

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.242 OF 1998
Cuttack this the 09th day of May, 2003

Satyaban Panda ... Applicant(s)

-VERSUS-

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

FOR INSTRUCTIONS

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


[Signature]
(B.N. SOM)
VICE-CHAIRMAN

[Signature]
09.05.03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 242 OF 1998
Cuttack, this the 09th day of May, 2003.

CORAM:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL).

...

Sri Satyaban Panda, Aged about 40 years,
S/o. Late Natabar Panda at present working
as E. D. D. A., Namouza Sub Office under
Kendrapara Head post Office, At/Po: Namouza,
Dist. Kendrapara.

.... APPLICANT.

By legal practitioner: Mr. T. Rath, Advocate.

:Versus:

1. Union of India represented through the
Chief Postmaster General, Orissa Circle,
Bhubaneswar, At/Po: Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices, Cuttack North
Division, Cuttack, At/Po/Dist. Cuttack.
3. Sub-Divisional Inspector (Postal), Pattamundai,
At/Po: Pattamundai, District- Kendrapara.

.... RESPONDENTS.

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

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Consequential order dated 20.06.1997 (Annexure-3)
passed by the Appellate Authority (Respondent No. 2), on his
appeal and the Applicant having been reinstated in service
as E. D. D. A. of Namouza Sub Post Office (under Kendrapara
Head Post Office) w.e.f. 07-07-1997, he has in this Original
Application under Section 19 of the Administrative Tribunals
Act, 1985 called in question that part of the order (passed by

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the said Appellate Authority) by which no allowance would be payable to the Applicant for the period of 'put off' duty. Needless is it to say that the Applicant, while working as E.D.D.A. was put off duty w.e.f. 23-04-1993 in contemplation of disciplinary proceedings that was to be initiated against him and the said disciplinary proceedings culminated in removing the Applicant from service w.e.f. 30-04-1996 (Annexure-1) and, later, the Appellate Authority reinstated him but denied payment of subsistence allowance. It is the case of the Applicant that denial of put off duty allowance (w.e.f. 23-4-1993, till the date of reinstatement in service) by the Respondents is arbitrary and to his prejudice and; in view of settled position of law, as propounded by the Hon'ble Apex Court, from time to time (that "put off duty allowance", which an employee under put off duty is entitled to get as a measure of subsistence) the directive of the Appellate Authority (under Annexure-3 dated 20.6.1997) is liable to be quashed. The Respondents-Department by filing a counter, have opposed the prayer of the Applicant. The Applicant has also filed a rejoinder to the counter.

2. We have heard Sri T.Rath, Learned Counsel appearing for the Applicant and Sri U.B.Mohapatra, learned Additional Standing Counsel appearing for the Respondents and perused the materials available on record.

3. In the counter, the Respondents while exhaustively highlighted the back-drop of the case leading from put off

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duty to punishment of removal and applicant's reinstatement in service, have not refuted the claim of the Applicant as to why he should not be entitled to get the put off duty allowances for the period in question, but have taken the stand that the Applicant was reinstated in service with condition that he would not claim either back wages or put off duty allowance. This assertion/objection of the Respondents ipso facto is nothing but passive resistance in so far as claim of the Applicant in the present Original Application is concerned. However, the Applicant in his rejoinder has disclosed the circumstances which compelled him to dance to the tune of the Respondents. Be that as it may, the short point in issue before us is as to whether the Applicant was entitled to get the put off duty allowance w.e.f. 23.4.1993 (the date of off duty) till 07-07-1997 (the date of reinstatement).

4. Before coming to discuss the point at issue, it is worthwhile to mention that the Applicant, without exhausting the remedies available to him under the relevant service rules, has approached this Tribunal for redressal of his grievance. Law is well settled, now, that mere existence of rights/grievance is not enough to approach a Court of law/Tribunal praying for efficacious remedy. One has to seek the remedy/agitate the grievance before the authorities in the Department, who are competent enough to do well with the matter. Considered from this aspect of the matter, if the Tribunal allows the litigants to approach the Tribunal in a cut and dry method, as the Applicant has in the instant case, it would tantamount



to not only fetter the discretion of the authorities (who are the best judge in this respect) but also it would create a bad precedence for the Tribunal by being approached unceremoniously.

5. So far as merit of the matter is concerned, the Applicant, in order to substantiate his claim, has not produced before us any authority to grant him the benefit as sought in this Original Application. However, it is a fact that previously there was no provision in the postal Department for grant of any put off duty allowance for ED staff for their sustenance. It was for the first time, the Govt. of India (by taking into consideration the decisions of the Hon'ble Apex Court of India pronounced from time to time (which was also relied upon by the learned counsel for the Applicant) issued executive instructions vide G.I. Deptt. Lr. No. 19-36/95-ED & Trg. dated 13.1.1997 for providing put off duty allowance in respect of ED Agents under off duty. In the instant case the Applicant claims, put off duty allowance w.e.f. 23.4.1993 to 7.7.1997. It is not the case of the Applicant that he was completely exonerated from the charges as is apparent from the order of recovery of Rs. 400/- having been effected in successive instalments. However, keeping in view the above executive instructions on the subject, of grant of subsistence allowance, we are of the view that the applicant's case does not come within the four corner of the rules as the said rules/ instructions have the prospective application. It is, therefore, considered that the Applicant's grievance for securing



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subsistence allowance w.e.f. 13.1.1997 i.e. the date when such executive instructions came to play subsists.

6. In the above view of the matter, the Applicant is directed to represent the authorities competent in the Department in this respect, within a period of 30 (thirty) days from this day forth and, in the event such a representation, as directed above, is filed by the Applicant, the Respondents/competent authorities should dwell with the matter in keeping with the instructions as issued by them vide letter dated 13.1.1997 and grant him the necessary relief as early as possible.

7. With the above observations and directions, this Original Application is disposed of by leaving the parties to bear their own costs.




(B.N.SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)