

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 333 of 1993.

Date of decision : January 3, 1994.

Jagadish Karmi ...

Applicant.

Versus

Union of India and another ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *NO*

K.P.A.
3-1-94.
(K. P. ACHARYA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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Jagadish Karmi ... Applicant.
versus
Union of India and another ... Respondents.
For the applicant ... M/s. P. V. Ramdas
P. V. B. Rao, Advocates.
For the respondents ... Mr. Akhyaya Kr. Misra,
Addl. Standing Counsel
(Central).

C O R A M:

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

ORDER

K. P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant, Shri Jagadish Karmi prays for a direction to be issued to the respondents to grant his salary from 24.2.1977 to 16.2.1988 and to direct the respondents to refund an amount of Rs. 2,900/- which was illegally recovered from the applicant on 11.2.1988.

2. Shortly stated, the case of the applicant is that while he was functioning as Branch Post Master of Khaliapalli Branch Post Office in the district of Phulbani he was put off from duty on an allegation that he had misappropriated some money over which he had control and custody. The applicant was put off

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from duty on 14.12.1977 and an F.I.R. was lodged in Ghantapada Police-station under section 409 of the Indian Penal Code. On 11.2.1986 a charge-sheet was filed against the applicant for having committed an offence under section 409 of the Indian Penal Code which ultimately formed subjectmatter of G.R.Case No. 387 of 1980. The applicant was tried before the Sub-Divisional Judicial Magistrate, Boudh, facing a charge under section 409 of the Indian Penal Code and by judgment dated 29.11.1986 the applicant was acquitted by the learned Sub-Divisional Judicial Magistrate, Boudh. After acquittal, on 23.6.1987 the applicant filed a representation for reinstatement and vide order dated 16.2.1988 contained in Annexure-2 the applicant was reinstated into service. In the concluding portion of the last paragraph of the order it is mentioned that the period of put off duty till the joining of the applicant, shall be treated as non-duty for all purposes. The applicant feels aggrieved with regard to this part of the order contained in Annexure-2 and hence this application hasbeen filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the question of payment of back wages does not arise because there is no provision ⁱⁿ _{under} the Extra-Departmental Agents(Conduct and Service) Rules to pay allowances to an Extra-Departmental agent for the period

he remains put off duty and in this connection, reliance is placed on Annexure-R/6. Therefore, it is maintained that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr.P.V.B.Rao, learned counsel for the applicant and Mr.Akhyaya Kumar Misra, learned Additional Standing Counsel(Central) for the respondents.

5. Mr.Rao rightly did not press the prayer for refund of Rs.2,900/- because according to Mr.Rao, this amount has already been returned to the applicant. Therefore, it is treated as not pressed.

6. Next, coming to the prayer of the applicant for giving him back wages Mr.Akhyaya Kumar Misra, learned Addl. Standing Counsel(Central) relying on Annexure-R/6 submitted that the question of paying back wages and subsistence allowance does not arise because there is no such provision in the Extra-Departmental Agents (Conduct & Service)Rules. Furthermore, it was submitted by Mr.Mishra that this Bench at a particular point of time refused to grant suspension allowance keeping in view the provisions contained in Rule 9 of the E.D.Ants(Conduct and Service)Rules and therefore this petition should be dismissed.

7. True it is, at one point of time this Bench was of the view that payment of back wages and subsistence allowance is not permissible in view of the provisions contained in Rule 9 but later Bangalore Bench and Madras Bench having held that suspension allowance

is payable to the employee who has been put off from duty, this Bench in several cases has given the benefit of payment of subsistence allowance to the different E.D. agents who have been put off from duty and some of the judgments were carried to the Supreme Court and the Supreme Court has upheld the view of this Bench. Therefore, taking into account the view of the Cuttack Bench and such view having been upheld in the Supreme Court, I find no merit in the aforesaid contention of Mr. Misra so far as the payment of subsistence allowance is concerned. As regards payment of back wages, in the case of Union of India, etc. etc. vrs. K. V. Jankiraman etc. etc. reported in AIR 1991 SC 2010, Their Lordships have held that once a particular employee has not been kept out of job on his own volition, then he is entitled to back wages even if he has not served in that post. Here is a case where the applicant was put off from duty on certain allegations of misappropriation and stood his trial before the learned Sub-Divisional Judicial Magistrate, Boudh who by its judgment dated 29.11.1986 has acquitted the applicant. Therefore, it is deemed that the applicant was in service with effect from the date on which he was put off from duty. Once he is deemed to be in service with effect from the date he was put off from duty, the applicant is undoubtedly entitled to his arrear emoluments which he would have ordinarily drawn if he would have been in service. Therefore, it is directed that the applicant be paid his arrear emoluments from 14.12.1977 to 16.2.88

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less the subsistence allowance(if any paid)within 90 days from the date of receipt of a copy of this judgment.

8. Thus, this application stands allowed. No costs.

K. Sarangi 3/1/94
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VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 3, 1994/ Sarangi.