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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.253/2001

Cuttack, this the 28th day of May, 2004

S.C. Nanda

.....

Applicant

Vrs.

Union of India & Others

.....

Respondent

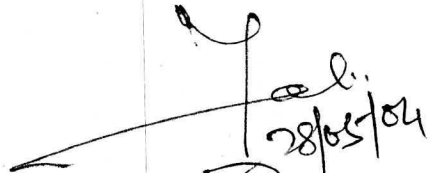
FOR INSTRUCTIONS

(1) Whether it be referred to the Respondents or not ?

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(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not?

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(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
&
HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Sri S.C. Nanda, aged about 36 years, Son of Raghunath Nanda, Village/Post-Kapileswar, Bhubaneswar-2, Dist-Khurda working as E.D. Mail Man, in Bhubaneswar RMS.

..... Applicant.

By the Advocate(s) Mr. K.C. Kanungo
-Vrs-

1. The Union of India represented by the Secretary-cum-D.G. Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist-Khurda-1
3. The Senior Superintendent of RMS, North Division, Cuttack.
4. The S.R.O. , North Division, Bhubaneswar RMS, Bhubaneswar.

.....Respondent(s)

By the advocate(s) Mr. J.K. Nayak

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN:

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This O.A. has been filed by Shri S.C. Nanda praying for quashing the date of effect of the modified Rule 9 of ED Conduct Rules, and for quashing the order in Annexure-5 treating the period of his put off duty as 'Non-duty' and further to direct the Respondents to pay him full allowances for the

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period of put off duty as he is entitled to it in view of the judgement of the Apex Court dated 10.07.95 in the Civil Appeal No. 54917 -27/90.

2. The facts of the case in narrow campus are that the applicant while working as E.D. Mail Man in Bhubaneswar RMS Division was put off duty with effect from 18.01.96 on the allegation of mis-conduct. On conclusion of the disciplinary proceedings framed against him, he was fully acquitted of the charges as a result of which he was re-instated by revoking the put off order with effect from 23.04.97 (Annexure-6). In the said revocation order it was also stated that the put off duty period will be treated as non-duty period. In result he was not paid any allowance for this period.

3. The Respondents have opposed the O.A by filing a detailed counter. They have contested the same on two grounds. Firstly, that the applicant having not made any representation against the order at Annexure-6 and thus having slept over it for more than four and half years his case is badly barred by limitation as provided under Section 21 of the Administrative Tribunals Act, 1985. They have assailed the M.A. filed by the applicant for condonation of delay as a fabricated story to be rejected off hand. Secondly, they have opposed it on the ground that though the disciplinary authority exonerated the applicant from the charges but he had decided, as stated at Annexure -6, that the put off duty period would be

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treated as non duty for the purpose of allowances and in the circumstances the question of payment of allowances does not arise at all.

4. We have heard the Ld. Counsel of both the parties and have perused the records placed before us. We have also perused the judgement of Apex Court passed in Civil Appeal No.54917-27/90, SLP No.4148/93.

5. Having regard to the facts and circumstances of the case we are not inclined to accept the objections raised by the Respondents regarding condonation of delay in filing this O.A. The objections raised by the Respondents are purely technical in nature and the question involved being one of payment of subsistence allowance, concerning livelihood of the applicant, the matter cannot be brushed aside on mere technicalities. We, therefore, condone the delay in this case looking at the economic and official status of the applicant, who is at the lowest rung of the Respondent Department, serving in the rural area.

6. With regard to the merit of the case we are not impressed with the arguments advanced before us by the Respondents in denying the benefit of put off duty allowance as well as wages on exoneration of the applicant. Here, we would like to traverse through the observations of the Apex Court in the Civil Appeal referred earlier. The relevant observation of the Apex Court with regard to the payment of full wages was as follows. We quote :-

12 " In the event of any of the Respondents being exonerated in the disciplinary proceedings the salary for the put off duty period can only be denied to him after affording him an opportunity and by giving concrete reason."

Pursuant to this direction, the Director General Post devised a scheme for payment of put off duty allowances and vide his order dated 13.01.97 made the following provisions. We quote:-

" Provided further that in the event of an ED Agent being exonerated he shall be paid full admissible allowances for the period of put off duty. In other cases, such allowances for the put off duty can only be denied to the ED Agents after affording him an opportunity and by giving cogent reasons". This is the proviso made under Rule 9 (3) of ED Conduct Rules.

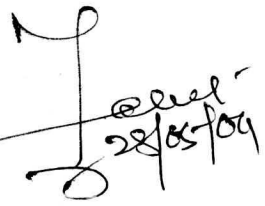
7. In view of the above mentioned provisions of Rule 9(3) of the ED Conduct Rules we are unable to understand the difficulty of the Respondents to pay full wages to the applicant for the put off duty period. In this O.A. the applicant has made two prayers, firstly, that he be paid put off duty allowances for the period he was kept away from duty i.e. from 18.01.96 to 23.04.97; and, secondly, full back wages for the period. The Respondents have now conceded in this counter that the amended rules having been given effect to from 13.01.97 put off duty allowance if payable will be paid to

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him from that day i.e from 13.01.97 to 23.04.97. They have, however, stated that nothing is payable for put off duty period because in the order passed by the disciplinary authority in Annexure-6 it is clearly mentioned with put off duty period will be taken as period of 'non duty'. We are unable to accept this argument of the Respondents and we find the order passed by the disciplinary authority at Annexure-6 untenable on two grounds. Firstly, that Annexure-6 dated 23 April 1997 was in fact an order reinstating the applicant to duty in which he had passed an order as to how to treat the put off duty period, whereas that order should have been passed by him while exonerating the applicant of all the charges in the disciplinary case. Further, we do not see any rationale in this order because when the applicant is exonerated of all charges how he could be treated not on duty. If for certain period he was not on duty (in this case from 18.01.96 to 23.04.97), that was on account of the order passed by the Respondent on 17.01.96 on certain basis which later on was found to be wrong. And for that wrong decision of the Respondent, he cannot be made to suffer. As per the rule governing the conditions of service of the Govt. employees when a disciplinary proceeding ends up in exoneration, the period spent on suspension is treated as duty because no blame is attributable to the individual and he is paid full wages. Any other order would surely be

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illogical and repugnant to law. We have, therefore, no hesitation in holding that the order passed by the disciplinary authority at Annexure-6 is bad in law and therefore be quashed. Further, as Rule 9(3) provides that on exoneration of an ED agent in a disciplinary proceeding he is entitled to full wages, we see no reason why the benefit of this rule will not be enjoyed by the applicant in this case. We, therefore, order that the applicant be paid back wages for the period he was put off duty. In result, this O.A. succeeds. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar