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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 716 OF 1993
Cuttack this the 16th day of September, 1999

Pramod Kumar Behera

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 circulated to all the Benches of the Central Administrative Tribunal or not ? *No*.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16.9.99

16.9.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.716 OF 1993
Cuttack this the 16th day of September, 1999

CORAM:

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

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Pramod Kumar Behera, aged 35 years
Son of Chakradhar Behera,
At/PO: Karanjabindha, Via: Gopalpur
District: Balasore

...

Applicant

By the Advocates : M/s.A.Deo
B.S.Tripathy,
P.Panda

-Versus-

1. Union of India represented through its Secretary, Department of Posts, Dak Bhavan, New Delhi
2. Chief Post Master General, Orissa Circle, At/Po: Bhubaneswar Dist: Khurda
3. Superintendent of Post Offices, Balasore Division, At/Po/Dist: Balasore

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Respondents

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

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application under Section 19 of the Administrative Tribunals Act, 1985, with prayer for reinstatement of the applicant by setting aside the order under Annexure-4, the facts not in controversy are that the applicant while serving as Extra Departmental Branch Post Master, Karanjabindha Branch Office in account with Gopalpur S.O. in Balasore District was put off duty on 28.7.1982 in connection with disciplinary proceeding and the said put off duty order was confirmed by Respondent No.3 on 3.8.1982 vide Annexure-1. In memo dated 30.11.1982(Annexure-2) charges were served on him. The applicant approached this Tribunal in Original Application No.300/91 for quashing the disciplinary proceeding and put off duty order and for his reinstatement with back wages. This Tribunal ~~dis~~ disposed of the said Original Application vide judgment dated 26.9.1991(Annexure-3). The relevant portion of the judgment is as follows :

"....Without expressing any opinion as to whether the petitioner is guilty of the accusation, we are of the opinion that in view of the fact that the alleged misappropriation took place as long back as 27th November, 1991 and the alleged amount being only Rs.940/- further more the said Rs.940/- having been deposited on 27th July, 1982, we feel inclined to take a lenient view in the matter and we find no justifiable reason to keep the proceeding alive. No fruitful purpose will be achieved by beating a dead horse. Therefore, we do hereby quash the proceeding subject to the condition that the petitioner would pay penal interest to be assessed by the concerned Superintendent of Post Offices in respect of a sum of Rs.940/- at the rate of Rs.18% per annum from 27.11.1981 to 27.8.1982 and this amount will be paid within two months from to-day and the amount will be assessed within ten days from the date of receipt of a copy of this judgment by the Superintendent of Post Offices and the petitioner will not be entitled to any

back wages. In case the amount has not been deposited by 27.7.1982 or deposited on a later date the interest will be paid till ~~now~~ the actual date of deposit of the amount. In case not deposited till now the principal amount along with interest till the date of deposit will be paid by the petitioner within two months from to-day. We expect the Superintendent of Post Offices to compute the penal interest payable by the petitioner within ten days from the date of receipt of a copy of this judgment. In case this condition is not complied by the petitioner within the stipulated period the proceeding will continue. It will be the responsibility of the petitioner to meet the concerned Superintendent of Post Offices and pursue the matter regarding assessment of penal interest by filing application/applications and obtained receipt thereof.

4. Mr.Naik, learned counsel for the applicant strenuously argued before us that the petitioner should be ordered to be reinstated. The conditions not having been complied as yet, which is expected to be complied on a future date, we do not feel inclined to give any specific direction in this regard, but we would leave the matter to the Chief Post Master General to consider this aspect and pass such orders as he deems fit and proper and the Chief Post Master General will consider this aspect after receipt of a report from the concerned Superintendent of Post Offices that the condition has been complied.

5. Thus, the application is accordingly disposed without any cost".

Pursuant to this direction of the Tribunal, the applicant was communicated as to the amount of penal interest and the applicant deposited the amount on 4.11.1991 at Gopalpur S.O. as per the averment made in the counter and this fact was communicated to the Chief Post Master General (Res.2) on 13.11.1991. However, Respondent No.2, after considering the judgment of this Tribunal found no justification to reinstate the applicant in service. This order of Res.2 was communicated to the applicant by Res.3 in letter dated

10.3.1992 (Annexure-4).

2. The case of the applicant is that since the condition imposed by this Tribunal in judgment dated 26.9.1991 passed in O.A.300/91 for payment of penal interest has been complied, the disciplinary proceeding stands automatically quashed as directed in that judgment and as such there is no other justification in not reinstating him in service and that respondents cannot sit over the judgment of the Tribunal and construe the judgment of this Tribunal in a manner contrary to its import and spirit and thus set at naught the judgment.

3. Respondents in their counter averred that after the charges in the disciplinary proceeding were served on the applicant, the latter filed I.C.C. No.391/82 before the Court of J.M.F.C., Balasore against officials of the Department and the relevant document concerning the charges were called for by the Court on different dates upto the year 1987 and these directions of the Court were complied. The Criminal Court in judgment dated 3.4.1991 acquitted the postal officials and after this acquittal when the action was being taken to obtain the relevant document produced before the Criminal Court to finalise the disciplinary proceeding, the applicant approached this Tribunal in O.A. 300/91 which was disposed of on 26.9.1991 with the directions quoted above. It is the further case of the respondents that after the applicant was communicated of the decision of the Chief Post Master General in letter dated 10.3.1992 vide Annexure-4, the applicant filed Misc.Application 35/92 in O.A. 300/91 which was ultimately heard and dismissed.

4. We have heard Shri B.S.Tripathy, learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appearing for the respondents. Also perused the record as well as record of O.A. 300/91.

5. As the record revels, the applicant was put off duty in the year 1982. Thereafter in the same year disciplinary proceeding had been initiated. This disciplinary proceeding stands automatically quashed in view of the directions of this Tribunal in O.A.300/91 as the conditions stipulated by the Tribunal were duly complied in time. It is not the case of the respondents that any other proceeding has been initiated and is pending against the applicant or any criminal case has been registered against the applicant and he has been convicted thereunder. It is also not the case of the Department that his services have been terminated. There is also no material that order of put off duty passed in the year 1982 had been quashed and/or revoked.

6. The situation therefore, boils down to this that the applicant has been put under off duty since 1982 without any other proceeding. In fact since he has not been reinstated by revocation of the put off duty order, further proceeding on the imputation of comission of misconduct while on duty would notarise. Question then arises as to why Respondent No.2, viz., the Chief Post Master General did not reinstate the applicant and thus allowed him to continue under put off duty till now.

We are aware that the applicant filed M.A.35/92 which was ultimately dismissed on 20.11.1993. We have carefully perused this Misc.Application which was filed

on 24.1.1992 and certainly not after communication of letter dated 10.3.1992(Annexure-4) as averred in the counter. Thus it is clear that this Misc.Application was filed about one and half month prior to this letter dated 10.3.1992. Misc.application was filed with a prayer to direct the respondents to implement the judgment dated 26.9.1991 of this Tribunal on the ground that though the applicant had deposited penal interest within the stipulated time as directed therein by the Tribunal, the Department did not take any action in the matter of reinstatement in spite of representation filed on 7.11.1991. During the pendency of this Misc.Application, the then learned counsel appearing for the Department intimated this Tribunal that the representation of the applicant to the Department after deposit of the penal interest as directed by this Tribunal had since been rejected. To this learned counsel counsel for the applicant submitted that his client had not received copy of this order (vide order sheet dated 2.9.1992). Since copy of Misc.Application was not served on the learned counsel for the respondents, the matter had undergone some adjournments and after service of copy of the M.A. and on hearing both sides, this Tribunal dismissed the M.A. This M.A. was dismissed evidently because the prayer made in the M.A. had become infructuous inasmuch as after filing of this petition the CPMG had taken the decision in the matter of reinstatement or no reinstatement of the petitioner pursuant to the direction of this Tribunal. Thus the scope of this M.A. and the present Original Application are different. In the present Original

Application legality or validity of the decision of the C.P.M.G. is under challenge and this was not challenged in the Misc.Application. This being so, simply because the M.A. was dismissed, it cannot be assumed that the present Original Application is bound to be dismissed.

5. We are aware that there is no order of removal of the applicant from service and he has been put off duty all these years since 1982. Yet the Chief Post Master General (Res.2) did not think fit to reinstate him even though the proceeding initiated in the year 1982 stood automatically quashed as per the direction of this Tribunal after the conditions stipulated in the judgment in O.A. 300/91 were duly complied. This judgment of the Tribunal is final, because the Department has not come up with a plea that it has been challenged in higher forum. Hence question for consideration is whether order of the C.P.M.G. under Annexure-4 in not reinstating the applicant in service can be sustained. At this stage we may note that copy of the order passed by the CPMG has not been filed by the respondents. Even order communicated by Res.3 to the applicant under Annexure-4 is also not clear as to what was the compelling reason for the C.P.M.G. in taking a decision not to reinstate the applicant who has been put under off duty since 1982 despite the disciplinary proceeding initiated against the applicant in that year stood automatically quashed by virtue of the order of the Tribunal in O.A. 300/91. There is no provision in service jurisprudence empowering such unbridled power ~~on~~ an employer to keep an employee under suspension indefinitely for years together without any

other charge against him.

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It is true that this Tribunal in para-4 of the judgment dated 26.9.1991 (Annexure-3) left the matter with regard to reinstatement to the Chief Post Master General to pass such orders as he deems fit and proper. It is also true that though there was a prayer for quashing the order of put off duty in that Original Application, no order to that effect was passed. It would imply that prayer for quashing the put off duty was disallowed at that point. It does not however mean that the Tribunal while disposing of that Original Application intended that the applicant would continue under put off duty for ever. The reason for not passing any order in the matter of reinstatement by this Tribunal is apparent from the judgment itself. Order of quashing of the disciplinary proceeding as discussed above was subject to conditions stipulated in the judgment. Apparently this Tribunal, bearing in mind as to the possibility of non-compliance of the condition by the applicant did not pass any orders in the matter of reinstatement and left the matter to Respondent No.2 so that he could be in a better position to pass such order after considering the fact whether the conditions stipulated in the judgment were duly complied in time. Had not the applicant deposited the penal interest in time, disciplinary proceeding would have continued and certainly under such circumstance, Respondent No.2 would have discretion either to revoke the order putting the applicant under off duty or to continue the same. The fact however remains that the applicant complied the conditions stipulated in the judgment in time and

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consequently as directed in the judgment disciplinary proceeding stood automatically quashed. This being the position Res.2 would not have allowed the applicant to continue to remain under put off duty without reinstating him in service, which would in the context of the judgment would necessarily mean revocation of the order of put off duty without assigning any compelling reason in order, which order as earlier stated has not been filed by the respondents. Hence we presume that the order of Respondent 2 in this regard is without any justifiable reason.

Non quashing of put off duty order by this Tribunal does not mean that the applicant would be under put off duty for ever in the absence of any other charge against him. Non quashing of put off duty order would mean that the Tribunal was satisfied in passing the put off duty order by the Department as per the circumstances prevailing on that date. Law is clear that suspension should not be continued beyond the minimum period for which it is essentially required. Even prolonging the continuance of suspension where enquiry is unduly delayed would smack of malafide. Here, as earlier stated no more enquiry proceeding is pending. The applicant was under put off duty because of a disciplinary proceeding which proceeding automatically stood quashed as per the judgment in O.A.300/91. Hence there was no necessity at all for continuance of this put off duty.

We have therefore, no hesitation to hold that the decision of Respondent no.2 in not allowing the applicant to resume duty (by reinstating him) is arbitrary.

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9. In the result we quash the order dated 10.3.1993 under Annexure-4 communicated by Res.3 to the applicant and consequently the actual order of the Chief Post Master General (Res.2) in not reinstating the applicant. Since the applicant has been under put off duty from the year 1982, we direct the respondents to revoke the order putting him under off duty and reinstate the applicant in service within a period of 15(Fifteen) days from the date of receipt of this order. We would make it clear that the applicant is entitled to put off duty allowance/compensation by way of exgratia payment with effect from the date the rule came into force in the Department within a period of 60(sixty) days from the date of receipt of copies of this order, if not already paid.

The application is allowed, but there shall be no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16.9.99
B.K.SAHOO

16.9.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)