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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.47 of 2006
Cuttack, this the 06th day of April, 2009

Madan Mohan Samal Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.47 of 2006
Cuttack, this the 06th day of April, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D

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

Madan Mohan Samal, aged about 55 years, Son of late
Manibhadra Samal, At/Po.Ratalanga, Via-Binjharpur, PS-
Binjharpur, Dist. Jajpur, 755004.

.....Applicant

By Advocate : Mr.P.K.Padhi

- Versus -

1. Union of India represented through its Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General (Orissa Circle), At/Po.Bhubaneswar, Dist. Khurda 751 001.
3. Director of Postal Services (Hqrs.), O/O the Chief Postmaster General, Orissa, At/Po.Bhubaneswar, Dist. Khurda, 751 001.
4. Superintendent of Post Offices, Cuttack North Divison, At-A.K.Parija Marg, Po.Cuttack GPO, Dist. Cuttack 752 001.

....Respondents

By Advocate - Mr.U.B.Mohapatra

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

Applicant while working as EDBPM of Ratlang BO was placed under off duty by the ASPO, I/C, Jajpur with effect from 08.09.1983. As provided under Rule 9(2) of P&T ED Agents (Conduct and Service) Rules, 1964, his order of off duty was

subsequently ratified by the Superintendent of Post Offices, Cuttack North Division, Cuttack vide order dated 12.09.1983. On the basis of the FIR lodged, GR Case No.135/84 was instituted against the applicant in the Learned SDJM, Jajpur so also in departmental proceedings charge sheet was issued to him vide memorandum dated 11.5.85. Vide order dated 12.06.1992, the Applicant was acquitted in the GR Case instituted against him. Thereafter, by filing Original Application No. 220 of 1993 the Applicant sought quashing of the disciplinary proceedings initiated against him as also sought direction to the Respondents to reinstate him into service with back wages and salary from the date of completion of 120 days of his put off duty. In order dated 19th August, 1999, this Tribunal disposed of the aforesaid Original Application with direction to complete the proceedings initiated against the applicant within a period of sixty days and directed payment of put off duty allowance till it is in force. Subject to the out come of the departmental proceedings, vide order dated 31.1.2000, the applicant was reinstated in service. In another proceedings instituted against him vide order dated 25.11.2002 he was imposed with the punishment of removal from service. Consequently, vide order dated 18th August, 2003, the proceedings initiated against the applicant vide memorandum

dated 11.5.1984 were dropped. By submitting representation he prayed for payment of duty allowance for the period from 8.9.83 to 25.4.2000. This was rejected by the Superintendent of Post Offices, Cuttack North Division, Cuttack vide letter dated 29.6.2001 against which he made appeal vide Annexure-9 series. As no decision was taken on his said appeal nor he has been paid his duty pay, he has approached this Tribunal in the present Original Application seeking the following reliefs:

“..to give a direction to the Respondents to regularize the put off duty period i.e. from 8.9.83 to 26.04.2000 for all purposes and further be pleased to direct to pay the back wages for the entire period (minus the ex gratia from 13.1.1997 to 25.4.2000”.

2. While the factual aspects noted above are not in dispute in the counter filed by the Respondents, it has been averred by them that the Applicant submitted representation for regularization of his put off duty period and payment of full back wages. The said representation was submitted by him to the Office of the Chief Postmaster General, Orissa for consideration. While the case of applicant was under consideration he approached this Tribunal in the present Original Application and as such no decision was taken on the representation of applicant by the competent authority which is still pending for disposal.

3. As regards the merit of the matter it has been pointed out that while the charges framed under memorandum dated 11.5.1984 were under enquiry/investigation, in another proceedings, the applicant having been found guilty was imposed with the punishment of removal and, as such, the charges levelled vide memorandum dated 11.5.1984 were dropped; which cannot be treated as full exoneration of the applicant. As such, he is not entitled to anything other than the ex gratia already paid to him.

4. During hearing it has been canvassed by the Learned Counsel for the applicant that the allegations levelled against the applicant vide memorandum dated 11.5.1984 were the subject matter of consideration in the GR case No. No.135/84 instituted in the Learned SDJM Court, Jajpur in which the Applicant was acquitted. Thereafter, in compliance of the order of this Tribunal in OA No. 220/1993 the applicant was paid ex gratia during the put off duty period and subsequently he was reinstated pending final decision on the disciplinary proceedings initiated against him. The said proceedings having been dropped, the put off duty period from 8.9.1983 to 25.4.2000 is treated to be illegal and unjustified and in the said circumstances, the Applicant is entitled to full wages. His dismissal in another proceeding has nothing to do in regard to payment of back wages during the put off duty period and,

therefore, though he is entitled to the same under law has not been paid by the Respondents nor any decision has been taken on his pending representation. This was opposed by the Learned Counsel for the Respondents by stating that the proceedings were dropped for the time being following his removal from service in another proceedings. For all intents and purpose this cannot be regarded as clear exoneration from charges. As such, the Applicant is not entitled to the relief claimed by him in this OA.

5. After considering various aspects of the matter, we are of the opinion that while judicial interference in the matters as in the present case is limited to the extent of infraction of any of the provisions of the Rules or the right enshrined in the constitution of India, the Authorities have been vested with the power to grant discretionary relief in order to remedy out the hardship caused to an employee. It is the case of the Respondents that due to filing of the present OA, the Respondents are yet to take any decision on the representation of the Applicant. In view of the above, without expressing any opinion on the merit of the matter, this Original Application is disposed of with direction to the Respondents to consider and take a view on the entitlement of the differential back wages of the applicant during which he was under off duty, within a period of 45(forty five) days from the date of receipt of a copy of this

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order. The Applicant is directed to present the copy of the order to the Respondent No.2 within a period of seven days hence. No costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

Knm,ps