

Sudhansu Kumar Panda Applicant

-Versus-

Union of India & Ors. Respondents

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Order dated: the 27th July, 2010.

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

..... Heard Mr.Sidheswar Mohanty, Learned Counsel

appearing for the Applicant and Mr.H.K.Tripathy, Learned Counsel appearing on notice for the Respondents and perused the materials placed on record. Applicant challenges the order under Annexure-3 dated 01/02-07-2010 in which the Respondents while revoking the suspension of the applicant without prejudice to the disciplinary proceedings initiated against the Applicant, posted him to KV Patratu in other words the order of suspension on being revoked, the Applicant was posted to KVPatraru. It reveals from the record that while the applicant was continuing as WET in KV, Sambalpur in contemplation of disciplinary proceedings vide order under Annexure-2 dated 30.12.2008 was placed under suspension. It was also ordered that the headquarters of the applicant during the currency of the suspension should be KV, Jharsuguda and he should not leave the headquarters without obtaining the previous permission of the competent authority.

Thereafter, in order under Annexure-3 dated 01/02-07-2010 the Respondents while ordering revocation of his suspension posted in KV Patratu. Being aggrieved by the said order under Annexure-3 submitted representation under Annexure-5 for posting in KV Jharsuguda or Sambalpur and thereafter approached this Tribunal with the aforesaid prayers. In support of his prayer he has relied on the decision of the Hon'ble High Court of MP in the case of KVS v Dr.R.K.Shahstri and



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another, reported in 2005(4) MPHT 352. Learned Counsel appearing for the Respondents, on instruction, submitted that meanwhile the applicant has already been relieved and as such, if he has any grievance he can agitate the same after joining in his new place of posting. I have gone through the decisions relied on by Learned Counsel for the Applicant. In the said case the headquarters during the currency of the period of suspension was fixed in some other place than the place where Dr. Shastri was placed under suspension in contemplation of disciplinary proceedings. However, on revocation of his order of suspension he was transferred and posted to another place which order he assailed before another Bench of the Tribunal. As it appears against the said order of the Tribunal, the KVS approached the High Court of MP. The Hon'ble High Court of MP after examining the order of the Tribunal with reference to the Rules based on which the Tribunal allowed the grievance of the applicant therein upheld the order of the Tribunal. Relevant portion of the order of the Hon'ble High Court of MP is quoted herein below:

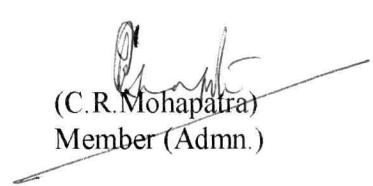
“11. It is well settled that when an employee is kept under suspension pending enquiry, he retains his lien over the post from which he is suspended. It is also a settled position that the station of posting immediately before suspension would be the headquarters vis-à-vis the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. It is also well settled that any vacancy caused on account of suspension pending inquiry, is to be filled by a reservist and where a reservist is not available by officiating appointment. Therefore, on revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. Therefore, we agree with the finding of the Tribunal that the order of the Appellate Authority dated 6/8-7-2002 to the extent it posts the first respondent to Karimganj and makes the revocation

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of suspension effective from the date of reporting at KV Karimaganj, is invalid and liable to be quashed."

2. On examination of the facts of the cases before the Hon'ble High Court of MP vis-à-vis the present one, I find no distinction to differ from the view taken by the Hon'ble High Court of MP. In view of the above, the relieving of the applicant from his post is of no consequence as far as interference by this Tribunal in the impugned order under Annexure-3 is concerned. As the case is covered by the aforesaid decision I do not see any justification to keep this matter pending directing the Respondents to file their counter. Hence, for the discussions made above, the order in so far as posting of the applicant to KV, Patratu is concerned is hereby quashed and the applicant is entitled to be posted where his lien exists i.e. at KV, Sambalpur. However, as the applicant is holding transferable post, quashing of the order will not stand on the way of the Respondents passing a regular order of transfer in exigencies of service or in public interest prospectively.

3. 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.)