

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 458 OF 2000
Cuttack, this the 31st day of August, 2001

Prema Narayan Dash 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)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31.8.2001

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

ORIGINAL APPLICATION NO. 458 OF 2000

Cuttack, this the 31st day of August, 2001

CORAM:

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

Prema Narayan Dash, aged about 41 years, son of Hari Adhikari, at present working as Jr.Accountant, Office of the Deputy Director, Accounts (Postal), Cuttack-753 005...

..... **Applicant**

Advocates for applicant - M/s D.K.Misra
S.C.Mohanty
R.K.Mahalik

Vrs.

1. Union of India, represented through the Director General Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.Khurda.
3. Dy.Director of Accounts (Postal), Cuttack-753005...

.... **Respondents**

Advocate for respondents - Mr.B.K.Nayak
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to regularise his period of suspension and to pay him the consequential service benefits after revising the scale of pay as per the Fifth Pay Commission report and has also asked for interest. The respondents have filed counter indicating that all amounts due to be paid to the applicant have already been paid. No rejoinder has been filed. For the purpose of considering this petition it is not necessary to go into too many facts of this case. We have heard Shri S.C.Mohanty, the learned counsel for the petitioner and Shri B.K.Nayak, the learned



S. Som

Additional Standing Counsel for the respondents.

2. The admitted position is that while the applicant was working as Junior Accountant under Deputy Director of Accounts (Postal), in order dated 5.10.1995 he was appointed as Caretaker on deputation basis for four years from 26.9.1995. In this order it was provided that as per existing provision deputation duty allowance at the rate of 5% of the basic pay is admissible. The applicant was placed under suspension on a dowry death case being instituted against him in which in judgment dated 1.2.2000 of the learned Additional Sessions Judge, Jajpur, he was acquitted. The applicant thereafter filed representation for reinstatement and for payment of all his dues. In order dated 13.4.2000 at Annexure-8 the suspension order was revoked.

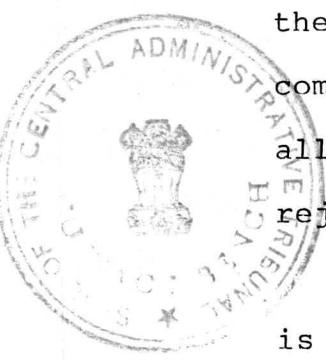
3. The respondents have stated that after the applicant was acquitted, on receipt of his representation for reinstatement, he was asked to indicate if against the judgment of the trial court acquitting him, any appeal has been filed. The applicant promptly replied indicating that he has no information if any appeal has been filed. They have further stated that during the period of suspension pay of the applicant had been revised according to the Fifth Pay Commission pay scale and his subsistence allowance was also revised accordingly. D.A., H.R.A., etc., were paid to him at the appropriate rates according to rules. It is further stated that in pursuance of the interim order dated 5.10.2000 of the Tribunal the period of suspensin was regularised in order dated 19.12.2000

(Annexure-R/1) and the period of suspension was treated as duty for all purposes excluding deputation duty allowance and transport allowance.

4. The learned counsel for the petitioner submitted that the applicant has received all payments in the month of January and February 2001, but he has not been paid the deputation duty allowance at the rate of 5% of his basic pay and transport allowance. Thus, the sole point for consideration is whether on the period of suspension of the applicant being regularised as duty, he is entitled to deputation duty allowance and transport allowance. So far as transport allowance is concerned, as the applicant was not required to attend office every day during the period of suspension, he is not entitled to transport allowance because transport allowance is given to the employees on certain conditions to facilitate their coming to office and back. The prayer for getting transport allowance is accordingly held to be without any merit and is rejected.

5. So far as deputation duty allowance is concerned, it is submitted by the learned Additional Standing Counsel for the respondents that during the period of suspension of the applicant, another person has worked as Caretaker and has presumably been paid deputation duty allowance. As the applicant has not worked as Caretaker he is not entitled to the same. We are unable to accept this contention on the following grounds. During the period of suspension a Government servant is entitled to subsistence allowance as laid down in FR 53(1)(ii)(a). Under this rule it is provided that subsistence allowance will be paid equal to leave salary which the Government servant would have

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drawn had he been on leave on half average pay. As the leave salary is based on last pay drawn and the last pay drawn is inclusive, in the case of the applicant, of the deputation duty allowance, had the applicant gone on leave from the post of Caretaker, his leave salary would have included deputation duty allowance. Therefore, his subsistence allowance would have included this element of deputation duty allowance. Moreover, for the purpose of payment of leave salary the pay is taken as defined in FR 9(21) and this includes deputation allowance, NPA and stagnation increment. This has been mentioned in page 93 of Swamy's Handbook (27th Edition). In view of the above, as the applicant would have been entitled to this element of deputation duty allowance even for the purpose of computing his subsistence allowance, on his suspension period being treated as duty, he will also be automatically entitled to this element of 5% deputation duty allowance. The prayer of the applicant for paying him this deputation duty allowance is accordingly allowed. This should be paid to him within a period of 90 days from the date of receipt of copy of this order.

6. As regards payment of interest, we find that the applicant has been acquitted in the order dated 1.2.2000. He represented on 4.4.2000 and the order of suspension was revoked on 13.4.2000. There is no delay involved in this. The respondents have pointed out that they asked the applicant to indicate if any appeal against the trial court's order has been filed. They also obtained a certified copy of the judgment and thereafter the order of regularisation was issued on 19.12.2000. In this order, his suspension order has been treated as duty without including the deputation duty allowance. For working out all this, the respondents no doubt have taken about 8 months which could

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have been finalised earlier. But in the circumstances of this case we do not think that delay in this case is of such magnitude as to grant payment of interest. The prayer for payment of interest is accordingly rejected.

7. In the result, therefore, the Original Application is partly allowed but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
31.8.2001
VICE-CHAIRMAN

AN/PS