

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Miscellaneous Application No.180/00635/2020
in Original Application No.180/00334/2019**

Tuesday, this the 19th day of January 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Sudhakaran,
S/o.late Bhargavan,
Aged 60 years,
GDS MD (“put off duty”),
Pavithreswaram B.O.,
Puthur S.O – 691 507.
Kollam Postal Division.
Residing at Nimisha Mandiram,
S.N.Puram, Pavithreswaram P.O.,
Puthur – 691 507.Misc. Applicant

(By Advocate Mr.V.Sajithkumar)

v e r s u s

1. Union of India represented by the Secretary to Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
3. The Superintendent of Post Offices,
Kollam Postal Division, Kollam – 691 001.
4. The Inspector of Posts,
Kottarakkara Sub Division,
Kollam Postal Division.
5. Fayaz.A.,
Inspector of Posts,
Kollam North Sub Division, Kollam.Misc. Respondents

(By Advocate Mr.P.R.Sreejith, ACGSC)

This Misc. Application having been heard on 12th January 2021, the Tribunal on 19th January 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

M.A.No.180/635/2020 has been filed by the applicant to direct the respondents to reinstate him into the service with immediate effect and to disburse the ex-gratia payment due to him at the rate of 50% higher than the amount received during the first 90 days of suspension, from the date of first extension, till the date of reinstatement within a time frame.

2. Heard Shri.V.Sajithkumar, learned counsel for the Misc. Applicant and Shri.P.R.Sreejith, ACGSC appearing for the Department of Posts.

3. The O.A was filed by the applicant aggrieved by the prolonged suspension/'put off duty' without issuance of a valid charge sheet. The applicant was given put off duty on 22.01.2018 while working as GDS MD, Pavithreswaram under the Kollam Postal Division. This put off duty has been extended several times by the recruiting authority. The 2nd respondent has appointed Shri.A.Fayaz, Inspector of Posts, Kollam North Sub Division as Disciplinary Authority on 12.09.2018 in this case. It is submitted that though Inspector of Posts, Kottarakkara is the actual recruiting authority, he could not function as such, because the concerned person happens to be a material witness in this case. The applicant submits that as per GDS Rules it is the "recruiting authority" who is the competent person to impose any punishment against a GDS. However, the respondents issued a charge sheet

on 14.11.2018 for conducting an inquiry under Rule 10 of GDS (Conduct & Engagement) Rules, 2011 which was issued by Shri.Fayaz.A., “Adhoc Disciplinary Authority & the Inspector of Posts”. It is submitted that as per GDS (Conduct & Engagement) Rules, 2011, there is no Disciplinary Authority and discipline can only be enforced by recruiting authority. The applicant submits that on bringing this to notice, the charge sheet was withdrawn by proceedings dated 08.04.2019. A fresh charge sheet has been issued by the Inspector of Posts, Kollam North Sub Division now describing himself as “Adhoc Recruiting Authority and Inspector of Posts, Kollam North Sub Division”, which is the impugned order at Annexure A-6. The applicant challenges Annexure A-6 as the Chief Post Master General (CPMG) by Annexure A-2 only empowered Inspector of Posts, Kollam North Division to act as “Disciplinary Authority” and not as “Recruiting Authority”. He submits that only in case where the CPMG, who is the 2nd respondent, specifically delegates the power of recruiting authority, the Inspector Kollam North Sub Division can act as recruiting authority and issue a charge sheet. In the absence of such order, all proceedings issued on behalf of the 5th respondent, ie., Inspector of Posts, Kollam North Sub Division are invalid and void ab initio. Thus it is submitted that no valid charge sheet has been issued to the applicant so far. Accordingly, the applicant prays for quashing Annexure A-6 and directing the respondents to reinstate him with effect from the date of expiry of first three months of put off duty and to grant him consequential benefits and other reliefs as may be prayed for and as the court may deem fit to grant along with costs of the application.

4. Per contra, the respondents have brought out the reasons for which it was decided why the applicant has been placed on put off duty. It is submitted that the 4th respondent who was the original recruiting authority being a material witness in the case could not function as disciplinary authority in respect of the applicant and hence appointment of Adhoc Recruiting Authority was mandatory for proceeding further. As per Rule 5 of Department of Posts, GDS (Conduct & Engagement) Rules, 2011 the powers of the recruiting authority in the matter of awarding any of the penalties specified in Rule 9 of the Department of Posts, GDS (Conduct & Engagement) Rules, 2011 may be exercised by an authority empowered in this behalf by a special order of the Head of Circle or the Head of the Region under circumstances to be recorded in writing. As per the said provision, the 2nd respondent in exercise of the powers contained in Rule 5 of the Department of Posts, GDS (Conduct & Engagement) Rules, 2011 has empowered the 5th respondent to function as the disciplinary authority of the applicant, with powers to impose all the penalties specified in Rule 9 ibid vide Memo dated 12.09.2018.

5. In line with this, disciplinary proceedings were initiated against the applicant by the 5th respondent under Rule 10 by issue of charge dated 14.11.2018. The applicant submitted his defence denying the charges levelled against him. Inquiry Officer and Presenting Officer were also appointed on 27.12.2018. Later, however, the Disciplinary Authority empowered in the case has dropped the charge sheet on 08.04.2019 in order to incorporate statement of an additional witness, as in the earlier charge

sheet dated 14.11.2018 the statement was not included as the witness was hospitalised. Hence another revised charge sheet including the statement of witness was issued on 09.04.2019. After this, a corrigendum was issued on the same charge sheet by the empowered disciplinary authority on 29.05.2019 (which is produced at Annexure R-1) stating that the memorandum was issued by the empowered disciplinary authority as Adhoc Recruiting Authority instead of Disciplinary Authority.

6. The applicant has contested issue of this charge sheet claiming that it is illegal and that unless there is specific delegation the Inspector of Posts Kollam North Sub Division cannot act as the recruiting authority and issue a charge sheet. In the absence of such order of empowerment/delegation, all proceedings are invalid and void ab initio as the proceedings are carried out on behalf of the 4th respondent, ie., Inspector of Posts, Kottarakkara Sub Division who is the actual recruiting authority.

7. While dealing with this M.A., we are not going into the issue of validity of Annexure A-6 charge sheet or otherwise. This can be decided after the final hearing of this case and after looking at all the evidence on record. In this M.A under consideration, we are only examining the request of the applicant for reinstatement and disbursement of higher ex-gratia payment due to him. It is not disputed that the applicant was placed under put off duty with effect from 22.01.2018. He has submitted that his ex-gratia payment was initially fixed at 25% of the TRCA. The put off duty is being extended for 90 days each time. However, the ex-gratia payment is

not enhanced, though the put off duty is being prolonged due to reasons not attributable to him. A representation was submitted by him to the 4th respondent on 15.07.2019 requesting for review of the payment of ex-gratia in terms of Sub rule 3 (ii) of Rule 12 of GDS (Conduct & Engagement) Rules, 2011. However, the respondent authorities has kept the matter pending since 15.07.2019 forcing him to submit an appeal on 24.07.2019 to the 3rd respondent against the continuous put off duty and denial of eligible and entitled ex-gratia payment. The appeal pointed out that he is under continuous put off duty for a long time without a charge sheet being issued which is against the decision of Hon'ble Supreme Court of India in Ajay Kumar Chowdhary v. Union of India Civil Appeal No.1912/2015 dated 16.02.2015 and thus he has to be reinstated as no valid charge sheet has been issued within three months. Another appeal has been submitted on 09.07.2020 to the 2nd respondent at Annexure A-11 has not also been dealt with so far in a proper way. On making an inquiry through an RTI application about the status of the appeal, it appears that the 3rd respondent had sent a reference letter to the 2nd respondent requesting guidance of the 2nd respondent on the appeal preferred by the applicant. The 3rd respondent has finally disposed of the appeal by an order dated 18.09.2020 with a finding that the pendency of this O.A praying for his reinstatement was hindering the consideration of his appeal for enhancement of ex-gratia payment for the prolonged suspension which was continuing for more than three years. A true copy of the order issued by the 3rd respondent has been produced at Annexure A-13. The order states that since the prayer in the appeal and the relief sought in the O.A are one and the same, the matter has

became subjudice and that Rule 19 (4) of the Central Administrative Tribunal Act states that : '*where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules.*'

8. The applicant submits that the ex-gratia payment to an employee kept under put off duty is eligible for enhancement upto 50% of the payment received during the first 90 days of his/her suspension if the prolonging of his suspension is not due to any factors attributable to him. In the present case the respondents do not have a case that the put off duty is being prolonged due to the fault/actions of the applicant. The matter of enhancement of allowance during the period of suspension was considered by the Hon'ble Supreme Court in a catena of cases and was also recently reiterated by the Hon'ble Delhi High Court in **Mahabir Prasad Yadav v. Lakshmibhai College W.P.(C) No.13811/2019** decided on 27.07.2020. Further more, the applicant has not been issued with a valid charge sheet even after three years of put off duty.

9. The counsel for the applicant has produced the following cases in support of his position :

(1) Mahabir Prasad Yadav v. Lakshmibhai College, W.P.(C) No.13811/2019, MANU/DE/1431/2020.

(2) The Superintendent of Post Offices & Ors. v. P.K.Rajamma, C.A.Nos.1172, 1354, 1355 and 1751 of 1972, MANU/SC/0338/1977.

(3) P.S.Sushyna v. Union of India & Ors., O.A.No.180/00911/2016, C.A.T., Ernakulam Bench decided on 05.12.2016.

10. In Mahabir Prasad Yadav case (supra) it has been held in para 18 that the 'pending case status' and 'other relevant facts' cannot be a reason to deny enhancement of suspension allowance in view of the clear provisions of FR 53. Further, seriousness of allegations, by itself, may not always and necessarily be a factor prohibiting enhancement of allowance, *per se*.

11. We also note that this Tribunal vide order dated 12.06.2019 in the case of Santhosh Solomon v. Union of India & Ors. (O.A.No.333/2019), as an interim measure, ordered reinstatement of the applicant therein placing reliance on the law laid down by the Apex Court in Ajay Kumar Choudhary v. Union of India & Anr. 2015 (7) SCC 291 and the consequential DoPT O.M.No.F.No.11012/04/2016-Estt.(A) dated 23.08.2016 (Annexure A-7) relating to issuance of charge sheet within 90 days and reinstatement, in case no charge sheet is issued after expiry of 90 days.

12. In this case, as we noted earlier, the issue of whether a valid charge sheet has been issued or not is still to be decided. This can be done only at the time of final disposal of the O.A. However, we note that the applicant has been placed on put off duty for a long period of three years and he has not been allowed enhancement of the ex-gratia payment/subsistence allowance as appears to be admissible under relevant rules governing his service. Hence, we direct the respondents to immediately enhance the ex-gratia payment/subsistence allowance to the level that is due to him as per the relevant rules [Rule 12 (3) of GDS (Conduct & Engagement) Rules, 2011] on the subject from the date he was eligible for the same in line with the law laid down by the Hon'ble Apex Court as well as DoPT Circulars etc. Arrears arising therefrom shall also be paid to the applicant within a period of two months from the date of receipt of a copy of this order.

13. As regards reinstatement into service, the respondents may consider the fact of prolonged suspension/put off duty and whether this should be continued in the interest of the department for such a long time. The appeal or representation made by the applicant on this aspect may be duly considered by the respondents within the same time period of two months as stipulated above in the light of standing instructions governing GDS officials placed on put off duty/suspension etc., untrammelled by any proceedings before this Tribunal.

14. With the above directions, M.A.No.180/00635/2020 is disposed of.

15. List this O.A for hearing on 17.03.2021.

(Dated this the 19th day of January 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00334/2019

1. **Annexure A-1** – A copy of the Memo No.IP/KTR/B Sudhakaran/2016 dated 22.01.2018 issued by the Inspector of Posts, Kottarakkara Sub Division.
2. **Annexure A-2** – A copy of the Memo No.IP(KTR)F/Pavithreswaram dated 10.04.2019 issued by the Inspector of Posts, Kottarakkara Sub Division (4th respondent).
3. **Annexure A-3** – A copy of the Memo No.VIG/1-4/03/2013-14 dated 12.09.2018 issued from the office of the Chief Post Master General (2nd respondent).
4. **Annexure A-4** – A copy of the Memo No.F/Pavithreswaram BO/Sudhakaran/GDS MD/Dlgs/18 dated 14.11.2018 issued by the 5th respondent.
5. **Annexure A-5** – A copy of the Memo No.F/Pavithreswaram BO/Sudhakaran/GDS MD/Dlgs/18 dated 08.04.2019 issued by the 5th respondent.
6. **Annexure A-6** – A copy of the Memo No.F/Pavithreswaram BO/Sudhakaran/GDS MD/Dlgs/19 dated 09.04.2019 issued by the 5th respondent.
7. **Annexure A-7** – A copy of the order No.F.No.11012/04/2016-Estt.(A) dated 23.08.2016 issued by the 1st respondent.
8. **Annexure A-8** – A copy of the Order No.VIG/1-4/03/2013-14 dated 04.09.2019 issued by the 2nd respondent.
9. **Annexure A-9** – A copy of the representation dated 15.07.2019 submitted by the applicant before the 4th respondent.
10. **Annexure A-10** – A copy of the representation dated 24.09.2019 submitted by the applicant before the 3rd respondent.
11. **Annexure A-11** – A copy of the revision petition dated 09.07.2020 submitted by the applicant before the 2nd respondent without annexures.
12. **Annexure A-12** – A copy of the representation dated 17.08.2020 submitted by the applicant to the 2nd respondent along with the reference letter dated 16.06.2020 submitted by the 3rd respondent to the 2nd respondent.
13. **Annexure A-13** – A copy of the order No.F3/02/2016-17 dated 18.09.2020 issued by the 3rd respondent to the applicant.

14. Annexure R-1 – A copy of the corrigendum dated 29.05.2019.
