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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 682 OF 2005
CUTTACK, THIS THE 30th DAY OF January, 2009


Pradipta Kumar Mohanty Applicant


Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(K.THANKAPPAN)
MEMBER (JUDL.)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

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CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 682 OF 2005
CUTTACK, THIS THE ~~30th~~ DAY OF January, 2009

CORAM :

HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

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Pradipta Kumar Mohanty, aged about 57 years, S/o Late Chatrubhuja Mohanty, Sub-Divisional Engineer, Telecom, Microwave Project, Bhubneswar.

.....Applicant

Advocate(s) for the Applicant- M/s. G.Rath, S.Mishra, T.K.Praharaj,
S.Rath, S.N.Mishra and
Mr.Susant K. Das.

VERSUS

1. Union of India represented by The Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi-110001.
2. Member (services), Department of Telecommunications, West Block, No.1, Wing N.2, Ground Floor, R.K.Puram, New Delhi-110066.
3. Chief General Manager, Eastern Telecom Project, Bharat Sanchar Nigam Ltd, Kolkata-700027.
4. The Dy. General Manager, Telecom Microwave Project Plot No.82, Sahid Nagar, Bhubaneswar-751007.

..... Respondents

Advocates for the Respondents – Mr. S.B.Jena.

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ORDERHON'BLE MR.C.R.MOHAPATRA, MEMBER(A)

The applicant, while working as Sub-Divisional Engineer in the office of D.E. Telecom, Microwave Project, Bhubaneswar was arrested on 09.09.1999 in a CBI case pertaining to possession of disproportionate assets. Since, he remained in the judicial custody for more than 48 hours, he was placed under suspension. Subsequently, he was released on bail on 22.09.1999 in terms of the order of Hon'ble High Court of Orissa dated 20.09.1999. The suspension was revoked on 18.09.2003 and the applicant resumed his duty on 27.11.2003. The applicant having made a representation on 30.10.2003 for treating the period of suspension as duty and as well as for grant of increment vide Annexure-A/6 and A/7 and having received no order in this regard has approached this Tribunal in the present O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

" 8.(A) to direct the respondents for treating the period of suspension from 9.12.1999 to 30.10.2003 as duty and

(B) to direct the respondents to allow the applicant to draw increments in the scale of pay of his grade i.e. SDE during 1999 to 2003 and

(C)

(D)....."



2. The case of the applicant is that his period of suspension has been unreasonably long and without justification particularly when his case was not reviewed for keeping him under suspension for the period 9.9.1999 to 30.10.2003. Due to the continuance of the applicant under suspension, the applicant had earlier approached this Tribunal in O.A. 609/01, which was disposed of by this Tribunal on 30.09.2003 with the following orders:

“ ...we are of the view that there has been delay in reviewing the suspension of the applicant (and as a result thereof, he is being paid subsistence allowances; for no useful purpose of the Government) and accordingly, we hereby direct the Respondents Department to review the suspension of the applicant in the light of our findings to the issues raised in para-5 above and pass appropriate orders within a period of one month from the date of receipt of a copy of this order, failing which the order of suspension of the applicant shall stand revoked; warranting reinstatement of the Applicant.”

3. Relying on the observations made by this Tribunal in the above O.A., the applicant contends that an order should have been passed under FR 54(3) for payment of full pay and allowance for the period from 19.12.1999 to 30.10.2003 and the period from 9.9.1999 to 8.12.1999 should have been ordered to be regularized after conclusion of the criminal case. In regard to grant of annual increment during 1999 to 2003, he has cited a decision of the Hon'ble Punjab & Haryana High Court in the case of Ratan Lal vs State of Punjab.

4. The contention of the Respondents in the counter is that the applicant, who is an employee of the BSNL is not amenable to the jurisdiction of the Central Administrative Tribunal and hence the case is not maintainable. The further contention in the counter filed by the Respondents is that the case of the applicant was reviewed by the competent authority timely and since a criminal case was pending under investigation by the CBI, it was decided not to revoke his suspension at that stage. The applicant was detained in CBI for a period exceeding 48 hours for serious charge of corruption and moral turpitude i.e. acquiring huge assets which was found to be disproportionate to his known sources of income. The investigation of CBI was completed during 2002 and since the cause of his suspension i.e. acquiring huge assets by illegal means remained unchanged till his acquittal by CBI Court, his suspension was not revoked, and on receipt of investigation report of CBI, the sanction for prosecution of the applicant was accorded under Section 19 of the PC Act in October, 2002. The Respondents have stated that the suspension was again reviewed in June, 2003 and after obtaining CBI's comments regarding revocation of suspension of the applicant, suspension was revoked vide order dated 18.09.2003. It is further stated by the Respondents that decision regarding regularization of his suspension period or otherwise can be taken only on the outcome of two criminal cases pending trial against him in the Court of Law. In support of their



action, the Respondents have pointed out the instructions of the DoPT and CVC guidelines, which stipulate that revocation of suspension of officers facing serious charges of corruption should not be done in a routine manner. Respondents have further submitted in para 10 of their counter that a decision on the treatment of his suspension period and release of his increments will be taken only on conclusion of criminal case pending trial against him and depending on its outcome (Annexure-R/5 refers in this regard).

5. We have heard the Ld. Counsel for either side and also perused the materials placed on record. During hearing, Ld. Counsel for both parties stuck to their respective stand taken in the O.A. and the counter respectively.

6. Regarding the issue of jurisdiction of this Tribunal, this matter is no longer relevant as the BSNL has also become amenable to the jurisdiction of this Tribunal.

7. The question, which is to be decided is whether, the applicant is entitled to full pay and allowance during the period of suspension and whether the said period needs to be treated as duty and if the period is treated as duty then the same will be reckoned for the purpose of drawal of annual increments during 1999 to 2003. In this regard, the relevant portion of FR 54-B(3) is extracted as under:

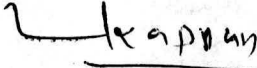
“54-B(3) Where the authority competent to order reinstatement is of the opinion that the


suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule(8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

8. It reveals from the record and also from the counter that the case of the applicant has not been considered in terms of FR 54-B(3) regarding the treatment of period of suspension and the applicant has retired in the meanwhile on attaining the age of superannuation. This mandatory provision ought to have been followed by the Respondents. It was obligatory on the part of Respondents to have issued an order regarding the period of suspension as soon as the suspension was revoked. In the light of the discussions, it will be in the fitness of things that the Respondents should consider the case of the applicant regarding the treatment of the period of suspension in terms of provisions of FR 54-B(3). We direct the Respondents to do the same by passing a reasoned order within a period of 30 days from the date of receipt of a copy of this order.

9. With the above observation and direction, the O.A. is disposed of. Parties to bear their own costs.


(K. THANKAPPAN)
MEMBER (JUDL.)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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