

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 688 OF 1998

Cuttack, this the 14/12/99 day of December, 1999.

JANAKRAM PANIGRAHI.

...

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.

SOMNATH SOM
VICE-CHAIRMAN

14.12.99
(G. NARASIMHAM)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 683 OF 1998.
Cuttack, this the 14th day of December, 1999.

C O R A M:

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

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JANAKRAM PANIGRAHI,
At/Po. & Dist. Kharsuguda,
at present L.S.G.P.A.,
Baragarh HO (Under suspension). Applicant.

By legal practitioner : Mr. D. P. Dhalsamant, Advocate.

- VRS.-

1. Union of India represented through
Chief Post Master General, Orissa,
Bhubaneswar- 751 001.
2. Director of Postal Services,
Sambalpur Region, Sambalpur-1.
3. Superintendent of Post Offices,
Sambalpur Division, Sambalpur-1.

.... Respondents.

By legal practitioner : Mr. A. K. Bose, Senior Standing
Counsel (Central).

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant, a Postal Assistant, had been placed under suspension on 13-4-1992 by the Respondent No. 3, Superintendent of Post Offices, Sambalpur Division in contemplation of initiation of a Disciplinary proceeding against him (Annexure-1). By order dated 15.9.98 (Annexure-2), Respondent No. 3 dropped the proceeding without prejudice to any other disciplinary action.

In this Application for declaring the order of suspension as illegal and unjustified and for treating the period of suspension as duty with all consequential benefits, The specific case of applicant is that Memo of charges were issued on 14-2-1995 and though Inquiring Officer and Presenting Officer were appointed on 5-5-1995, no sitting of the enquiry had been held. Though after dropping the proceeding by order dated 15.9.1998 and though on 20.9.1998, he made approaches for revocation of the order of suspension but the Department did not pay any heed.

2. The Department in their counter did not deny this fact.. Their stand is that while serving as Sub Post master of Jharsuguda Sub Post Office, from 15-6-1987 to 29-1-1992, the applicant accepted deposits in different Savings Bank Accounts and issued several new pass books but did not take it to the Government accounts. He also did not make entries in the concerned documents/registers. He even issued/sold NSCs, KVPS and

IVPs and the sale value was not taken into Government account and the amounts were mis-appropriated. The total amount of loss detected came to Rs.1,20,400/- The matter was entrusted to the CBI and the CBI issued charge-sheets No.12, dated 30.8.1993, No.13, dated 30.8.93 and No.14, dated 30.8.1993. Since the case is pending in the court of the CBI, the proceeding initiated against the applicant was dropped. Revocation of suspension order does not arise because of the pendency of the CBI case.

3. We have heard Mr. D. P. Dhalsamant, learned Counsel for the applicant and Mr. A. K. Bose, learned Sr. Standing Counsel (Central) appearing for the Respondents and also perused the records.

4. Facts as stated above are not in controversy. The main point for determination is whether suspension order passed in contemplation of initiation of disciplinary proceeding shall have to be revoked as and when the proceeding is dropped.

As earlier stated, under Annexure-1, dated 13-4-1992, the applicant was placed under suspension in contemplation of initiation of disciplinary proceeding. It is also not in dispute that pursuant to the initiation of the disciplinary proceeding charges were framed on 14-2-1995 i.e. merely three years after passing of the suspension order. Inquiring Officer and the Presenting Officer were appointed on 5.5.1995, but no enquiry had taken place. Ultimately on 15.9.98, the proceeding was dropped under Annexure-2, dated 15.9.98 ^{which} runs as thus;

"The departmental proceeding initiated against Shri J. R. Panigrahi, PA, Bargarh HO (now under suspension) vide this Office Memo F1/7-1/91-92 in connection with commitment of multiple fraud in I. E. Jharsuguda SO under Rule-14 of CCS(CCA) Rules, 1965 is hereby dropped without prejudice to any other disciplinary action".

5. It would be clear that while dropping the disciplinary proceeding, there was no mention that the proceeding was dropped because of the pendency of the parallel CBI case. On the other hand, the stand of the Department in the counter itself that the CBI filed three chargesheets on 30.8.1993 itself after conclusion of the investigation. If in deed, the Department did not intend to proceed with the disciplinary proceeding because of the pendency of criminal cases instituted by the CBI on 30.8.93 there was no necessity for the Department to frame charges on 14.2.1995 and thereafter appoint the Inquiring Officer and the Presending Officer. Hence we are not prepared to accept the stand of the Department that the proceeding was dropped because of the pendency of the CBI Cases which fact as earlier stated does not find mentioned in Annexure-2.

6. At this stage it is useful to quote the following passage from Swamy's Manual on Disciplinary Proceedings (1999 edition) at page 239:

" 2. Reinstatement is resumption of his Office by a person who has been dismissed/removed/whose service has been terminated/under suspension. Reinstatement in service of a Government is possible in the following types of cases:-

(i) If he had been placed under suspension pending criminal proceedings against him and is acquitted by the court of law and it is decided that no departmental proceedings need be

initiated on the basis of the facts disclosed during investigation or on the basis of facts which led to the launching of prosecution in a court of law;

(ii) xx xx xx

(iii) If he had been placed under suspension pending departmental proceedings against him and if the departmental proceedings instituted against him are withdrawn for any reason or if he is exonerated or is awarded a penalty other than that of compulsory retirement, removal or dismissal from service*.

Thus, the legal position is clear that once an employee is placed under suspension in contemplation of initiation of a disciplinary proceeding and if the disciplinary proceeding is dropped, for some reason or the other, the suspended employee shall have to be reinstated, more so in a case of prolonged suspension for several years as in the case before us.

7. However, prayer for declaring the order of suspension **illegal** and **unjustified** can not be considered in this Original Application filed on 21.12.1998 when the impugned suspension was ordered in the year 1992 as being barred by time.

8. For the reasons discussed above, we hold that the order of suspension is deemed to have been **revoked** w.e.f. 15.9.1998 when the disciplinary proceeding was dropped and the applicant is entitled to all consequential service benefits as though on duty from that date. However, we direct Respondent No.3 the Superintendent of Post Offices, Sambalpur Division to take a decision in the matter of treating the period of suspension of applicant from the date of suspension till the proceeding was dropped in Annexure-2, within a

period of 60 days from the date of receipt of a copy of this order, if not already been decided.

9. In the result, with the observations and directions made above, the Original Application is disposed of. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.12.99

14.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.