

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00398/2015

HYDERABAD, this the 15th day of April, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



M. Venkateswara Rao, S/o. M. Udaya Bhaskar Rao,
Aged about 45 years,
Occ: Gramin Dak Sevak Branch Post Master (Put Off),
Ramarajulanka BO, a/w. Malikipuram SO – 533253,
Amalapuram Division.

...Applicant

(By Advocate : Mr. ABLN Pavan Kumar, Proxy counsel for
Mr. M. Venkanna)

Vs.

1. Union of India represented by
The Secretary,
Ministry of Communication & IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
AP Circle, Dak Sadan, Hyderabad – 500001.
3. The Director of Postal Services,
O/o. The Postmaster General,
Visakhapatnam Region, Visakhapatnam – 530 017.
4. The Superintendent of Post Offices,
Amalapuram Division, Amalapuram - 533 201.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC for
Mr. P. Krishna, Addl. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed in regard to non grant of ex-gratia/ subsistence allowance during the put off period.



3. Brief facts of the case are that the applicant while working as Grameen Dak Sewak (GDS) in the respondents organisation was put off duty on 9.1.2009 and a charge memo was issued on 12.4.2011 under Rule 10 of GDS (C&E) Rules 2001. I.O / P.O were appointed and the applicant has been attending the inquiry. However, the respondents have not released the ex-gratia payment, as is permitted under the relevant rules, and hence the OA.

4. The contentions of the applicant are that GDS Rules provide for payment of ex-gratia payment to those employees who have been put off from duty. Applicant cited the Hon'ble Apex Court judgment in support of his contentions.

5. Respondents contend in the reply statement that the applicant was absconding from duty from 08.11.2008 to 12.11.2008. Thereupon, investigation was taken up and it was found that the applicant committed a fraud of Rs.2.30 lakhs in Savings Bank, Money Orders and Rural Postal Life Insurance premium deposits. FIR bearing the number 38/2010 was registered in the concerned police station. Consequently, he was put off duty w.e.f. 9.1.2009 and charge memo was issued on 12.4.2011 under GDS (C&E) Rules 2001. I.O/PO were appointed on 3.5.2011 and the inquiry is in progress. Applicant is not eligible for ex-gratia payment since he was

put off duty subsequent to absconding from duty. Applicant represented on 18.07.2011 and he was replied that he was ineligible for the ex-gratia payment on 29.9.2011.

6. Heard both the counsel and perused the pleadings on record.



7. I. The dispute is about non payment of ex-gratia payment to the applicant during the put off period. The applicant while working as GDS Branch Post Master at Ramarajulanka Branch Post office, was put off duty w.e.f. 9.1.2009 for alleged involvement in the commitment of fraud to the extent of Rs.2.30 lakhs in the transactions relating to Savings Bank, Money Orders etc. Charge Memo dated 12.4.2011 was issued under GDS (C& E) Rules and the inquiry is under progress with the appointment of I.O/P.O on 3.5.2011. The applicant is attending the inquiry and is seeking ex-gratia payment, which is otherwise understood as subsistence allowance during the put off period. Respondents denied the same stating that the applicant was put off duty subsequent to absconding from duty from 8.11.2008 to 12.11.2008. The relevant Rule i.e. Rule 12(3) of GDS (C &E) Rules 2001 is extracted here 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 a Allowance together with admissible Dearness Allowance:

Provided that where the period of put of 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 as 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 compensations 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.



II. The Rule states that if the employee remains absent/absconds, then he is not eligible for the ex-gratia payment. In the instant case, the applicant was absconding from duty for 5 days from 8.11.2008 and thereafter, he was calling on the respondents to grant him the subsistence allowance. The representations submitted, voluntarily crediting the amount of Rs.2.74 lakhs towards the alleged fraud committed, attending the disciplinary inquiry, moving a bias petition against the I.O etc, by the applicant are ample proof to demonstrate that the applicant did not remain absconding, as claimed by the respondents. The applicant absconded from duty from 8.11.2008 to 12.11.2008 as stated by the respondents in the reply statement. Besides the subsistence allowance is paid to enable the applicant to meet the expenses in attending the inquiry. If the subsistence allowance is not paid, then he would not be able to attend the inquiry and thereby reasonable opportunity would be denied to the applicant to defend himself,

which in turn is violation of the Principles of Natural Justice. In the process, the inquiry gets vitiated as held by Hon'ble Apex Court in **Captain Paul Anthony v Bharat Gold Mines** and **Ghanshyam Das v State of MP**, relied upon by the applicant in support his contentions.



III. Subsistence allowance is paid to sustain the employee and his family members during the bad time when is under put off duty and therefore, cannot be denied as observed by the Hon'ble Apex Court in **B.D. Shetty v. Ceat Ltd., (2002) 1 SCC 193**, as under:

Merely because legal proceedings will be pending in a court or before other authority and they take some time for disposal, may be inevitably, that itself cannot be a ground to deny subsistence allowance to a workman against a statutory obligation created on the employer under Section 10-A(1)(b). One must not lose sight of the fact that the Act is a beneficial piece of legislation and the provision of subsistence allowance made is intended to serve a definite purpose of sustaining the workman and his family members during the bad time when he is under suspension, pending inquiry. This provision is enacted with a view to ensure social welfare and security.

The law on access to justice in a departmental inquiry makes it clear that the delinquent should not be denied a fair opportunity to defend himself by denying him financial resources. If an employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry. Access to justice is a valuable right available to every person, even to a criminal, and indeed free legal representation is provided even to a criminal. In the case of a departmental inquiry, the delinquent is at best guilty of misconduct, but that is no ground to deny access to subsistence allowance.

The respondents have misread the rule and wrongly applied it to the case on hand. The applicant did not remain absconding as is required under the rule cited to deny the benefit sought. Besides, the legal principle laid down by the Hon'ble Apex Court cited supra does not permit denial of subsistence allowance.



IV. Hence, in view of the above the applicant is eligible for subsistence allowance / ex-gratia payment from the date of his first representation dated 18.7.2011 and enhancement thereafter, as per extant Rules. Therefore, respondents are directed to grant the same to the applicant from 18.7.2011 onwards as per his eligibility and enhancement thereafter, as per extant Rules and Law. Time allowed to implement the judgment is 3 months from the date of its receipt.

With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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