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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O. A. No.444 of 2012

Cuttack this the 26th day of August, 2014

Sri Sudarsan Kar Applicant
-Versus-
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? 
2. Whether it be referred to PB for circulation? 


(A.K.Patnaik)
Member (Judicial)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No.444 of 2012

Cuttack this the 26th day of August, 2014

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THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

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Shri Sudarsan Kar, aged about 50 years, S/o. Sri Brudaban Kar, Vill/Post. Fategarh, Via-Bhapur, Dist. Nayagarh working as GDSBPM, Fategarh under POD.

...Applicant

(Advocates: Mr.P.K.Padhi)

VERSUS

Union of India represented through

1. The Secretary Cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. The Chief Postmaster General, Odisha Circle, At/Po.Bhubaneswar, Dist. Khurda, 751001.
3. The Director of Postal Services (Hqrs.), O/o. the Chief Post Master General, Odisha Circle, At/Po.Bhubaneswar, Dist. Khurda, 751001.
4. Sr. Superintendent of Post Offices, Puri Division, At/Po/Dist. Puri, Odisha, Pin-752001.

... Respondents

(Advocate: Mr.P.R.J.Dash)

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

The case of the Applicant, in brief, is that while he was continuing as EDSPM of Fategarh EDSO, in contemplation of a disciplinary proceedings against him, was placed under off duty vide order dated 01.01.2006 which was subsequently, as per rules ratified vide order dated 06.06.2006. Charge sheet was issued to him on 01.02.2011. First sitting of



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the enquiry was held on 16.8.2011. On 23.08.2011 applicant submitted list of documents for the purpose of defending his case. While the matter stood thus, the applicant has filed this OA praying for quashing of the order putting him under off duty dated 06.06.2006, to reinstate him to service and pay him all his consequential service and financial benefits retrospectively.

2. Respondents resist the claim of the applicant by stating that as during verification of cash and stamp balance, some omission and commission having come to the notice of the authorities, the applicant was immediately placed under off duty which was subsequently ratified by the competent authority with further stipulation that he will be paid ex gratia equal to 25% TRCA per month during the period of his off duty and subsequently an order was passed for payment of enhanced TRCA to the tune of 50% of the original amount sanctioned w.e.f. 30.08.2006. He was charge sheeted under Rule 10 of GDS (Conduct & Employment) Rules, 2001 vide order dated 01.02.2011 and IO has been appointed to enquire into the matter. It has been stated that as the off duty of the applicant was due to omission and commission committed by him which came to the notice during enquiry which is continuing this OA is liable to be dismissed.

3. We have heard Mr. P.K.Padhi, Learned Counsel appearing for the Applicant and Mr.P.R.J.Dash, Learned Additional CGSC appearing for the Respondents and perused the materials placed on record. Mr.Padhi submitted that though off duty is not a punishment but by virtue of long



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continuance of the said order it has become a punishment. He has also submitted that as per the Rules/DGP&T instruction dated 19th April, 1988 and 15th January, 1990 the Regional Director should personally review every month all the cases of put off duty of EDAs and issue appropriate order in each case. The cases pending over six months need to be brought to the notice of PMG who shall issue appropriate direction in this regard. In the instant case, no such review has been made till date. It has been stated that since no review has been done the order of off duty is liable to be quashed. In this context, Mr. Padhi has placed reliance on the decision of this Tribunal dated 18th February, 1997 passed in OA No. 205 of 1996 (Srikar Mahanda Vrs UOI & Ors) and has prayed for grant of the relief claimed in this OA. On the other hand, Mr. Dash, submitted that it is not correct to state that no review has been made. In fact review has been made in the meantime and the ex gratia compensation payable during off duty period has been enhanced. On the specific query as to the stage of the proceeding it was submitted by Dash that the matter is under enquiry. By stating so, Mr. Dash has prayed for dismissal of this OA.

4. I have considered the rival contentions of the parties and have also gone through the Rules and the order relied upon by Mr. Padhi. It is no doubt that the order of off duty is not a punishment but when the said order is continued without any timely review it cannot be said that as because the order is not a punishment the same can be allowed to continue in the name

Alor

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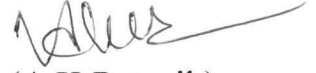
of enquiry for eternity. In order to avoid harassment and humiliation to a EDA/GDS who has been placed under off duty, the DGP&T has consciously issued the order for timely review but I find that no such review had taken place through the applicant has been continuing under off duty since 01.06.2006 and the Respondent-Department has been paying ex gratia to him without any work. I also find that taking into consideration the law laid down in the cases of **State of H.P. Vrs B.C.Thakur** (1994) 27 ATC 567 (SC) and **Sudhir Vrs Kolgaonkar Vrs Union of India and others**, (1996) 33 ATC 431 (CAT Bombay), this Tribunal in the case of Srikar Mahananda (supra) quashed the order of suspension as the same was continuing for longer period without any review.

5. As in the instant case the applicant has been continuing under off duty since 01.06.2006 that too with out any review as provided in DGP&T instruction dated 19th April, 1988 and 15th January, 1990. By applying the decision of this Tribunal in the case of Srikar Mahananda (supra), the orders of off duty dated 01.06.2006 which was ratified vide order dated 06.06.2006 is hereby quashed and the Respondents are directed to reinstate the applicant forthwith preferably within a period of thirty days from the date of receipt of copy of this order. It is made clear that the period of off duty from the date of suspension till re instatement shall be decided by the Respondents, after conclusion of the proceedings initiated against him.



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With the aforesaid observation and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.



(A.K. Patnaik)
Member (Judicial)

