

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.314 OF 2004

ALLAHABAD THIS THE 12th DAY OF DEC 2005

HON'BLE MR. D.R. TIWARI, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J

Jai Prakash Mishra, S/o late K.L. Misra, Aged about 42 years, R/o 133(B)/502(d) Jahangirabad, Kanpur..

.....Applicant.

(By Advocate Shri O.P. Gupta)

V E R S U S

1. Union of India, through Secretary, Ministry of Communication, Government of India, New Delhi.
2. Sub-Divisional Inspector of Post Offices, South Sub-Division, Kanpur City, Bada Chaurah, Kanpur.
3. Senior Supdt. Of Post Offices, City Division, Kanpur, Bada Chaurah, Kanpur.
4. Post Master General Kanpur Region, Kanpur, Bada Chaurah, Kanpur Nagar.

.....Respondents

(By Advocate: Sri S. Singh.)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The short but sharp question involved in this case is whether there is any difference between "kept off duty" and "suspension". The applicant in this OA contends that they are one and the same, while the respondents say 'No'.

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2. Facts capsule as contained in the OA and the reply against the same as given in the counter are contained in the succeeding paragraphs:

3. Facts as contained in the OA:

(a) The applicant was appointed as C.P. Chaukidar on 15.12.86 and was granted temporary status w.e.f. 29.11.89; he was kept off duty vide order dated 18.12.95 for unauthorized absence w.e.f. 16.12.95 during which theft was committed in the post Office in the night of 16.12.95. Applicant was punished vide order dated 3.4.97 with the recovery of Rs.9720/- and reduction of pay scale for the period of three years. This punishment was challenged by filing O.A. NO.129/2001, which was allowed on 18.2.2001, by quashing all punishment orders and giving liberty to the respondents to pass fresh orders in accordance with law. Applicant was put back on duty by order dated 15.4.97.

(b) Money recovered from applicant was refunded by the order dated 4.6.2001, and a show cause notice dated 6.6.2001 for aforesaid allegations was served on him. His reply was considered in his favour and he was exonerated from all charges vide order dated 13.8.2001 passed by respondent NO.2. But his kept off period remained undecided; therefore, he submitted several representations.

(c) Vide impugned order dated 22.10.2003 applicant has been informed that his

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claim has already been decided by P.M.G. Office on 19.11.2001, the same has already been communicated to the applicant vide letter dated 20.11.2001.

(d) It is submitted that order dated 20.11.2001 was not passed deciding the representation dated 24.9.2002. By this representation, applicant requested before the respondents to regularize the kept off (suspension) period from 18.12.95 to 15.4.97 in the light of order passed by respondent NO.2 on 13.8.2001, exonerating the applicant from all charges.

(e) Since by order of disciplinary authority dated 13.8.2001, applicant is fully exonerated from all charges leveled on him, he is legally entitled to get his kept off period regularised by getting all benefits for the said period including seniority and salary.

4. The reply of the respondents as contained in counter ^{is} ~~are~~ as follows:

(a) The contention of the applicant made in paragraph No.4 (ii) of the original application that the kept off period remained undecided is not correct, the representation of the applicant was decided by the Post Master General, which was communicated to the applicant. It is submitted that decision for payment of salary for the period he was kept off duty, has been finally decided and nothing remains to be decided.

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(b) The applicant is trying to show kept off duty as suspension. The suspension order is issued only for Government Servants under Rule 10 of CCS (CCA) Rules, 1965. Since the applicant is contingent paid employee the aforesaid rule is not applicable in his case. The temporary status was granted to the applicant to avail the facilities available to the Group D employees of Government.

(c) Temporary status like the applicants cannot be treated at par with the Government Servant. The action of the respondents ^{is} just, legal and in accordance with Rules and there is no illegality.

5. Arguments were heard. The counsel for the applicant submitted that after issue of temporary status, the applicant is subject to the disciplinary proceedings and as such, there is no magic in the term "put off duty", which is identical to suspension in effect. As such, when the applicant is exonerated, he is certainly entitled to the full pay and allowances for the period he was "put off duty".

6. On the other hand, the counsel for the respondents submitted that for being covered under the term "suspension" an order under Rule 10 of the CCS(CC&A) Rules, 1965 should be passed whereas in the case of the applicant the order was put off duty. As such, the same cannot be considered as suspension and

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hence, the applicant is not entitled to pay and allowances during the period of put off.

7. A perusal of the impugned order would reveal that the denial to pay the pay and allowances to the applicant for the period in question is that the "since the department did not extract work from Shri Jai Prakash Misra, C.P. Chowkidar, Kidwai Nagar, Kanpur during the period from 16-12-96 to 10-04-97, he is not entitled for any salary for the said period."

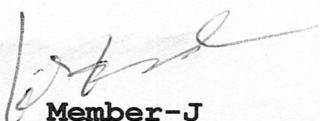
8. Now a comparison between put off and suspension. The former is applicable in the case of contingent paid employees and the latter to the regular (though initially on temporary basis) employees. Both are resorted to in connection with certain disciplinary proceedings. During the period of put off duty or suspension, the employer-employee relationship does not cease, as the final outcome of the disciplinary proceedings has to be implemented in respect of both the cases. While during the period of put off no allowance is paid, during the period of suspension, of course, subsistence allowance is granted. When the individual is exonerated of the charges, the period of suspension is regularized as of duty and what is paid to the suspended employee is his salary as reduced by the subsistence allowance already received by him. In other words, the suspended

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employee gets full pay and allowances, for the period of suspension, though no work has been extracted from him. In the case of put off duty, logically and rationally, the individual should be paid his full pay and allowances as no amount is paid as subsistence allowance.

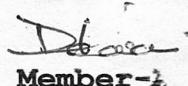
9. In the instant case, the respondents have been harping upon the fact that the applicant was a contingent paid employee. This situation was prior to the grant of temporary status and as such, the applicant can no longer be considered as contingent paid employee. The applicant is therefore, entitled to the pay and allowances for the period from 16-12-1996 to 10-04-1997, as his non performance of duty is not on account of his fault but, as rightly stated by the respondents, vide the impugned order, "**the department did not extract work from him**".

10. In view of the above, the OA succeeds. The applicant is entitled to pay and allowances for the period he was put off duties and the respondents are directed to work out and pay the salary of the applicant for the period from 16-12-1996 to 10-04-1997. This drill should be performed within a period of four months from the date of communication of this order. No costs.



Member-J

Manish/-



Member-1