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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00366 of 2011
Cuttack, this the 15th day of November, 2017

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)
.....

Sri Madan Mohan Samal,
aged about 61 years,
S/o. Late Manibhadra Samal,
At/Po. Ratalanga, Via-Binjharapur,
PS. Binjharapur, Dist. Jajpur, PIN-755004.

.....Applicant

By the Advocate :Mr. P.R.J.Dash

-Versus-

1. Union of India represented through its Director General of Posts, Dak Bhawan, Sansad Marg, New Dehi-110 001.
2. Chief Postmaster General, Orissa Circle, At/Po. Bhubaneswar, Dist. Khurda-751 001.
3. Superintendent of Post Offices, Cuttack North Division, At-P.K.Parija Marg, Po. Cuttack GPO, Dist. Cuttack-753 001.

..... Respondents

By the Advocate : Ms. S.Mohapatra

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ORDER

S.K.PATTNAIK, JM:

Applicant has filed this OA with a prayer to direct the Respondents to regularize the put off duty period w.e.f. 08/05/1983 to 25/04/2000 for all purpose and further direct to pay the allowances for the entire period (minus the Ex gratia compensation from 13/01/1997 to

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25/04/1997. It is noticed that he has made the aforesaid prayer without seeking to quash the impugned order dated 17/06/2009 (Annx. A/6).

2. The case, in brief, is that the applicant was working as EDBPM of Ratlang Branch Post Office in the District of Jajpur. While working as such, vide order dated 08/09/1983, he was placed under off duty by the ASPO, I/C, Jajpur which was ratified vide order dated 12/09/1983 by the order of the competent authority under Rule 9 (2) of P&T ED Agents (Conduct and Service) Rules, 1964. In the Criminal case instituted against him before the Learned SDJM, Jajpur, the applicant was acquitted. In the departmental proceedings initiated against him vide Memorandum of charge dated 11/05/1984; the Department could not proceed further due to non availability of documents. Thus, the applicant was reinstated to duty on 26/04/2000 (F/N). During the off duty period, in compliance of the order of this Tribunal, the applicant was sanctioned and paid the ex gratia as per his entitlement. The subsequent events took place that being not relevant we do not like to record the same for deciding the present lis. However, claiming the back wages w.e.f. 08/05/1983 to 25/04/2004, the applicant filed representation before the competent authority. Alleging no action on the said grievance of the applicant he had filed OA No. 47/2006 before this Bench which was disposed of on 06/04/2009 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 fortyfive days. The authority concerned considered the representation of

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the applicant but rejected his claim vide order dated 17/06/2009 (Annx.A/6).

3. Respondents filed the counter strongly objecting to the reliefs claimed by the Applicant in his Original Application.

4. The crux of the arguments of the learned counsel for the applicant is that as the Respondents failed to substantiate/establish the charge levelled against the applicant both in Criminal as well as Departmental proceedings and ultimately the applicant having been reinstated to service, he was entitled to the back wages for the period of off duty. In this connection, the learned counsel for the applicant has relied on the decision of the Hon'ble Apex Court in the case of Union of India and others v K.V.Jankiraman and others reported in (1993) 23 Administrative Tribunals Cases 322. Per contra in a bid to torpedo and pulverize the arguments advanced by the learned Counsel for the Applicant, Ms.Mohapatra, learned CGASC appearing for the Respondents submitted that even if the applicant was reinstated to service, he was not entitled to back wages as the applicant was in gainful employment as Headmaster of Ratneswar Bidyapitha. Besides, it has been submitted that there is no provision to treat the period of off duty as duty. As such, after taking note of all aspects of the matter with due application of mind, the authority concerned rejected the claim of the applicant. Furthermore, it was contended by Ms.Mohapatra, learned advocate that the facts and issues involved in the case of K.V.Jankiraman

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(supra) being different and distinct has no application to the present case. Accordingly, she has prayed for dismissal of this O.A.

5. We have considered the rival contentions of the respective parties and perused the records. It is not in dispute that the applicant was in part time job of GDSBPM/GDSBPM of Ratlang Branch Post Office. He was discharging the duties of GDSBPM/EDBPM besides his own duty as Headmaster of Ratneswar Bidyapitha. No rule has been produced by the applicant to justify that wherever and whenever a GDSBPM/EDBPM is reinstated after being found not guilty in criminal or judicial proceedings, he is entitled to back wages, as a matter of right. Rather, the issue of entitlement of back wages came up for consideration time and again and the consistent view of the Courts/Tribunal is that payment of back wages remains discretionary and it has to be considered keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages, which is dependent on various facts. The court/Tribunal cannot sit as appellate authority over the decision taken by the authority competent to take such decision unless the said decision is per se illegal or being contrary to any rules or law. We see no illegality in the order of rejection as the authority passed the order after taking note of all aspects of the matter.

6. In so far as decision relied on by the learned counsel for the

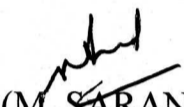
applicant is concerned, trite is the position of law that a decision takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down therein and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration to support their reasoning. As such, we have examined the case in hand vis-a-vis the case relied on by the learned counsel for the applicant. On examination, we find that the facts and issues involved in the present case are totally different to the case before the Hon'ble Apex Court. In the present case, the applicant was in gainful employment during the off duty period whereas in the case before the Hon'ble Apex Court the applicant was not in gainful employment during the period of suspension. Hence the facts of the case being different and distinct the decision relied on by the learned counsel for the applicant is hardly of any help to him.

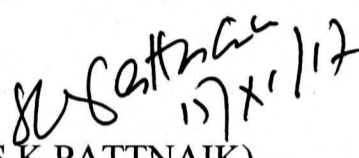
7. Before parting with this order, we would like to keep on record the latest view of the Hon'ble Supreme Court how the period of suspension and the period of a public servant, who got involved in a criminal case and after initial conviction by the trial court gets acquittal on appeal, will be counted and whether he is to be paid backwages or the period to be treated as such. In the case of *Union of India Vs. Jaipal Singh 2004 SCC (L&S) 12* Their Lordships have held that the department cannot be made liable to pay for the period for which they could not avail the services of the employee and it is for the

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department to consider looking into the fact and circumstances of the case what back wages to be paid to the employee. In the instant case, we did not notice anything irrational or illegal in the order of the Respondents calling for interference.

8. In view of the discussions made above, we find no merit in this OA which is accordingly dismissed. No costs.


(M. SARANGI)
Member (Admn.)


(S.K. PATTNAIK)
Member (Judl.)

RK/CM

