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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.454 OF 1992
Cuttack this the 21st day of April, 1999

(PRONOUNCED IN THE OPEN COURT)

Prafulla Kumar Shur

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

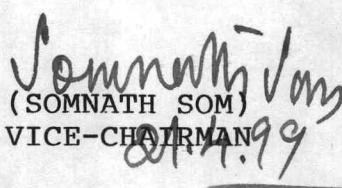
1. Whether it be referred to reporters or not ?

Yes ,

2. Whether it be referred to reporters or not ?

No .


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
21.4.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.454 OF 1992
Cuttack this the 21st day of April, 1999

CORAM:

THE HON'BLE SHRI SOMNAH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

Sri Prafulla Kumar Shur,
aged about 41 years,
Son of Damodar Shur,
Sub-Post Master,
P.O: Sib Mandir
Dist: Keonjhar

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Applicants

By the Advocates : M/s.S.Kr.Mohanty
S.P.Mohanty

-Versus-

1. Union of India represented through
its Secretary, Department of Posts,
Dak Bhawan, New Delhi
2. The Director of Postal Services,
Office of the Post Master General,
Sambalpur Region,
Sambalpur,
At/Po/Dist: Sambalpur
3. The Superintendent of Post Offices,
Keonjhar Division,
At/PO/Dist: Keonjhar

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Respondents

By the Advocates : Mr.A.K.Bose,
Sr.Standing Counsel
(Central)

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 15.4.1991 imposing punishment of stoppage of one increment for six months without cumulative effect passed by the Superintendent of Post Offices, Keonjhar Division (Res.3) and the order dated 25.9.1991 at Annexure-5 passed by the appellate authority enhancing the period of withholding of increment from six months to 18 months without cumulative effect.

2. The respondents have filed their counter opposing the prayer of the applicant.

For the purpose of disposing of this Original Application, it is not necessary to go into too much of the facts of this case.

3. The short facts of this case are that at the relevant time the applicant was working as Sub-Post Master, Sundara Siba Mandira Post Office. It is also the admitted position that this was a Post Office manned by a single person, i.e., the applicant. Applicant's case is that he suddenly fell seriously ill on 11.2.1991 and in consultation with Doctor of Barbil Govt. Hospital, he was shifted to Champua Hospital for treatment. His daughter dropped two Post Cards to the higher authorities at Champua on the same day, i.e., on 11.2.1991 informing about the illness of the applicant. On 12.2.1991, S.D.I.(P) visited the applicant at Champua Hospital and found him sick as it appears from the order of the appellate authority at Annexure-5. For his absence from

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8 duty for two days, i.e. on 11.2.1991 and 12.2.1991 without informing the higher authorities, they could not make any alternative arrangement and therefore, the Post Office remained closed on those two days. Disciplinary proceedings therefore, initiated against the applicant and the disciplinary authority in his order at Annexure-3 imposed the punishment of stoppage of one increment for a period of six months without cumulative effect. The applicant filed an appeal. The appellate authority, after considering the appeal enhanced the punishment withholding increment from six months to 18 months without cumulative effect.

4. We have heard Shri S.P.Mohanty, learned counsel for the petitioner and Shri A.K.Bose, learned Senior Standing Counsel appearing for the respondents and have perused the records.

5. It has been submitted by Shri S.P.Mohanty, learned counsel for the petitioner that the appellate authority did not give any notice to the applicant to show cause against the proposal to enhance punishment and thereby the appellate authority violated the Sub-Clause-IV of the Proviso to Sub-rule(2) of Rule-27 of CCS(CCA)Rules. This rule provides that no order imposing enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity in accordance with provision of Rule-16 of making a representation against such an enhanced penalty. It is submitted by Shri A.K.Bose, learned Senior Standing Counsel that this is not a case of enhancement of penalty. The same penalty of withholding of one increment

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without cumulative effect has been imposed, but only the period has been increased from six months to eighteen months. It is also submitted by Shri Bose that the appellate authority, while increasing the period of withholding increment from six months to eighteen months, had duly taken into consideration the appeal filed by the applicant and therefore, order of the appellate authority is not illegal. We are not inclined to accept the contention of Shri Bose that increasing the period of withholding increment from six months to eighteen months is not a case of enhancement of penalty. If this is accepted, then in a case where the original order of punishment is withholding increment for one year, the appellate authority may increase the same for 3/4 years that it ^{as} saying it cannot also be called enhanced punishment. This contention of learned Senior Standing Counsel is not logical and cannot be accepted. By withholding of increment, the petitioner suffers deprivation of monetary benefits and if such period of deprivation is increased from six months to 18 months, then that is a case of enhancement of penalty and since this is a case of enhancement of ~~penalty~~, notice as required under the relevant rules as quoted above, ~~notices~~ should have been issued to the applicant against the proposed enhancement of punishment, which was a statutory requirement and in the absence of any such notice being issued to the applicant before passing the order enhancing the punishment, the order of the appellate authority cannot be sustained. We, therefore, quash the order dated 25.9.1991(Annexure-5) passed by the appellate authority. The second prayer of the applicant is for quashing order dated

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25.4.1991 (Annexure-3) passed by the disciplinary authority imposing punishment on him as referred earlier. It has been submitted by the learned counsel for the petitioner that the petitioner suddenly fell seriously ill and he was advised by Doctor to be shifted to Champua Hospital and accordingly he was shifted to Champua Hospital where was hospitalised for two days. In view of this circumstance, he could not inform the departmental authorities about his falling ill. It has also been submitted by him that the daughter of the applicant dropped two Post cards to the departmental authorities on the date of illness of the petitioner, i.e. on 11.2.1991 and this is also admitted by the respondents vide Annexure-R/2. Therefore, it is submitted by the learned counsel for the petitioner that averment of the respondents in their counter that the Post cards dropped by the daughter of the applicant had not been received by the departmental authorities is not borne out by the documents filed by the respondents themselves and this averment of the respondents should be rejected. We have also noted that the appellate authority in his order at Annexure-5 has also noted that the daughter of the applicant had dropped two Post cards on 11.2.1991, but the fact of the matter is that the applicant should have informed the superior authorities by Telephone so that another person could have been sent for relief and the Post Office could have remained open on 11.2.1991 and 12.2.1991. Because of the petitioner's lapse in not informing the departmental authorities from his regular station, no reliever could be sent and therefore, the Post Office remained closed for two days. This must have

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put the general public ^{to} serious inconvenience. In view of this, we do not think that the order of punishment passed vide Annexure-3 by the disciplinary authority requires to be set aside. In view of the above, while we quash Annexure-5 passed by the appellate authority enhancing punishment of withholding increment from six months to eighteen months, we decline to quash order at Annexure-3 passed by the disciplinary authority.

In this Original Application no stay had been granted and therefore, presumably the order of the appellate authority withholding increment of the petitioner from six months to eighteen months might have been given effect. Now that we have quashed this order, and the applicant's increment, as has been ordered vide Annexure-3 ^{is} to be withheld for a period six months, the applicant would be entitled to receive certain financial benefits. We hereby direct that the departmental authorities should pay the financial benefits to the applicant within a period of sixty days from the date of receipt of this order.

In the result the O.A. is disposed of in terms of the observations and directions as above, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.4.99