

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

CP No. 117 of 2010

Present: **Hon'ble Mr. Swarup Kumar Mishra, Member (J)**
 Hon'ble Mr. T. Jacob, Member (A)

Rabindranath Mallick aged about 56 years S/o Late Chaitanya Mallick of Vill-Radhaballavapur Samil Bandhatia, PS- Dhamnagar, Dist-Bhadrak.

.....Applicant

VERSUS

1. Radhika Dorai Swamy, Director General of Posts, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi-110001.
2. Hilda Abraham, Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda, 751001.
3. Manisha Mishra, Director of Postal Services (HQrs), Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda, 751001.
4. Sri Kaibalya Parida, Superintendent of Post Offices, Bhadrak Division, Bhadrak-756100.
5. Sri Meena Handa, Director General of Posts, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi-110001.
6. Dr.S.K.Kamila, Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda, 751001.
7. Sri G.Gurunathan, Director of Postal Services (HQrs), Office of the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda, 751001.
8. Sri Sarbeswar Misra, Superintendent of Post Offices, Bhadrak Division, Bhadrak-756100.

.....Respondents/Contemnors.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 17.03.2021

Order on :09.07.2021

O R D E R

SWARUP KUMAR MISHRA, MEMBER (JUDL.)

This Contempt Petition arises out of OA No. 1308/2004 has filed this Contempt Petition for non-compliance of the order dated 13.8.2010 by which the OA No. 1308/2004 disposed of on 13/08/2010 by quashing the order of removal from engagement of the applicant as a Gramin Dak Sevak (in short GDS) passed by the respondents. Relevant portion of the order is quoted extracted as under:

“9.In view of the above, the order of the Disciplinary as well as Appellate Authority under Annexure A/7 & A/10 & 11 are hereby quashed and the matter is remitted back to the Disciplinary Authority for making de novo enquiry from the stage of supplying of the copy of the rep[ort of the IO to the Applicant. Respondents are hereby directed to reinstate the Applicant forthwith and in so far as payment of back wages for the intervening period we leave it to the Disciplinary authority to decide in accordance with the Rules and Law.”

2. Alleging non compliance of the said order the Applicant has filed the instant CP. Meanwhile, the order dated 13.8.2010 of this Tribunal was challenged by the respondents in Hon'ble High Court in W.P.(C) No. 11284/2015. Vide order dated 5.10.2015, Hon'ble High Court of Orissa was pleased to stay the order of this Bench dated 13.8.2010 in OA No. 1308/2004. In the said circumstances, this Tribunal vide order dated 16.11.2015 dropped the CP with liberty to the applicant to move the Tribunal after disposal of the writ petition.

3. The applicant filed MA No. 626/2019 bringing to the notice of this Bench that writ petition has been dismissed by Hon'ble High Court vide order dated 25.4.2019. Accordingly, vide order dated 26.8.2019, CP was restored and the respondents were directed to file show cause reply.

4. The respondents filed show cause reply enclosing a copy of the order dated 11.10.2019 by which the applicant is reinstated as GDS BPM, Bandhatia w.e.f. 30.7.1996 i.e. from the date on which he was removed from engagement and discharged from service w.e.f. 17.10.2018, which is the applicant's date of superannuation. It has been further decided that the inquiry will be conducted in terms of the order of the Tribunal and the question of payment of back wages during the intervening period will be decided by the disciplinary authority in accordance with Rules & Law and Disciplinary Authority vide order dated 11/10/2019 decided that period of put off duty along with payment of back wages will be decided on conclusion of disciplinary proceedings and thus no contempt was committed by the Respondents. This Bench after considering the rival submission of the respective parties vide order dated 13/11/2019 directed the

respondents to submit additional show cause mentioning the reasons for not allowing the benefit of the rule 12(5) of GDS Rules while passing the order dated 11.10.2019.

5. On 6th December, 2019 Respondents filed show cause mentioning therein that Rule-12 (8) of the GDS (Conduct & Engagement) Rules, 2011 is not applicable in the instant as the Applicant was not placed under deemed put off duty. Hence is not entitled to any benefits in term of Rule-12 (5) of the GDS (Conduct & Engagement) Rule, 2011. It was specifically made clear in the order dated 11.10.2019 that the intervening period i.e. from the date of removal till the date of superannuation and the period of put off duty along with payment of back wages will be decided by the disciplinary authority on conclusion of the disciplinary proceedings. In so far as completion of the proceedings is concerned it has been stated that the applicant was instated vide order dated 11.10.2019 and de novo inquiry was started from the stage of supply of copy of report of the IO to the applicant. The applicant has been supplied with a copy of IO's report along with disagreement statement of the DA on the IO's report vide letter dated 04.12.2019 requiring him to submit representation, if any, within 15 days of the receipt of the said letter. Further stages of the disciplinary proceeding will be carried out in due course and it will be finalized as per Rule -10F of GDS (Conduct & Engagement) Rules, 2011.

6. Heard learned counsel for respective parties and perused records. According to learned counsel for the Applicant as this Tribunal while quashing the order of punishment left the matter to the disciplinary authority to decide regarding payment of back wages during the intervening period in accordance with Rule and Law. As per Rule 12 (5) of GDS Rules where a penalty of dismissal or removal from engagement imposed upon a Sevak is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary

authority, on a consideration of the circumstances of the case decides to hold a further inquiry against the Sevak on the allegations on which the penalty of dismissal or removal was originally imposed, the Sevak shall be deemed to have been on put off duty by the Recruiting Authority from the date of original dismissal or removal and shall continue to remain on put off his duty until further orders the Respondents were under obligation to grant the applicant put off duty allowance and having not done so the Respondents have committed Contempt and therefore they are liable to be proceeded as per Rule and Law. This was strongly opposed by the learned counsel for the Respondents stating that there was no intentional or deliberate violation of the order and this Tribunal had left the matter to the Disciplinary Authority to decide and the Disciplinary Authority on examination of the matter, in detail, decided that ultimate result of the enquiry will govern the matter regarding entitlement of back wages and therefore no contempt is committed. Accordingly he has prayed for dismissal of this C.P.

7. Needless to state that before punishing a person for non-compliance of the order of the Tribunal, the Tribunal must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but should also be satisfied that such disobedience was willful and intentional. Similarly, in various cases the Hon'ble Apex Court has been pleased to hold that Courts must not travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. On the face of the order dated 11.10.2019 passed by Respondents after disposal of the writ petition by the Hon'ble High Court of Orissa at no stretch of imagination it can be said that the Respondents have intentionally and deliberately violated the orders of this Bench upheld by the Hon'ble High Court of Orissa. According to applicant as per Rule 12(5) of GDS Rule he was entitled to put off duty allowance and according to the

Respondents the said Rule is not applicable to the instant case. It is well established principle of law that in contempt proceedings, a fresh direction cannot be given in other words jurisdiction to consider the matter on merits in the contempt proceedings is impermissible. From the above it is clear as to whether the applicant is entitled or not the put off duty allowance as per Rule 12 (5) of GDS rule is a matter for fresh adjudication which is impermissible under law to examine in the contempt petition. In this connection it would suffice to place reliance on the decision of the Hon'ble Apex Court in the case of [J.S.Parihar v. Ganpat Duggar and Ors.](#) 1996 Supreme Court Cases (L&S) 1422 relevant portion of which is quoted below:

"...The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list maybe wrong or maybe right or may or may not be in conformity with the directions. But that would be a fresh cause of action for aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order.re-examining the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the ACT..."

8. For the discussions made above and on the face of the order dated 11/10/2019 issued by the Respondents in compliance of the order of this Bench which was upheld by the Hon'ble High Court of Orissa, we find no merit in this CP which is accordingly dismissed. Notices are discharged. No costs.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)