

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

**HON'BLE MR. A.K. GAUR , MEMBER (J)
HON'BLE MR. D. C. LAKHA, MEMBER (A)**

Original Application Number. 1613 OF 2005.

ALLAHABAD this the 9 day of 2, 2010.

Triloki Nath, S/o Sri Badri Prasad, Resident of Village and Post Office
Dhani Bazar, District Maharajganj.

.....Applicant.

VERSUS

1. Union of India through the Chief Post Master General, U.P. Circle Lucknow.
2. Senior Superintendent of Post Offices, Gorakhpur Division, Gorakhpur.
3. Sub Divisional Inspector (Post), Ananda Nagar, District Maharajganj.

.....Respondents

Advocate for the applicant: Sri M.K. Upadhyay

Advocate for the Respondents: Sri S. Srivastava

ORDER

Delivered by Hon'ble Mr. A.K. Gaur, J.M.

The applicant Through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for following main relief:-

- "A. To direct respondents to give 50% of back wages from the date of dismissal order dated 22/31-5-1993 to the date of reinstatement order dated 19th August, 2002.

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- B. to direct to the respondents to give 18% interest on the delayed payment of back wages to the applicant.
- C. to direct to the Respondents to give pay to the applicant with effect from 14th, August, 1992 to 12th August, 2002."

2. Factual matrix of the case are that the applicant, who is presently working as extra departmental Delivery Agent Mail Carrier Baisar (Dhani) under Sub Divisional Inspector Anand Nagar District Maharajganj, earlier filed an original application No. 314 of 1993 challenging the order dated 14.8.1992 and 22/31.5.1993, which was allowed by the Tribunal vide judgment and order dated 09.04.2002 (Annexure A-1 of O.A) with following direction: -

"13. In the facts and circumstances, the OA is allowed. Orders dated 14.08.1992 (Ann A-3) and 22/31-5-1993 (Ann A-6) are quashed. We direct respondent no. 1 to reinstate the applicant immediately. Respondent no. 2 is directed to ensure the compliance of this order. The applicant will also be entitled to 50% of back wages from the date of his dismissal to the date of reinstatement. The payment of the back wages will be made within 3 months from the date of communication of this order to respondents.

14. We also award cost of Rs. 1000/- because the entire action of respondent no. 1 has been arbitrary, prejudicial and illegal. The department may recover the loss to the Government from respondent no. 1, because of whose illegal action the department had to indulge into avoidable litigation."

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3. Learned counsel for the applicant submitted that in compliance of the judgment and order dated 09.04. 2002 although the Respondent no. 1 passed an order for reinstatement to the applicant on 3.7.2002 and based on which the Respondent no. 3 has also passed an order dated 22.7.2002 for reinstatement as G.D.S. Mail Carrier/Mail Deliverer, Baisar but he was not given duty . Aggrieved the applicant made a representation to the Respondent no. 2 for giving charge of the post , as well as other benefits given vide judgment and order dated 9th, April, 2002. Learned counsel for the applicant would further contend that although the respondent No. 3 given charge to the applicant as E.D.D.A./Mail Carrier Baisar (Dhani) on 19.08, 2002 but as regard directions about the back wages of 50% from dismissal to the date of reinstatement, they have not passed any order. Thereafter the applicant filed representation dated 25.08.2003 / Annexure No. A-5 of O.A for payment of back wages but the respondents did not pay any heed to it.

4. On notice, the respondents filed Counter Affidavit. Learned counsel for the respondent submitted that as per the decision taken by the Circle Office, a writ petition No. 2779 of 2002 has been filed challenging the judgment and order dated 09.04.2002. Learned counsel for the respondents further submitted that the order passed by the Tribunal was also complied with and the applicant was taken back into services but the applicant refused to perform the duty till the back wages are not paid to him and after lapse of 6 months, the applicant preferred an application dated 14.08.2002 addressed to the then Senior Superintendent of Post Offices, Gorakhpur Division, Gorakhpur for resuming the charge of EDMP

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09.04.2002 has not been fully complied with. It is a matter of serious concern that the direction of the Tribunal is being circumvented by the respondents on flimsy grounds. The intention of the court is always to advance substantial justice to the parties concerned. In the present case, there was a clear direction of the Tribunal to pay 50% back wages for the period for which the applicant remained under punishment. The plea taken by the respondents for not giving 50% back wages, does not appear to be convincing as there is no interim order of the Hon'ble High Court staying the directions given by the Tribunal vide judgment and order dated 09.04.2002. It is settled principle of law that payment of back wages is a recurring cause of action in view of the decision rendered by Hon'ble Supreme Court reported in **1994 (6) SCC page 24 - Uptron India Ltd. Vs. U.O.I & Ors** and **1995 (5) SCC page 628 - M.R. Guta Vs. U.O.I & Ors**. We may observe that the technicalities and niceties of law should not come in the way of getting 50% back wages as directed by the Tribunal.

9. In view of the observations made above, the O.A is allowed. The respondents are directed to pay 50% of back wages from the date of his dismissal to the actual date of reinstatement in service with interest prevalent at the market rate on delayed payment within a period of three months from the date of receipt of certified copy of this order.

10. There will be no order as to costs.


(MEMBER- A)


(MEMBER- J)

/Anand/

Baisar, Dhani Bazar and the department immediately gave the charge on 19.08.2002 A/N as per the report of Sub Divisional Inspector (P), Anand Nagar dated 20.08.2002. Learned counsel would further contend that the Civil Misc. Writ Petition No. 2779 of 2002 is pending for final hearing before the Hon'ble High Court .

5. Learned counsel for the applicant has filed Rejoinder Affidavit in which nothing new has been added except R.A-1, based upon which it has been stated in para 9 of R.A that no such writ petition No. 2779/2002 challenging the judgment and order dated 09.04.2002 passed by the Tribunal has been filed and the aforesaid Writ Petition has been filed by one Sri Krishna Murari Sharma.

6. The respondents have filed Suppl. Counter Affidavit. In para 8 of Supl. Counter Affidavit, it has been stated that the Writ Petition No. 2779/2003 (Union of India Vs. Triloki Nath) has been filed against the judgment passed by the Tribunal in O.A No. 314/1993.

6. We have heard learned counsel for both sides at length and perused the pleading as well.

7. As regards the dispute regarding filing Writ Petition, it appears that the respondents in the Counter Affidavit wrongly have mentioned the number of Writ Petition as '2779/2002' instead of '2779/2003' as mentioned in para 8 of Suppl. Counter Affidavit.

8. Having heard learned counsel for both sides, we are fully satisfied that directions given by the Tribunal vide judgment and order dated

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