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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.322 of 2009

Ganesh Chandra Roul Applicant
Versus
Union of India & Others. Respondents

Order dated: 23.04.2010.

C O R A M

THE HON'BLE MR.B.V.RAO, MEMBER (JUDICIAL)
And
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

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Applicant while workings as GDSBPM of Kasida Branch Post Office was placed under off duty vide order dated 18.08.2008 in contemplation of disciplinary proceedings for the alleged embezzlement of Government money. A set of charges was drawn up and served on him vide Memo under Annexure-A/4 dated 19th January, 2009 asking the applicant to furnish his reply. Thereafter vide order under Annexure-A/5 dated 28.01.2009 Shri Basanta Kumar Singh, IPO Rajnilgiri Sub Division, Rajnilgiri was appointed as the IO. Applicant alleging bias against the IO submitted representation requesting change of the IO. The disciplinary authority finding such allegation baseless rejected the request of the applicant and communicated the same to the applicant under Annexure-A/12 dated 13.04.2009. Applicant thereafter made appeal under Annexures-A/13 & A/14 to the Director of Postal Services, Bhubaneswar being the appellate authority of the applicant. Meanwhile through Memo under Annexure-A/15 dated 01.06.2009 reduced the ex gratia amount of the applicant to 12th 1/2% on the ground of the delay in conclusion of the disciplinary proceedings being attributable to the applicant. Being aggrieved by the foresaid orders of the Disciplinary Authority, the Applicant has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985 praying to quash the orders under Annexure-

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A/12 & A/15 and to direct the Respondents to allow Bhagirathi Das as his AGS in the disciplinary proceedings and to direct the Respondents to restore and enhance the put off duty allowance of the applicant to 37 1/2% of the TRCA.

2. Respondents filed their counter trying to justify the orders under Annexure-A/12 & A/15 and have stated that since the allegations are serious in nature being afraid of the consequences applicant has been unnecessarily trying not to allow the disciplinary proceedings to come to an end so as to enjoy the TRCA which he is getting during his off duty period. They have also given justification stoutly denying the allegation of bias levelled by the applicant against the IO. Accordingly, Respondents have prayed for dismissal of this OA.

3. We have heard Learned Counsel for both sides and perused the material placed on record. It was fairly submitted by Learned Counsel for the Applicant that meanwhile Respondents have accepted the request of the applicant and changed the IO and allowed the AGS nominated by the Applicant. Hence he does not press so far as these two prayers are concerned. However, he insisted on the prayer for quashing of the order under Annexure-A/15 dated 01.06.2009 in which the subsistence allowance which he was getting during the put of duty period has been reduced to 50% of 25% (12th 1/2%) w.e.f. 01.06.2009. We find substantial force in this prayer of the applicant because after ninety days the applicant was entitled to a review regarding variation in put off duty/ex gratia allowance to the extent provided in the Rules but the same was not done by the Respondents in spite of repeated representation. Now it is seen that the Disciplinary authority reduced the subsistence allowance to 50% of 25% making it 12th 1/2% per month attributing the delay in concluding the enquiry on the applicant as he has brought bias

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allegation against the IO. In this connection, we have gone through sub clause (ii) of Clause 12 of GDS (Conduct and employment) Rules in which power has been vested with the authority to reduce the amount of compensation as ex gratia payment by a suitable amount not exceeding 50% of such compensation admissible during the first 90 days, if in the opinion of the said authority, the period of put off duty has been prolonged due to reasons to be recorded in writing directly attributable to the Sevak. No such finding has been given by the Disciplinary Authority in the order under Annexure-A/15 while ordering reduction of the put off duty allowance of the applicant. One more reason for which the order under Annexure-A/15 is not sustainable is that the disciplinary authority reduced the put off duty allowance on the allegation of adopting dilatory tactics for lingering the enquiry. This cannot be sustained as the Applicant has a right to ask for a Defence Assistant and also change of IO because of alleged bias. Respondents have delayed in the decision to change the IO as also allowing him the Defence Assistant of his choice. That apart, law is well settled in a plethora of judicial pronouncements that in administrative law, rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures and are also applicable to the administrative bodies, in its decision making process having civil consequences (Ref: **Rattan Lal Sharma V Managing Committee etc.-1993 SCC (L&S) 1106 [paras 9 & 12]**). In the case of **Canara Bank and others v Debasis Das and others**, (2003) 4 SCC 557=2003(3) SLR 64 (SC) in paragraph 13 at page 570, it has been held by the Hon'ble Apex Court as under:

“The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil

consequences is in issue. These principles are well settled. The first and for most principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. Thus is one of the most important principles of natural justice.”

4. Besides the above, put off duty/suspension is not an order of punishment but keeping the employee out of his employment temporarily for the reason of Criminal or disciplinary case initiated/contemplated against such employee. For the aforesaid reason the Rule making authority consciously framed rules/issued instruction (which has direct nexus with the provision under Article 21 of the Constitution of India the right to livelihood) for payment of subsistence allowance to the employee concerned for the sustenance of the Government servant and all his family members during the period of put off duty/suspension.

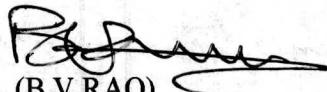
5. For the aforesaid reason, we are of the considered view that the order reducing the put off duty/ex gratia allowance of Applicant dated 01.06.2009 in Annexure-A/15 is not sustainable and accordingly the same is quashed. In regard to enhancement of the above Allowance since the representation made by the Applicant to this extent is still pending, let the Respondents ~~decide~~ decide and pass a reasoned order on the same within a period of fifteen days from the date of receipt~~s~~ of this order and communicate the result thereof to the Applicant.

6. Last but not the least, we may observe that the enquiry/Disciplinary Proceedings should be completed by the Respondents at an early date and the Applicant is directed to cooperate with the enquiry and

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should not seek adjournment of the enquiry without any cogent and valid reason.

7. In the result, this OA stands allowed to the extent stated above.

No costs.


(B.V.RAO)
MEMBER (JUDL.)


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