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O.A.No. 384 of 2008
Subash Ch. Nanda Applicant
Versus
Union of India & Others Respondents
.....

Order dated: 16th March, 2010

C O R A M
THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)
And
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
.....

Applicant, while working as GDSBPM of Jhimani Branch Post Office in account with Kujang Sub Post Office, was placed under off duty vide order dated 27.02.2007, in contemplation of a disciplinary proceedings. Charge sheet was issued against him on 29th June, 2007 and by order dated 24.07.2007 IO and PO were appointed. It was alleged that after two sittings, there has been no sitting of the enquiry. Order placing him off duty, like Damocles' Sword is still hanging on him; for which by way of filing this Original Application, the Applicant has prayed to quash the order (putting him under off duty) and to direct the Respondents to pay him all his service and financial benefits retrospectively.

2. By filing a counter, Respondents have tried to justify their action in allowing the Applicant to continue under suspension with effect from 27.02.2007 as, on serious charges, enquiry is still pending against him.

3. Heard Learned Counsel for both sides and perused the materials placed on record. Besides claiming violation of Rules and various instructions issued by the DGP&T on the subject, Learned Counsel for the Applicant has sought to quash the order (of putting him off duty) on the ground of long delay/long continuance of the order putting the applicant under off duty. In this connection he has also relied on the decision of the Guwahati Bench of the Tribunal rendered in the case of **Hareswar Deka v Union of**

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India and others, (reported in 1998(1) ATJ page 35). Learned Counsel appearing for the Respondents vehemently opposed the contention of the Learned Counsel for the Applicant by stating that there was no delay and whatever delay caused was due to collecting materials etc. It has further contended by the Respondents' Counsel that the matter was intimated to the next higher authority time to time. Accordingly, he has prayed for dismissal of this OA.

4. Long continuance of put off duty came up for consideration before this Tribunal in the case of **Srikar Mahanda v Union of India and others** in OA No. 205 of 1996. The Division Bench of this Tribunal, taking into consideration the law laid down by Their Lordships of the Hon'ble Apex Court rendered in the case of **State of H.P v B.C.Thakur** (reported in (1994) 27 Administrative Tribunals Cases 567 -SC) and of the Bombay Bench of this Tribunal rendered in the case of **Sudhir V. Kolgaonkar v Union of India and others** (reported in (1996) 33 ATC 431 have held as under:


"5. After hearing the Learned counsel for the parties, we are of the view that the impugned order of suspension having been in force for a period of more than a period of three years on the date of the order cannot be allowed either to continue or to subsists. In the case before the Supreme Court, the delinquent officer was charge sheeted and the departmental enquiry was also pending. However, there no substantial progress in the departmental enquiry for nearly a period of two years and, therefore, the Supreme Court took a view that continuation of suspension for nearly two years in such a case could not be held valid. Bombay Bench of this Tribunal considered a case of suspension in contemplation of a departmental proceeding and it was held that continued suspension for more than six months without application of mind or review and without filing charge sheet was illegal. Following these decisions, we are of the view that in the facts and circumstances of the case, the impugned suspension order or the subsequent order for Subsistence Allowance (Annexure-1&2) cannot be sustained. Accordingly they are liable to be quashed."

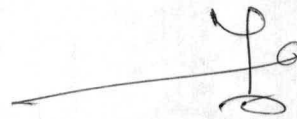
5. Guwahati Bench of the Tribunal quashed the order of suspension due to long continuance. We find no difference in the case before

us/in hand as also the case before this Bench earlier, quoted above and the case before the Guwahati Bench of this Tribunal. In this case also the applicant has been continuing under off duty for last three years.

6. In the light of the discussions made above by applying the law already laid down by this Bench of Tribunal as also Guwahati Bench of the Tribunal, the order placing the Applicant under off duty (under Annexure-1 dated 27.2.2007) is hereby quashed. The Respondents are hereby directed to take back the applicant to service forthwith.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. MOHAPATRA)
Member (Admn.)


(M.R. MOHANTY)
Vice-Chairman