

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 278 OF 1998.

Cuttack, this the 22nd day of November, 1999.

HRUSHIKESH CHAINI.

....

APPLICANT.

VERSUS

UNION OF INDIA & 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*

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM
VICE-CHAIRMAN
22.11.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 278 OF 1998.

Cuttack, this the 22nd day of November, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

Hrushikesh Chaini,
Aged about 33 years,
S/o. Krutibas Chaini
of Village & Post: Sidhal,
PS. & Dist: Jagatsinghpur.

APPLICANT.

By legal practitioner :- Ms. S. L. Patnaik, Advocate.

- VERSUS -

1. Union of India represented by the Secretary, Department of Posts, Dak Bhawan, New Delhi-1.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Cuttack South Division, Cantonment Road, Town/ Dist. Cuttack.
4. Assistant Superintendent of Post Offices, I/c., Jagatsinghpur Sub Division, Po/Ps./Dist. Jagatsinghpur.

RESPONDENTS.

By legal practitioner : Mr. J. K. Nayak, Additional Standing Counsel (Central),

J. K. Nayak

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- a) to direct the Respondents to pay the exgratia compensation for the period under put off duty by quashing Annexures-A/2;
- b) to supply the documents as prayed for by the applicant;
- c) And any other reliefs as deemed fit proper under law.

2. The applicant's case is that while he was working as Extra Departmental Branch Post Master, Sidhal Branch Post Office, he was put off duty on account of allegation of mis-conduct, in order dated 11.9.1989. The applicant filed Original Application No. 372 of 1989 for quashing the order of put off duty. Applicant has mentioned in para 4.3 of his Original Application that the Tribunal in their order dated 8.3.1991 in Original Application No. 372/1989 upheld the action of put off duty of applicant. It is further stated that as per the stay order passed in Miscellaneous Application No. 304 of 1989 on 3.11.1989, authorities did not come forward to take charge from the applicant and the applicant was allowed to perform his duty as EDBPM, Sidhal BO from 1989 to 26.2.1992 and therefore, he has the rightful claim to get the allowances for the above period. Applicant has further stated that he had approached this Tribunal in Original Application No. 356/92 for getting

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his allowances. The Tribunal in their order dated 1.12.1992, disposed of the Original Application directing the authorities to disburse the allowances as admissible under rules for the services rendered by him. Applicant has stated in para 4.5 of the Original Application that in pursuance of the order, the Respondents have paid the applicant, the amount of allowances till 26.6.1992. Applicant has stated that after payment of allowances on 22.3.1993, a set of charges were served on him. The applicant in his letter dated 3.4.1993, denied the charges. An Enquiring Officer was appointed. The applicant wanted to peruse certain documents but those documents were not supplied to him for his perusal. He also asked in his letter dated 15.7.1993 to furnish additional documents but those documents were also not supplied. It is further stated that the Inquiring Officer, in his order dated 5.10.1993 mentioned that the disciplinary authorities could not produce the S.B.-3 for perusal of the applicant due to non-availability of the same. The applicant filed another Original Application bearing O.A.No. 290/1994 for quashing the charge-sheet and to reinstate him in his original post and the same is still pending. Applicant received written brief from the Presenting Officer on 12.10.1994 and gave a written reply on 22.12.1994. Thereafter, Respondents sent a letter to applicant on 22.5.1995 asking him to make his submission to the enquiry report within ten days but as the applicant was ill, he could not give his reply to the letter mentioned above and wanted one month time. In response to this, in letter dated 2.8.1995 further 15 days time was given to him. Accordingly, the applicant submitted his reply.

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after receipt of the enquiry report in his letter dated 20.8.1995. Applicant has stated that at that stage, on 15.9.1997, he asked the Respondent No. 3 to sanction ex-gratia payment during the put off duty period but no reply has been received by the applicant. He received a letter dated 3.10.97, at Annexure-A/2 stating that he has been dismissed from service on 29.3.1996. Applicant further states that he met the authorities several time to ascertain the fact of his dismissal but he was not supplied with a copy of the dismissal order and because of this it was not possible on the part of the applicant to trace out the same. It is further stated by the applicant at Paragraph 4.15 of the Original Application that he was under the impression that the disciplinary proceeding is not yet over. It is further stated that for getting ex-gratia payment, he sent a lawyer's notice but without any result and that is why, he has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that while the applicant was working as EDBPM, Sidhal BO, he committed fraud of SB account for which he was placed off duty on 11.9.1989 and this was ratified by the ~~and~~ ^{SDJM} Superintendent of Post Offices, Cuttack South Division, Cuttack in his order dated 18.9.1989. The case was reported to the Police who submitted chargesheet in the Court of the learned SDJM, Jagatsinghpur and this was registered as GR case No. 617/1989. Disciplinary proceeding was also initiated against him and chargesheet was issued on 22.3.1993. I.O. and PO were also appointed after giving due opportunity to the applicant. After conclusion of the enquiry, a copy of the

enquiry report was sent to applicant in letter dated 22-5-1995. Applicant submitted his representation on 20.8.1995 with reference to the enquiry report. His representation was considered and punishment of dismissal from service was imposed on the applicant in order dated 29.3.1996. Respondents have stated that according to rules in force at the time, the applicant was put off duty, no put off duty allowance was payable to the ED employees. Rules were amended only w.e.f. 13.1.1997 in pursuance of the observation of the Hon'ble Supreme Court in the case of SECRETARY, MINISTRY OF COMMUNICATIONS & ORS VRS. S. GUNDU ACHARYA in Civil Appeal No. 5.4917-27/90, SLP No. 4148/93 etc. and with effect from 13.1.1997, only the exgratia became payable. As the applicant was dismissed prior to that date, Respondents have stated that he is not entitled to any exgratia payment. As regards the applicant's averment that the Departmental Authorities did not take over the charge from him and he continued to discharge the duties of the EDBPM from 1.9.1989 to 26.6.1992, Respondents have stated that the applicant did not hand over charge for which the learned Magistrate and the Police Authorities were asked to take charge from the applicant and ultimately under the orders of the Sub-Collector, Jagatsinghpur and in the presence of the Magistrate, charge was taken from him on 26.6.1992. In any case, it is not necessary for us to consider about this period from 1.9.1989 till 26.6.1992, for which period, according to applicant he remained in charge of the Office because the Departmental Authorities did not take over the charge from him. The Departmental Authorities,

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on the other hand have stated that the applicant refused to hand over the charge during that period. It is not necessary to consider this aspect because the applicant has himself mentioned in para 4.5 of his Original Appl. that the Respondents paid the applicant his amount of allowance till 26.6.1992. As the applicant has stated that he got the allowance during this period i.e. upto 26.6.1992 it is not necessary to consider this aspect any further. In the context of the above facts, the Respondents have opposed the prayers of applicant.

4. We have heard Ms.S.L.Patnaik, learned counsel for applicant and Mr.J.K.Nayak, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

5. It has been submitted by learned counsel for the applicant that in course of enquiry certain documents were not supplied to the applicant and thereby the punishment order is vitiated. It is also submitted by the learned counsel for the applicant that as the copy of the punishment order was not supplied to the applicant, he was not in a position to file appeal. It is not necessary to consider this submission because in this Original Application, the applicant has not prayed for quashing the punishment order or the disciplinary proceeding. It has further been alleged by the applicant in para 4.15 of the Original Application that he was under the impression that the enquiry has not yet been completed. This averment is contradictory to the averment made by the applicant himself in para 4.11 of the Original

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Application wherein he has stated that after getting the enquiry report, he submitted his representation after asking for time which was initially allowed to him. As earlier mentioned, in this petition, the prayer of applicant is for getting exgratia payment for the period, he was put off duty. According to Rule-9 of the EDA(Conduct & Service) Rules, EDAs were not entitled originally to get the put off duty allowance during the put off duty period. This rule was amended in pursuance of the direction of the Hon'ble Supreme Court, in the case, referred to by the Respondents in their counter. Accordingly rule 9 was amended and exgratia payment came into force w.e.f. 13.1.97. As this amendment can have only prospective effective and can not be made effective, retrospectively, the applicant having been dismissed from service w.e.f. 29.3.1996, he is not entitled to exgratia payment.

6. In the result, we find no merit in this original application which is accordingly rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

S. N. Som
(SOMNATH SOM)
VICE-CHIEF JUDGE
1997

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