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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 02-09-2010

PRESENT:

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

In the Matter of

O.A. No.47/2010

Fakir Ch. Sahoo ... Applicant

Versus

Union of India & Ors. ... Respondents
(For Full details, see the enclosed cause title)

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For Applicant: Mr. P.K.Padhi, J.Mishra, K.Sharma, Counsel

For Respondents: Mr.S.Mishra, ASC

ORDER

MR. C.R.MOHAPATRA, MEMBER (A):

The order under Annexure-A/1 dated 25.02.1983 of the Superintendent of Post Offices, Cuttack (N) Division, placing the applicant under 'off duty' is sought by the applicant in this Original Application to be quashed with further prayer to direct the Respondents to reinstate him in service with all consequential benefits including back wages. The order placing the Applicant under 'off duty' reads as under:

"Memo No. F/6-2/82-83 dated at Cuttack the 25-02-83

Whereas an inquiry **in respect of an allegation of misconduct** against Sri Fakir Charan Sahoo, EDSPM, Bodamundai EDSO in account with Kendrapara HO is pending.

Now, therefore, the undersigned in exercise of the powers conferred on hi by Rule 9(1) of P&T Extra Departmental Agents (Conduct & Services) Rules, 1964 hereby puts the said Sri Fakir Charan Sahoo off duty with immediate effect.

Shri Fakir Charan Sahoo is not entitled to any allowances for the period he is kept off duty."

2. Counter stand of the Respondents is that misappropriation of fund having come to the notice of the authorities the applicant was immediately placed under suspension by the competent authority vide order dated 25.2.1983 and criminal
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case was instituted against him. Finally the order of acquittal of the applicant in the criminal case was set at rest by the order of the Hon'ble High Court of Orissa dated 6.4.2007 in GA No.2 of 1990. Thereafter, charge sheet for initiation of disciplinary proceedings under Rule 10 of GDS (Conduct and Employment) Rules, 2001 was drawn and served on the applicant vide letter under Annexure-R/1 dated 15.2.2010 and the matter is under enquiry/investigation by the IO appointed under Annexure-R/2 dated 26.2.2010. Since the disciplinary proceedings on misappropriation of Govt. fund is under investigation/enquiry the applicant is not entitled to reinstatement as prayed by him in this OA.

3. Heard Learned Counsel for both sides and perused the materials placed on records including the order dated 16th March, 2010 in OA No.384 of 2008 of this Bench and the order dated 3.7.1997 in OA No. 2 of 1993 of the Guwahati Bench of the Tribunal relied on by the Learned Counsel for the Applicant. Needless to state that there is no bar for initiating disciplinary proceedings even during the currency of the criminal case nor is there any bar for initiation of disciplinary proceedings even after acquittal in criminal case. Power has been vested with the authority to keep the applicant under off duty in contemplation or initiation of disciplinary proceedings or in criminal proceedings. The authority is also empowered to reinstate the applicant before any of the proceedings come to an end and in case the suspension/off duty of the employee concerned needs continuance which shall only be after following the rigors provided in the Rules and various instructions issued by the higher authority. Nothing is forthcoming from the counter whether the Respondents have ever reviewed the off duty order of the applicant, if so what is the result of such review. It is the case of the Respondents that only after making preliminary enquiry they have placed the applicant under off duty. If it is so, then no reason has been furnished by the Respondents why they took about three years after the order of the Hon'ble High Court of Orissa to issue charge sheet to the Applicant. This smacks of the callousness,

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non-application of mind and cavalier manner of the Respondents in dealing with such a case. The alleged incident is of the year 1983. The applicant was placed under off duty in the year 1983. The final verdict in the criminal case was of the year 2007. The charge sheet issued to the Applicant in 2010 is for the incident which took place in the year 1983 without any explanation for the delay in initiation of the proceedings when rule does not prohibit for initiation of disciplinary proceedings during the currency of criminal case. Though I do not intend to express any opinion on the above at this stage, but I must deprecate such long continuance of the off duty order **for more than two decades/twenty seven years, without any allowance**. Such long continuance of put off duty order of an employee without any review came up for consideration in this Tribunal in OA No. 384 of 2008 filed by Subash Ch. Nanda v Union of India and others. Considering the submission of both sides and various judge made laws on the subject this Tribunal quashed the order of off duty of the applicant therein in order dated 16th March, 2010. Relevant portion of the order is quoted 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 departmne4tal 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

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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. In the present case, the applicant was placed under suspension vide Memo No. F/6-2/82-83, dated 25-02-83 due to pending enquiry in respect of an allegation of misconduct against him was pending, with further condition that he will not be entitled to any allowances for the period he is kept off duty. But it is noticed that subsequently provision has been made under Rule 9(3) of the EDA (Conduct & Service) Rules, entitling an ED Agent *ex gratia* during the said off duty period. The outcome or the progress of the inquiry undertaken and based on which the applicant was placed under off duty is not forthcoming in the counter nor in course of hearing of this OA. The reason for not making periodical review as per the instructions of the DGP&T or if such review is done the result of the review committee on the order of put off duty is also not forthcoming in the counter. Had the Respondents timely reviewed the order of put off duty with diligence, the Applicant would have at least been paid the *ex gratia* as ordered vide DGP&T Letter No. 19-36/95-ED & Trg dated 1st August, 1999. As such, keeping an employee under off duty for such a long period without any allowance is an inhuman act of the Respondents as held by the Hon'ble Apex Court in the case of **CAPT.M.PAUL ANTHONY v BHARAT GOLD MINES LTD. AND ANOTHER**, 1999 Supreme Court Cases (L&S) 810. Relevant portion of the order is extracted herein below:

"Service rules also usually provide for payment of salary at a reduced rate during the period of suspension (e.g. Fundamental Rule 53). This constitutes subsistence allowance. If there is no provision in the rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension. (para 28)

Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by 'suspension syndrome' and the employees have been found to be placed under suspension just for nothing. It is an officer's irritability rather than an employee's trivial lapse which has often resulted in suspension. **Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee when he is placed under suspension, he is demobilized and salary is also paid to him at a reduced rate under the nickname of 'subsistence allowance, so that the employee may sustain himself.** (para 29)

If even subsistence allowance is not paid, the very object of paying reduced salary to the employee during suspension period is frustrated. **The act of non payment of subsistence allowance can be likened to slow poisoning as the employee, if not permitted to sustain himself on account of nonpayment of subsistence allowance, would gradually be started to death** (para 30)


On joining government service, a person does not mortgage or barter away his past rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint, does not become master of the body and soul of the employee. The Government by providing job opportunities to the citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under proviso to Article 309 of the Constitution or other statutory rules including Certified Standing Orders. The fundamental right including the Right to Life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. **Provision for payment of subsistence allowance made in service rules only ensures non-violation of right to life of employee** (para 31."

5. Non-compliance of the instruction of the DGP&T in regard to payment of *ex gratia* and total silence for three years, even after the criminal case attained finality, for initiation of disciplinary proceedings in the year 2010 cannot be countenanced in law. Besides, Law is well settled in the case of **SI Rooplal and others vrs. Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC

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644 that precedents are to be followed by the Tribunal. On examination of the case in hand vis-à-vis the earlier decision of this Tribunal in the case of Subash (surpa) I find no distinguished feature to differ from the view already taken by the Division Bench of this Tribunal. Hence, the order of put off duty under Annexure-A/1 is hereby quashed. The Disciplinary proceedings having not seen the light of the day and the same having been initiated only in 2010 (Annexure-R/1), i.e. three years after the order of the Hon'ble High Court of Orissa in the criminal case upholding the acquittal of the Applicant, the Applicant is deemed to have been reinstated in service from the order of the Hon'ble High Court of Orissa dated 06.04.2007 as on that date he was not under any enquiry for which he had been placed under off duty in 1983. It appears that due to the absolute callousness of the Respondents, the Applicant continued in a state of put off duty without any rhyme or reason. Hence, he is entitled to all consequential service and financial benefits with effect from 06.04.2007. The entire exercise shall be completed by the Respondents within a period of 30(thirty) days from the date of receipt of copy of this order. It is, however, made clear that the Respondents are in no way barred from proceeding with the disciplinary proceedings already set in motion.

6. The period from the date of put off duty till 06.04.2007 of the Applicant shall be decided by the Respondents after conclusion of the disciplinary proceedings initiated against him but the Applicant is entitled to ex gratia with effect from 1st August, 1999 till 6.4.2007 which shall be calculated and paid by the Respondents within the time stipulated above.

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


(C.R. Mohapatra)
Member (Admn.)