

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/794 of 2015
Cuttack this the 27th day of September, 2016

Arun Kumar Mohanty...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it referred to reporters or not ? No
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? No

27/9/16
(S.K.PATTNAIK)
MEMBER(J)

27/9/16
(R.C.MISRA)
MEMBER(A)

23

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.794 of 2015

Cuttack this the 27th day of September, 2016
CORAM

*HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)*

Arun Kumar Mohanty, aged about 62 years, S/o.late Brajabandhu Mohanty, Sub-Postmaster(retired), resident of Village-Dhumat Sasan, PO-Indupur, Dist-Kendrapara, Odisha

...Applicant

By the Advocate(s)- M/s.K.C.Kanungu & C.Padhi

-VERSUS-

Union of India represented through:

1. The Secretary, Communication-cum-D.G.Posts, Dak Bhawan, New Delhi-1
2. Director of Postal Services(HQs), Office of Chief Postmaster General, Odisha Circle, Bhubaneswar-751 001, Dist-Khurda, Odisha
3. The Superintendent of Post Offices, Cuttack North Division, At/PO/Dist-Cuttack, Odisha

...Respondents

By the Advocate(s)- Mr.J.K.Nayak

ORDER

S.K.PATTNAIK, MEMBER(J):

In this Original Application, applicant prays for grant of subsistence allowance with effect from 29.08.2012 to 19.12.2012 and for refund of Rs.54949/- which was earlier paid to him and again recovered by the Department.

2. Applicant's case as far as limited to present relief may be summarized as follows.

86/Cuttack
27/9/16

24

3. Applicant was placed under suspension with immediate effect vide order dated 29.8.2012(A/4) as a disciplinary proceeding was initiated against him. Suspension order was served on the applicant on 10.12.2012 when he was present in the office of Res.No.3 to ventilate his grievance. Earlier, applicant was paid subsistence allowance. However, subsistence allowance for the period from 28.9.2012 to 9.12.2012 to the tune of Rs.54,949/- was directed to be adjusted at the time of drawl of revised allowance on the ground that the subsistence drawn for the aforesaid period was declared unauthorized absent. Cause of action for the present case arose when the respondents sent a communication to the applicant dated 2.11.2015(A/14) in which it was pointed out that the excess paid subsistence allowed for the period from 29.08.2012 to 09.12.2012 was adjusted from the revised allowance.

4. Respondents contested the case by filing a detailed counter-reply. According to respondents, period from 29.8.2012 to 9.12.2012 is to be treated as the period of unauthorized absence for which there was an order of adjustment of excess amount paid towards the subsistence allowance to the tune of Rs.54949/- against the revised allowance. It is the case of the respondents that applicant intentionally did not join his new place of posting and remained absent unauthorized and avoided receipt of suspension memo

25

and as such, suspension is to take effect from the date of communication to the Government servant.

5. A very small question evolves for consideration in this O.A. i.e., from which date the suspension order shall be effective, i.e. -

- i) whether from the date of issue of suspension order ?
or;
- ii) from the date of service of suspension order ?

6. Since it is a legal issue, the factual aspects pale into insignificance. Learned counsel for the official respondents relies on a decision of the Hon'ble Supreme Court reported in (2008) 2 SCC (L&S) 1 (Union of India vs.S.P.Singh) wherein Their Lordships have held that it becomes operative when notice is dispatched to the suspended official at his correct address known to the office. There is a direct decision on the point reported in AIR 1970 SC 214 (State of Punjab vs.Khemiram) wherein analyzing various practical aspects, Their Lordships in Paragraph-16 of the judgment have observed as follows.

"In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an

8/6/2015
29/11/14

26

order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision question expressly so provides".

7. In view of the aforesaid authoritative pronouncement by the Hon'ble Apex Court, once an order is issued to the concerned Government servant, the operational date of suspension shall be from the date when it was issued. Moreover, in the instant case, the order clearly envisages that it has to take with immediate effect. So, it hardly matters when the notice is actually served or received by the delinquent employee. Otherwise, the Department will be under an obligation to pay or adjust permissible leave to the delinquent employee in between passing of the orders of suspension and actual service of the suspension order. In the instant case, applicant fortunately is not asking for subsistence allowance from the date of service – rather he is asking for the same from the date of issue of the order, which the Department should have insisted and we do not understand why the Department is taking a contrary stand in this case. Competent authority had earlier correctly passed order granting subsistence allowance for the intervening period of passing of suspension order and communication of the suspension order, but under a misconception had withdrawn the same which is liable to be

JKG/affair
27/9/16

27

quashed in the larger interest of justice, equity and good conscience.

8. For the reasons discussed above, order dated 7.10.2015(A/12) and communication dated 01.11.2015A/14) are quashed and set aside.

9. The O.A. is allowed in part. It is hereby ordered that the suspension order shall be made effective from the date of passing of the same and subsistence allowance has to be made payable from that date and the alleged adjustment of amount and/or recovery from the applicant be repaid to him forthwith, preferably within a period of one month; failing which, applicant shall be eligible to interest @ 8% from the date of order. No costs.

S.K.Pattnaik
(S.K.PATTNAIK)
MEMBER(J)

R.C.Misra
(R.C.MISRA)
MEMBER(A)

BKS