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O.A.No. 509 of 2007

Chapadhari Bag Applicant
Versus
Union of India & Others Respondents
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ORDER DATED: 24-01-2008.

Mr. J. Sengupta, Learned Counsel appears for the Applicant and submits that he has received the copy of the counter filed by the Respondents.

2. He submits that the case of the Applicant is that he was placed under suspension with effect from 21.07.2006 and the order of suspension was revoked on 31.07.2006. Applicant was not taken on duty. As it appears from Annexure-A/5 he was asked to obtain police clearance before reporting for duty. An endorsement to this effect was made by some one on behalf of Section Engineer (Signal), E.Co. Railways, Titilagarh. Such a condition was, however, not made in the order of revocation. Applicant, due to his detention in police custody beyond 48 hours was expecting another order of deemed suspension. Disciplinary proceedings have been initiated against him vide charge sheet (Annexure-A/3) and the proceedings are yet to be concluded. Applicant submits that he has not been getting Subsistence Allowance for the period of suspension and he considers himself to be under



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suspension till date as he was not allowed to join his duty immediately after revocation of the order of suspension.

3. In the present Original Application, the Applicant has sought for the following relief:

- “(i) To quash the proceedings as well as the charge dated 02.08.2006 (Annexure-3) and the letter dated 24.11.2007 ~~(i)~~ (Annexure-A/12) along with the enquiry report;
- (ii) To pay the subsistence allowance as due and omissible (sic) to the Applicant for the period he was under suspension (i.e. 21.07.2006 till date)”.

By way of interim order he has sought for the following:

- “(i) Pending finalization of the case, the Hon’ble Tribunal may be pleased to stay the further proceedings initiated against the applicant vide charges dated 02.08.2006 (Annexure-A/3) till conclusion of the criminal proceedings pending before the court of Ld SDJM, Rayagada.”

4. Mr. S.K.Ojha, Learned Standing Counsel for the Railways appears for the Respondents and submits that the disciplinary proceedings which were initiated with the issue of charge sheet have reached their finality inasmuch as enquiry has been conducted and the inquiry officer has already submitted his report which is under consideration of the Disciplinary Authority. Mr. Ojha, Learned Standing Counsel refers to Anexure-A/12 at page 37 of this OA where

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under the applicant has been furnished with a copy of the inquiry report and he was asked to make his representation within 10 days. He has not made any representation even though this period has lapsed since long. It reveals from counter that the enquiry has been held *ex parte* as the applicant did not attend the same. Learned Counsel for Applicant submits that it was not possible for the applicant to attend the enquiry due to non-payment of the Subsistence Allowance.

5. Learned Standing Counsel for the Respondents submits that the Subsistence Allowance could not be paid due to non-production of non-engagement certificate during the period of suspension. He says that the period of suspension for which SA is to be paid to him is only for the period between 21.07.2006 to 31.07.2006 and not beyond that. He further submits that the Applicant has remained absent from duty till date unauthorisedly.

6. Learned Counsel for the Applicant makes submission that since the enquiry has been completed and the applicant has been asked to furnish his reply on the inquiry report and the period of 10 days is already over, he may be allowed to submit his reply within 15 days from today and action for releasing Subsistence Allowance be taken expeditiously. Accordingly, O.A. ~~may~~ ^{may} be disposed of. To this Mr.

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S.K.Ojha, Learned Standing Counsel for the Railways has no objection.

7. Considering the submissions made by the parties, liberty is given to the Applicant to submit his representation with reference to Annexure-A/12 within a period of 15 days. Thereafter, the Disciplinary Authority will take immediate action to conclude the proceedings as per Rules/Law. The Applicant should produce the non-engagement certificate within a period of 15 days and thereafter, Subsistence Allowance, as admissible under Rules, should be released within next seven days by the concerned authority.

8. With the above observations this Original Application stands disposed of without going into the merits of the case. No order as to costs.


(C.R.MOHAPATRA)
MEMBER(A)