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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 115 OF 1998
Cuttack this the 14/12 day of December, 1999

Laxmidhar Mohapatra

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

14.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 115 OF 1998
Cuttack this the 14th day of December, 1999

CORAM:

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

Sri Laxmidhar Mohapatra
aged about 59 years
S/o. Late Dibakar Mohapatra
At/Po: Kanikapada
Via: Mangalpur
Dist: Jajpur

...

Applicant

By the Advocates : M/s.P.V.Ramdas
P.V.B.Rao

-Versus-

1. Union of india represented
by the Chief Post Master General
Orissa Circle,
Bhubaneswar-751001
2. Superintendent of Post Offices
Cuttack North Division,
Cuttack-753001

...

Respondents

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

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Laxmidhar Mohapatra, filing this application on 2.3.1998 was appointed as Extra Departmental Sub Post Master, Kanikapada Post Office under Jajpur Head Office. He was prosecuted for the offence under Section 409 of the I.P.C. in G.R.Cse 650/83. The Learned Chief Judicial Magistrate, Jajpur, trying the case, ultimately acquitted him of the offence on 25.8.1997, on the ground that evidence of witnesses are self contradictory and prosecution has not come up with clean hands (judgment vide Annexure-1). According to applicant, this criminal case was lodged against him because of an occurrence said to have occurred on 1.8.1983 for which F.I.R. was lodged on 6.8.1983. Though he was not served with any order of put off duty, he was prevented from performing his duties because of the pendency of the criminal case. On his acquittal on 25.8.1997 he represented to the Superintendent of Post Offices, Cuttack North Division under Annexure-2 dated 28.10.1997 for his reinstatement and other benefits. This was followed by a reminder dated 17.11.1997. Even this reminder remained unresponded. Hence in this Original Application he prays for his restoration to the post of E.D.S.P.M. with all consequential service benefits.

2. Respondents in their counter filed on 15.2.1999 state that the applicant, while serving as E.D.S.P.M., Kanikapada had absconded on 1.8.1983 after closing the Post Office at 3.30 P.M. leaving the keys of the Post Office at his home at Kanikapada. Sarat Chandra Sahu,

E.D.D.A., of that Post Office managed to get those keys of the Post Office along with keys of two letter boxes from the son of the applicant on 2.8.1983 and distributed ordinary letters to the public. On coming to know of the abscondence of the applicant, he intimated to the higher authorities, whereafter on verification and enquiry, it could be known that there was net loss of Rs.9620.04 to the Department and the applicant had misappropriated that amount. Consequently FIR was lodged and the G.R. Case was registered. Police arrested the applicant in the year 1984. As he absconded after committing fraud and misappropriation, there was no necessity to issue memo of put off duty. His representations dated 28.10.1997 and 17.11.1997 for reinstatement were not considered as disciplinary action against him was contemplated and ultimately initiated through Memo dated 14.9.1998(Annexure-R/2).

3. We have heard Shri P.V.Ramdas, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel for the respondents. Also perused the records.

4. As the counter reveals, the disciplinary proceeding was initiated against the applicant for his failure to maintain absolute integrity and due devotion to duty for his abscondence and commission of misappropriation through Memo dated 14.9.1998(Annexure-R/2). In other words, the disciplinary proceeding was initiated more than six months after filing of this Original Application and evidently after receiving notices dated 11.3.1998 of this Original Application sent by Regd.Post. There is nothing on record to say that prior to 14.9.1998 there was ever~~any~~ any contemplation of initiation/of disciplinary

proceeding against the applicant.

At this stage it is worthwhile to discuss the present status of the applicant. Admittedly he was appointed as E.D.S.P.M. The version in the counter is he has not been placed under put off duty. Still, he is not being allowed to perform duty. It cannot be said that he has been discharged/removed from service, because the Department itself admit through initiation of disciplinary proceeding that he is still employed under them. If the version in the counter is accepted as correct, it would come to this that the Department, for a considerable time had not allowed the applicant to perform duty without putting him under off duty and they have though fit to initiate disciplinary proceeding against him only after receipt of notices in this Original Application. Under ~~in this~~ ~~the~~ circumstance, if the Department had not put the applicant under off duty, we have no hesitation to observe that the Department in a way exploited the applicant by preventing him from his entitlement to payment of exgratia by way of compensation since January, 1997, as per G.I.Deptt.of Posts Order No.19-36/95-ED and Trg. dated 13.1.1997 had he been put under off duty.

However, we find the version in the counter that there was no necessity to issue memo of put off duty is not correct, because in the charge memo(Annexure-R/2) it has been clearly mentioned that on 8.8.1983, when the FIR was lodged, simultaneously memo of put off duty was issued and this memo could not be served on the applicant, because the said memo sent by Regd.Post with A.D. returned undelivered with remark "addressee absent from home, his present address is unknown". Thus it is

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clear that order of put off duty was indeed issued on 8.8.1983. It is true that it could not be ^{actually} communicated to the applicant because of his non-availability, though communication was made through Regd.Post. In State of Pnjbab vs.Khemi Ram, reported in AIR 1970 SC 214, the Apex Court held that communication of order of suspension passed against the Government servant takes effect from the date of communication and not from the date of actual receipt. In Para-16 of the decision, the Apex Court clearly observed that once an order of suspension is issued and it is sent out to the concerned Govt. servant, it must be held to have been communicated to him, no matter when he actually received it. Once such an order is sent out, it goes out of control of such an authority issuing the order and therefore, there would be no chance whatsoever of changing its mind or modifying it. In view of this legal position, once the put off duty order is was issued on 8.8.1983 and sent by Regd.Post, the process of communication was complete. There is nothing on record that this order has been subsequently cancelled or modified. Hence it is presumed that on 8.8.1983 the applicant has been placed under put off duty and he would be entitled to payment of exgratia by way of compensation as per circular of Govt. of India referred to above.

This put off duty order issued on 8.8.1983 has not been annexed. As the facts mentioned in the charge memo reveal, this was issued simultaneously when the FIR was lodged. It comes to this that he was placed under put off duty because of initiation of the criminal case and ^{not} in contemplation of initiation of disciplinary proceeding. Question arises whether an E.D. employee placed under put

off duty in connection with a criminal case, which ultimately ended in his acquittal would be entitled to reinstatement. At this stage it is worthwhile to quote the relevant portion of G.T., M.H.A. , Deptt. of Personnel and A.R. O.M. No.35014/9/76-Fstt. dated 8.8.1977, as mentioned at Page 257 of Swamy's Manual on Disciplinary Proceedings (1999 Edition).

"1. One of the items considered by the National Counsel(JCM) was a proposal of the Staff Side that a Government servant who was deemed to have been placed under suspension on account of his detention or on account of criminal proceedings against him, should be paid full pay and allowances for the period of suspension, if he has been discharged from detention or has been acquitted by a Court.

2. During the discussion, it was clarified to the Staff Side that the mere fact that a Government servant who was deemed to have been under suspension, due to detention or on account of criminal proceedings against him, has been discharged from detention without prosecution or has been acquitted by a Court, would not make him eligible for full pay and allowances because often the acquittal may be on technical grounds, but the suspension might be justified".

The applicant was acquitted by the Criminal Court not on technical grounds, but on merit with full discussion of the evidence on record. As earlier stated, the Criminal Court disbelieved the evidence of prosecution witnesses observing the same to be self-contradictory and unreliable and that the prosecution had not come up with clean hands. Since the applicant has been acquitted not on technical ground, but on merit with strictures against the prosecution, he was entitled to be reinstated immediately after the acquittal in view of the instructions quoted above.

5- For the reasons discussed above, we hold that the applicant was under put off duty from 8.8.1983 till the judgment of acquittal passed on 25.8.1997. Accordingly,

we direct the respondents to treat the applicant as on duty from 26.8.1997 onwards with consequential service and financial benefits and formally revoke the order of put off duty and allow the applicant to ^{resume and} perform the duty within a period of 15(Fifteen) days from to-day. We make it clear that the period from 26.8.1997 till the put off duty order is formally revoked shall also be treated as duty.

In the result, the Application is allowed, but without any order as to costs.

Somnath Jm
(SOMNATH SOMNATH)
VICE-CHAIRMAN

B.K.SAHOO

14.12.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)