

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 288 OF 1998

Cuttack, this the 13th day of April, 1999

Shiva Prasad Parida 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)

VICE-CHAIRMAN

Somnath Som
13/4/99

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CUTTACK BENCH, CUTTACK.

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Cuttack, this the 13th day of April, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Shiva Prasad Parida,

aged about 41 years

son of Brundaban Parida,

At/PO-Bansh, Dist.Jagatsinghpur Applicant

Advocates for applicant - M/s S.K.Das
S.Behera

Vrs.

1. Union of India, represented through its Secretary, Post & Communication Department, Government of India, New Delhi.
2. Post Master General, Orissa, At/PO-Bhubaneswar, Dist.Khurda.
3. Superintendent of Post Offices, Cuttack South Division, At/PO/Dist.Cuttack

..... Respondents
Advocate for respondents - Mr.B.K.Nayak
A.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som. In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to disburse the back wages of the petitioner from 24.5.1983 to 16.6.1988 along with all consequential benefits. He has also asked for interest at Bank rate on the arrear dues.

2. Case of the applicant is that while he was working as E.D.B.P.M. of Bansh B.O., a criminal case was

instituted against him. The learned S.D.J.M, Jagatsinghpur, recorded an order of acquittal. The departmental proceeding was also completed in his favour. Thereafter he was reinstated in service. He had earlier filed OA No.63 of 1991 which was disposed of in order dated 21.1.1993 at Annexure-1. The prayer in that OA was for granting him back wages for the period during which he was put off duty. The Tribunal in their order dated 21.1.1993 noted that different Benches of the Tribunal have in their orders issued from time to time, held that similarly circumstanced persons like the applicant are entitled to back wages. But those judgments have been taken to Hon'ble Supreme Court in appeal and the Hon'ble Supreme Court in SLP No. 6923 of 1992 have stayed the operation of those judgments of the Tribunal. In view of this, in OA No. 63 of 1991 the Tribunal ordered that in view of the above position of pending litigation on this point before the Hon'ble Supreme Court they would not like to pass any orders regarding the claim of the petitioner to get the back wages for the put-off duty period. The Tribunal directed that the judgment of the Hon'ble Supreme Court should be awaited and in case the Hon'ble Supreme Court holds that ED officials are entitled to back wages, then the petitioner would be at liberty to renew his prayer and the competent authority is bound to act according to the judgment of the Hon'ble Supreme Court. The applicant has further stated that the Hon'ble Supreme Court disallowed the SLP No. 6923/92 filed by the respondents. Copy of the order is at Annexure-2. It is further stated that thereafter he applied to the competent authority for granting of back wages along with a copy of the order of the Hon'ble Supreme Court but without any effect. That is how he has come up in this petition with the aforesaid prayers.

S. Jam.

3. The respondents in their counter have stated that while the applicant was working as EDBPM, Bansh B.O. he was involved in a case regarding loss of remittance of Rs.1000/- and his integrity was suspected in that case. He was, therefore, put off duty in order dated 30.5.1983. But the applicant instead of receiving the put-off duty memo absconded from duty entrusting the work of the EDBO unauthorisedly to Sri Raj Kishore Swain from whom Overseer, Mails, Alanahat took charge of the B.O. on 1.6.1983. As the applicant absconded from duty from 1.6.1983, he was deemed to have been put off duty from 1.6.1983. FIR was lodged and the chargesheet was submitted by the police in GR Case No. 348/93 in the court of the learned S.D.J.M, Jagatsinghpur. The learned S.D.J.M. acquitted the applicant in the above G.R.Case. Thereafter enquiry under Rule 8 of the ED Agents (Conduct & Service)Rules, 1964 was initiated against him which was concluded in order dated 2.6.1988 of Additional Post Master General, Orissa, exonerating the applicant from the charges. But the period of put-off duty was treated as non-duty for all purposes in memo dated 2.6.1988 which is at Annexure-R/1. The applicant was reinstated in service with effect from 17.6.1988. The respondents have stated that as in the disciplinary proceeding the period of put-off duty was treated as non-duty the applicant is not entitled to back wages. On the above grounds, they have opposed the prayers of the applicant.

S. Das.
4. We have heard Shri S.K.Das, the learned counsel for the petitioner and Shri B.K.Nayak, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

5. In the order of the Hon'ble Supreme Court filed by the applicant at Annexure-2 their Lordships of the

Hon'ble Supreme Court have referred to their earlier decision in the case of Secretary, Ministry of Communications and others v. S.Gundu Achary, CC 457/90. We have gone through this decision. In this decision in the case of **S.Gundu Achary (supra)** their Lordships of the Hon'ble Supreme Court agreed with the conclusion reached by the Tribunal that Rule 9(3) of the ED Agents (Conduct & Service) Rules, 1964 infacted Article 14 of the Constitution of India. Their Lordships of the Hon'ble Supreme Court, however, modified 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."

S. J. Som
In accordance with the above direction of the Hon'ble Supreme Court the Department of Post in their letter dated

13.1.1997 intimated that Rule 9 has been amended. At this stage it is necessary to note that prior to the amendment, sub-rule (3) of Rule 9 specifically laid down that an employee shall not be entitled to any allowances for the period for which he is kept off duty under the Rule. After amendment it was provided that an employee shall be entitled per month for the period of put off duty to an amount of compensation as ex gratia payment equal to 25% of his basic allowance together with admissible Dearness Allowance thereon on such 25% of basic allowance. It is also laid down that if the period of put-off duty exceeds ninety days, then the competent authority shall be entitled to increase the amount of compensation by a suitable amount not exceeding 50% of such compensation admissible during the period of first ninety days if in the opinion of the competent authority, the period of put-off duty has been prolonged for reasons not directly attributable to the E.D.Agent. Similarly, put-off duty allowance can also be reduced if it is held that the put-off duty period has been prolonged due to reasons directly attributable to the E.D.Agent. From the above it is clear that with effect coming into force of this amendment, E.D.Agents who are put off duty would be entitled to an amount of compensation as ex gratia payment at the rates indicated above. This amendment came into force with effect from 13.1.1997. In the instant case the petitioner's prayer is for back wages for the period from 24.5.1983 to 16.6.1988 much before the judgment of the Hon'ble Supreme Court in **S.Gundu Achary's case (supra)** which was delivered on 10.7.1995 and also much before the amendment which came into force with effect from 13.1.1997. In view of this, it is clear that the applicant is not entitled to the benefit of the amendment for the period during which he was put off duty during 1983 to 1988.

S. Dom.

6. The next aspect is that the Hon'ble Supreme Court have mentioned that it would be open to 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. From Annexure-R/1 of the counter which is the order of the Additional Post Master General in the disciplinary proceedings against the applicant, it is seen that there were two charges against the applicant. Charge no.1 was held not proved and this finding of the inquiring officer was accepted by the Additional Post Master General. Charge no.2 had five parts. The inquiring officer held that this charge could not be proved against the applicant except the aspect of remaining absent unauthorisedly. Additional Post Master General has given the finding that the charge that the applicant absconded and remained unauthorisedly absent could not be proved. Accordingly, he exonerated the applicant from the charges. But he held that put-off duty period should be treated as non-duty. This is because at that time there was no provision for making any payment during the put-off duty period. But in accordance with the direction of the Hon'ble Supreme Court, the departmental authorities are obliged to hear the applicant because he has been exonerated fully of the charges in the disciplinary proceedings and he must be afforded an opportunity before allowance for the put-off duty period can be denied to him. From the pleadings of the parties it does not appear that the departmental authorities

have done so. In view of this, we direct the Chief Post Master General, Orissa, to give an opportunity to the applicant with regard to his prayer for payment of allowance during the put-off duty period and pass appropriate orders giving reasons strictly in terms of paragraph (3) of the order of the Hon'ble Supreme Court quoted by us above. This exercise should be completed within a period of 120 days from the date of receipt of copy of this order and the result communicated to the applicant within 15 days thereafter.

7. The Original Application is disposed of in terms of the observation and direction given above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
13.4.99
VICE-CHAIRMAN

AN/PS