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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. No. 266 OF 1993

Cuttack this the 4th day of ~~May~~^{June}, 1996

Gangadhar Chinara

...

Applicant

Versus


Union of India & 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 No. Central Administrative Tribunal or not?


(N. SAHU) 4.6.96.
Member (Administrative)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O. A. No. 266 of 1993

Cuttack this the 4th day of ^{June} ~~May~~, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

Gangadhar Chinara, Extra Departmental Packer,
Satpatna, Po. Satpatna, District. Nayagarh.

... APPLICANT

-Versus-

- 1) Union of India represented through its Chief postmaster General, Orissa Circle, Bhubaneswar-751 001.
- 2) Senior Superintendent of post Offices, Puri Division, Puri-752001.
- 3) Sub Divisional Inspector (Postal), Nayagarh West Sub Division, Nayagarh-752 069.

... RESPONDENTS

BY THE APPLICANT : M/s. D.P. Dhalsamant, A. Kanungo. Advocates.

BY THE RESPONDENTS : Mr. Ashok Mishra, Senior Standing Counsel
(Central)

.....

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE):

The brief facts in this application are that the applicant while working as Extra Departmental Delivery Agent, Satpatna Sub Post Office, was placed under

suspension

has submitted.

put off duty by the Sub Divisional Inspector (Postal),
Nayagarh West Sub Division, (Respondent No.3) under
Rule-9 of the P & T E.D. Agent Conduct and Service,
Rules, 1964 on 25.6.1986 suspecting his involvement in a
fraud case committed by one Shri Indramani Behera,
Sub Post Master, Satpatna amounting to Rs. 35,708.97 in
permanent account and Rs. 5,952/- in temporary account.
The applicant was relieved from his duties on 1.7.1986
but the proceedings were ordered to be dropped vide
Memo dated 6.3.1987 by the same SDI(P), Nayagarh
West Sub Division without prejudice to such actions as
may be deemed proper to be taken in the criminal
investigation. The matter came up before this Bench
in Original Application No.302 of 1987. Although,
the order of dropping the proceedings dated 6.3.1987
was received by the Respondent No.2, Senior Superintendent
of Post Offices, Puri Division, Puri on 5.4.1987 yet,
the applicant was able to resume his duties only on the
afternoon of 23.1.1988. In O.A. No.302 of 1987,
the Court directed the disciplinary authority to pass
orders according to rules in the disciplinary proceeding
if any started regarding payment of arrears to the
applicant. The counter-affidavit at page-3'C' states
that the applicant's case is linked with the fraud
case in different S.B. accounts. It is stated that the
case was reported to Police and FIR was lodged at

Daspalla Police Station on 27.12.1990 by the Sub-Divisional Inspector (Postal), Nayagarh West Sub Division. The chargesheet or a final report is yet to be submitted by the Police in the court of the J.M.F.C. Daspalla which is the reason for delay in finalisation of this instant case.

2. While I reiterate and reaffirm the observation of the Division Bench in Original Application No.302 of 1987, the delay in finalisation of this criminal proceeding is disapproved. The Hon'ble Supreme Court of India at time and again chastised the Government for such inordinate delay in concluding even preliminary investigations. Hon'ble Supreme Court had laid down time limits for concluding a criminal Case. The matter relates to 1986. A decade later, the Respondents say that chargesheet has yet to be framed. This is a classic case of long delay even in completing the preliminary investigation. I would direct the Chief Postmaster, General, Orissa Circle, Bhubaneswar, head of the organisation, to review the matter thoroughly and either to proceed with the criminal investigation to its logical end or if there is no material to drop the case completely. I would direct him to finish this exercise within a period of three months. The counter affidavit hints of a fraud case and therefore, in the interest of justice,

it is appropriate that the matter should be thoroughly investigated and a charge-sheet if so advised to be filed before the Criminal Court within a period of three months. If there is no material, the case should be completely dropped with an intimation to all parties concerned.

3. With regard to payment of backwages, the earlier concept is that 'no work no pay'. That was also part of the E.D. Rules. The Hon'ble Supreme Court of India in S.L.P. No. CC 457/90 in the case of Secretary, Ministry of Communications, vs. S. Gundu Acharya, reviewed the order of the Central Administrative Tribunal in Superintendent of Post Offices vs. Peter J.D. Souza and others. The Hon'ble Supreme Court gave the following directions:

" We, however, modify the relief granted by the Tribunal in the following terms:

- 1) We declare Rule 9(3) of the Rules as violative of Article 14 of the Constitution of India;
- 2) We leave it open to the Government of India to re-examine the matter and if it so chooses, frame a new set of Rules substituting Rule 9(3);
- 3) It would be open to the Union of India to examine each case to reach the conclusion as to whether the individual is entitled to the salary for the period when he was kept off duty under Rule (1) of the Rules. In the event of any of the

respondents being exonerated/reinstated in the disciplinary proceedings the salary for the off-duty period can only be denied to him after affording him an opportunity and by giving cogent reasons.

- 4) We direct the appellants concerned to afford reasonable opportunity to the respondents in the disciplinary proceedings which are pending or in progress against any of them. This may be done as directed by the Tribunal in J.D. Souza's case".

4. In view of the above directions of the Supreme Court, I direct Respondent No.1, Chief Postmaster General, Orissa Circle, Bhubaneswar first to ascertain whether a new set of Rules have been framed substituting Rule (3). If rules have been framed by the Government of India, Respondent No.1, shall follow the rules and guidelines in this behalf. If no rules have been framed then each individual case has to be examined on merits.

5. This direction supplements the direction of the Division Bench in O.A. No. 302 of 1987, para-5 of the order dated March, 28, 1988. As mentioned above, the first point of reference is put off duty of the applicant on 1.7.1986 and then the decision to drop the same and after a long delay to allow him to rejoin from 23.1.1988. The Respondents shall consider the period of put off duty, in accordance with the Supreme Court's decision stated

[Handwritten signature]

above. As far as the applicant is concerned, Respondent No.1 shall examine the gravity of the crime on the one hand and the right to live as a fundamental right on the other. He shall examine whether the applicant is entitled to any salary or any part of salary for the period he was kept out of duty under Rule 9(1). Before arriving at a decision, Respondent No.1 shall grant an opportunity of being heard to the applicant. Respondent No.1 shall first of all ensure whether there is evidence for filing a chargesheet and if so the chargesheet should be filed because on the filing of the chargesheet the alleged culpability of the applicant shall be brought to light. If there are no charges and if the entire proposed criminal investigation is dropped then in accordance with the directions issued above, Respondent No.1 shall decide the amount to be paid during the put off duty to the applicant in accordance with the directions of the Hon'ble Supreme Court in J.D. Souza's case. The final outcome in this regard, shall be communicated to the applicant on or before 31.12.1996.

6. Thus, the Original Application is disposed of accordingly. There would be no order as to costs.

N. SAHU
(N. SAHU) 4.6.96
MEMBER (ADMINISTRATIVE)