

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.185 OF 2000
Cuttack this the 24th day of January/2001

Parsuram Senapati ... Applicant(s)

-VERSUS-

Union of India & Others ... 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 ?

Somnath Senapati
(SOMNATH SEN)
VICE-CHAIRMAN

24.1.2001

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 185 OF 2000
Cuttack this the 24th day of January/2001

CORAM:

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

...

Parsuram Senapati, aged about 29 years,
S/o. Late Brajabandhu Senapati of
Vill-Sudhasarangi, PO:Brahmanasadangi,
PS: Baliana, Dist-Khurda - at present
Lower Division Clerk (under suspension)
Office of Regional Provident Fund Commissioner
Sub-Regional Office, Rourkela, Dist-Sundargarh

Applicant

By the Advocates

Mr.H.S. Pati

-VERSUS-

1. Regional Provident Fund Commissioner,
Orissa, Bhubaneswar, Unit-9, Dist-Khurda
2. Regional Provident Fund Commissioner
Employees Provident Fund Organisation,
Sub-Regional Office, 2nd Floor, New Bus
Terminers, Gandhi Road, Rourkela-1
Dist - Sundargarh

Respondents

By the Advocates

Mr.Ashok Mohanty

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Parsuram Senapati, Lower Division Clerk, Office of the Regional Provident Fund Commissioner, Sub-regional Office, Rourkela has been placed under suspension by order dated 2.11.1998 w.e.f. 17.10.1998 after-noon (Annexure-1), because of his detention in custody in C.B.I. Case R.C. 15(A)/97 under Section 120-B/420/467/468/477/A I.P.C. and under Section 13(2) read with Section 13(i)(d) of the P.C.Act, 1908, for more than 48 hours from 27.10.1998 at 5.45 P.M. The F.I.R. was admittedly lodged ^{by} ~~with~~ Respondent No.1, i.e. Regional Provident Fund Commissioner, Orissa, Bhubaneswar.

2. While praying for quashing of this order of suspension and consequent reinstatement with backwages and for repayment of deductions made in the subsistence allowance with interest at

the rate of 18% p.a., the case of the applicant is that ^{though} in the F.I.R. his name ^{does} ~~did~~ not find place, yet cognizance was taken against him and he challenged this order of cognizance before the High Court of Orissa in Criminal Misc. Case 855/2000 and by order dated 23.2.2000, the High Court of Orissa stayed the further proceedings in the C.B.I. case pending before the Special Judge, C.B.I., Bhubaneswar, for a period of four weeks. According to applicant, this interim stay order of the High Court would imply that the Criminal Case against him was uncalled for and as such there was no necessity for his suspension. Since subsistence allowance is paid to an employee under suspension for his maintenance, no deduction should be made from that allowance.

2. The Department in their counter filed on 30.12.2000 take the stand that under the departmental rules an employee under arrest and detention for more than 48 hours in any case has to be suspended. Hence there was no illegality in passing the order of suspension. When the C.B.I. requested the Department to spare the applicant for interrogation in that CBI case (Annexure-R/1), the applicant was directed to proceed to Bhubaneswar to report to the inquiry. Applicant was arrested on 27.10.1998 and the fact of arrest was intimated to Respondent No.1, through a radio message by the CBI (Annexure-R/2). Thereafter the suspension order was issued. Though the applicant is entitled to 50% of pay as subsistence allowance, deductions as admissible under the rules are being made from such subsistence allowance, and no deduction, not permissible under the rules has been made. The Department also opposed the reinstatement of the applicant and pleaded that even the Department is at liberty to initiate

a departmental proceeding after the conclusion of the criminal case and during pendency of the criminal case the applicant has to continue under suspension.

3. No rejoinder has been filed.

4. We have heard Shri H.S.Pati, the learned counsel for the applicant and Shri Ashok Mohanty, the learned Special Counsel for the Respondents. Also perused the records.

5. From the side of the Department E.P.F. Staff (CCA) Rules, 1971, as amended upto December, 1993, was filed for our perusal and return.

6. There is no dispute that the applicant was arrested and remained in custody for 48 hours. Under Rule-10(2)(a) of C.C.S.(CCA) Rules, 1965, a Govt. servant shall be deemed to have been placed under suspension by an order w.e.f. date of his detention, if he is detained in the custody, whether on a criminal charge or otherwise for a period exceeding 48 hours. Identical provision has also been made under Rule-6(2)(a) of E.P.F.(CCA) Rules, 1971. Thus, there is no illegality in passing the order of suspension under Annexure-1 needing interference. This apart the prayer for quashing the suspension order is not maintainable under Section 20 of the Administrative Tribunals Act, 1985, since the pleadings do not reveal that the applicant had exhausted his alternative remedy of filing the departmental appeal before the appellate authority, as provided under Rule-19 (i) of the aforesaid Rules of 1971.

7. In regard to the deductions from subsistence allowance the positive case of the Department is that deductions as admissible under the rules are being made. It was submitted at the Bar that F.R. 53(5) deals with such recoveries, from

subistence allowance. Hence the 2nd prayer of the applicant for refund of deductions with interest also fails.

7. Now the only point for determination is whether the applicant can be reinstated by revocation of the order of suspension. In course of hearing the applicant submitted that the case in which the High Court of Orissa has passed the interim order of stay has since been disposed of against him. He also gave us to understand that in the criminal case, charge has been framed against him, but he challenged the framing of charge by filing another O.J.C. before the High Court.

Relevant facts relating to the criminal case are not before us in order to understand the gravity of the offence against the applicant. No disciplinary proceeding is also pending against the applicant. All that the Department plead that after the disposal of the criminal case, the disciplinary proceedings may be initiated. Pleadings are also silent that this suspension of the applicant is subject to time to time review by the Department. Besides constituting a great hardship to an employee, suspension unduly delayed involve payment of the subsistence allowance, without/employee performing any useful service to the Government. We, therefore, direct the Department to review the case of the Department and take a decision as to whether the applicant can be reinstated, by passing a reasoned order and communicate such reasoned order to the applicant within a period of two months from the date of receipt of copies of this order.

In the result O.A. is dismissed with the observation and direction made above, but without any order as to costs. EPF (CCA) Rules, 1971 be returned.

[Signature]
VICE-CHIEF
24.1.2001

(G. NARASIMHAM)
MEMBER (JUDICIAL)