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O.A.No. 201 of 2009  
Mahima Ranjan Rout .... Applicant  
Versus  
Union of India & Others .... Respondents

Order dated: the 06th April, 2010

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

As it appears, the Applicant was placed under off duty in contemplation of disciplinary proceedings by the ASPOs (I/C), Kendrapara Sub Division vide order dated 05.02.2004. As it further appears, this order dated 5.2.2004 putting the applicant under off duty was ratified by the Supdt. of Post Offices, Cuttack North Division Cuttack dated 12.2.2004 and has been continuing in operation till date. This order allowing him to continue under suspension has been challenged by the Applicant in this Original Application under section 19 of the A.T. Act, 1985 seeking to quash the same with direction to the Respondents to take him back to his post of GDSBPM of Chakroda Branch Post office in account with Kendrapara Head Post Office from which post he was placed under off duty.

2. By filing counter, the Respondents opposed the prayer of the applicant on the ground that during inspection, huge amount of fraud having been noticed it was decided to place the applicant under off duty in contemplation of disciplinary proceedings. Accordingly, vide order dated 5.2.2004 the applicant was placed under off duty by the ASPO which was ratified by the Supdt. of Post Offices being the appointing authority of the applicant vide order under Annexure-A/1. Soon thereafter, besides disciplinary proceedings, criminal case was also registered before the Learned JMFC, Kendrapara in the matter against the applicant. While in disciplinary proceedings enquiry is going on, in the Criminal case the matter is under trial.

In terms of the instructions, the put off duty order of the applicant has received due consideration of the competent authority from time to time. As the charges against the applicant are serious in nature involving misappropriation of huge amount it was decided to allow the put off duty order of the applicant to continue. However, the applicant has been receiving the allowance which he is entitled to get during the put off duty period. Accordingly, Respondents have prayed for dismissal of this OA.

3. Learned Counsel for the Applicant has submitted that the plea of the Respondents that periodical review of the order put off duty of the applicant has taken place is completely a myth and after thought. This is because no decision after such review had ever been communicated to him justifying the continuance of the applicant under off duty. For the aforesaid reason, by relying on the Division Bench order dated 16<sup>th</sup> March, 2010 of this Tribunal in OA No. 384 of 2008 ( Subash Ch. Nanda v Union of India and others) it has been contended by him that since the applicant has been continuing under off duty since 05.02.2004 and charge sheet having been issued, there having no chance of tampering of any evidence etc., allowing the applicant to continue under off duty amounts to exploitation and as such, the order of put off duty is liable to be quashed. This was opposed by Learned Counsel appearing for the Respondents by stating that the decision relied on by the Applicant is not applicable to the present case because the factual matrix involved in both the cases are different and distinct. Further it was contended by him that in the present case besides disciplinary proceedings for the huge fraud, criminal case is also under trial before the Criminal Court. In view of the above, Learned Counsel for the Respondents has prayed for dismissal of this OA.

4. After giving in-depth consideration to the points raised by the parties, perused the documents filed in support of the pleadings of the parties. I have also perused the decisions relied on by the Learned Counsel for the Applicant. Prima facie I find substantial difference in the factual matrix in both the cases. Besides it is noticed that there was no simultaneous proceedings initiated against the applicant in the aforesaid OA or the fraud for which the applicant was placed under suspension was not like the present one. Since considering the gravity of the allegation, decision was taken by the authority to allow the applicant to continue under put off duty I do not find any justification to sit in judgment over such decision of the competent authority especially this Tribunal being not the appellate authority to sit over the decision of the competent authority in a matter like the present one. In view of the above, I hold that this OA being devoid of any merit is liable to be dismissed. Hence, it is dismissed. No costs.

  
(C.R.MOHAPATRA)  
MEMBER (ADMN.)