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O.A.No. 404 of 2009
Bichitranda Nath Applicant
Versus
Union of India & Others Respondents
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Order dated: 05th April, 2010

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THE HON'BLE MR. C.R. MOHAPATRA, MEMBER (A)
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As it appears, in contemplation of disciplinary proceedings, the Applicant while continuing as GDSBPM of Balarampur Talagarh Branch Post Office in account with Jenapur SO was placed under off duty vide order under Annexure-A/1 dated 27.10.2006. Since no charge sheet was framed/served nor the put off duty was revoked in spite of passage of time and repeated representations, he has approached this Tribunal in the present Original Application filed on 31st August, 2009 seeking to quash the put off duty order dated 27.10.2006 and to direct the Respondents to pay him all his TRCA retrospectively.

2. In the counter filed by the Respondents it has been stated that charge sheet has been served on the Applicant vide Memo dated 02.12.2009. They have also denied the allegation of the applicant that after putting the Applicant under off duty the Respondents sat over the matter without giving any consideration. The put off duty of the applicant received due consideration in accordance with the DGP&T instructions and considering the necessity and desirability it was decided to continue the applicant under off duty. Accordingly, while opposing the prayer of the applicant, the Respondents have prayed for dismissal of this OA.

3. Learned Counsel appearing for the Applicant has submitted that review of the order of put off duty of the applicant as taken in the counter is completely a myth and after thought. This is because no decision after such

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review had ever been communicated to him justifying the continuance of the applicant under off duty. It has further been contended by him that after receipt of the notice from this Tribunal, Respondents rose from the slumber and issued the charge sheet after four years from the date putting the applicant under suspension. By relying on the Division Bench order dated 16th 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 27.10.2006 and now charge sheet has already been issued the put off duty order is liable to be quashed; especially there being no reason to allow the applicant to continue under off duty thereby taking money by way of put off duty allowance without any work in the Department. Learned ASC appearing for the Respondents by reiterating the stand taken in the counter has objected to the arguments advanced by Learned Counsel for the Applicant and has stated that as the Respondents consciously after due consideration allowed the applicant to continue under off duty and this Tribunal being not the Appellate Authority over the decision of the competent authority who passed the order, this OA is liable to be dismissed. After giving due consideration to the rival submissions of the parties, perused the earlier Division Bench order dated 16th March, 2010 passed in the case of Subash (supra). In the said case, the Applicant, Subash, was under off duty w.e.f. 27.02.2007. As such taking into consideration the facts of the matter and judge made laws of the Hon'ble Apex Court as also of this Tribunal, the Divisions Bench of this Tribunal quashed the order of off duty of the Applicant. Relevant portion of the order in the case of Subash (supra) is extracted herein below:

4. Long continuance of put off duty came up for consideration before this Tribunal in the case of **Srikar Mahanda v Union of India and others** in OA No. 205 of 1996. The Division Bench of this Tribunal, taking into

consideration the law laid down by Their Lordships of the Hon'ble Apex Court rendered in the case of **State of H.P v B.C.Thakur** (reported in (1994) 27 Administrative Tribunals Cases 567 -SC) and of the Bombay Bench of this Tribunal rendered in the case of **Sudhir V. Kolgaonkar v Union of India and others** (reported in (1996) 33 ATC 431 have held as under:

"5. After hearing the Learned counsel for the parties, we are of the view that the impugned order of suspension having been in force for a period of more than a period of three yeas on the date of the order cannot be allowed either to continue or to subsists. In the case before the Supreme Court, the delinquent officer was charge sheeted and the departmental enquiry was also pending. However, there no substantial progress in the departmental enquiry for nearly a period of two years and, therefore, the Supreme Court took a view that continuation of suspension for nearly two years in such a case could not be held valid. Bombay Bench of this Tribunal considered a case of suspension in contemplation of a departmental proceeding and it was held that continued suspension for more than six months without application of mind or review and without filing charge sheet was illegal. Following these decisions, we are of the view that in the facts and circumstances of the case, the impugned suspension order or the subsequent order for Subsistence Allowance (Annexure-1&2) cannot be sustained. Accordingly they are liable to be quashed."

5. Guwahati Bench of the Tribunal quashed the order of suspension due to long continuance. We find no difference in the case before us/in hand as also the case before this Bench earlier, quoted above and the case before the Guwahati Bench of this Tribunal. In this case also the applicant has been continuing under off duty for last three years.

6. In the light of the discussions made above by applying the law already laid down by this Bench of Tribunal as also Guwahati Bench of the Tribunal, the order placing the Applicant under off duty (under Annexure-1 dated 27.2.2007) is hereby quashed. The Respondents are hereby directed to take back the applicant to service forthwith.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

4. On examination of the aforesaid case as also the present one, I do not see any difference both factually and on the point of law involved in both the cases so as to take any different view than the decision rendered above. In the aforesaid premises the order under Annexure-A/1 dated 27.10.2006 is hereby quashed with direction to the Respondents to reinstate

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the applicant forthwith. But I am not inclined to grant the second prayer of the Applicant. The question of regularization of the period from putt off duty till reinstatement shall be decided after conclusion of the Disciplinary Proceedings initiated against him.

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

No costs.


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