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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 151 OF 2000
Cuttack, this the 6th day of February, 2001

Birendranath Panda

.....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)

G. Narasimham
(SOMNATH SOM)
VICE-CHAIRMAN
6.2.2001

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....
Birendranath Panda, aged about 59 years,
son of Jagannath Panda, At-Bhourian, P.O-Sukleswar,
Dist.Cuttack

.....
Applicant

Advocates for applicant - M/s. Ashok Mohanty
T. Rath

Vrs.

1. Union of India, represented through Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices, Cuttack North Division, Cuttack-1.
3. Sub-Divisional Inspector (Postal), Pattamundai, Dist. Kendrapara

.....
Respondents

Advocate for respondents - Mr. A.K. Bose
Sr. C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S. Som.
In this application the petitioner has prayed for quashing the order dated 16.7.1985 placing him under put-off duty from the post of EDBPM, Badagoth B.O. and the order dated 28.7.1999 at Annexure-3 issuing charges against him. The second prayer is for a direction to the respondents to reinstate the applicant.

2. Before proceeding further it is noted at this stage that from the above orders it appears that the applicant was put off duty in July 1985 and chargesheet was issued against him in July 1999, i.e., after a gap of

fourteen years. The respondents in their counter opposing the prayers of the applicant, have stated that the applicant worked as EDBPM, Badagoth B.O. from 7.2.1979 to 12.7.1985 after which he was placed under put-off duty in order dated 16.7.1985. After he was put off duty, departmental investigation into the case was carried at different levels like Sub-Divisional, Divisional and Circle levels and it was found tht he had temporarily misappropriated an amount of Rs.23, 608/- from different Savings Bank and Time Deposit Accounts and he had committed permanent misappropriation of Rs.2,583/-. The respondents have further stated that after completion of investigation the matter was examined for further course of action and ultimately the chargesheet was issued on 6.8.1999. It is stated that in accordance with the amended rules which came into force on 13.1.1997 he has been paid compensation by way of ex-gratia payment for his being put off duty and this compensation has also been enhanced to 37.5% of the allowances from the initial rate of 25. In this case, on the date of admission of the O.A. on 29.3.2000, by way of interim relief, it was ordered that the disciplinary proceedings may go on, but before passing final orders the disciplinary authority should obtain the leave of the Tribunal. In the counter filed in August 2000, i.e., five months after the notices were issued, the respondents have not indicated that the enquiry has been completed. They have also not moved the Tribunal for leave to pass final orders on the proceedings.

3. We have heard Shri Ashok Mohanty, the learned counsel for the petitioner and Shri A.K. Bose, the learned Senior Standing Counsel for the respondents and have also perused the records.

4. From the above recital of facts, it appears that the sole point for determination in this case is whether the disciplinary proceeding was liable to be quashed on the ground of delay. From the counter it appears that the reason for delay advanced by the respondents is that to make investigation in the work of the applicant for the period from 7.2.1979 to 16.7.1985, i.e., for a period of six years, they have taken fourteen years of time. From paragraph 3 of the counter it further appears that before the applicant was put off duty on 12.7.1985 it was found that he had temporarily misappropriated Rs.23,608/- and permanently misappropriated Rs.2,583/-. Therefore, it does appear from the averment of the respondents themselves that the quantum of permanent misappropriation and temporary misappropriation had been brought to light even before the applicant was put off duty. In the context of the above, it is inexplicable how the departmental authorities have taken fourteen years to issue the chargesheet moreso when the instructions of Director-General, Posts, provide that the proceedings against ED employees should be completed most expeditiously within 120 days. It is also to be noted that at the time when the applicant was put off duty in July 1985, no compensation by way of ex-gratia payment was payable. This came into force on the basis of a direction of the Hon'ble Supreme Court with effect from 13.1.1997. Thus, out of fourteen years of remaining under put-off duty, the applicant did not get any put-off duty payment for a period of twelve years. In view of this, we have no hesitation in holding that the departmental authorities have inordinately delayed the initiation of the proceeding without sufficient and justifiable reason. In view of this, the proceeding is liable to be quashed.

JSom.

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5. Of the three charges against the applicant, Articles II and III relate to temporary misappropriation of amounts accepted by way of deposits in the sense that these were accepted by the applicant on certain dates from the depositors and taken into Post Office account after delay. But no loss to the Department has occurred in the process. The respondents have stated in the counter that the applicant has committed permanent misappropriation of Rs.2583/-. In Article I of the charge, which deals with a case of permanent misappropriation, the amount is only Rs.1000/-. In other words, in respect of the balance alleged amount of permanent misappropriation of Rs.1583/- , no charge has been preferred against the applicant. The question arises as to who will pay this misappropriated amount of Rs.1000/- with which the applicant has been charged. In fitness of things, the Chief Post Master General (respondent no.1) should fix responsibility for delay in initiating the proceeding and recover the amount of Rs.1000/- from the person responsible.

J Som.

6. In the light of our above discussion, we quash the disciplinary proceedings and direct that the applicant should be reinstated in service within a period of thirty days from the date of receipt of copy of this order. As regards the first prayer for quashing the order (Annexure-1) placing the applicant under put-off duty, we note that serious charges have been preferred against the applicant and on the basis of these prima facie charges the departmental authorities were entitled to place him under put-off duty. We therefore decline to quash the put-off duty order at Annexure-1.

7. In the result, therefore, the Original Application is allowed in terms of the observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

February 6, 2001/AN/PS