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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 90 OF 2003  
Cuttack this the 7th day of January/2005

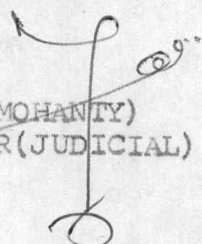
Laxmidhar Sahoo ... Applicant(s)


- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 90 OF 2003  
Cuttack this the 7<sup>th</sup> day of January/2005

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)  
...

Sri Laxmidhar Sahoo, 52 years,  
S/o. late Brajabandhu Sahoo  
Vill-Mouzbeg, PO-Balanga, Dist-Puri

...

Applicant

By the Advocates

M/s. P.K. Padhi  
M.P. J. Roy  
U.R. Bastia

- VERSUS -

1. Union of India represented by it's Chief  
Post Master General (Orissa Circle),  
At/PO-Bhubaneswar, Dist-Khurda-751001
2. Director of Postal Services (Hqrs.)  
O/o. Chief Post Master General (Orissa)  
At/PO-Bhubaneswar, Dist-Khurda-751001
3. Sr. Superintendent of Post Offices,  
Puri Division, At/PO/Dist-Puri-752001

...

Respondents

By the Advocates

Mr. B. Dash, A.S.C.

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Shri Laxmidhar Sahoo (applicant)

Ex-Postman, Puri Head Office has filed this O.A. seeking  
the following reliefs :

"...to quash Annexure-9 and direct the  
Respondents more particularly to Respondent  
No.3 not to take any action till finalisa-  
tion of the appeal before the learned  
appellate Court, i.e., learned Sessions  
Judge, Puri in CrI. Appeal No. 1 of 1998; and  
further to direct to pay subsistence  
allowance @ of 75% w.e.f. 1.1.99, i.e., the  
date from which the applicant was dismissed  
from service, which was latter set aside  
by Res.1 vide his order dtd.29th Oct., 2001".

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2. The facts of the case in a nut shell are that while working as Postman, Puri H.O. during the period from 24.5.1980 to 26.11.1986, it was alleged that the applicant had misappropriated the amount of certain money orders payable to different payees by adopting fraudulent means and by forging the signatures of the payees on the vouchers. The Department had filed an FIR which was the subject matter in G.R. Case No. 1564/89 and ended in conviction of the applicant under Section 409 IPC. During the pendency of the Court case, the Respondents-Department initiated action under the departmental rules against the applicant, which the applicant had challenged in O.A. No. 274/90 before this Tribunal and the Tribunal by its order dated 16.4.1990 stayed the departmental proceedings. Against the order of conviction which was passed on 31.1.1998, the applicant preferred an appeal in the Court of Sessions Judge, Puri and obtained a stay on the punishment order passed by the Trial Court on 5.2.1992. During this period the Respondents-Department invoked the provisions of Rule-19(1) of CCS(CCA) Rules, 1965 and observing the procedure laid down therein, the disciplinary authority passed the final order on 31.12.1998 imposing punishment of dismissal of the applicant from service. Against this order, the applicant preferred an appeal, as a result of which the appellate authority quashed the order of punishment with direction to start de novo proceedings from the state of issuing notice for personal hearing in the form of a skeleton inquiry

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vide order dated 29.10.2001.

3. In this O.A. the plea of the applicant is that as the appellate authority had passed an order that with the revocation of the order of dismissal, the applicant should be deemed to be under suspension from the date when the order dismissing him from service was issued, he was entitled to subsistence allowance from 31.12.1998 to 29.10.2001. His grievance is that the Respondents have paid him only 50% as subsistence allowance and had never reviewed the allowance as required under Rule-53(i)(ii)(a)(i) of F.R.

4. The Respondents, by filing a detailed counter have disclosed that the applicant was paid subsistence allowance at the rate of 50% and the same could not be enhanced as he had not cooperated with the process of inquiry. Referring to the rule position as given under F.R. as referred to above, they have submitted that under the rules, the competent authority can increase the subsistence allowance by 50% if the prolongation of suspension period is attributable to the Government. But in the instant case, the suspension period had to continue as the applicant stayed away from the inquiry although he was given notices to attend the inquiry first on 21.11.2001, followed by notices dated 28.11.2001, 19.12.2001, 16.1.2002, 25.1.2002, 8.2.2002, 11.3.2002, 26.1.2002, 13.5.2002 and 30.7.2002, but in none of those occasions he did turn up. They have, therefore, submitted that as the applicant had deliberately caused delay in the inquiry he is not entitled to the benefit as envisaged under FR 53 (as referred to above).

5. Regarding his plea that the impugned order at Annexure-9 should be kept in abeyance till the finalization of appeal pending before the Sessions Judge, the Respondents have contended that the disciplinary authority is empowered under the CCS(CCA) Rules to take action when a Govt. servant is convicted under the criminal charge and that such an action is not bar even if conviction has been stayed by the appellate Court.

6. Applicant has filed no rejoinder by refuting the stand taken by the Respondents as above and therefore, the said averments made by the Respondents-Department stand uncontested.

7. Having regard to the facts of the case as enumerated above, we find that the plea of the applicant that he is entitled to enhancement of subsistence allowance with effect from 1.1.1999 does not merit consideration as the Respondents have been able to prove beyond doubt that the delay in the disciplinary proceeding against the applicant was caused by the reason that he did not cooperate with the inquiry. With regard to his prayer for quashing the Annexure-9, we are of the view that as the applicant has not been able to rebut the stand taken by the Respondents that Rule-19(1) of CCS(CCA) Rules, 1975 empowers the disciplinary authority to take action against the delinquent official even when his conviction under criminal charge has been stayed by the appellate Court, no interference by the Tribunal is warranted.

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6. Having regard to what has been discussed above,  
we see no merit in this O.A. which is accordingly dismissed,  
leaving the parties to bear their own costs.

*M.R. Mohanty*  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*B.N. Som*  
(B.N. SOM)  
VICE-CHAIRMAN

BJY