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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 287 of 1995

Cuttack this the 3rd day of April, 1996

Rabindranath Biswal ... Applicant(s)

Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.287 of 1995

Cuttack this the day of April, 1996

C O R A M:

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

...

1. Rabindranath Biswal, aged 32 years,
S/o.Trilocan Biswal
Extra Departmental Stamp Vendor
residing at 4703 Adimatha Colony
Bhubaneswar

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Applicant

By the Advocate:

Mr. D.P.Dhalasamant

Versus

1. Union of India represented
through Chief Post Master General,
Orissa Circle, Bhubaneswar,
At/PO:Bhubaneswar,
Dist :Khurda-751001
2. Director of Postal Services,
Circle Office, Bhubaneswar
Dist:Khurda - 751001
3. Sr.Superintendent of Post Offices
Bhubaneswar-I Division
Bhubaneswar
4. Asstt.Superintendent of Post Offices,
North Division
Bhubaneswar

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Respondents

By the Advocate:

Mr.Ashok Mishra,
Standing Counsel

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O R D E R

MR.N. SAHU, MEMBER (ADMN) : The only prayer in this application is
to direct the respondents to release the salary of the
applicant for the period of put off duties, i.e. from

5.3.1994 till the date of joining. The brief facts are that Shri R.N.Biswal worked as a Postman, Sahidnagar S.O. on adhoc basis. The admitted facts are that the applicant received cash amounting to Rs.6666/- in the register of Money Orders. The allegation is that he forged payment of money orders in the name of Narahari Nayak. The allegations were that Shri Nayak expired long before the date of payment which was on 22.2.1994 and as such the payment was a fraudulent one. Shri Nayak expired on 21.10.1993. Money order paid vouchers containing the signature of the payee were sent to E.Q.D. who confirmed the forgery. The delay occurred because of examination of a number of persons at different places and collection of documentary evidence from the office.

2. The applicant appealed to the appellate authority who reviewed the put off duty case and came to the conclusion that since all the relevant records have been seized and officials examined, there was no chance of tampering evidence of the applicant and as such he directed revocation of put off duty order. Accordingly the applicant was reinstated. The reinstatement was on 21.2.1995. The applicant claims salary for the period from 5.3.1994 to 21.2.1995.

3. Before me the learned counsel for the applicant placed the order of the Supreme Court of India in SLP No. CC 457/90 in the case of Secretary, Ministry of

Communications, v. S.Gundu Acharya. The Supreme Court reviewed the order of the Central Administrative Tribunal in Superintendent of Post Offices v. 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 9(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."

In view of the above directions of the Supreme Court, I direct Respondent No.1, Chief Post Master General, Orissa Circle, Bhubaneswar, first to ascertain whether a new set of rules have been framed substituting rule (3). If rules have been framed

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by the Government of India, Respondent 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. In this particular case Respondent 1 shall examine the matter at his level, particularly in view of 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 1 shall grant an opportunity of being heard to the applicant. He shall pass the orders under Rule 9(3) in accordance with the guidelines of the Supreme Court, within a period of two months from the date of receipt of this order.

The application is disposed of as above.

No costs.


(N. SAHU)
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//