

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.325 OF 1999
Cuttack this the 17th day of November/2003

Sibaram Nayak ... Applicant(s)

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Applicant(s)

-VERSUS-

Respondent(s)

FOR INSTRUCTIONS

1. / Whether it be referred to reporters or not ?
2. / Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

(BHARATI RAY)
MEMBER (JUDICIAL)

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17.11.
(S. MANICKA VASAGAM)
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.325 OF 1999
Cuttack this the 17th day of November/03

CORAM:

THE HON'BLE MR. S. MANICKA VASAGAM, MEMBER(ADMN.)
AND
THE HON'BLE MRS. BHARATI RAY, MEMBER(JUDICIAL)

Sri Sibaram Nayak, aged about 50 yrs.
S/o. Late Biswanath Nayak of Vill-Sibilapasi
PO-Sibilapasi, P.S. Kamakhya Nagar
Dist-Dhenkanal

... Applicant

By the Advocates

Mr. R. N. Biswal

-VERSUS-

1. Union of India represented by the Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar-1, Dist-Khurda
2. Superintendent of Post Offices, Dhenkanal Division, At/PO-Dhenkanal Town, P.S. Dhenkanal Town, Dist-Dhenkanal

... Respondents

By the Advocates

Mr.J.K.Nayak, A.S.C.

O R D E R

MR.S.MANICKA VASAGAM, MEMBER(ADMN.): The applicant, while working as Extra Departmental Branch Post Master(in short E.D.B.P.M.), Sibilapasi Branch Office was suspended as a charge under Section 409 I.P.C. was made against him. Though the Trial Court convicted the applicant, on appeal, the learned Sessions Judge, Dhenkanal-Angul, Dhenkanal allowed the appeal on merits vide judgment dated 8.2.1994. By this time, based on the order of the learned Magistrate the applicant was dismissed from service vide order dated 30.11.1987. However, basing on the acquittal order passed

by the learned Sessions Judge, the applicant made a representation on 2.11.1994, seeking reinstatement as E.D.B.P.M., Sibilapasi. Since there was no response, the applicant kept on sending reminders regularly. Ultimately, the Respondents reinstated the applicant in service vide order dated 29.10.1999 (Annexure-R/2). The applicant joined duty on 9.11.1999. In view of the fact that, though the applicant has been reinstated in service, he was not paid any backwages, the applicant had come before the Tribunal seeking both reinstatement as well as backwages. Since this O.A. was filed in July, 1999, the applicant had incorporated the request for reinstatement also in the prayer. The learned counsel for the Respondents (Shri J.K. Nayak) reiterated the averments in the counter filed by the Respondents. The facts relating to dismissal, Court orders and reinstatement are not disputed. It was submitted that the learned Sessions Judge acquitted the applicant vide judgment dated 8.2.1994 and the applicant represented his case thereafter, it took sometime for the Respondents to come to a conclusion about the reinstatement of the applicant. It was strenuously argued that since the applicant had not functioned as EDBPM he is not entitled to any backwages.

2. The short point that arises for our consideration in this Original Application is whether the applicant is entitled to backwages since the prayer relating to reinstatement has already become infructuous. Admittedly, the applicant was acquitted by the learned Sessions Judge in the year 1994. In the normal course, therefore, it is

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incumbent on the Respondents that as soon as applicant's representation is received, his case should have been examined immediately without any loss of time and a decision should have been arrived at. It is not disputed that the applicant has been representing repeatedly since 1994 about his case. Therefore, the applicant cannot be faulted for the belated decision of the Respondents. Thus the plea of limitation cannot be sustained. Further, in view of the fact that the Respondents had desired to reinstate the applicant in service, the question of limitation at this point of time does not arise.

3. The only point that survives now is about the backwages. In this connection we would like to note that a Coordinate Bench of this Tribunal in O.A.No.1165/2002 (decided on 4.12.2002) (in the case of Ramananda vs. Union of India & Ors. reported in Administrative Total Judgments 2003(1) 3777 held that the Government is required to pass orders immediately when acquittal orders are passed. Any delay in this case cannot be put against the employee. In this regard, they have relied upon the instructions issued by the Government of India on 19.9.1975. In that case we notice that the acquittal was under the benefit of doubt. Per contra, we notice that in the instant case the applicant was acquitted on merits. Therefore, the case of the applicant on hand is ^{on} more ~~firm~~ grounds and hence called for similar view ^{as} was taken in the case cited (supra). Further, we also notice that it is not as if the applicant was keeping quiet after his case was decided by the learned

Sessions Judge. It is evident that he had been constantly reminding the authorities for a decision. Therefore, he cannot be penalized by way of denial of back wages for the delay taken by the Respondents in arriving at a conclusion.

4. In view of the discussion above and, applying the ratio of decision in Ramanand's case (supra), we are of the view that the ends of justice would be met if the following directions are issued. The Respondents are directed to consider the case of the applicant as if he was in service from the date of dismissal and therefore, entitled to all the consequential benefits. The back wages that would arise to be paid to the applicant shall be paid. This exercise shall be completed within three months from the date of receipt of copy of the order.

5. The O.A. is allowed to the extent indicated above. However, there shall be no order as to costs.

Bharati Ray
(BHARATI RAY)
MEMBER (JUDICIAL)

S. Manikavasagam
(S. MANIKAVASAGAM) 17.11.03
MEMBER (ADMINISTRATIVE)

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