

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 27th day of January, 2011.

**HON'BLE MR. S. N. SHUKLA, MEMBER- A.
HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J.**

ORIGINAL APPLICATION NO. 595 OF 2005

Kedar Singh, s/o Late Saraju Singh, R/o Village- Taranpur, P.O. Khoripakar, District- Ballia.

.....Applicant

Advocate for applicant : Sri K.S. Rathore

V E R S U S

1. The Union of India through Post Master General, Lucknow.
2. The Post Master, Head Post Office, Ballia.
3. The Superintendent, Post Office, Ballia Region, Ballia.
4. The Post Master, HSG-I, Head Post Office, Ballia.

.....Respondents

Advocate for the respondents : Sri R.K. Srivastava

O R D E R

BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J.

The applicant has approached this Tribunal under section 19 of Administrative Tribunals Act 1985 seeking quashing of order dated 22.08.1996 passed by respondent No. 4 and order dated 28.02.2005 passed by respondent No. 3.

2. The brief facts of the case that the applicant was working as Stamp Vendor in the office of respondent No. 3. On 25.04.1968 one Sri Rishm Deo Pandey purchased N.S.C for a period of ten years amounting to Rs. 1000/-. The said NSC was withdrawn on 23.10.1976 by the NSC holder. The applicant at the time of withdrawal of NSC identified said Sri Rishm Deo Pandey, who received Rs. 1560/- against the NSC purchased by him for Rs. 1000/-. It is stated in the O.A that on 15.12.1997 one complaint

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was lodged by another Rishm Deo Pandey alleging therein that his NSC was misplaced and the amount matured by the other person in connivance with the departmental official. On the complaint made by the subsequent Rishm Deo Pandey, the respondents department lodged FIR under section 409, 420 IPC in Police Station Kotwali, District Ballia, which was converted into criminal case No. 256/1984 trialed by Chief Judicial Magistrate, Ballia. On registration of FIR the applicant was placed under suspension. On 13.12.1995 the applicant was acquitted in the above stated FIR by Chief Judicial Magistrate, Ballia. Simultaneously the departmental proceeding was also initiated against the applicant and ultimately on 22.08.1996 the respondent No. 4 i.e Post Master, Head Post Office, Ballia exonerated applicant from the charges. Despite the exoneration of the applicant from the charges, the respondent No. 4 awarded him the punishment of Censure. The applicant thereafter moved a representation before the respondents for granting differential of salary from 27.10.1970 to 09.09.1996, when he was put off duty. When the respondents did not heal to the request of the applicant then he filed O.A No. 396/2000 before this Tribunal, which was disposed of vide order dated 07.12.2004.

3. From perusal of the order passed by this Tribunal it is clear that above said O.A was disposed of with a direction to the respondents to decide the pending representation dated 13.09.1999. It is stated in the original application that after having the order from this Tribunal the same was forwarded to the respondents through registered post on 21.02.2005. Respondent No. 3 in terms of the direction of this Tribunal decided the representation dated 13.09.1999 by passing an order dated 28.07.2005 whereby rejected the representation on the ground that in

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terms of rule 12(3) of Gramin Dak Sevak (Conduct and Employment) Rules 2001 (herein after referred as Rule 2001) he was awarded punishment , therefore, he is not entitled for full wages for the period when he was put off duty. Hence the instant Original Application.

4. Notice of the application was issued and the respondents filed its Counter Affidavit.

5. In the Counter Affidavit the respondents have taken specific ground that in terms of rule 12(3) of Rules 2001 , the applicant is not entitled for differential of amount as he was awarded punishment by the competent authority and, therefore, order is legal and in accordance with law. Moreover it was for the competent authority to see whether full amount is to be paid or not in terms of rule, which empower authority to pass appropriate order with regard to financial benefit.

6. We have heard counsel for applicant Sri K.S. Rathore and Sri R.K. Srivastava, counsel for the respondents and perused the record.

7. The controversy in the instant case is that whether the applicant is entitled for differential of amount for the period when he was put off duty by the respondents during the pendency of departmental proceedings in terms of Rule 2(3) of Rules 2001. To have a better appreciation rule 12(3) of Rules 2001 is reproduced herein under : -

“(3). A Sevak shall be entitled per month for the period of put off duty to an amount of compensation as ex-gratia payment equal to 25% of his/her Time Related Continuity Allowance together with admissible Dearness Allowance:



Provided that where the period of put-off duty exceeds 90 days, the Appointing Authority or the authority to which the Appointing Authority or any other authority empowered in this behalf, as the case may be, who made the order of put-off duty shall be competent to vary the amount of compensation for any period subsequent to the period of first 90 days as follows:

- (i). The amount of compensation of ex gratia payment may be increased by a suitable amount, not exceeding 50% of such compensation admissible during the period of the first 90 days, if in the opinion of the said authority the period of put off duty has been prolonged, for reasons to be recorded in writing, not directly attributable to the Sevak.
- (ii). The amount of compensation as ex-gratia payment may be reduced by a suitable amount not exceeding 50% of such compensation admissible during the first 90 days , if in the opinion of the said authority, the period of put off duty has been prolonged due to reasons to be recorded in writing directly attributable to the Sevak.

Note 1 - The rate of Dearness Allowance will be based on the increased or decreased amount of compensation admissible under sub-clauses (i) and (ii) above.

Note 2 - The payment of compensation for the put off duty period shall not be subject to furnishing of a certificate that the Sevak is not engaged in any other employment, business, profession or vocation:

Provided that a Sevak who has been absconding or remains absent unauthorizedly and is subsequently put off duty shall not be entitled to any compensation as ex-gratia payment.

Provided further that in the event of a Sevak being exonerated, he shall be paid full admissible allowance for the period of put off duty. In other cases, such allowances for the put off duty can only be denied to a Sevak after affording him an opportunity and by giving cogent reasons.

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(Underlined to lay emphasis)

Note - Any payment made under this rule to a Sevak on his reinstatement shall be subject to adjustment of compensation already paid as ex-gratia.

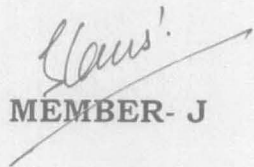
8. From bare perusal of the above quoted rule it is clear that competent authority is empowered under this rule to put off duty any employee during pendency of the departmental proceeding but from bare perusal of the proviso to the rule it is clear that once the employee is exonerated by the competent authority then he is entitled for full admissible allowances for the period of put off duty.

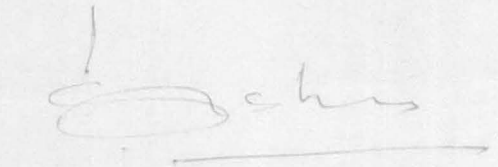
9. Now the facts of the case in hand it is the admitted case between the parties that the applicant was exonerated from the charges by the competent authority by order dated 22.08.1996. Once the applicant has been exonerated from the charges by the competent authority specifically stating therein that the charges have not been proved against him, therefore, there is no occasion for the respondents to inflict the punishment of censure upon the applicant without providing opportunity of hearing because censure is also defined^{as} punishment under the rules. As clear from rule 12(3) reproduced above, once the employee has been exonerated from the charges that he is entitled for full admissible allowances and if any punishment has to be inflicted upon him, the same can be done by recording the reasons as per Rule 12(3)(ii). The respondents have not produced any record showing any material that competent authority recorded reasons in writing as per rule 12(3)(ii) and also applicant was granted opportunity before awarding punishment of censure. Therefore, the same is in violation of principles of natural justice and also in violation of rule 12(3).

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10. Once the basic principle of natural justice has been violated by the respondents, therefore, the impugned order is not sustainable in the eyes of law. Not only this, the Hon'ble Supreme Court in number of cases repeatedly held that before passing any order, which is having a civil consequence, the effected person has to be given an opportunity of hearing, which is lacking in the instant case. Therefore, we are satisfied that the impugned order is not sustainable in the eyes of law as once the person has been exonerated from the charges, for which he was put off duty, then in terms proviso of rule 12(3) of Rule 2001, he is entitled for full admissible allowances. Hence the impugned orders dated 22.08.1996 and 28.02.2005 are set aside and the respondents are directed to grant admissible allowances to the applicant within a period of three months from the date of receipt of copy of this order. No other point has been raised.

11. There will be no order as to costs.


MEMBER- J


MEMBER- A

Anand/