

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.209/2000

NEW DELHI, THIS THE 12TH DAY OF JULY, 2000.

HON'BLE MR.JUSTICE ASHOK AGARWAL,CHAIRMAN
HON'BLE MR.V.K.MAJOTRA, MEMBER(A)

Shri Baljor Singh
S/o Shri Chattar Sain
R/o Village & Post Office Bhooni,
Distt.Meerut.
C/o Shri Sant Lal Advocate
C-21(B) New Multan Nagar,
Delhi-110056.

...Applicant

(BY Shri Sant Lal, Advocate)

vs.

1. The Union of india, through the
Secretary,
Ministry of Communications,
Deptt.of Posts,
Dak Bhawan,
New Delhi-110001.
2. The Director Postal Services,
Dehra Dun Region
Dehra Dun 240001.
3. The Senior Superintendent of
Post Offices,
Meerut Division,
Meerut-250001.

...Respondents

(By Shri Rajinder Nischal, Advocate)

ORDER (ORAL)

JUSTICE ASHOK AGARWAL:

Applicant at the material time was appointed as Extra Departmental Branch Post Master of Bhooni Branch Post Office with effect from 21.12.1963. Pending disciplinary proceedings initiated against him, he was put off duty vide order dated 30.7.1987. By a further order issued by the disciplinary authority on 13.10.1987, a chargesheet was issued. By his representation of 20.10.1987, he denied the charges. The disciplinary authority by further chargesheet of 15.1.1988 raised the very same allegation

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against the applicant as the one contained in the chargesheet of 13.10.1987. Like on the earlier occasion, applicant by his representation dated 23.1.1988 denied the charges. The disciplinary authority by an order passed on 31.10.1988 imposed a penalty of removal from service against the applicant. He impugned the aforesaid order of penalty by preferring an appeal. The appellate authority, by an order passed on 21.9.1990 set aside the order of penalty and allowed the appeal. He retired from service on 31.7.1990.

2. By the present OA, applicant claims payment for the period he was put off duty till he retired i.e., for the period 30.7.1987 to 31.7.1990.

3. The aforesaid claim of the applicant is similar to the claim raised before the Ernakulam Bench of this Tribunal in OA No.551/88- OC Mary Elizabeth v. Union of India & ors. decided on 3.11.1989. The Tribunal in the aforesaid case has placed reliance on a decision in the case of K. Saradamma v. The Senior Superintendent of Post Offices, 1983 (2) SLR 41 decided by the Kerala High Court and has granted reliefs to the applicant therein who was similarly placed as the applicant in the present OA. The Tribunal in addition to the aforesaid decision of the Kerala High Court has also taken note of a judgement in the case of P.M. Rosamma v. The Inspector of Post Offices and others in TAK 79/1987 wherein also relief was accordingly granted. The Tribunal in its judgement has, inter-alia, observed as under:-

6. We have heard the counsel and perused the records of the case. The counsel for the applicant pointed out that in a similar case K. Sardamma Vs. The Senior Superintendent of Post Offices 1983 (2) SLR-41, the High Court of Kerala has held that the petitioner was entitled to full wages for the period for which she was put off duty as also for the period for which she was kept out of employment by the order of the Disciplinary Authority until she was reinstated as a result of the Appellate Authority's order. The following observations have been made in that judgement.

"In the present case, the petitioner is only an Extra Departmental Branch Post Master. The provisions of the Fundamental Rules which govern the suspension of regular government service (sic) do not apply to her. She is governed only by the Posts and Telegraphs

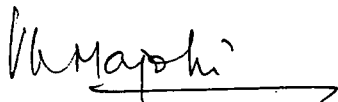
Extra Departmental Agents (Conduct and Services) Rules, 1964. The rule empowers the employer to keep an employee out of duty when an enquiry is being held against him in respect of alleged misconduct. Sub Rule (3) of Rule (9) provides that such an employee shall not be entitled to any allowance for period during which he is kept out of duty. The scope of this provision has to be examined in the light of corresponding provisions of the Fundamental Rules which apply to the regular employees. The latter set of Rules provide for payment of subsistence allowance for the employees. The effect of Rule 9 (3) noticed above is only that Extra Departmental Employees cannot claim subsistence or other allowances, as in the case of regular government servants governed by the Fundamental Rules. Rule 9 (3) cannot however control the right of an employee to get full wages during the period of suspension, if the suspension is found to be unjustified as a consequence of the suspension order are getting merged with the dismissal order, and that order itself is declared invalid. Where a dismissal and (sic) in a decree of nullity, the dismissed employees can claim restitution. He has a right to be put back in the position he would have occupied, but for the suspension and dismissal. This leads to the result that the employee concerned can claim full wages for the period of suspension and also for the period he is kept out after the dismissal, unless such rights have been bartered away by agreement or are notified and restricted by statutes governing the contract. In a (sic) present case, it is conceded on behalf of the respondents that there is no contract between the petitioner and employer which authorises denial of wages to her during the period she is kept out of duty. All that the respondents could urge in support of their stand is Rule 9 (3) noticed earlier. That rule operates only during the period an employee is actually under suspension and only for the limited purpose of defeating her claim for payment during that period. That rule cannot defeat or control the effect of Court's declaration about the nullity of the termination. It is too much to think that the purpose of the rule is to deny remuneration to any employee even in cases where the suspension and the dismissal are declared to be void or of no legal effect by a competent court."

4. In our judgement, decision in the aforesaid cases to the effect that Rule 9(3) of the Extra Departmental Agents (Conduct and Service) Rules, 1964 cannot control the right of an employee to get full wages during the period of suspension if the same is found to be unjustified as a consequence of the order of

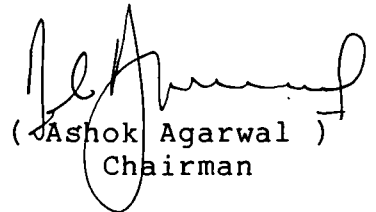
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dismissal itself being declared invalid is fully justified. In the circumstances, we find that the applicant has made good his claim raised in the present OA. Applicant in the circumstances is held to be entitled to be paid his full salary during the period he was put off duty till he retired, i.e., for the period 30.7.1987 to 31.7.1990. Respondents are directed to make the aforesaid payment to the applicant expeditiously and within a period of three months from the date of service of this order.

5. Present O.A. is accordingly allowed, but without any order as to costs.



(V. K. Majotra)
Member (A)



(Ashok Agarwal)
Chairman

/sns/