

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/7/2018

Date of Reserve: 23.01.2020

Date of Order: 13.03.2020

CORAM:

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

Sri Duryodhan Mohanty, aged about 61 years, S/o. Late Parsuram Mohanty, permanent resident of Vill/PO-Damodarpur, PS-Khaira, Dist-Balasore.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.1
2. Chief Postmaster General (CPMG), Odisha Circle, Bhubaneswar-751 001.
3. Supt. of Post Offices, Bhadrak Division, At/PO/Dist-Bhadrak.

...Respondents

By the Advocate(s)-Mr.P.K.Mohanty
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, while working as EDBPM, Damodarpur B.O. in account with Dungura S.O. under Bhadrak Postal Division, was placed under put off duty with immediate effect by the Superintendent of Post Offices, Bhadrak Division vide Memo dated 28.11.1997 (A/1) in exercise of powers conferred under Rule-9(1) of E.D.Aagents (Conduct and Services) Rules, 1964 on the allegation of misconduct stated to have been committed by him. Subsequently, vide order dated 24.02.1998 (A/2), he was removed from service. The contents of the said order are reproduced hereunder.

"Whereas Shri Duryodhan Mohanty, E.D.B.P.M., Damodarpur BO in account with Dungura SO has been convicted on a criminal charge under Section 409 IPC of S.P.E. Case No.10/90 and has been awarded a sentence to

undergo R.I. for 2 (two) and ½ (half) years and to pay a fine of Rs.15,000/- in default to undergo R.I. for another one month by Hon'ble Justice M.R.Hazra, A.C.J.M., Bhubaneswar on 11.04.1997.

And whereas it is considered that the conduct of the said Sri Duryodhan Mohanty, EDBPM, Damodarpur in account with Dungura SO which has led to his conviction is such as to render his further retention in public service undesirable/the gravity of the charge is such as to warrant the imposition of a major penalty.

And whereas Shri Duryodhan Mohanty, was given an opportunity of personal hearing and offer his written explanation.

And whereas the said Sri Duryodhan Mohanty has given an written explanation dated 13.02.98 which has been duly considered by the undersigned.

Now, therefore, in exercise of the powers conferred by Rule-7 of E.D.As (Conduct and Services) Rules, 1964, the undersigned hereby removes the said Sri Duryodhan Mohanty, EDBPM, Damodarpur in account with Dungura SO from service with immediate effect".

2. Aggrieved with the above, the applicant submitted a representation dated 15.11.2000 to the Chief Post Master General, Orissa Circle, Bhubaneswar requesting for his reinstatement in service and in consideration of this the CPMG, Orissa Circle passed an order dated 23.02.2001 (A/3), the relevant part of which reads as follows:

"Examination of the case revealed that the C.B.I./S.P.E., Bhubaneswar registered a case No.RC/17 (S)/90 against Shri Mohanty in connection with the above misappropriation and charge sheet was given vide No.16 dt. 30.10.90. The case was heard in the Court of SDJM, Bhubaneswar in case No.10/1990 and judgment was pronounced on 11.4.1998. In the said judgment, Shri Mohanty was sentenced to undergo R.I. for 2 and ½ years and to pay a fine of Rs.5000.00 and in default to pay the fine to undergo another one month R.I. Keeping this judgment in view, the Supdt. Of Post Offices, Bhadrak Division awarded the punishment of removal to Shri Mohanty after observing usual formalities vide memo No.F/4-1/90-91 dt. 24.2.98. The criminal appeal of Shri Mohanty in the higher Court was also dismissed.

The Chief Postmaster General, Orissa Circle, Bhubaneswar, on careful examination of the case finds that the removal from service imposed on Shri Duryodhan Mohanty is on the basis of the outcome of the criminal proceeding leading to his misconduct which is justified in this case and therefore, the Chief Postmaster General, Orissa Circle, Bhubaneswar does not find any plausible ground to consider the request of the Ex-ED official for his re-instatement in service and decides the representation of Shri Duryodhan Mohanty accordingly".

3. Against the order of conviction as well as the order of the Appellate Court, the applicant had approached the Hon'ble High Court in Crl.Revision No.570/1999 and vide judgment dated 03.02.2017 (A/4), the Hon'ble High Court completely exonerated the applicant from all criminal charges holding that the findings of facts recorded by the courts below are not supportable on the evidence on record. Thereafter the applicant submitted a representation dated 08.02.2017 to the Superintendent of Post Offices, Bhadrak Division with a request for his reinstatement in the post of GDSBPM, Damodarpur B.O. Since there was no response, the applicant had approached this Tribunal in O.A.No.160/145/2017, which this Tribunal disposed of with direction to consider the said representation and communicate the result thereof to the applicant by way of a reasoned and speaking order. In the above backdrop, vide order dated 08.05.2017 (A/5) the applicant was intimated that the matter would be reopened after two months. Be that as it may, by a subsequent order dated 16.08.2017 (A/6) the applicant was brought back to the post of GDS BPM, Damodarpur BO with immediate effect. After being reinstated in service, the applicant submitted a representation dated 13.12.2017 (A/7) to the Superintendent of Post Offices, Bhadrak Division with a request to grant consequential service and financial benefits. While the

matter stood as such, he has approached this Tribunal in the present O.A., seeking for the following reliefs:

- i) To admit the Original Application.
- ii) To direct Respondent No.2 & 3 to all financial and consequential benefits to the applicant w.e.f. 24.02.1998 to till the date of reinstatement on 16.08.2017 as if he has not been removed from service.
- iii) To direct the Respondents to re-fix/revise the pay of the applicant in reference to his pay was drawing at the time of his termination from service.
- iv) To direct the Respondent No.3 to pay the arrear thereof within a stipulated period with interest.
- v) To pass any other order/orders as deemed fit and proper for ends of justice.

4. In support of his case, the applicant has urged that since he has been honourably acquitted, he is entitled to all consequential service and financial benefits inasmuch as, remaining out of service is not attributed to him nor the principle of 'no work no pay' will apply to his case. Applicant has further pointed out that the order reinstating him in service passed by the respondents after the judgment of the Hon'ble High Court in the Crl.Appeal 570/1999 cannot be treated to be a fresh appointment to the post in question. He has also brought to the notice of this Tribunal that after his acquittal by the Hon'ble High Court, the respondents took almost five months to reinstate him in service, which is unreasonable and irrational.

5. Contesting the claim of the applicant, respondents have filed a detailed counter. According to respondents, nowhere there has been any indication in order dated 16.08.2017 (A/6) that the applicant would be treated as a fresh entrant for fixation of his allowance. It has been submitted that necessary instruction has been issued to the Postmaster, Bhadrak Head post Office who

is the DDO of the applicant to the effect that the monthly Time Related Continuity Allowance (TRCA) should be fixed at the rate of Rs.3660-70-5760/- which is much higher than the allowance of the fresh entrant. However, they have submitted that the representation of the applicant dated 13.12.2017 (A/7) is under consideration at the departmental level and necessary action in the matter will be taken up within a period of next two months.

6. Applicant has filed a rejoinder to the counter in which it has been submitted that in view of the law laid down in Union Territory, Chandigarh Administration vs. Pradeep Kumar & Anr., order of acquittal passed in the case of applicant cannot be accepted as acquittal on technical ground.

7. Respondents have also filed a reply to the rejoinder.

8. Heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission and the citations relied upon by the applicant.

9. At the outset, we would like to note that although in the counter-reply filed by the respondents on 24.04.2018 there has been an indication that the representation of the applicant dated 13.12.2017 (A/7) regarding consequential service and financial benefits will be taken up within next two months, as it appears, there has been no whisper as to the fate of the representation submitted by the applicant till the OA was finally heard on 23.01.2020. However, under the existing circumstances, the point that needs to be answered is whether this Tribunal can direct the respondents to grant consequential service and financial benefits in favour of the applicant before the respondents could take a decision in that behalf. In our considered opinion, such a course of action by this Tribunal would tantamount to stepping into the shoes of the administration, thereby abridging the scope for

judicial review. Since a decision is yet to be taken by the respondents on the representation preferred by the applicant and conversely, it would not be proper for this Tribunal to rush to a conclusion in order to determine the entitlement of the applicant as claimed in the O.A. In our considered opinion, the ends of justice would be met if the matter is remitted to the Chief Postmaster General, Odisha Circle (Respondent No.2) to consider the grievance of the applicant for his entitlement to consequential service and financial benefits on account of his reinstatement in service in pursuance of the judgment of the Hon'ble High Court in Crl. Appeal No.570/1999. In view of this, we direct the CPMG, Orisha Circle, (Respondent No.2) to consider the matter in the light of the rules and instructions on the subject and take a decision on the representation dated 13.12.2017 (A/7) within a period of two months from the date of receipt of this order and communicate their decision to the applicant by a speaking and reasoned order, within the said time.

10. Ordered accordingly.

11. In the result, with the above 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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