

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/23/2019

Date of Reserve: 16.03.2020
Date of Order: 18.03.2020

CORAM:

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

Kailash Chandra Das, aged about 58 years, S/o. Late Krushna Das, Ex-BPM, Badagotha BO under Sungura SO – permanent resident of Vill/PO-Badagotha, PS-Mahanga, Dist-Cuttack.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
S.K.Mohanty
Smt.J.Pradhan

-VERSUS-

Union of India represented through:

1. The Director General (Post), Dak Bhawan, Parliament Street, New Delhi-110 001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar-751 001, Dist-Khurda.
3. Superintendent of Post, City Division, At-Cantonment Road, PO-Buxi Bazar, Town/Dist-Cuttack-01.

...Respondents

By the Advocate(s)-Mr.R.K.Kanungo
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1285, the applicant has sought for the following reliefs:

- i) To declare the order dated 16.08.1989 under Annexure-A/1 as non est in the eye of law.
- ii) And to direct the Respondents to reinstate the applicant in service w.e.f. 19.10.2001 with full back wages.
- iii) And pass any other order as deemed fit and proper in the interest of justice.

2. Shorn of unnecessary details, it would suffice to note that the applicant while working as Branch Post Master, Badagotha BO was put under off duty

vide order dated 16.08.1989 (A/1) because of his involvement in SB fraud case of Badagotha BO. Accordingly, he was paid compensation as ex-gratia as per the rate admissible from time to time. In the meantime, CBI, Orissa, Bhubaneswar took up the case for investigation by registering FIR and thereafter, seized the vital documents relating to fraud committed by the applicant. Thereafter, the charge sheet was filed by the SBI against the applicant. However, the applicant was acquitted by the Additional C.J.M. on 24.07.2001. On being acquitted, the applicant submitted a representation dated 19.10.2001 (A/7) to the Superintendent of Post Offices, Cuttack North Division, with a request to reinstate him in service. As there was no response, the applicant submitted another representation dated 27.09.2018 (A/8) to the Senior Superintendent of Post Offices, Cuttack City Division, to consider his reinstatement with grant of full back wages. There being no response, he has approached this Tribunal in this O.A. seeking for the reliefs as already quoted above.

3. The applicant has filed the MA No.117/2019 along with the OA for condoning delay in filing the OA, which has been filed in 2019 claiming reinstatement w.e.f. the date of his acquittal from criminal charges in the year 2001. It is stated that the trial court has acquitted him vide the judgment dated 24.7.2001 and dated 7.8.2001. But he is being kept on put off duty by the respondents even after acquittal. It is stated that the delay in filing the OA was not intentional and he has not received any notice for the criminal appeal pending against his order of acquittal.

4. The respondents' counsel has raised objection to the MA by citing two judgments on the question of delay. These cases are factually different, since in the present OA, the applicant is continuing to remain under put off duty

even on the date of filing the OA. Hence, the OA cannot be said to be barred by limitation in respect of his reinstatement from 2019. But the delay will be relevant for claiming the arrear allowances for the period starting from the year 2001. Another judgment cited by the respondents' counsel is in the case of Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board and Ors., in which the issue was back wages for the period the petitioner was convicted and in jail. In the present OA, the applicant was never convicted and he stands on a different footing.

5. In the circumstances, we are of the view that the reasons furnished in the MA No.117/2019 for cononating delay are satisfactory, since the applicant is continuing under put off duty till the date of filing the OA even after acquittal by the trial court. Hence, the MA No.117/2019 is allowed and the delay in filing the OA is condoned with the condition that if he succeeds in the OA then his arrear allowance is to be restricted taking into account the date of filing the O.A., i.e. w.e.f. 1.1.2019.

6. The grounds on which the applicant has based his claim in the OA are that after he being acquitted by the CBI Court vide judgment dated 24.07.2001 and dated 07.08.2001 under Section 248 (I) Cr.PC, he is entitled to reinstatement in service. It is the case of the applicant that as on date he has not received any notice challenging the judgment of the CBI Court and therefore, the respondents are under obligation to reinstate him in service.

7. Contesting the claim of the applicant, respondents have filed a detailed counter. According to respondents, challenging the judgments of the CBI Court, Criminal Appeals bearing Nos.9872/2001, 9873/2001 and 9874/2001 have been filed before the Hon'ble High Court which are still pending. It has been pointed out that vital documents seized by the CBI, Bhubaneswar are

available in the Hon'ble High Court as a result of which, departmental action could not be taken against the applicant. In view of this, it has been submitted that when criminal appeal is pending in the Hon'ble High Court, it is not possible on the part of the respondents to take any action.

8. Applicant has filed a rejoinder to the counter in which it has been pointed out that the Department having failed to initiate departmental proceedings against the applicant after lapse of 29 years from the date of allegation on the ground of non-availability of documents, the applicant should not be allowed to be under put off duty.

9. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of arguments along with the citations submitted by the parties. It is to be noted that the order putting the applicant off duty is not a final order and it depends upon the outcome of the disciplinary proceedings. Admittedly, in the instant case no such disciplinary proceeding has been initiated against the applicant on the ground that the records seized by the CBI have been produced before the Hon'ble High Court and the criminal appeal against the judgment of CBI Court is the subject matter of judicial scrutiny by the Hon'ble High Court.

10. Since in the meantime, about 19 years have passed from the date of filing of criminal appeal before the Hon'ble High Court and as it appears, the applicant is yet to receive any notice from the Hon'ble High Court. On the other hand, the respondents for the reasons mentioned above, have not initiated any disciplinary proceedings against the applicant. Therefore, this Tribunal is of the opinion that the ends of justice would be met if the Senior Superintendent of Post Offices, Cuttack City Division (Respondent No.3) is directed to take a decision and pass an appropriate orders regarding

reinstatement of the applicant within a period of thirty days from the date of receipt of this order taking into consideration the grounds taken including the judgments cited by the applicant in this OA. The applicant will be at liberty to send a copy of the Paper Book of the OA and copy of judgments cited to the Respondent No.3 within seven days. It is made clear that we have not considered the grounds on merit raised by both the parties in this OA

Ordered accordingly.

10. In the result, the O.A. is disposed of as above, with no order as to costs.

Pending MAs are thus disposed of.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

