

NOTES OF THE REGISTRY

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for Admision

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Bench

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Bench

J Jam

Order dated 25.9.2001

Heard Shri A.Kanungo, learned counsel for the petitioner and Shri S.R.Patnaik, learned ASC for the respondents and also perused the records. In this O.A. the petitioner has prayed for a direction to respondents to pay him the full salary for the period from 5.5.1999 to 7.12.1999, within a stipulated period. The case of the applicant is that he was working as Loco Driver in Kantabanjhi when from 5.5.1999 no duty was assigned to him. He filed a representation dated 15.6.1999 vide Annexure-1 praying that duties should be allotted to him. Applicant has stated that an order of suspension dated 5.5.1999 was served on him on 2.12.1999 and the order was dated 5.5.1999/ order 2.12.1999. A revocation of the suspension order was also issued on 2.12.1999. In view of this the applicant has stated that he should be deemed to till that date have been not under suspension/and therefore, he has claimed salary for the alleged period of suspension and also thereafter till 7.12.1999.

Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed.

It is not necessary to refer to all the averments made by the respondents in their counter. It is stated by the respondents that because of certain lapse on the part of the applicant, order was issued on 5.5.1999 to Station Manager, Bolangir to suspend the applicant for deriliction of duties. It was again remanded on 9.9.1999. But the applicant was not available in spite of direction to present himself before the Senior Divisional

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Mechanical Engineer nor he did appear before the higher authority. It was reported by the Station Manager, Bolangir that his whereabouts were not known. Thereafter from 15.9.1999, orders were issued to keep the applicant under absent list. Again on 29.11.1999 an order was issued to Station Manager, Bolangir to direct the applicant to meet the Senior Divisional Mechanical Engineer Sambalpur and he met the Senior Divisional Mechanical Engineer Sambalpur on 2.12.1999, on which date order of suspension was revoked. Respondents have stated that for his alleged lapse for the above period the departmental proceedings have been drawn up against him and this period will be finalized on completion of the departmental proceedings. On the above grounds respondents have opposed the prayer of the applicant.

In the context of the above pleadings the first question which arises for consideration is whether the order of suspension would be effective from the date he received the said order ~~dt.~~ 2.12.1999, which incidentally is the date of order of revocation of the suspension. In this case from the pleadings of the parties it appears that the applicant has intentionally avoided to receive the suspension order. In terms of the decision of the Hon'ble Supreme Court in the case of ~~Khemiram vs State of Punjab~~ ^{State of Punjab, Khemiram} & Ors. reported in AIR 1970 SC 214, the order of suspension would take effect from the date of its despatch to the suspended employee. In view of this, it is not possible to hold that the

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order of suspension will take effect only when it is served on the applicant, as in this case on 2.12.1999. With regard to payment of subsistence allowance to the applicant respondents have made contradictory statement in their counter. In Page-3 of the counter respondents have made the following averments;

" As per rules subsistence allowance has been drawn during the period from 5.5.1999 to 20.8.1999 and thereafter no payment was drawn, as he was under absent list and he was also not available at his H.Q."

At Page-5 (Para-10) of their counter respondents have however stated as under:

"...the applicant was under suspension w.e.f. 5.5.1999 to 10.9.1999 and absent w.e.f. 11.10.1999 to 7.12.1999. Subsistence allowance was drawn for the suspension period and no payment was drawn for the rest of the period."

From the above two averments extracted by us, it ~~is~~ appears that respondents have made contradictory statements with regard to payment of subsistence allowance to the applicant beyond 20.8.1999 till 10.9.1999. Learned A.S.C. was not able to explain as to how ~~these~~ contradictory statements have crept in. In view of this, we direct the respondents to pay subsistence allowance to the applicant, within a period of 15(fifteen) days from the date of receipt of copies of this order for the period under suspension in respect of which he has not been paid.

As regards the period of suspension during which he was absent and thereafter no payment has been made, respondents have indicated that the departmental proceedings have been initiated against him. From the pleadings it appears that the departmental proceedings are still pending. Learned counsel of both sides were not able to indicate if the departmental

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proceedings have since been finalized. In this view of the matter we direct the departmental authorities to complete the departmental proceedings and pass final orders within a period of 60 (sixty) days from the date of receipt of copies of this order. The manner in which the period of alleged absence will be treated will depend upon the final outcome of the departmental proceedings.

The O.A. is disposed of as per observation and directions made above, but without any order as to costs.

MEMBER (JUDICIAL)

P. D. Narayanan
VICE-CHAIRMAN
25.9.2001

free copies of
final order
at 25.9.01 issued
to counsel for
both sides.

8/11

S.O.D)

25/9/01