

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/515/2017

Date of Reserve:01.03.2019

Date of Order:10.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Avarani Pradhan, aged about 56 years, W/o. Sri Batakrushna Sahoo, resident of At-Makaraba Sahi, Bauxi Bazar, PO-Cuttack GPO, PS-Durga Bazar, Dist-Cuttack, Odisha, PIN-753 001, presently posted as Postal Assistant, Cuttack GPO.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani
P.K.Samal
D.P.Mohapatra

-VERSUS-

Union of India represented through:

1. The Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751 001.
3. Director of Postal Services (HQ), O/o. The Chief PMG, Odisha Circle, Bhubaneswar-751001.
4. The Senior Superintendent of Post Offices, Cuttack City Division, Cuttack-753 001.

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a Postal employee under the Department of Posts who is not placed under suspension. Challenging the legality and validity of the order of suspension and its extension for a period of 180 days, she had earlier

approached this Tribunal in O.A.No.646 of 2016 challenging the legality and validity of the order of suspension. This Tribunal vide order dated 23.09.2016 disposed of the said O.A. in the following terms:

"3. Going through the said Office Memorandum, it is amply clear that the charge sheet should be submitted before expiry of 90 days from the date of suspension or else the suspension will lapse in case the time line is not adhered to. In view of such latest Office Memorandum of DOP&T, the Department is bound to review their own decision as it is not permissible to pass any order contrary to the observation of the Hon'ble Apex Court and subsequently, clarified by vide DOP&T Office Memorandum (supra). Hence, this O.A. is disposed of with a direction to respondents to review the suspension order in the light of the latest circular/office memorandum issued by the DOP&T based on the judgment of the Hon'ble Supreme Court referred to above and pass appropriate orders, as expeditiously as possible".

2. Grievance of the applicant is that despite the aforesaid direction of the respondents the respondent-authorities turned down her request for reinstatement in service. Hence, by filing the present O.A., the applicant has prayed for the following reliefs:

- i) Admit the Original Application
- ii) After hearing the counsels for the parties be further pleased to quash the order of suspension issued vide Memo No.F/7-5/2015-16 dated 23.05.2016 at Annexure-A/1 and the orders at Annexure-A/7 and Annexure-A/9.
- iii) To quash the orders of extension of suspension issued vied Memo No.F/7-5/2015-16 dated 13.08.2016 at Annexure-A/3, Memo No.F/75-/20125-16 dated 03.02.2017 at Annexure-A/11 and Memo No.F/7-5/2015-16 dated 10.08.2017 at Annexure-A/12 holding that the action is against the express provisions of Government of India contained in DOP&T OM dated 23.08.2016 at Annexure-A/4 circulated on the basis of the judgment dated 16.02.2015 of the Hon'ble Supreme Court in the matter of Ajay Kumar Choudhury vs. Union of India & Ors., in Civil Appeal No.1912 of 2015.

- iv) To declare the extension period of suspension as illegal and void.
- v) To direct the Respondents to revoke the order of suspension and reinstate the applicant in her post forthwith.
- vi) To direct the Respondents to extend all consequential service benefits to the applicant; and/or
- vii) Pass any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice considering the facts and circumstances of the case and allow the O.A. with costs.

3. In support of her case, the applicant has contended that the direction of this Tribunal in O.A.No.646 of 2016 to review the suspension in the light of the circular issued by the DOP&T in pursuance of the judgment of the Hon'ble Supreme Court in Ajit Choudhury case (supra) has been flouted by the respondents. Further, the applicant has submitted that whereas for committing the similar misconduct, the other employees have been let off and reinstated in service, the applicant has not been reinstated in service and thereby a discrimination has been meted out to her.

4. Per contra, the respondents have filed their counter. The main thrust of the counter is that due to lack of appropriate timely action required for disposal and clearance of inward cheques on the part of the applicant being Treasurer-II, Cuttack GPO, a large number of inward cheques involving to the tune of Rs.57,92,979/- were cleared without being debited from their respective SB Accounts standing at Cuttack GPO for which the applicant is solely responsible. In the above backdrop, an FIR bearing No.121/2016 dated 09.06.2016 was lodged by the Department in Mangalabag Police Station. The Police authorities have summoned the applicant several times in connection with the FIR so lodged by the Department and as per the request of

Mangalabag PS, permission has been accorded for initiation of criminal prosecution against the applicant. The Mangalabag Police have submitted the charge sheet bearing No.234/2016 on 31.8.2016 arising out of FIR No.121/2016 before the SDJM(S), Cuttack as a result of which GR Case No.971/2016 against the applicant is under trial. It has been pointed out that the applicant has been placed under suspension with effect from 24.05.2016 vide Memo dated 23.05.2016 in connection with her gross negligence in the performance of her duties as Treasurer-II thereby allowing an outsider to handle the records of her branch which caused fraudulent clearance of cheques. According to respondents, the charge sheet has already been issued to the applicant on 14.10.2016 which is well before the completion of 90 days from the date of coming into force the DOP&T circular as well as from the 1st review of suspension. It has been submitted that the oral inquiry is under progress by the Inquiring Authority in which the applicant has although attended two sittings of inquiry, but, thereafter she has chosen not to cooperate with the inquiry on some pretext or the other. Respondents have therefore, prayed that the O.A. being devoid of merit is liable to be dismissed.

5. We have heard the learned counsels for both the sides and perused the records. We have also gone through the earlier orders of this Tribunal passed in O.A.No.646 of 2016 as well as the DOP&T Office Memorandum dated 23.08.2016. For the of clarity, the relevant part of the said Memorandum is quoted hereunder:

"2. In compliance of the above judgment, it has been decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge sheet is not served to the charged officer. As such, it should be ensured that the charge sheet issued before expiry of 90 days from the date of suspension. As the suspension will lapse in case this time line is not adhered to, a close watch

needs to be kept at all levels to ensure that charge sheets are issued in time".

6. We have considered the rival submissions. From the pleadings of the parties, *prima facie*, it appears that there has been allegation of gross misconduct against the applicant which has led to criminal prosecution before the SDJM(S), Cuttack in G.R. Case No.971/2016 and criminal trial is on. We are aware that the applicant in this case was placed under suspension on 24.05.2016 whereas charge sheet was served on 14.10.2016, which according to applicant, is beyond the period of 90 days as per DOP&T instructions issued in the aforesaid Memorandum dated 23.08.2016. It is the case of the respondents that the charge sheet has already been issued to the applicant on 14.10.2016 which is before the completion of 90 of the date of coming into force the DOP&T Office Memorandum.

7. In the written notes of submission, the applicant has brought to the notice of the Tribunal that vide order dated 4.1.2018 consequent upon revocation of suspension, the applicant has been posted as Postal Assistant, College Square MDG. In the O.A., the main relief sought for by the applicant is to quash the suspension order dated 23.05.2016 and the order extending her suspension beyond the period of 90 days declaring the same as void. Since the order of suspension has already been revoked and the applicant has been reinstated in service, it goes without saying that the said order of suspension order stood nullified from the date it was so passed. As regards the consequential benefits, the applicant has not produced the order by virtue of which the order of suspension has been revoked. However, we would note that the service benefits to which the applicant is entitled to on account of

revocation of suspension order will be taken into consideration by the respondents as per the extant rules and instructions on the subject.

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

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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