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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 689/92

Cuttack, this the 15th day of July, 1999

Harishankar Acharya

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*,

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*,

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.7.99

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....

Harishankar Acharya,
son of late Shatrughna Acharya,
Extra Departmental Branch Post Master,
Tampersara Branch Post Office Applicant

Advocates for applicant - M/s J.N.Acharya
B.B.Mishra

Vrs.

1. Union of India, represented by the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.Puri.
2. Director of Postal Services, Sambalpur Region, At/PO/District-Sambalpur.
3. Senior Superintendent of Post Offices, Sambalpur Division, At/PO/Dist.Sambalpur.
4. Sub-Divisional Inspector of Post Offices, Sambalpur (W), Sub-Division, At/PO/Dist.Sambalpur...
..... Respondents

Advocate for respondents - Mr.B.Dash
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a declaration that the orders at Annexures 4 and 6 denying service benefits to him from 1.6.1991 to 13.3.1992

are illegal and unjustified. He has also prayed for conferring all service benefits for the above period along with 12% interest per annum and costs.

2. In this 1992 matter pleading has been completed long ago. On 24.12.1998 when the matter was called the learned counsel for the petitioner was absent. In view of this, the matter was fixed for peremptory hearing on 3.2.1999 and it was indicated that the matter would be finally disposed of on that date even in the absence of the learned counsel for the petitioner. The matter was ultimately taken up on 1.6.1999. On that day the learned counsels for the petitioner were absent nor was any request made on their behalf seeking adjournment. In view of this, we heard Shri B.Das, the learned Additional Standing Counsel for the respondents and perused the records.

3. Facts of this case are not in dispute. It is not necessary to indicate the facts mentioned by the applicant in his petition as also in his rejoinder because even on the basis of the facts averred by the respondents in their counter the O.A. has to be allowed. Therefore, the facts averred by the respondents in their counter are only being referred to.

4. Respondents have stated that the applicant was proceeded against in departmental proceedings while he was working as EDBPM, Tampersara B.O. and was put off duty on 28.6.1989. After enquiry minor penalty was imposed on the applicant and in the order dated 31.5.1991 at Annexure-1 it was stated that the period of put off duty shall not count towards payment of allowances. The applicant was also ordered to be reinstated. During the put off duty period of the applicant another person one Jagat Ram Panda was working against the post of the applicant. In pursuance of the order

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dated 31.5.1991 respondent no.4, i.e., Sub-Divisional Inspector (Postal), Sambalpur (West) directed Jagat Ram Panda to hand over charge to the applicant, but Shri Panda tried to avoid handing over charge. Ultimately an FIR had to be lodged and help of the police had to be taken. District Magistrate, Samalpur, was approached and Sub-Divisional Magistrate, Bargarh was directed by the District Magistrate to help the postal authorities in the matter. Block Development Officer, Attairia, who was also an Executive Magistrate, was deputed to maintain law and order in the matter of taking over of charge of the Branch Post Office from Jagat Ram Panda. The Executive Magistrate went on 12.11.1991 along with police force. But Jagat Ram Panda was found absent in the village and did not turn up till sunset and therefore the Executive Magistrate and the police force returned without making Jagat Ram Panda hand over charge to the applicant. Again on 3.1.1992 respondent no.4 proceeded along with the Executive Magistrate-cum-B.D.O., Attabira, to the village for ensuring handing over of charge. When it was decided to break open the door of the Branch Post Office, Jagat Ram Panda appeared and handed over charge to the applicant on 14.3.1992. Under these circumstances, the applicant could resume charge of the office of EDBPM, Tampersara till 14.3.1992. The respondents have stated that the order of reinstatement was made effective from 14.3.1992 because the applicant could not take over charge on 1.6.1991 and therefore the applicant is entitled to salary only from the date he started functioning on the principle of "no work no pay".

5. In this case the applicant was ordered to be reinstated with effect from 1.6.1991. But because of the recalcitrance of the person appointed in put-off duty vacancy

to hand over charge, the applicant could take over charge only on 14.3.1992. Thus for his inability to take over charge on 1.6.1991 the applicant is in no way responsible. His representation for service benefits for the period from 1.6.1991 to 13.3.1992 has been rejected on the ground that the applicant did not work during this period and on the principle of "no work no pay" allowances cannot be given to him. The principle of "no work no pay" has been considered by their Lordships of the Hon'ble Supreme Court in the case of Union of India v. K.V.Jankiraman, AIR 1991 SC 2010, wherein the Hon'ble Supreme Court have laid down that the above principle would not apply in a case where the employee is willing to work but because of circumstances beyond his control he is prevented from discharging his duties. Facts of this case squarely fall within the four corners of the law as laid down by the Hon'ble Supreme Court in the above case. In this case the petitioner was willing to work on his reinstatement from 1.6.1991, but because of the Department's inability to make the provisional appointee hand over charge ^{not} to the applicant, he could not take over charge of the post. In view of this, we hold that the petitioner is entitled to all service and financial benefits for the period from 1.6.1991 to 13.3.1992. This prayer of the applicant is accordingly allowed and the respondents are directed to make payment of the amount due to the applicant in terms of our order within a period of 90 (ninety) days from the date of receipt of copy of this order.

6. The applicant has also prayed for payment of 12% interest on the amount due to him. In this case the respondents denied the service benefits to the applicant under a mistaken impression that on the principle of "no work no pay" during the aforesaid period the applicant is not entitled to any financial benefit. The applicant has not proved nor has he made any averment that the above view has

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been taken by the departmental authorities out of malice or with a view to harass him. In consideration of this, we hold that no case for payment of interest at 12% per annum is made. This prayer of the applicant is therefore rejected.

7. In the result, the O.A. is partly allowed but under the circumstances without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.7.99
VICE-CHAIRMAN

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