

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.106 OF 1998
Cuttack, this the 10th day of November, 1998

Bikram Sagar Applicant

Vrs.

Union of India and 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 Central Administrative Tribunal or not? NO.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.106 OF 1998
Cuttack, this the 10th day of November, 1998

CORAM:

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

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Bikram Sagar,
Postal Assistant under suspension,
Jaipatna, Dist.Kalahandi-766018 Applicant

By the Advocate - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through
Chief Post Master General,
Orissa Circle, Bhubaneswar-751 001.
2. Director of Postal Services,
Office of the Postmaster General, Berhampur Region,
Berhampur-760 001.
3. Superintendent of Post Offices,
Kalahandi Division,
Bhawanipatna-766 001.....

Respondents

By the Advocate - Mr.U.B.Mohapatra
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order dated 28.4.1995 at Annexure-1
placing him under suspension. He has also prayed for a
direction to the respondents to make payment of pay and
allowances to the applicant for the period when he is no
more in police custody.

2. The facts of this case, according to the
petitioner, are that while he was working as Postal
Assistant in Jaipatna Sub-Post Office, he was asked to

appear before police at Dharamgarh Police Station on 21.4.1995 for interrogation. He was detained at the police station on 21st and 22nd April 1995 and was taken into custody on 24.4.1995 in GR Case No.144 of 1995. He was released on bail only on 26.6.1995 by the order dated 22.6.1995 passed by the Hon'ble High Court of Orissa in Criminal Misc.Case No.1320 of 1995. Superintendent of Post Offices, Kalahandi Division, in his order dated 28.4.1995 at Annexure-1 placed the applicant under suspension with effect from 21.4.1995 and the applicant is still continuing under suspension. According to the applicant, the investigation in the case has not been completed even though more than three years have passed. No chargesheet or final report has been submitted. The departmental authorities have also failed to review the need for continuation of suspension of the applicant as they are required to do in accordance with Director General of P & T's circular dated 5.7.1976. It is further submitted that the departmental authorities have failed to follow the procedure laid down in Ministry of Home Affairs' circulars dated 7.9.1965 and 4.2.1971. He has made repeated representations to Director of Postal Services, Berhampur, for his reinstatement, but no order has been passed. In view of this, he has come up with the aforesaid prayers.

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3. Respondents in their counter have stated that while the applicant was working as Postal Assistant, Jaipatna Sub-Post Office in Kalahandi Division, a racket in connection with abstraction and substitution of answer scripts of candidates appearing in +2 Arts and +2 Science Examinations, 1995 conducted by the Council of Higher Secondary Education, Orissa, was detected ^{at} Kesinga R.M.S. and various other places in Kalahandi District. Apparently, the answer scripts were being taken out from registered parcels

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sent through the post and were being substituted. This was detected by police in April 1995 and raids were conducted during which answer sheets, fake seals and currency notes and other incriminating documents were recovered. In Dharamgarh P.S. Case No.32/95 registered on 16.4.1995 the applicant was called for interrogation at Jaipatna Police Station as per requisition of Officer-In-Charge, Dharamgarh Police Station, since the applicant's involvement in the above racket was strongly suspected. The wireless message is at Annexure-R/1. After interrogatioin at Dharamgarh Police Station, the applicant was arrested at 10.30 A.M. on 23.4.1995 and forwarded to the court of Sub-Divisional Judicial Magistrate, Dharamgarh, who remanded him to judicial custody. Thereafter the applicant was placed under suspension in the impugned order dated 28.4.1995. 233 answer papers seized by the police in this case were sent to Handwriting Bureau. Superintendent of Post Offices, Kalahandi, wrote to D.I.G.of Police, Crime Branch, for early submission of opinion by Handwriting Bureau. According to the respondents, the investigation is almost complete and chargesheet will be placed against the applicant shortly to stand his trial in the court of law. It is further submitted that the police authorities have moved Superintendent of Post Offices (respondent no.3) to accord sanction of prosecution to the applicant. The respondents have stated that as the investigation in the case continued for long because of non-submission of opinion by the Handwriting Bureau, the investigation was not complete and the chargesheet could not be filed, and that is how the applicant continued under suspension. The respondents have further stated that review of suspension case of the applicant has been done regularly and subsistence allowance given to him has also been enhanced. The respondents have stated that in view of gravity of the case, the suspension

of the applicant was considered justified. In view of this, the respondents have opposed the prayers of the applicant.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records. The learned counsel for the petitioner has given a memo of citations citing two decisions which have also been considered and would be referred to later in this order.

5. It has been submitted by the learned counsel for the petitioner that the applicant was taken into custody on 24.4.1995 and was released on bail on 26.6.1995 by the order dated 22.6.1995 passed by the Hon'ble High Court of Orissa. It is submitted that once the applicant has been released from custody, his suspension should be revoked moreso when the need for his continued suspension has not been reviewed by the departmental authorities as they are required to do. We find from the order at Annexure-1 that this order of suspension was issued under Rule 10(2) of CCS (CCA) Rules, 1965. This provides that a Government servant shall be deemed to have been placed under suspension with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours. From this it would be clear that under Rule 10(2) suspension of a Government servant is automatic even if no suspension order by the appointing authority is passed. In this case, the applicant remained in custody for a long period till he was released under orders of the Hon'ble High Court and therefore, by operation of Rule 10(2) of CCS (CCA) Rules, 1965, he was to be deemed to be under suspension. As this is an inevitable consequence of his being taken into custody,

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such order of suspension cannot be quashed because that is brought about by operation of the statutory rule. This is also the view taken by the Ahmedabad Bench of the Tribunal in the case of R.T.Sharma v. Union of India and others, (1990)14 ATC 547. The learned counsel for the petitioner relied on this decision to urge that the petitioner should be reinstated in service after his release from custody by the orders of the Hon'ble High Court. In R.T.Sharma's case(supra), the applicant was a Telecom Office Assistant in the office of Telecom District Manager, Baroda. On an allegation of corruption and irregularities in recruitment, the Central Bureau of Investigation registered a case against D.E.T., Bharuch and others including the applicant in that case. The applicant was arrested and remanded to police custody for a few days and thereafter into judicial custody. He was placed under suspension. The Tribunal, in consideration of the facts and circumstances of the case, ordered reinstatement of the applicant. The facts of this case are quite different from the facts here. There the Tribunal noted that besides the applicant, the main accused, the District Engineer, Telecom and others were not placed under suspension. The Tribunal felt that if continuation in service of other accused persons did not hamper the investigation, there was no reason to believe that the applicant's reinstatement in service would do so. It was felt that continuation of suspension of the applicant in that case would continue discriminatory treatment of the applicant. The facts of that case are quite different. It is not the case of the petitioner that other accused who are postal employees in the same case were not placed under suspension or had been reinstated subsequently. The respondents have also pointed out that they have reviewed the need for continuation of suspension of the applicant.

regularly. In view of this, we hold that the decision of the Tribunal in R.T.Sharma's case(supra) is not applicable to the facts and circumstances of the instant case.

6. The other decision relied upon by the learned counsel for the petitioner is R.Perumal and others v. Union of India and others, (1990) 12 ATC 551. That case is also distinguishable. In that case, the departmental proceeding and criminal prosecution were simultaneously continuing against the applicants who were under suspension for five years and ten months. The Tribunal took the view that criminal trial and departmental proceedings having taken more than five years and there being little likelihood of these being concluded within a short time, the applicants should be reinstated in service. In the instant case, the suspension has continued for three and half years. The point for consideration is whether because of this long period of suspension, the applicant is entitled to be reinstated in service. In matters such as this, each case has to be considered in the light of its facts and circumstances. In the instant case, the allegation against the applicant is serious in nature. Apparently, the answer scripts of +2 Arts and +2 Science Eaminations conducted by Council of Higher Secondary Education,Orissa, were being sent through registered parcels. The allegation against the applicant is that he was involved in a racket of extracting and substituting those answer scripts. Apparently, during investigation police has found sufficient material against him for prosecution in the court of law and sanction of prosecution has been asked for. As the charge is serious and sanction of prosecution has been asked for, it does not appear to be a case where merely because of long period of

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suspension over three and half years, the petitioner is entitled to be reinstated in service. Moreover, the respondents have pointed out that delay in filing chargesheet was due to delay in obtaining the opinion of the Handwriting Bureau. For this, Superintendent of Post Offices, Kalahandi, had written to D.I.G. of Police, Crime Branch, Orissa, Cuttack, vide Annexure-R/4 for expediting the matter. Therefore, the departmental authorities have done what they could to expedite the process of investigation. Therefore, the prayer of the applicant to reinstate him in service is held to be without any merit and is rejected.

7. The other prayer is for giving him his pay and allowances with effect from the date of his release from custody. It is not the case of the applicant that he stands reinstated in service as soon as he is released from custody. He has continued under suspension and according to the respondents, is receiving his subsistence allowance. In view of the above, this prayer is also held to be without any merit and is rejected.

8. In the result, therefore, the application is held to be without any merit and is rejected but without any order as to costs.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN