

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Rejoinder not filed.
 Bench
 14/11

Rejoinder not filed.

Bench
 15/2/02

Rejoinder not filed.

Bench
 28/3/02

Rejoinder not filed.

Bench

15/5/02

AFR

Order dated 02.05.2002

On consent of the parties this matter is taken up for final disposal.

Heard Shri P.K.Padhi, Advocate for the Applicant and Shri A.K.Bose, Sr.Standing Counsel for the Respondents and perused the records.

Applicant, an E.D.Packer in the Postal Department, was placed under suspension/put off duty by order dated 23rd September, 1996 (and was relieved on 10.9.1996), apparently for the reason of a criminal case against him (following death of his wife) and he was reinstated in service by order dated 6.11.2000, w.e.f. 9.11.2000.

This reinstatement was following to his acquittal from the charges under Section 498-A/302/201 IPC. During the period of his suspension/put off duty, the applicant was paid nothing for his sustenance, for which he submitted representations dated 17.5.1995 (Annexure-2) and dated 6.1.2001 (Annexure-4). He also submitted another representation under Annexure-5 dated 1.2.2001. In the said premises the applicant approached this Tribunal in the present Original Application. After filing of the present Original Application, subsistence allowance/exgratia payments have been made to the applicant during May, 2001, for the period from 13.1.1997 to November, 2000, as disclosed under Annexure-R/2 to the counter. The applicant was entitled to get subsistence allowance for the entire period he was placed under suspension/put off duty for his sustenance. That having not been paid at the relevant time, there was gross violation of Article 21 of the Constitution of

J.S.

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India. It is stated by Shri A.K.Bose, learned Sr. Standing Counsel for the Respondents that provisions to make payment of subsistence allowance/ex gratia payments during the put off duty period for E.D. Agents of the Postal Department came into force w.e.f. 13.1.1997 and, therefore, payment of subsistence allowance/ex gratia payments have been made to the Applicant w.e.f. 13.1.1997.

In the absence of any provision for making payment of subsistence allowance (at a reduced rate) the Respondents were under payment of obligation to make full salary to the Applicant, but for the reason of the guidelines issued w.e.f 13.1.1997 they are making payment of a part of full wages/salaries as subsistence allowance/ex gratia payment. Therefore, there was no reason not to pay subsistence allowance/ex gratia payment for the period spent by the Applicant under suspension/put off duty prior to 13.1.1997.

AFR
In this context my attention has been invited to a decision of the Hon'ble Supreme Court, in the case of Union Of India vs. Santilal S. Vala and reported in 2002 AIR SCW 60, entitling an E.D. employee to 50% of wages during the period he was placed on 'put off duty'. In this view of the matter, I am of the opinion that if the Department will not make payment 50% wages/ as subsistence allowance, prior to ~~13.1.1997~~^{then}, they should pay full salary to the Applicant towards subsistence allowance.

In the present case the applicant, however, having been reinstated without any stigma, he

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is entitled to full wages for the entire period he spent under suspension/put off duty, as has been decided by the Hon'ble Supreme Court of India in the case of Union of India vs. K.V.Jamaki Raman reported in AIR 1991 SC 2010.

Copy of order off. 2.5.02 issued to the Counsel for both sides.

My
18/5/02 *S.O.*
18/5/02 *Padhi*
13.5.02

Copy of order off. 2.5.02 issued to all the deptt. by Regd./A.D post.

My
18/5/02 *S.O.*
18/5/02 *AFR*

In the said premises, having heard the learned counsels of both sides, I direct the Respondents to pay full salaries/wages to the Applicant for the entire period he spent under suspension/put off duty minus the payments already made to him as subsistence allowances, ex gratia payments w.e.f. 13.1.1997 to 9.11.2000. The arrears should be calculated and paid to the Applicant within a period of three months from the date of receipt of copies of this order.

The O.A. is allowed. No costs.

T. Anorajan Thang

MEMBER (JUDICIAL)
02.05.2002

LATER: Send copies of this order to Respondents at the cost of the Applicant. Shri Padhi undertakes to file the required postages, for transmission of copies of this order to Respondents also by 7.5.2002. Free copies of order be made available to both sides. *T. Anorajan Thang*
MEMBER (JUDICIAL)
02.05.2002