN

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Respondents

For the applicant

M/s. M.R. Panda
S. P. Sahoo
D. K. Pani,
Advocates

For the respondents

Mr. P. N. Mohapatra,
Addl. Standing Counsel
(Central)

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 direct the opposite parties to draw and disburse ^{the} salary due to the petitioner during the period of his suspension and further more a direction be issued to the opposite parties to allow the petitioner ~~of~~ his service benefits as per rules.

2. Shortly stated the case of the petitioner is that while he was functioning as a Grade-IV Line-man (Stores) at Berhampur in the P & T Department, he was transferred from Berhampur and posted as Lines-man (Phone) in Bhanja Vihar (Berhampur University) under the JE's office vide order dated 13th October, 1983. Petitioner's representation was rejected. The petitioner, due to his illness remained

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absent and as such could not hand-over charge of the stores to the concerned officer. The petitioner was placed under suspension and a disciplinary proceeding was initiated against him. By an order dated 4.1.91, the order of suspension was revoked and the petitioner was allowed to join his duties. And this was by virtue of an interim ^{order} passed by the learned Munsif, Berhampur in M.J.C. No.133/83. Later the matter came up before this Bench ^{as} appeal pending before the District Judge, Berhampur was transferred under Section 21 of the Administrative Tribunals Act, 1985. This case was renumbered as T.A. No.191/87. This Bench did not pass any order and left the matter opened to be considered by the appropriate authority. In the meanwhile, the claim of the petitioner for his arrear salary having been denied to him by the competent authority, this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that claim of the petitioner was duly considered and a Committee consisting of some higher officers of the Telecommunication Department had considered the claim of the petitioner, but having found that the claim of the petitioner was unjustified and illegal, they rightly rejected the claim of the petitioner, and therefore, the case is devoid of merit is liable to be dismissed.

4. We have heard Mr. S. K. Sahoo, learned counsel for the petitioner and Mr. P. N. Mohapatra, learned Standing Counsel. The only contention advanced by Mr. Sahoo is that before ^{adverse} passing an order against the petitioner rejecting his claim for payment of arrear salary during the period of absence,

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a notice should have been served on the petitioner to file his show cause and such procedure not having been adopted, principles of natural justice have been violated, and therefore, the impugned order rejecting the claim of the petitioner should be quashed.

5. Before we express any opinion on the aforesaid contention of Mr. Sahoo, it would be worthwhile to succinctly state the history of this case. Admittedly the petitioner was performing his duty as Lines-man. Admittedly the petitioner was transferred to Bhanja Bihar University. The petitioner did not hand-over charge of the stores. The petitioner filed ^a/suit in the Court of Munsif, Berhampur challenging the order of transfer and seeking a relief to quash the same. The suit forming subject matter of O.A. No. 199/93 was dismissed by the learned Munsif. The matter was carried in appeal to the Court of the District Judge, Ganjam and while the appeal was pending, Section 2⁷ of the Administrative Tribunals Act, 1985 was made operative and the appeal was transferred to this Bench for disposal which was renumbered as T.A. 91/87. In ^{a/} the ^{quashing} portion of the judgment dated 31st October, 1988, this Bench observed as follows :

" We have heard Mr. M.R. Panda, learned counsel for the petitioner and Mr. A.B. Mishra, learned Senior Standing Counsel at some length. It was submitted by Mr. Panda that in the meanwhile the order of transfer passed by the competent authority has been revoked by the competent authority and the plaintiff has been reinstated to his former post. In view of the aforesaid contention, we feel that there is no further grievance of the plaintiff-appellant to be redressed.

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Mr. Panda lastly submitted that the plaintiff having been reinstated to duty, it should be ordered by the authorities that the plaintiff should be treated as on duty during the period of suspension. There being no prayer to the above effect by the plaintiff in the plaint and necessarily there could not be any such prayer, we do not feel inclined to accept and allow the prayer made by Mr. Panda on behalf of his client. That apart, these are matters to be decided by the disciplinary authority and therefore, we direct that the disciplinary authority would pay his attention to this aspect and pass orders according to law if any application is filed before him by the petitioner. A copy of this judgment be sent to the learned District Judge, Ganjam, Berhampur for his record."

In pursuant to this judgment vide Annexure-7, the Sub-divisional Officer (Telegraphs) (Shri G.B.Sarangi) vide its order dated 27.1.1989 states as follow:

" The period from 4.1.1984 to 3.10.1985 shown absent against Shri Narahari Rout, L.M.Tel.grammes Berhampur (Ganjam) is unjustified and the period will be treated as on 'DUTY' for all purposes.

Pay and Allowances for the period from 4.1.84 to 3.10.85 may be drawn and disbursed.

No disciplinary proceedings need be initiated against the official for the lapses on the part of the official."

According to Mr. Sahoo, this amount due to the petitioner not having been paid, representation was filed by the petitioner Shri Narahari Rout which was duly considered by the Tele-com District Engineer, Berhampur. In its order dated 5th August, 89 it is stated as follows :

" Therefore, the undersigned feels that the petitioner did not perform any duties and his where-about is not known. Action as deemed fit could have been taken by the SDO(Telegraphs), Berhampur in time. The whole case reviewed by the Committee consisting of three Members viz. (i) T.D.E., Berhampur, (ii) Accounts Officer, O/O TDE BF and (iii) Dy.TDE BE. After review of the case it was decided that this period of absence

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from 4.1.84, 3.10.85 will be regularised towards leave due to the official as per the leave at his credit. The official should be asked to give application for leave for the aforesaid period. Copy of these findings are endorsed to the official Shri Narahari Rout, Lineman with instruction to submit leave papers."

It was also felt necessary that responsibility should be fixed with SDO Telegraphs, Berhampur concerned for not taking any action for such a long period."

Being aggrieved by this order (Annexure-8) it was contended by Mr.Sahoo that due notice should have been given to the petitioner before passing ~~of~~ this order. In our opinion this contention of Mr.Sahoo is devoid of merit. Representation has been filed by the petitioner and on the basis of this representation, orders have been passed as deemed fit and proper by the competent authority. In such a situation there is absolutely no scope left ~~to~~ ^{for} the concerned authority to give notice to the petitioner, and, therefore, we find no merit in the contention of Mr.Sahoo that principle of natural justice has been violated.

It was next contended by Mr.Sahoo that no reasons have been assigned in the impugned order. Law is well settled by a plethora of judicial pronouncements of the Supreme Court that where rules do not envisage for assigning any reason, the competent authority need not assign any reason. The latest pronouncement of the Supreme Court, ^{is} reported in AIR 1993 SC 1008 (National Thermal Power Corporation vs. Singer Company). Apart from the above, after giving our careful consideration to Annexure-8, we find that sufficient reason has been assigned by the competent authority, and therefore, on this account the petitioner need not feel

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rightly aggrieved. Therefore, we are of opinion that the claim of of the petitioner for disbursement of salary due to him during the period of absence has been rejected - rather we are of the view that the competent authority has taken a very sympathetic view over the petitioner by allowing him to file a leave application and leave would be granted to the petitioner ~~according the same is~~ ^{as} due to him. Instead of ~~accepting~~ ^{thinking} this sympathetic attitude extended to him by the competent authority, the petitioner rushed to this Bench without any substance in his case. Therefore, we would hereby confirm the order passed under Annexure-8, and give liberty to the petitioner to make an application to grant him leave as per rules and according to leave due to him.

6. Before we part with this case, we would also confirm the view taken by the Telecom District Engineer, Ganjam that the S.D.O. Telegraphs had grossly failed in his duties in not taking due action against the petitioner. Of course we do not mean to say anything at this belated stage ^{that} any action should be taken against the petitioner. But we ~~concerned~~ hope and trust the authorities of the SDO Telegraphs (in whichever capacity he may be working) should be ~~given a~~ ^{given a} warning to be careful in future.

7. Regarding petitioner's prayer for permission to file his leave application within 30 days from to-day, no permission is necessary. We give liberty to the petitioner to file a leave application before the appropriate authority within 30 days from to-day and the same may be disposed of by the competent authority as soon as possible, according to law.

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

T. S. Sahoo
MEMBER (ADMINISTRATIVE)

24 FEB 94.

VICE-CHAIRMAN

Dasgupta
24.2.94.

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 24.2.1994/ B.K. Sahoo