

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CU TTACK BENCH:CU TTACK.

ORIGINAL APPLICATION NO. 680 OF 1993.

Cuttack, this the 30th day of August, 1999.

TRINATH NAYAK.

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APPLICANT.

- VERSUS -

UNION OF INDIA & OTHERS. . .

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## RESPONDENTS.

FOR INSTRUCTIONS

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

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM) 2.99  
VICE-CHAIRMAN

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 680 OF 1993.

Cuttack, this the 30th day of August, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

...

TRINATH NAYAK,  
Son of C. Nayak,  
Working as PA,  
Odagaon Sub Post Office,  
PO/PS/Odagaon, Dist. Nayagarh. .... APPLICANT.

By legal Practitioner : M/s. S. S. C. Ghose, S. Ghose, Advocate.

-Versus-

1. Union of India represented by the Chief Postmaster General, Orissa, Bhubaneswar, Dist. Khurda.
2. Director of Postal Services, Bhubaneswar, Po/Ps. Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Puri Division, Puri, Dist. Puri. ... RESPONDENTS.

By legal practitioner : Mr. U. B. Mohapatra, Additional Standing Counsel (Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

*S. Som.*  
In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for quashing the impugned order of punishment dated 24-3-1993, at Annexure-3 ordering stoppage of his next increment for a period of one year without cumulative effect.

2. The facts of this case fall within a short compass and can be briefly stated. The applicant is serving as Postal Assistant in Odagaon Sub Post Office, and in the absence of Sub-post Master, he was the only person working there. According to him, because of pressure of work, he became ill suffered from head reeling and on 11.11.1992, applied to the Senior Superintendent of Post Offices, Puri Division, Puri, Respondent No. 3 for leave enclosing Medical certificate but the leave was not granted to him. He had to work despite of his illness. Again on 27.11.1992, he sent an application to grant him leave and relieve him. At that time, applicant's wife who is a chronic patient of low-blood pressure, Eosinophilia and other complains, became seriously ill and collapsed. As the condition of the applicant and his wife became serious, on 2-12-1992, he sent a telegram to the Respondents on the following words:

"Self serious, wife bed-ridden, unable to work. Work closed. He will be held further responsible for any mishappening".

Departmental Authorities held the last sentence of the Telegram is insubordination and therefore, departmental proceeding was initiated against him, <sup>SJOM</sup> in Memo dated 11.2.

1993, at Annexure-1. Applicant submitted his explanation in which he explained that there is nobody to lookafter him and his wife and even though he had applied for leave twice, leave was not sanctioned to him. He also stated that the language of the Telegram was neither threatening nor insubordination. He, therefore, prayed that kindness, <sup>SJOM</sup> should be shown to the applicant and subordinate staffs by the Respondent No. 3.

*SJOM*

On receipt of explanation, Respondent No. 3 disposed of the minor penalty proceeding in his order at Annexure-3 imposing the punishment referred to above and the appeal preferred by the applicant was also rejected, by the Appellate Authority in his order at Annexure-4. Because of this, applicant has come up with the prayer referred to earlier.

3. Respondents, in their counter, have stated that the applicant applied for 21 days leave from 11-11-1992 but he could not be relieved due to acute shortage of staff. He sent another application on 27-11-1992 for a period of 30 days on medical ground. The Post Master, Nayagarh was directed to depute one reserve clerk to Odagaon to relieve the applicant immediately. A phone message was also given to the postmaster, Naygarh. A copy of the phone message was endorsed to applicant for his information. Respondents have stated that applicant was sitting idle in his office from 27.11.1992 without doing any work and there was another clerk who was managing the work. Notwithstanding this, applicant had sent a telegram which according to Respondents shows disrespectful language and insubordinate conduct. Respondents have further stated that the explanation of applicant was taken into consideration and the impugned order of punishment was passed taking into account all the facts of this case. On the above grounds, Respondents have opposed the prayer of Applicant.

8

S. Sam.

4. This 1993 matter has come up for hearing today from the WARNING list notified morethan a month ago. To-day, when the matter was called for hearing, learned counsel for applicant Mr. S. C. Ghose, nor his Associate were present nor was any request made on his behalf seeking adjournment. As in this case, pleadings have been completed long ago, it was not possible to drag on the matter indefinitely. We have, therefore, heard Mr. U. B. Mohapatra, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records. After going through the records and after hearing, Mr. U. B. Mohapatra, learned Additional Standing Counsel appearing for the Respondents we do feel that in this case, applicant has been rather treated harshly. The fact that he was suffering is not disputed by the Respondents because, Departmental Authorities arranged for his relieve belatedly. Obviously, therefore, the Departmental Authorities had accepted the fact of illness of applicant. Applicant was running the Post office single handedly and even though the relief clerk (2nd clerk) was sent there, the applicant was not sanctioned leave from 27.11.1992. As the applicant was ill and his wife was also ill, he had sent telegram asking for leave and saying that in case any untoward incident is happen, the leave sanctioning authority will be held responsible. In his explanation, applicant has stated that because of his illness, he was mentally imbalanced. As the applicant was suffering from illness, he can not be held responsible even if it is held that the language in the Telegram particularly the last sentence thereof shows

*S. Jam.*

insubordination and is of threatening nature. It is also to be noted that even though the applicant had applied for Earned Leave, no orders rejecting his leave was communicated to him. In the context of the above facts, imposition of penalty of stoppage of one increment for one year without cumulative effect appears to be shockingly disproportionate to the fault of applicant in not adopting proper language in the Telegram at a time, when admittedly, he was suffering from illness and his wife was seriously ill. In consideration of this, we would have normally remanded the matter to the Departmental Authorities for imposing some other penalty on the applicant but considering the fact that the matter relates to the year 1992 and the alleged lapse is of trivial in nature, we quash the order of punishment and direct that the applicant should be warned for such fault in writing threatening language in the Telegram. In other words, this communication of warning to be issued to the applicant, should not be recorded in his CR.

5. With the above observations and directions the Original Application is allowed. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
30.12.99

KNM/CM.