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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

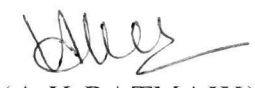
Original Application No. 843 of 2010
Cuttack, this the 21st day of July, 2014

Pradipta Ku. Mohanty	Versus Applicant
Union of India & Others	 Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C. MISRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 843 of 2010
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HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)

HON'BLE MR. R. C. MISRA, MEMBER (Admn.)

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Pradipta Kumar Mohanty,
aged about 63 years,
Son of Late Chatrubhuj Mohanty,
Retired SDE (Trunks), Telephone Bhawan,
under GMTD, Bhubaneswar
At present residing in A/18 (Shop-cum-residence),
Ruchika Market, Baramunda, Bhubanewar, Pin-751003.

...Applicant

(Advocates: M/s. S.K.Ojha, S.K.Nayak)

VERSUS

Union of India Represented through

1. Secretary, Govt. of India,
Ministry of Communications and Information Technology,
Department of Telecommunications,
421, Sanchar Bhavan, 20-Ashoka Road,
New Delhi-110001.
2. The Member (Services) Telecom Commission,
Department of Telecommunications,
West Block, No. 1, Wing No. 2,
Ground Floor, R.K.Puram,
New Delhi-110066.
3. Chief General Manager,
Eastern Telecom Project, Bharat Sanchar Nigam Limited,
Kolkata, PIN- 700027.
4. Director, (VA), Govt. of India,
Ministry of Communications and Information Technology,
Department of Telecommunications (Vigilance Wing),
112, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.
5. Deputy General Manager,
Telecom Microwave Project, Plot No. 82,
Sahidnagar, Bhubaneswar,
PIN 751007.

... Respondents

(Advocate: Mr. S.B.Jena)



ORDER**A.K.PATNAIK, MEMBER (JUDL.):**

Applicant is a retired employee of the erstwhile Telecom Department now it is under the BSNL. The case of the applicant is that he was placed under suspension from 09.09.1999 due to his detention in custody for more than 48 hours and continued as such till 18.09.2003. Since the applicant continued to be under suspension beyond the period of 90 days without any review of his suspension and without initiating any departmental proceeding, he approached this Tribunal in O.A. No. 609/01. This Tribunal vide order dated 30.09.2003 held as under :

“10.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.”

In compliance of the aforesaid direction of this Tribunal, the competent authority on review of the continuance of the order of suspension of the applicant, vide order dated 18.09.2003, revoked the suspension of the applicant with effect from the date of receipt of the order. However, the fact remains that the applicant in pursuance of the order dated 18.09.2003 joined his duty on 27.11.2003. Since no order was issued with regard to treating the period of suspension from



09.12.1999 to 30.10.2003, the applicant approached this Tribunal in

• O.A. No. 682/05 praying for direction to the Respondents for treating the period of suspension as duty as well as for grant of increments and all other consequential benefits. The said O.A. was heard by this Tribunal and disposed of on 30.01.2009 with direction to the Respondents as under:

“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 the 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.”

Thereafter, Respondents vide order dated 30.08.2010 intimated to the applicant as under:

“AND WHEREAS in view the pendency of a case in CBI Court Bhubaneswar, the suspension period can not be termed as wholly unjustified in terms of FR 54-B(3).

In view of the above, the undersigned being the competent authority, after due and careful consideration of the case, order that full pay and allowance are not payable to Shri P.K.Mohanty for the period of suspension from 09.12.1999 to 31.10.2003.”



2. Being aggrieved, the applicant filed this O.A. praying to quash the order of rejection dated 30.08.2010 and to direct the Respondents to treat the period of suspension from 09.12.1999 to 30.10.2003 as duty for all purposes and pay him differential wages/salary including sanction of annual increment and further to revise the pension/provisional pension and pay him the arrear.

3. The sum and substance of the stand taken by the applicant in support of the relief claimed by him is that it may be a fact that due to pendency of the criminal proceeding and due to arrest of the applicant the entire suspension may not be termed as wholly unjustified but the failure in reviewing the order of suspension after 90 days is also unjustified in view of the clear provision under Rule 10(7) of the CCS (CCA) Rules, 1965 read with the order of this Tribunal in O.A. Nos. 609/01 and 682/05. Hence, he is entitled to get the benefits for the period, which was declared unjustified as per the statute.

4. Respondents have filed their counter in which it has been stated that the suspension of the applicant was periodically reviewed and on the recommendation of the review committee the subsistence allowance of the applicant was enhanced to 75%. Advice of the CBI for revocation of the suspension was sought as per the CVC directives dated 25.09.2000 in which it has been provided that where the suspension is due to recommendation of the CBI, the CBI is required to be consulted for revoking the said order of suspension. The CBI, in its reply dated 24.04.2000 recommended the continuance of the applicant under suspension. However, the suspension of the applicant



was revoked vide order dated 18.09.2003 after getting the clearance from the CBI vide letter dated 17.07.2003. The final outcome of the CBI case is still awaited. However, a major penalty proceeding was initiated against the applicant, which was culminated in imposition of major penalty vide order dated 17.09.2007. The grievance of the applicant was duly considered by the authorities in compliance with the order of this Tribunal. As CBI case is still pending the authorities did not find any justification to regularize the period of suspension of the applicant. Accordingly, it has been stated by the Respondents that the O.A. being devoid of merit is liable to be dismissed.

5. Heard Mr. S.K.Ojha, Ld. Counsel for the applicant, and Mr. S.B.Jena, Ld. Addl. Central Govt. Standing Counsel appearing for the Respondents, and perused the materials placed on record.

6. Admittedly, the applicant was placed under suspension from 09.09.1999 and the said suspension order was revoked vide order dated 18.09.2003 in pursuance of which he joined duty on 30.10.2003. Admittedly, the applicant was arrested on 09.09.1999 in a CBI case and he was released on bail on 22.09.1999. Therefore, he was placed under suspension from 09.09.1999. It has been admitted by the Respondents in their counter that advise of the CBI as per the CVC directive dated 25.09.2000 was sought and the CBI in its reply dated 24.04.2000 had recommended for continuance of the order of suspension of the applicant. Nothing has been stated about the action taken from 24.04.2000 till further communication was received from the CBI in letter dated 17.07.2003. Further even though letter from CBI was issued on 17.07.2003, it took near about two months to issue




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the order of revocation vide order dated 18.09.2003. It is also an admitted fact that the applicant has been awarded the major punishment in the disciplinary proceeding initiated against the applicant under Rule 14 of the CCS(CCA) Rules, 1965 vide order dated 17.07.2007. In view of the above, the provision embodied in O.M. dated 03.12.1985 and relied on by the Ld. Counsel for the applicant has no application in which it has clearly been stated that where departmental proceeding against a suspended employee for imposition of major penalty finally ended with the imposition of minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54 (B) and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54 (B), which is not the present case. But, at the same time, we find that the suspension of the applicant was due to arrest in CBI case. The applicant was denied the benefit as the CBI case is pending before the appropriate Court of Law and neither in the order of rejection nor in the counter any convincing reason has been adduced in not taking timely action of the review of the order of suspension of the applicant from 24.04.2000 till 17.07.2003. If no action was taken by the department after lapse of a reasonable period from 24.04.2000, we do not see any justification to deny the applicant the benefits of pay and allowances excluding the subsistence allowance already paid to him. Meanwhile, the applicant has retired on reaching the age of superannuation. Since, this aspect of the matter has not been dealt into the order of rejection, we feel that the above aspect needs reconsideration by the competent authority. Hence, we



quash the order of rejection dated 30.08.2010 and remit the matter back to the Respondent No. 5 to examine the matter afresh keeping in mind the observation made ^{above} ~~about~~ and communicate the decision to the applicant in a well reasoned order within a period of 60 days.

7. With the aforesaid observation and direction, this O.A. is allowed to the extent indicated above. No costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

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