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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No.260/00075/2014

Cuttack this the 16th day of March, 2015

FOR INSTRUCTIONS

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



[R.C.MISRA]
Member (A)



[A.K.PATNAIK]
Member (J)

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HON'BLE MR. A. K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

.....

Aruna Kumar Mohanty aged about 59 years S/o Late Shri Brajabandhu Mohanty, Sub Post Master (under suspension), resident of Village Dhumat Sasan, PO Indupur, District Kendrapara, Odisha.

...Applicant

(Advocate: Mr. K.C. Kanungo)

VERSUS

1. The Union of India represented through the Secretary, Communication-cum-D.G. Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District Khurda, Odisha.
3. Director of Postal Services, Odisha, Office of Chief Postmaster General, Orissa Circle, Bhubaneswar, District Khurda, Odisha.
4. The Superintendent of Post Offices, Cuttack North Division, At/PO/Dist/ Cuttack, Odisha.

... Respondents

(Advocate: Mr. B.K. Mohapatra)

O R D E R

A.K. PATNAIK, JUDICIAL MEMBER :

Before stating the specific service particulars of the applicant and the grounds for the claim, a recount of the general factual and litigation background would be apt.



2. The Applicant, Aruna Kumar Mohanty while working as Sub Postmaster, Karilopatna Sub Post Office under Kendrapara Head Post Office was placed under suspension by the Superintendent of Post Offices, Cuttack North Division, Cuttack vide order dated 09.10.2012 in which his headquarters was fixed at Karilopatna too with the terms that he should not leave the headquarters without prior permission of the competent authority. Being aggrieved by the said order, the applicant preferred appeal dated 19.07.2013 to the Director of Postal Services, Odisha Circle, Bhubaneswar. Thereafter, alleging inaction in taking prompt decision on the said appeal, the applicant filed OA No. 681 of 2013 which was, without expressing any opinion on the merit of the matter, disposed of on 13th November, 2013 with direction to the Director of Postal Services, Bhubaneswar to take a decision on the said appeal/representation dated 19.07.2013, if the same was still pending, within a period of sixty days from the date of receipt of copy of the order. The appeal/representation for change of headquarters from Karilopatna to Rajnagar was rejected by the Chief Postmaster General, Odisha Circle, Bhubaneswar vide letter dated 09.10.2013 (which was prior to disposal of

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the earlier OA No. 681 of 2013) but could not be placed before this Tribunal in the earlier OA. Prior to filing the appeal/representation he had also preferred representations dated 06.09.2013 and 26.09.2013 to the Superintendent of Post Offices, Cuttack North Division, Cuttack requesting for change of the headquarters. The result thereon was communicated to him only in letter dated 26.11.2013 i.e. after the order of this Tribunal in earlier OA No. 681 of 2013 and the order of the Chief Postmaster General, Odisha Circle, Bhubaneswar dated 09.10.2013. Hence by filing this OA, he has prayed for the following reliefs:

"To quash Annexure A/6, A/13 and A/15 for the ends of justice.

Be further pleased to direct the Respondent No. 4 to fix the headquarters of the Applicant at Rajnagar in pursuance to Annexure A/2, A/3 and A/4 for the ends of justice.

Be further pleased to direct Respondent No. 4 to facilitate the payment of subsistence allowance w.e.f. Dt. 29.08.2012 with upward revision from time to time and arrear thereof within such time as the Hon'ble Tribunal deems it fit and proper in the exigency of circumstances and for the ends of justice."

3. Applicant's contention is that the provision for payment of subsistence allowance during the period of suspension cannot be lightly dealt ^{with} into as the said provision was brought into the rules keeping in mind the mandate enshrined in article 21 of the constitution



of India viz;right to life is a fundamental right. Hence non payment of subsistence allowance cannot pass the provision made by the Government of India vide OM No.11012/10/76-Estt.(A)and OM No.11012/17/85-Estt.(A)dated 28.10.1985 copy of which has been filed at Annex.-A/16.Further stand of the applicant is that when respondent no.4 repeatedly directed the applicant to join at Rajnagar,there is no justification to fix the headquarters of the applicant during the period of suspension at Karilopatna and as such, fixation of the headquarters at Karilopatna is arbitrary.His contention is that when he went to Karilopatna twice to receive the subsistence allowance, he was rebuked and assaulted by the public.The public of Karilopatna have threatened danger to his life and the life of his family members. As such he requested for change of the headquarters during the period of suspension and change of headquarters in the given circumstances is permissible under OM dated 08.09.1956 copy of which has been filed at Annexure -A/17.

4. Respondents have filed their counter mainly stating therein that the applicant was placed under suspension due to his direct involvement in a fraud case. The payment of subsistence allowance, during the period

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of suspension, as per rules, was also ordered. Accordingly, subsistence allowance, as due and admissible, as per rules, was being drawn regularly but he failed to receive the payments as he was not residing at his headquarters and not cooperating with the departmental investigation. The CBI case No. RC 20(A) 12 BBS has been registered against the applicant. The CBI, Bhubaneswar after making investigation into the matter submitted the charge sheet against the applicant. The matter is still sub judice. Besides, charge sheet vide Memo No. F/4-1/2012-130 dated 24.02.2014 under Rule 14 CCS (CC&A) Rules, 1965 has already been issued to the Applicant. It has been stated that the request of the applicant for change of headquarters was duly considered by the appropriate authority but the same was rejected. The applicant has been instructed to attend Karilapatna SO and take payment of his subsistence allowance but he failed to receive the payment as he is not residing at his headquarters. In substance, the stand of the Respondents is that there being no injustice caused in the decision making process of the matter, this OA is liable to be dismissed.



5. We have heard Mr. K.C. Kanungo, learned counsel for the applicant and Mr. B. K. Mohapatra, learned Additional CGSC appearing for the Respondents. Learned Counsel for both sides argued the matter broadly on the lines of their respective pleadings and also filed their notes of arguments stating the stand taken in course of hearing.

6. It is to be noted that vide order dated 25.04.2014, this Tribunal had directed as under :-

"In our considered view, Respondents have to make some administrative arrangement for disbursement of the subsistence allowance to the applicant, pending final decision of this O.A. It is found that the applicant had made a representation to SPOs, North Division, Cuttack for change of headquarters and payment of arrear dues of subsistence allowance etc. and this representation was rejected by the Superintendent of Post Offices, Cuttack North Division on 26.11.2013. Therefore, subject to outcome of this O.A., Superintendent of Post Offices, Cuttack North Division, who is Respondent No. 4 in this O.A. is directed to disburse subsistence allowance including the arrears to the applicant in his office at Cuttack until further orders.:"

7. It is also to be noted that the applicant in his written notes of submission has disclosed that he has retired on superannuation on 30.04.2014 and therefore, the issue of fixing headquarter during the period of suspension did not survive any longer.

8. Having regard to the above, we are of the view that the relief sought by the applicant regarding




change of headquarters does not last any longer and therefore, this prayer has become infructuous.

9. As regards the prayer for payment of subsistence allowance w.e.f. 29.08.2012 with upward revision from time to time and arrears thereof, it has been submitted by the respondents that subsistence allowance @ 75% is not acceptable because the applicant was not cooperating with the disciplinary authority in the matter of conduct of inquiry that was initiated in the year 2012. On the other hand, it is submitted by the applicant that under F.R. 53 and Government of India Guidelines [G.I., M.F. OM No. 15(16) E-IV/58 dated 16.02.1959] it is mandatory to review of the subsistence allowance after a period of three months of suspension. Therefore, in the absence of any review of subsistence allowance, delay or laches cannot be attributed to the applicant.

10. We have considered the rival submissions. We have also gone through the order dated 10.01.2014 (Annex.R/1 to the counter) issued by the respondents in response to the representation dated 19.07.2013 of the applicant. It reveals that in the said



representation, applicant had made a prayer for enhanced subsistence allowance and the said prayer has not been considered by the respondents while issuing order dated ^{10.01.} ~~17.07.2013~~ ⁴ 

11. Since there is no material available on record that the respondents had in fact reviewed the subsistence allowance on completion of three months of his suspension, in the fitness of things, we would direct the respondents particularly, respondent No. 3 to review grant of subsistence allowance at the enhanced rate in accordance with F.R. 53 read with Government of India Guidelines [G.I., M.F. OM No. 15(16) E-IV/58 dated 16.02.1959] and pass an appropriate order, if necessary, after giving an opportunity to the applicant of being heard. This exercise shall be completed within a period of sixty days from the date of receipt of this order.

12. Ordered accordingly.

13. With the aforesaid observation and direction, the O.A. is disposed of with no order as to costs.


[R.C.MISRA]
Member (A)


[A.K.PATNAIK]
Member (J)