

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 311 of 2020

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Bhajaman Pradhan, aged about 36 years, S/o Late Bhagaban Pradhan, Vill/PO-Balisahi, Via – Narasinghpur, PS- Narasinghpur, Dist – Cuttack presently working as GDSMD, Balisahi Branch Post Office, Cuttack, Pin: 754032 (Gr. D)

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary its Secretary of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Chief Post Master General, Odisha Circle, At/PO Bhubaneswar, Odisha, PIN-751001.
3. Superintendent of Post Offices, Cuttack South Division, Cuttack – 753001.
4. Inspector of Posts, Athagarh Sub-Division, Athagarh-754029.

.....Respondents.

For the applicant : Mr. C.P. Sahani, Advocate.

For the respondents: Mr. B. Swain, Advocate.

Heard & reserved on : 06.11.2020

Order on :26.11.2020

O R D E R**Per Mr. Swarup Kumar Mihsra, Member (J)**

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Admit the original application, and*
- (ii) *After hearing the counsels for the parties further be pleased to quash the order of put off duty/suspension issued vide Memo No. F/Saradhapur BO/208 dated 21.01.2019 at Annexure A/8 holding that the action is against the departmental rules/provisions and express provisions of Govt of India contained in DOP&T OM dated 2308.2016 at Annexure – A/12 circulated on the basis of the judgement dated 16.02.2015 of the Hon'ble Supreme Court in the matter of Ajay Kumar Choudhary Vs. Union of India & Ors., in the Civil Appeal No. 1912 of 2015.*
- (iii) *To declare the extension period of suspension as illegal and void.*
- (iv) *To direct the respondents to revoke the order of suspension and reinstate the applicant in his post forthwith.*
- (v) *To direct the respondents to extend all consequential service benefits to the applicant.*
and
- (vi) *Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow the O.A. wit costs.*

2. The case of the applicant as averred in brief in the OA is that the applicant was approved for engagement as GDSMD Balisahi BO after death of his father under compassionate ground vide memo dated 26.07.2017 communicated to the applicant vide respondent no. 3

memo dated 27.07.2017 (Annexure A/1). The applicant submitted that he had undergone training from 13.09.2017 to 15.09.2017 vide memo dated 04.09.2017 (Annexure A/2) but was not given appointment immediately without any reason by respondent no. 4. The applicant was allowed to join as GDSMD, Balisahi SO on 04.10.2017 vide respondent no. 4 memo dated 25.09.2017 (Annexure A/3 series). The applicant alleged that Inspector of Posts, Athagarh Sub-division i.e. respondent no. 4 had been vindictive against him from the first day of his joining because he was against his engagement as GDSMD, Balisahi BO and he was ordered to manage the post of GDSBPM only after 22 days of his joining as GDSMD, Balisahi BO without any training and experience. The applicant submitted that respondent no. 4 deliberately ordered him to work as GDSBPM indifferent Bos with the intention that the applicant might commit some mistake and he could take action against him. Respondent No. 4 vide his memo dated 26.1.2017 (Annexure A/4) ordered the applicant to work as GDSBPM, Balishai BO in addition to his original work as GDSMD but no combined duty allowance was paid to him for the double duty. The applicant then was ordered to manage the work of GDSBPM, Regeda BO vide memo dated 10.01.2018 (Annexure A/5) where he worked from 18.01.2018 to 18.07.2018. The applicant was further ordered to work as GDSBPM, Saradhapur BO vide memo dated 18.07.2018 (Annexure A/6) where he worked from 19.07.2018 to 15.12.2018. It is submitted by the applicant that even though respondent no. 3 is the competent authority to make arrangement/appointment against the post of GDSBPMs but respondent no. 4 unauthorizedly and illegally harassed him by transferring from one post to another, when hundred of other senior GDS staffs were available in the sub-division. It is further

submitted by the applicant that Respondent no. 4 vide memo dated 15.12.2018 (Annexure A/7) ordered the applicant to undergo IPPB training from 17.12.2018 to 19.12.2018 and join in his own post at Balisahi BO after the training but Respondent no. 4 asked him to come to Athagarh HO with RICT machine on 17.12.2018 for training and the respondent took the RICT machine and told the applicant that he need not go for training and he would not be allowed to join as GDSMD Balisahi BO. No order was also issued to him to join as in charge BPM, Saradhapur BO or as GDSMD, Balisahi BO and vide memo dated 21.01.2019 (Annexure A/8) the applicant was put off duty and no reasons for the said order of put off duty was communicated to the applicant even after repeated request. The applicant then made an appeal to respondent no. 3 on 02.03.2019 (Annexure A/9) against the order of put off duty issued by respondent no. 4 and prayed to reinstate him. After no reply was given to his letter vide Annexure A/9 the applicant made another representation dated 09.03.2020 (Annexure A/10) to respondent no. 3 on the ground that even after lapse of more than one year no prima facie case has been made out and prayed for reinstatement. The applicant submitted that as per para 3 of D. G. Posts letter dated 26.07.1990 (Annexure A/11) the case is required to be finalized within 45 days not 120 days, but since no charge memo had been issued and no prima facie case had been made out against the applicant even after one and half years the order of suspension/put off duty is arbitrary and illegal. The applicant in the OA further averred that as per as per DoPT OM dated 23.08.2016 (Annexure A/12) which is based on judgment of the Hon'ble Supreme Court in the matter of Ajay Kumar Choudhary Vs. UOI, Civil Appeal No. 1912 of 2015 it is clarified that if the charge-sheet is not issued before the

expiry of 90 days from the date of suspension then the suspension will lapse but the respondents failed to issue any charge memo against the applicant within 90 days from the date of his put off duty, therefore, the extension of the put off duty period till date is illegal, inequitable, malicious and liable to be set aside. The applicant submitted that as per para 3 of DG Posts letter at Annexure – A/11 it is necessary that the disciplinary authority make every effort to finalize the disciplinary proceeding and pass final order so that the GDS employee does not remain put off duty for a period exceeding 45 days. The applicant further submitted that as per sub rule (2) of GDS (C&E) Rules 1965 “an order made by Inspector of Post Offices or the Asst. Superintendent of Post Offices as the case may be, of the Sub-Division under sub-rule (1) shall cease to be effective on the expiry of fifteen days from the date of such order unless earlier confirmed or cancelled by the Recruiting Authority of the authority to which the recruiting authority is subordinate” and as per para-4 of letter at Annexure A/11 the cases of put off duty ordered by authority lower than appointing authority must be confirmed or rescinded within 15 days, but the order of put off duty from the from post of GDSBPM Sardhapur BO made by respondent no. 4 has not been confirmed by respondent no. 4 hence the impugned order of put off duty issued by the respondent no. 4 at Annexure A/8 is rescinded and the applicant should be deemed to have been revoked ipso facto. The applicant further averred that he was not given put off duty allowance till April 2019 and in April 2019 he was given TRCA at the rate of 25% as put off duty allowance which is continuing till date even though he is entitled to get 37.5% of TRCA after 90 days of put off duty i.e. from 21.04.2019 as per

proviso to Rule-12(3) of GDS (Conduct & Engagement Rules, 2011. Hence this OA.

3. The respondents in their counter inter-alia averred that applicant after completing his training from 13.09.2017 to 15.09.2017 was issued engagement memo dated 25.09.2017 by respondent no. 4 and the applicant joined as ABPM(MD), Balisahi BO in account with Narasinghpur SO on 04.10.2017. While working as IC BPM, Regeda on temporary arrangement, the applicant was ordered to work as I/C BPM, Saradhapur BO on temporary arrangement basis by respondent no. 4 vide memo dated 18.07.2018 and applicant joined as I/C BPM Saradhapur BO on 19.07.2018. The respondents submitted that on 10.12.2018 SPM, Narasingpur SO informed over phone to respondent no. 4 regarding balance differ of two Sukanya Samridhi Accounts bearing nos. 35877960958 & 3299968761 at Saradhapur BO between passbook balance with Finacle ledged balance and guardian of the said two accounts presented their passbooks for balance verification and on checking of the passbooks with finacle ledger balance, they found that the balance noted in the passbooks differ with the available balance in finacle ledger. On 11.12.2018 respondent no. 4 visited Narasingpur SO and instructed SPM to submit the passbook for investigation but since the passbook were with PA Narasinghpur SO who was on IPPB Training he was informed that it will be submitted to respondent no. 4 on 13.12.2018. Sri Anirudha Rout, Overseer (Mail), Athagarh Sub-Dvision was ordered to visit Saradhapur BO on 13.12.2018 to carry out past work verification of the applicant. On 13.12.2018, the SPM, Narasinghpur SO handed over the said two passbooks to the respondent no. 4 and after examination of transaction it was established that Rs. 1000/- and Rs. 2000/- have been misappropriated from the SSA account no.

3587960958 and 3299968761 respectively. Hence respondent no. 4 placed the applicant under off duty vide his memo dated 21.01.2019 and submitted his 1st investigation report vide letter dated 28.01.2019. After verification of past work of the applicant, it was revealed that the applicant was involved in misappropriation of govt money to the tune of Rs. 2,20,800/- and the total loss sustained by the department comes to Rs. 2,11,952/- and the applicant has credited Rs 2,11,000/- suo moto. The respondents further submitted that respondent no. 4 vide Annexure A/7 ordered the applicant to undergo IPPB training from 17.12.2018 to 19.12.2018 and after completion of his training, the applicant will join in his own post at Balisahi BO, the applicant was relieved from the post of I/C BPM/MD, Saradhapur BO handing over the charge to Sri Aditya Narayan Nayak, Overseer (Mail) on dated 15.12.2018 (Annexure R/2). The applicant attended the training and after completion he joined at Balisahi BO and he was placed under off duty vide respondent no. 4 memo dated 21.01.2019 (Annexure A/8 of the OA). The respondents submitted that appeal dated 02.03.2019 of the applicant has been disposed vide memo dated 28.08.2020 (Annexure R/3) by respondent no. 3. The respondents further submitted that put off duty allowance at the rate of 25% was sanctioned by respondent no.4 vide memo dated 20.02.2019 (Annexure R/5) and subsequently the put of duty allowance at the rate of 37.5% after 90 days of put off duty was enhanced by the respondent no. 4 vide memo dated 26.08.2020 (Annexure R/6). The respondents submitted that all action have been taken by the respondents in due process of department guidelines and there was no intentional delay in doing so and the past work verification of the applicant took time to find out the actual loss sustained by the department. After

completion of investigation respondent no. 4 who is the recruiting authority issued the charge sheet against the applicant vide his memo dated 14.09.2020 (Annexure R/4) and the delay was unintentional and it was not feasible to issue charge sheet within the stipulated period. It is submitted by the respondents that vide his representation dated 19.12.2018 (Annexure R/7), 01.01.2019 (Annexure R/8), 02.01.2019 (Annexure R/9), 21.01.2019 (Annexure R/10) and 25.01.2019 (Annexure R/11) the applicant had admitted that he was working as BPM(i/c), Saradhapur BO during the period from 19.07.2018 to 15.12.2018 and while working as such he had accepted the deposits from the depositors and entered the amount in the respective passbooks in words and figures, impressed the date stamp of Saradhapur BO and handed over the passbooks to them, but the deposited amounts have not been taken into BO account and the said amounts have been used for his personal work and requested the SPM Narasinghpur SO to permit him to make good the misappropriated amount at Narasinghpur SO under UCR and the applicant had credited the misappropriated amounts. The respondents submitted that as per sub-rule (1) of Rule 12 of GDS (Conduct and Engagement) Rules, 2011 which stipulated that in cases involving fraud or embezzlement, the sevak holding any post specified in the schedule to these rules may be put off duty by the Inspector or the Assistant Superintendent of Post Offices of the Sub Division as the case may be under immediate intimation to the Recruiting Authority and respondent no. 4 is the recruiting authority of the applicant and the applicant committed fraud while working as I/C BPM, Saradhapur BO for which he was relieved from the duty of I/c BPM and was brought back to his original post of posting i.e. ABPM (MD), Balisahi BO and was placed under put off

duty as ABPM(MD) by the respondent no. 4 who is competent authority to do so and since respondent no. 4 is the recruiting authority of the applicant there is no need of obtaining confirmation of the put off duty order from any higher authority.

4. The applicant in his rejoinder submitted that he joined as GDSMD, Balisahi SO on 04.10.2017 and only after 22 days of that he was ordered to managed the post of GDSBPM, GDS BPM Regeda BO and GDSBPM Saradhapur BO when he was not even well conversant with the original duty of GDS MD, and while working as GDSBPM, Saradhapur BO he accepted deposits from the customers but he could not take those deposits into the concerned accounts as he did not know the procedure properly and that one RICT machine for transactions was given to him without any training to function the RICT machine. He had informed his inability to work as GDSBPM to respondent no. 4 but was forced to continue, so he kept the deposits in his safe custody and did not misappropriated any amount and deposited the entire amount in govt. accounts as per the calculation and direction of the respondents. He also submitted that if he was involved in any case of misappropriation then how the respondents were not able to issue any charge memo even after lapse of more than 1 year and 8 months and when he filed the present OA then the charge memo was issued by respondent no. 4 who is also not competent authority. The applicant further submitted that as per departmental rules/provisions (Annexure A/13) it is mandatory to impart training prior to induction of GDSs to work as GDSBPM, but he was forced to work in different GDSBPM posts without training and while he joined the department just 22 days before. The applicant submitted that his appeal dated 02.03.2019 was rejected vide order dated 28.08.2020 after he filed

this OA and when the Tribunal directed to explain the inordinate delay. The applicant further submitted that he was not allowed to join as GDSMD, Balisahi BO after the training and last posting of his was against the post of GDSBPM, Saradhapur BO and the recruiting authority for the post of GDSBPM is Respondent No. 3 and not Respondent No. 4 so the disciplinary authority should be Respondent No. 4 since as per the settled position of law the disciplinary authority of an official is the appointing authority for the post he has held before the suspension/put off duty. The charge memo was not issued within the time frame so the order of put off duty has become void after the expiry of 90 days and since order of put off duty has not been reviewed at any point of time either within the 90 days or after that till date, so the order needs to be revoked.

5. Learned counsel for the applicant relied on the following citations:

1. Hon'ble Apex Court judgment in Civil Appeal No. 1912 of 2015 in *Ajay Kumar Choudhary v. Union of India and other.*
 2. CAT Principal Bench in OA No. 3634/2017 in *Jagbir Singh versus Govt of NCT of Delhi and ors.*
 3. CAT Cuttack Bench in OA No. 615/2017 in *Partha Sarathi Mishra versus Union of India and ors.*
6. The whole contention of learned counsel for the applicant is that no charge sheet was issued to the applicant even though he was put off duty for a period of more than 90 days. The judgement of Hon'ble Supreme Court in the case of *Ajay Kumar Choudhury Vs. Union of India* that further continuance of the currency of suspension order should not extend beyond three months if within this period charge sheet is not served on the delinquent employee. The relevant portion of the

aforesaid order of Hon'ble Supreme Court is extracted below for ready reference.

“13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorize detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghbir Singh V. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) of the Cr. P. C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. We therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of

Charges/Chargesheet is not served on the delinquent officer/employee; if the memorandum of charges/chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

7.DoP&T in response to the aforesaid judgment of the Hon’ble Apex Court passed order dated 23.08.2016 on continuance of suspension when admittedly no charge sheet has been filed within 90 days period. The relevant portion of the order is extracted below:

“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 is 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.

3. It should also be ensured that disciplinary proceedings are initiated as far as practicable in cases where an investigating agency is seized of the matter or criminal proceedings have been launched. Clarifications in this regard have already been issued vide O.M. No. 11012/6/2007-Estt.A-III dated 21.07.2016.”

8. During pendency of the OA a charge memo was issued to the applicant on 14.09.2020 vide Annexure R/4. The applicant has not challenged the order passed by the appellate authority on the basis of his representation. The said order was passed on 28.08.2020 filed by the respondent before this Tribunal on 31.08.2020 during the pendency of the OA and was also mentioned in the counter affidavit. Thereafter the applicant had filed rejoinder on 20.10.2020. The applicant has not also not challenged the action of the respondents in issuing charge memo against him vide Annexure R/4 in the present case.

9. The respondents have justified regarding the order placing the applicant in put off duty inter alia mentioning that respondent being the recruiting authority of the applicant was competent to do so.

10. This Tribunal have gone through all the documents filed by the respective parties as well the pleadings of both the sides. The specific stand taken by the applicant that the order of put off duty has not been extended or reviewed by the competent authority has not been successfully and specifically refuted by the respondents. Although in written arguments filed by the respondents at para 11, it

has been mentioned that the details of put off duty cases with up to date status are being submitted to the circle office every month for necessary review, there is no such pleading in their counter affidavit. No document has also been placed before this Tribunal to show that the case of the applicant i.e. placing him on put off duty has ever been reviewed, examined or considered by any higher authority of Respondent No. 4. The respondents have also not come up with any clear stand that the DOPT letter dated 23.08.2016 vide Annexure A/12 or the guidelines thereof is not applicable to the present case or to their own establishment. The respondents have neither averred in their counter nor filed any document to show that the guidelines for putting up duty as per GDS (Conduct Engagement) Rules applicable to the applicant, with regard to review has ever been followed. Although there is specific provision in rule that cases of put of duty pending for 45 days or more should be brought to the personal notice of CPMG/PMG/Regional PMG who should issue proper direction in this regard, it is not known if such instructions has been followed in the case of the applicant.

11. In the above circumstances in the absence of any relevant details particulars revealed by the respondents their action in continuing to place the applicant on put off duty should not be ignored. Hence the matter is required to be remanded for consideration and following up the guidelines in question by Respondent No. 2.

12. Hence the OA is disposed of with direction to Respondent No. 2 to consider as to whether the further continuation of applicant on put off duty is required to be reviewed or modified in accordance with law and rules in question within a period of one months from the date of receipt of copy of this order and Respondent No. 2 shall pass speaking and reasoned order to the applicant within the

said period. The applicant is at liberty to place any material, citations rules or regulation before Respondent No. 2 within 10 days from passing of this order.

13. Accordingly the OA is disposed of with above direction but in the circumstances without any order to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)