

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A./T.A./CCA No. 989/01

Date of decision

24/3/06

Ali Jan Shah & Anr.

Applicant(s)

Sri M. P. Sarraf

Counsel for the applicant(s)

Versus.

U.O.T & Anr.

Respondents(S)

Sri S. Chaturvedi

counsel for the respondent(s)

CORAM

Hon'ble Mr. K. B. S. Rajan

V.C./Member(I)

Hon'ble Mr. A. K. Singh

Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. ✓ To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?

A. K. Singh

SIGNATURE

Manish/-

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

ORIGINAL APPLICATION NO.989 OF 2001

ALLAHABAD THIS THE 28th DAY OF March, 2006

HON'BLE MR. K. B. S. RAJAN, MEMBER-J
HON'BLE MR. A. K. SINGH, MEMBER-A

Ali Jan Shah S/O Sri Safi Shah,
R/O Village & Post Office Pali,
District Ghazipur. (Deceased)

1/1 Sikendar Shah,
S/o Ali Jan Shah,
R/O Village & Post Office Pali,
District Ghazipur.

.Applicant

By Applicant: Shri M.P. Sarraf

Versus

1. Union of India, through the Secretary,
Department of Posts,
Ministry of Communication,
New Delhi.
2. The Superintendent of Post Offices,
Ghazipur.

. Respondents

By Advocate: Shri S. Chaturvedi

O R D E R

By A. K. Singh, Member-A

O.A. No.989 of 2001 has been filed by the applicant Shri Ali Jan Shah (of the address given in the O.A. herein to be referred to as applicant) against order dated 07.06.2001 sanctioning Rs.6000/- as ex-gratia gratuity and denying him the benefit of pay and salary on the ground that there is no provision under the Rules to pay salary and other allowances to an EDBPM. Brief facts of the case are

Ready

that the applicant while serving as an Extra Departmental Branch Postmaster, Pali was removed from service, vide memo no. CR-5/20175-76 dated 17.8.1976 issued by Superintendent of Post Offices, Ghazipur Division for misappropriation of money orders. The applicant preferred an appeal/ Revision against this decision but the same, was rejected vide order dated 19.2.1991. Shri Ali Jan Shah then filed O.A. No.996/91 against his order of removal from service. The O.A. was decided on 09.01.1997 in his favour. The respondent department moved a review petition No.73/97 against the impugned order of Tribunal but the same was dismissed by the Tribunal on 31.10.2000. As the Disciplinary Authority passed the order of removal of the applicant on grounds of misappropriation of money without conducting any inquiry proceedings, this Tribunal while setting aside the same, passed the following order:-

"In view of these facts and Circumstances, we hold the view that the applicant succeeds. The order of punishment passed by the disciplinary authority and confirmed by the appellate as well as by Revisional Authority is quashed and set aside. The applicant shall be deemed to have continued in service and shall be entitled for all consequential benefits."

2. Since the respondent department did not comply with the above direction of the Tribunal, the applicant filed a Contempt Petition No.26/99 against the respondents which was dismissed on 31.10.2000 on the ground of Limitation/ Time Bar.

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3. The applicant again filed a fresh O.A. No.192/2001 as per liberty granted to the applicant by the Tribunal while dismissing the Contempt petition which was decided by the Tribunal on 27.2.2001 with the following direction:-

"In Case, the applicant moves a fresh representation the same shall be decided by the respondents within three months thereafter and in case the amount claimed is not paid, competent authority in the respondent's establishment shall pass detailed reasoned and speaking order with particular reference to the rules relied upon, with a copy to the applicant."

4. In pursuance to the aforesaid direction, the competent authority, namely the Superintendent of Post Offices passed the following order:-

"I have gone through the representation dated 12.4.2001. The representation is decided as under:-

1. Of Course, the punishment order dated 17.8.1986 was quashed by the Hon'ble Tribunal in O.A. No.996/91 decided on 9.1.1997. But the post of Extra Departmental Branch Post Master does not confer right for pay and allowances for the period from 24.9.1975 to 31.12.1996 as the Extra Departmental Branch Post Master are governed under Post and Telegraph. Extra Departmental Agent (Conduct and Service) Rules 1964 and there is no such Rule to pay the pay and allowances.
2. In the aforesaid O.A., the applicant has himself quoted his date of retirement as in December 1996 and it is deemed have been retired on 31.12.1996.
3. The Post and Telegraph extra departmental Agent (Conduct and Service) Rules 1964 envisaged under rule 4 that such employee shall not be entitled to any pension, only the ex gratia gratuity amount upto maximum of Rs.6000/- is admissible vide DGP&T instruction No.40-29/87-PE II/ED and Training dated 7.1.1993.

Ag. Secy

4. The applicant was extra departmental Branch Post Master Pali Branch Post Office as such he is not entitled for pay and allowances, Leave encashment, Leave salary, Provident Fund and Pension under P&T EDA (Conduct and Service) Rules 1964 remained in force prior to 31.12.1996.

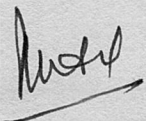
5. Therefore, the order for payment of Rs.6000/- (Rs. Six Thousand only) as admissible in shape of ex gratia gratuity has been ordered to be paid to the applicant vide this office memo no even dated 24.5.2001.

Sd/-

Superintendent of Post Offices,
Ghazipur Division.

6. Being aggrieved by the aforesaid decision/order the applicants have filed the present O.A., before us. According to the applicant, he is entitled to get pay and allowances etc. and interest on delayed payment as well as the compensatory cost from the respondents. Respondents deny the same and oppose the O.A. on the ground that P&T EDA (Conduct & Service) Rules 1964, which were in force of the material time i.e. prior to 31.12.1996 did not make any such provision. The applicants and the respondents were also heard in person on 02.06.2006. In their personal submissions both sides reiterated their earlier submissions, before us.

6. We have given our anxious considerations to the submissions made by the applicant as well as the respondents in support of their case. We find that



the order of this Tribunal dated 09.01.1997, achieved finality when the review filed against the same was dismissed on 31.10.2000. Impugned order was not also not challenged before the Allahabad High Court by way of any Writ Petition under Article 226 of the Constitution of India. Hence the same achieved finality. The operative portion of the impugned order is recorded, here below.

"In view of these facts and circumstances we hold that view that the applicant succeeds. The order of punishment passed by Disciplinary Authority and confirmed by the appellate as well as by Revisional Authority is quashed and set aside. The applicant shall be deemed to have continued in service and shall be entitled for all consequential benefits. O.A. is decided accordingly. No order as to costs".

Though the order does not clearly speak of the actual nature of these benefits, nevertheless, it leaves no scope for doubt, that as per the ~~impugned~~ ^{impugned} orders the applicant on reinstatement shall be entitled to his lawful wages during the intervening period i.e. from the date of his removal to the date of his reinstatement. We also find that the ~~impugned~~ ^{impugned} order of Tribunal directing the reinstatement of applicant in service is dated 9.1.1997 while the applicant was dismissed from service vide order dated 17.8.1976. Hence the applicant on reinstatement will be entitled to receive his wages, as on duty, w.e.f. 17.8.1976 till the date of his retirement i.e. 31.12.1996. Wages will obviously include salary and other allowances attached thereto.

Impugned

In the second place, we are conscious of the fact that the applicant is an "Extra Departmental Branch Post Master and not a regular employee of the Postal Department and hence his Service conditions have to be different vis-à-vis regular employees of corresponding rank in the department. Hence there does appear some force in the argument advanced by the respondents in this regard. We have also carefully considered the claim of the applicant for Leave encashment, Gratuity etc.

10. Respondents on their part, have clarified the position vide their speaking order dated 7.6.2001 Extra Departmental Branch Post Masters were not entitled to Pay and allowances, Leave encashment, Leave Salary, Provident Fund or Pension under P&T EDA (Conduct and Service) Rules 1964 (Rule 4) which were in force, at the relevant point of time i.e. prior to 31.12.1996. They were only entitled to a maximum Gratuity of Rs.6,000/- as retiral benefits under the aforesaid Rules.

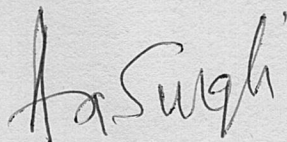
11. Applicant has not cited any provisions of Law, Rule or Regulation under which they were entitled to the benefits of Bonus, Leave Encashment etc., claimed by them. It may be stated in this context that while a court or Tribunal has the power to enforce the rights of a citizen. It has however, no powers to create such a right. Courts have to function within the limits laid down by law and

Ans

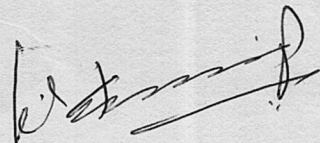
their decisions have to be, not only to be in accordance with law but also within the parameters laid down by law. The applicant has not cited a single Rule or authority under which they were entitled to above mentioned benefits claimed by them in the O.A. Hence O.A., in question, is clearly unsubstantiated ^{by} any law, Rule or Regulation and hence fails on all other points except on the point of wages during the intervening period. Accordingly, we order payment of the same from the period from 17.8.1976 (date of dismissal) to the date of his Superannuation i.e. 31.12.1996 (as the applicant has already retired on the date).

12. Since the maximum amount of Gratuity, admissible to the applicant is only Rs.6,000/- under the relevant rules and the same has already been paid, the request of the applicant for payment of any additional amount over and above already paid, merits rejection. O.A. remains completely and clearly unsubstantiated on other points raised by benefits the applicant and hence merits rejection.

13. O.A. is accordingly, disposed of in the above manner.



Member-A



Member-J

/neelam/