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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 188 OF 2002
Cuttack, this the 2nd day of March 2005

BISHNU MOHAN PANDA.

....

APPLICANT.

-Versus-

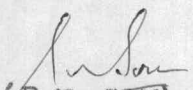
UNION OF India & Ors.

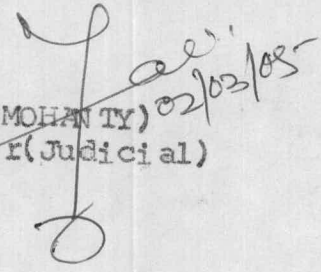
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RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(B.N. SOM)
Vice-Chairman


(M. R. MOHANTY) 02/03/05
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO. 188 OF 2002
Cuttack, this the 2nd day of March, 2005

C O R A M:

THE HONOURABLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.)

....

Shri Bishnu Mohan Panda,
GDSBPM, At/Po/Mouda,
Via-Madhab Nagar,
Dist. Bhadrak-756 181.

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Applicant.

By legal practitioner: M/s. Sanjib Mohanty,
P.K. Sahu,
S. Biswal,
Advocates.

-Versus-

1. Union of India represented through
its Secretary, Department of Post,
At/Po/Ps: Dak Bhawan, New Delhi-1.
2. Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Superintendent of Post Offices,
Bhadrak Division, Bhadrak,
PIN-756 100.
4. Assistant Superintendent of Post Offices (I/C),
Bhadrak Central Sub Division, Bhadrak.

... Respondents.

By legal practitioner: Mr. A.K. Bose, Sr. Standing Counsel.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

The grievance of the Applicant is as against the "put-off duty" order (under Annexure-1 dated 20.02.2002) that was passed by the Assistant Superintendent of Post Offices (incharge) of Bhadrak Central Sub Division. It was ordered not to pay anything as subsistence allowances during the period of his "put-off duty". This 'put-off duty' order was passed; when the Applicant was continuing as GDSBPM of Mouda Branch Post Office in account with Madhabanagar Sub Post Office.

2. Respondents have filed a counter interalia elaborating the reasons of putting the Applicant under off duty. It has mainly been disclosed by the Respondents in their counter, that on receipt of allegations pertaining to manipulation of Pass Book (by the Applicant, while working as GDSBPM of Mouda Branch Post Office) the matter was enquired into and that as it was, prima facie, found that the Applicant had misappropriated a huge amount of money, it was felt necessary to draw a disciplinary proceedings against him and that, for the sake of free and fair enquiry, the Applicant was immediately placed under "off duty" by the Assistant Supdt. of Post Offices

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(under Annexure-1 dated 20-02-2002) and that, subsequently, the said action was ratified by the Appointing Authority (i.e. Superintendent of Post Offices of Bhadrak Postal Division) and that the Applicant, instead of receiving the order of suspension, manhandled the Authority and proceeded to remain absent (by submitting a leave application) unauthorisedly from 20-02-2002 to 20-06-2002 (by handing over the charge of the post office to his son) without obtaining prior approval from the competent authority. It is the case of the Respondents, as disclosed in the counter that on the next day (i.e. on 21-02-2002) the ASPO, in charge of Bhadrak Central Sub Division (accompanied with ASPOs (OD) and attached O/S mails) proceeded to Mouda Branch Post Office and found that the GDSBPM (Applicant) has absconded from his house. However, the substitute GDSBPM (the son of the Applicant) handed over the charge of the Post Office to the attached overseer of Bhadrak Central Sub Division on 21-02-2002. As the Applicant has been absconding/ remaining absent unauthorisedly, it was ordered that the Applicant is not entitled to any allowances (as per Rule 12(3)(ii) note below) and, therefore, it has been prayed for by the Respondents that the Original Application, being devoid of any merit, is to be dismissed.



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3. Learned Counsel for the Applicant has also filed a rejoinder.

4. Heard learned Counsel for the parties and perused the materials placed on record.

5. ~~It~~ course of hearing, it has been emphatically submitted by the learned counsel for the Applicant that the Applicant has not been absconded or remained absent unauthorisedly - rather he applied for leave by providing a substitute as per the Rules. Further, it has been argued that provision has been made for payment of allowances during put off duty period for sustenance of the GDS and as per the various judicial pronouncements (of the Hon'ble Apex Court, Hon'ble High Court and this Tribunal) a suspended/put off duty employee is entitled to get the subsistence allowances for his sustenance and that nonpayment of the put off duty allowance (as has been ordered under Annexure-1) is definitely offending to the ^{very} verify aim and object of the said rules/Article 21 of the Constitution of India and thus, the impugned order of put off duty (with a condition not to pay any thing for sustenance) under Annexure-1 is liable to be quashed. It has further been argued on behalf of the Applicant that since the ASPQ is not the appointing

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authority, he had no authority to place the Applicant under suspension and that any authority, subordinate to the Appointing Authority, if passes the order of suspension/put off duty; the same being a nullity is liable to be quashed. Learned Counsel appearing for the Respondents, on the other hand, has submitted that under Rule-12 of GDS (Conduct and Employment) Rules, any authority subordinate to "Appointing Authority" has the power to place a Sevak under put off duty; provided that the same has to be ratified by the Appointing Authority within a period of fifteen days and since, in this case, the put off duty of the Applicant has been approved by the Appointing Authority within the stipulated time period, the same cannot be said to be illegal. With regard to nonpayment of Subsistence /put off duty allowances, it has been pointed out that since the Applicant absconded/ remained absent unauthorisedly, it was rightly ordered (by the authority competent) that the Applicant to be not entitled to any allowance during his period of put off duty. Hence it was emphatically submitted by the learned counsel for the Respondents that interference of this Tribunal into the order of suspension/put off duty under Annexure-1 to be unwarranted.

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6. We have given our anxious thought to the issues raised by the respective parties with reference to the materials placed on record and the GDS (Conduct and Employment) Rules. Note-2 of Rule 12(3)(ii) of GDS (C&E) Rules provides as under:-

"provided that a Sevak who has been absconding or remains absent unauthorisedly and is subsequently put-off duty shall not be entitled to any compensation as ex-gratia payment".

Reading the sub-clause to Rule-12, it prima facie shows that if a GDS is placed under off duty (on the ground of his absconding or remaining absent unauthorisedly) then he is not entitled to any put off duty allowances. In other words, after finding that the Sevak is absconding or remaining absent unauthorisedly, he is not entitled to put off duty allowance. But here, in the instant case, the Applicant was placed under put off duty (on 20-02-2002) from which date he applied for leave. There was no material as on the date of issuance of the order of suspension/put off duty to show that the Applicant remained absent unauthorisedly from duty. Therefore, putting the ^{in the impugned order} clause "that the Sevak is not entitled to put-off duty allowances" is not as per the rules quoted

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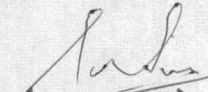
above. Apart from the above, put off duty allowance is provided to a Sevak during the put off duty period for his/her sustenance. The logic behind making such rule is that a man should not be punished before he is held guilty. Master and servant relationship does not cease to operate the moment a Sevak is placed under off duty. It still exists till it is terminated by specific order as per the Rules/laws. Therefore, the clause put in the order under Annexure-1 dated 20.02.2002 that "it is further ordered that Shri Bishnu Mohan Panda shall not be entitled to any allowances during the period of his put off duty" is against the constitutional mandate as provided under Article 21 of the Constitution/ spirit of the Rules. Hence, the said clause in Annexure-1 dated 20.02.2002 is hereby quashed. The Applicant is entitled to put off duty allowance, as per the Rules, as long as he is under put off duty and had not been absconding during any period of put off duty. We are not, therefore, inclined to quash the entire order of put off duty under Annexure-1 dated 20.02.2002, but it is hereby ordered that the Respondents should take up and conclude the disciplinary proceedings, if any that was initiated (or to be initiated) against the Applicant as expeditiously as possible and that too, preferably within a period of ninety days from the date of receipt of a copy of this order.

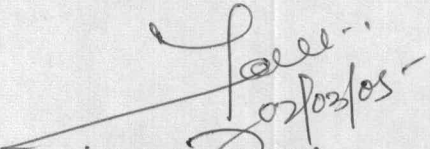


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7. In the result, this O.A. is allowed in
part. No costs.


(B.N. SOM)
Vice-Chairman


(M. R. MOHANTY)
Member (Judicial)