

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.115 OF 1999
Cuttack this the 30th day of September, 1999

Faguni Charan Barik

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
30.9.99

30.9.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO. 115 OF 1999
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CORAM:

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

Faguni Charan Barik,
aged about 43 years,
S/o. Brundaban Barik, working as
E.D.B.P.M., attached to the R.M.S.,
Jajpur Road, At/Po/Dist: Jajpur

...

Applicant

By the Advocates : M/s.A.K.Rao
M.K.Mohanty
P.K.Sendh
S.K.Rath

-Versus-

1. Union of India represented by the
Secretary, Department of Post,
India, New Delhi
2. Chief Post Master General,
Bhubaneswar, At/Po: Bhubaneswar
Dist: Khurda
3. Superintendent of Post Offices,
Cuttack North Division, Cuttack
At/Po|Dist: Cuttack
4. Asst.Superintendent of Post Offices,
Department of Post, Jajpur Sub-Division,
At/PO/Dist: Jajpur

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Respondents

By the Advocates : Mr.A.Routray
Addl.Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application praying for pay and allowance from 1.11.1995 till 10.6.1996 along with interest at 18% per annum, the undisputed facts are that applicant Phaguni Charan Barik, who was appointed as Extra Departmental Mail Carrier at Jajpur Road R.M.S. for executing mail in S.S. ~~pro~~Buss between Jajpur Road R.M.S. and Jajpur with effect from 4.2.1974 was ordered to be shifted to Jajpur Head Post Office by order dated 31.10.1995. He challenged this order before this Tribunal in Original Application 725/95. In judgment dated 3.4.1996 ^{the Tribunal} held the impugned order of transfer was contrary to Rule-20 of E.D.Agents(Conduct & Service) Rules and accordingly quashed that order and directed that the applicant should continue to discharge the job of E.D.M.C. at Jajpur Road. Pursuant to this judgment, the applicant resumed the duty at Jajpur Road with effect from 10.6.1996. However, his arrear pay and allowances from 1.11.1995 to 9.6.1996 were not paid to him.

Thereafter he preferred Original Application 477/96 before this Tribunal claiming arrear pay and allowances for this period. This application was disposed of on 9.7.1996 with a direction to applicant to make a representation to the Superintendent of Post Offices, Cuttack(North) Division, Cuttack within a period of two weeks from that date and the Superintendent of Post Offices should dispose it of and if admissible as per rules, disburse the pay and allowances legally due to the applicant for the period in question within eight weeks

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from the date of submission of representation by the applicant.

Pursuant to this direction, Advocate for the applicant submitted a representation to the concerned authority, but without any response. Hence the applicant again moved this Tribunal in O.A.277/97 for the same relief. In that case the Department opposed the relief on the ground that the applicant did not comply the direction of the Tribunal in O.A. 477/96 to the effect that he must file a representation and as no representation had been filed by the applicant, but filed by his Advocate, no orders had been passed on that representation. On hearing this submission, the Tribunal in order dated 18.3.1998 directed the applicant to file representation before the Superintendent of Post Offices within a period of seven days and the Superintendent of Post Offices was directed to dispose of such representation strictly in accordance with rules within a period of 30 days from the date of receipt of such representation and communicate the decision taken on that representation to the applicant within seven days thereafter.

2. In the present application the applicant submits that he submitted a representation as directed by the Tribunal to the Superintendent of Post Offices under Annexure-3 dated 23.3.1998, but the Superintendent of Post Offices in letter dated 22.4.1998 vide Annexure-4 disallowed the claim on the ground of No Work No Pay. However, he ordered the said period of absence to be regularised as L.W.A. as applicable to E.D.As.

3. The respondents have opposed the prayer of the

applicant in this application mainly basing on the principle of No Work No Pay.

4. We have heard Shri A.K.Rao, learned counsel for the applicant and Shri A.Routray, learned Addl.Standing Counsel appearing for the respondents.Also perused the records.

Admittedly during the period in question the applicant had not performed ~~the~~ duty. The question for consideration is whether he had not performed the duty during the period of transfer voluntarily or against his will. As the facts reveal, he was ordered to be shifted from Jajpur Road to Jajpur and as such he could not perform the duty thereafter at Jajpur Road till the order of transfer was held to be illegal and quashed by this Tribunal. This follows the order of transfer dated 31.10.1995 will have to be treated as non est. Thus it comes to this, but for passing of an illegal order dated 31.10.1995, the applicant in normal course would have performed his duties from 1.11.1995 to 9.6.1996. Thus this is a case where the applicant though ~~he~~ was willing to work was prevented from doing the work by an illegal order of the Department. Under such circumstances, as has been held by the Hon'ble Supreme Court in the case of K.V.Janakiraman reported in AIR 1991 SC 2010 and reiterated in J.N.Sribatchha case reported in 1998 Supreme Court Cases (L&S) 1251 that normal rule of "No Work No Pay" is not applicable to such cases where the employee, although he is willing to work is kept away from work by the authorities for no fault of his.

We are aware that O.A.477/96 and O.A.277/97 were filed by the applicant praying for the same relief.

Whether such a relief would be admissible or not was not decided in these two cases, apparently, because the Department was given opportunity to settle the dispute on the representation to be filed by the applicant. It is not as though this Tribunal disallowed the relief in those two cases to act as resjudicata in this application.

5. For the reasons discussed above, we direct the respondents to pay the arrear pay and allowances to the applicant from 1.11.1995 till the date he resumed the duty on 10.6.1996 along with 12% interest ~~interest~~ per annum from 10.6.1996 onwards within a period of 60 days from the date of receipt of this order.

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.9.99

B.K.SAHOO

30-9-99
(G.NARASIMHAM)
MEMBER(JUDICIAL)