

DA 271/2001

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Dt. 17.10.2001

The learned counsel for the Respondents prays for time to file counter. The learned applicant's counsel is present and he has no objection. Heard both the counsels. Prayer allowed. Time granted till 9.11.2001 for counter.

AL 17/10/2001
REGISTRAR

Counter not
filed.

Sathur R.egistr. 8/11

9.11.2001

Call on 23.11.2001 for
Counter.

AL 9/11/2001
REGISTRAR

Counter not
filed.

Sathur R.egistr. 23/11/2001
23-11-2001.
Sh. B. Dask, Lt Asst file
one MA & PMS for 4 weeks time
to file counter. Heard. Time
granted as Last chance to file
counter by 12-12-2001.

AL 23/11/2001

08. 20.05.02.

Call this matter on 20.06.02.

AL
Member (J).

ORDER NO.09 DATE: 20.06.2002

Sri R. Prasad Rao, Ex-S.P.M. of Sunabeda Sub-Post Office was "removed from service" on 13.11.1995 by the orders of the Senior Superintendent of Post Offices Koraput Division (having headquarters at Jeypore) vide his Memo No.F/M-13-1(Sub)/1992 dated 13.11.1995; after finalisation of disciplinary proceeding under Rule-14 initiated (against said Sri Rao) on 23.09.1993. Under the said orders, Sri Rao was deemed to have placed under suspension during the period from 15.09.1994 to 12.11.1995. Appeal dated 12.12.1995 of said Sri Rao (against the said order of removal) was decided under Office Memo No. ST/6-125/1994 dated 07.02.1996 of the Director of Postal Services (Berhampur) upholding the punishment. The said Sri Rao, then filed an Original Application (No. 473 of 1996) under Section-19 of the Administrative Tribunal Act, 1985 challenging the order of removal and also the Appellate order. The said Original Application (No. 473 of 1996) was allowed on 15.09.1998 by quashing the impugned order of removal passed by the Senior Superintendent of Post Offices (Koraput), Jeypore and also the P.T.O.

RECORDED

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~~counter not
filed. Last chance
over~~

~~Regd~~
11/12

MA. allowed for
time to file
counter.

~~Regd~~
11/12

12-12-2001.

Ld ASC has filed one
petition praying for further 4
weeks time to file counter -
plea. Since last chance
allowed. Since last chance
is already availed by him,
no further chance can be granted.
Therefore the petition is rejected.

Put up before the Bench
for further order

REGISTRAR

~~counter not
filed~~

~~Regd
11/12~~

~~Regd
11/12~~

appellate order dated 07.02.1996 of the Director of Postal Services (Berhampur), by holding that the entire departmental proceeding was vitiated from the stage of enquiry. It was also decided by this Tribunal that the said Sri Rao is deemed to be continuing in service. Since the order of removal was quashed, this Tribunal also gave liberty to the Department to proceed, afresh, against said Sri Rao from the stage of enquiry and, in the event the department choose to proceed against said Sri Rao, then they should complete the departmental proceedings within a period of four months. Following to passing of the aforesaid judgment of this Tribunal, the authorities ought to have reinstated the present Applicant; but, instead of doing so, the present Respondents passed two separate orders, on 22nd October, 1998. The relevant portion of those two orders of 22.10.1998 are extracted below :-

Ist Order

" In pursuance to the directions of the Hon'ble C.A.T., Cuttack Bench, the undersigned decides to proceed against Shri R. Prasad Rao, Ex-SPM, Sunabeda SO afresh under Rule-14 of CCS(CC&A) Rules, 1965 from the stage of "Perusal of records" with the same I.O. and P.O. appointed by the Sr. Supdt. of Post Offices, Koraput Division, Jeypore (K.)."

2nd Order

" Now, therefore, the undersigned in exercise of the Powers conferred by Sub-rule(1) of Rule-10 of the CCS(CC&A) Rules, 1965 hereby orders that Shri R. Prasad Rao, Ex-SPM, Sunabeda SO is deemed to have been placed under suspension from 13.11.95 until further orders.

P.T.O.

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Free copy of
the orders Nos-
dt. 8.1.02 given
to the both
counsel.

Sathu
16/11/02

R
16/1
S.O

~~Counter COPY
not served.~~

Sathu
Bench

Counter file
For both ER
orders.

Sathu
16/2
Bench

for admission
Sathu
16/4
Bench

for Administration

Sathu
17/5
Bench

It is further ordered that during the period that this order shall remain inforce the Headquarters of Shri R.Prasad Rao, Ex-SPM, Sunabeda SO should be Sunabeda and the said R.Prasad Rao shall not leave the Headquarters without obtaining the previous permission of the undersigned.**

The aforesaid two orders were passed by Director of Postal Services, Berhampur.

(2) While setting aside the removal order, this Tribunal clearly found malafides of the authorities of Sri Rao. While starting the proceeding, *de novo*, the authorities appointed the same individuals, who conducted the enquiries previously, as I.O. and P.O. in the fresh enquiry.

(3) Being aggrieved by the observations of this Tribunal (liberty to the department to proceed afresh against Sri Rao) made in Original Application No.473 of 1996, the Applicants preferred a writ application (OJC No.15655 of 1998) in the Hon'ble High Court of Orissa and obtained interim orders, from Hon'ble High Court on 23.11.1998 in respect of both the orders passed on 22nd October, 1998 as extracted above.

(4) It is the present case of the Applicant that despite the above said interim order dated 23.11.1998, he was being paid Subsistence allowances till July, 2000; whereafter Subsistence allowances are also not being paid to him. In the said premises the Applicant has filed the present Original Application

P.T.O.

YB

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1. Rejoinder filed.
Copy served.
2. M.A. 479/02 filed
by counsel for petition
for amendment.
Copy served.
For admission.

19.6.02

Bench.

Postal requisition
filed.

Four copies of
order dt. 20.6.02
may be handed
over to counsel
for Lok. Dash

Copies of said
order sent to
all resp'ts.

*Arvind
SD*

No. 271 of 2001. A counter has been filed in the present case by the Department by contesting the grievances of the Applicant.

(5) Heard Mr. P.K. Padhi, learned Counsel for the Applicant and Mr. Bimbishar Dash, learned Addl. Standing Counsel for the Union of India, appearing for the Respondents.

(6) The Advocate for the Applicant stated that the suspension order passed by the Department on 22nd October, 1998 having been stayed by the Hon'ble High Court of Orissa and this Tribunal (in the earlier round of litigation/Original Application No. 473 of 1996) having directed that Sri Rao is deemed to be continuing in services right from 13.11.1995; the Applicant is entitled to full salary, if not from any earlier date, atleast from 13.11.1995. To this Mr. B. Dash, learned Addl. Standing Counsel replied that, in the peculiar circumstances of this case, the Respondent - department is at a fix and, therefore, they are not in a position to even pay the subsistence allowances to the Applicant; especially because the suspension order has been stayed by the Hon'ble Court.

(7) Hon'ble High Court in OJC No. 15655 of 1998 has not stayed the judgment of this Tribunal rendered in Original Application No. 473 of 1996. However, Hon'ble High Court has stayed (i) the suspension order and (ii) the directions to start disciplinary proceedings de novo. In the said circumstances, the Respondents-department ought to have allowed the Applicant to resume duty and

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to continue in service, as per the direction dated 15.09.1998 of this Tribunal rendered in Original Application No.473/1996. The Department, without taking steps to implement the orders of this Tribunal and that of the Hon'ble High Court ought not have kept the Applicant in a hanging position. The action of the department in not making payment of susistence allowances/full salary to the Applicant are continuing to violate Article-21 of constitution of India (so far it touches the Applicant and his family) and, therefore, the department/Respondents are hereby directed to pay full salary to the Applicant and, in all fairness, to reinstate him in service. The department/Respondents should implement this order (pertaining to payment of full salary and reinstatement of the Applicant) within a period of two months from the date of receipt of a copy of this order.

(8) It is made clear, at this stage, that in the event the department succeeds in the High Court (in OJC No.15655/1998) they shall remain free to proceed against the Applicant in the departmental proceeding in question.

(9) With the above observations and directions, this Original Application is disposed of.

(10) Send copies of this order to the Respondents, at the cost of the Applicant.

Mr. P.K.Padhi, learned Counsel for the Applicant, undertakes to file required postages for onward transmission of copies of this order to the

P.T.O.

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Respondents. On furnishing required postages, as undertaken, a free copy of this order be given to the Applicant/Advocate for the Applicant. A free copy of this order be also given to the learned Additional Standing Counsel.

Feeble
20/06/2002
MEMBER (JUDICIAL)