

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 673 of 1987
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DATE OF DECISION 16.4.1991

Mr. N.M. Bhatt Petitioner

Shri. B.P. Tanna Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri. P.M. Rawal Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi .. Vice Chairman

The Hon'ble Mr. S. Santhanakrishnan .. Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *YB*
2. To be referred to the Reporter or not? *YB*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

O.A.No. 673 of 1987

Mr. N.M. Bhatt
Asst. Supdt. of Post Office,
Valsad Division,
VALSAD

... Applicant

Versus

1. Union of India, through
Ministry of Communication,
Government of India,
NEW DELHI
2. Member (Personnel),
Postal Services Board,
P & T Directorate
NEW DELHI
3. Postmaster General,
Gujarat Circle,
Navrangpura,
AHMEDABAD
4. Directorate of Postal Services,
Vadodara Region,
VADODARA

... Respondents.

J U D G E M E N T

Dated : 16.4.1991

Per : Hon'ble Mr. P.H. Trivedi

... Vice Chairman

In this case, the petitioner succeeded in getting punishment of compulsory retirement reduced to reduction in rank. He was earlier suspended but when in appeal punishment was reduced to reduction in rank ^{and} he was reinstated, he did not join in the posting given to him but appealed to the Postal Services Board against the reduced punishment. He succeeded and the penalty awarded to him was set aside by the said Board. He now claims that for the period from the date of his reinstatement in a lower post to the date of the order of the Board setting aside this reduced penalty, the Board should have passed the order for treating the period as on duty which he claims. The respondents on the other hand, contend that since he was reinstated in the lower post and given a posting, his subsequent absence was volitional and not authorised by the respondents and does not require to be treated as on duty.

(4)

2. The facts and contentions in this case are briefly stated as follows :

3. The petitioner who was Asstt. Superintendent of Post Offices at Surat was charged for passing bills wrongly and in violation of the orders of the Directorate of Posts causing loss to the department and for making irregular appointment. After due inquiry, he was given the penalty of compulsory retirement. He appealed against it and it was reduced to reduction in rank to a lower post. He was reinstated and posted at Valsad as SCI on reinstatement. He has been paid arrears of allowance from 1.3.1985 to 26.6.1986. The respondents do not admit that for the period from 1.3.1985 to 9.4.1987 the Board should have passed an order treating it as duty period.

4. The dispute is only regarding the payment for the period from 20.6.1986 to 9.4.1987. Should this period be treated as on duty on the setting aside of the penalty by the Board? Is it obligatory on the part of the Board to take a decision under F.R. 54 when setting aside the order of punishment or appeal against it whether the petitioner was fully exonerated and the whole or part of his pay should be given to him?

5. It is not disputed by the petitioner that he was reinstated by the order modifying his punishment to the reduced rank and given a posting at Valsad because he was reinstated and the respondents had admitted the liability for payment for the period of suspension untill then. The Board was not called upon to make any orders for treating the period from the date of his suspension to the date of the order of the Board to be treated as on duty. The petitioner has admittedly joined as Assistant Supdt. of Post Offices. The respondent No.3 has passed order to treat the period from 1.3.1985 to 20.6.1986 as leave due and admissible. This is done.

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in pursuance of the order dt.4.5.1987 which gives respondents' position on the matter and is reproduced for convenience.

"The absence of the official from duty w.e.f. 21.6.1986 is of his own volition. The period from 21.6.'86 to 9.4.1987 will be decided separately by DSP, Vadodara, SSP Valsad as this is a case of unauthorised absence."

6. Learned advocates from both side have submitted written submissions which are on record.


7. In our view, the petitioner has^a grievance but he has pursued it on the support wrongly taken on the basis of FR 54. The respondents are right in contending that the petitioner having been reinstated and having voluntarily not chosen to join in the lower post of C.T. Valsad was unauthorisely absent and therefore they cannot accept that the period from reinstatement to the date of the orders of the Board i.e. from 20.6.1986 to 9.4.1987 should be treated as on duty and that the Board was under no obligation to take a view whether on exoneration he should be given his full pay and emoluments for this period. The Board was under no such obligation for this period because the petitioner was not under suspension by any order of the respondents and therefore the operation of FR 54 was not attracted for the Board to consider whether he was exonerated and^{whether} his full or part of pay should be given to him. Although the rules cited by the petitioner cannot give him any support for the relief claimed, we cannot ignore the fact that the petitioner finally succeeded in getting out of any order of penalty and as a result was given his post as Asstt. Supdt. In such circumstances, clearly, the pay of the petitioner should be of the post from which he was first retired and subsequently reduced to a lower rank i.e. the pay of the Asstt. Supdt.

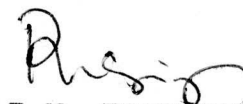
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8. There is no issue that the respondents propose to proceed against the petitioner for unauthorised absence

and it appears that they are prepared to treat this period as leave as due. In the circumstances of this case, therefore, it would be just and proper that the petitioner should be paid his full pay and allowance for the period from 1.3.1985 to 9.4.1987 as Asstt. Supdt. of Post Offices and the period from 20.6.'86 to 9.4.'87 should be adjusted against leave due to him and for this period the pay should be fixed as if he was on leave from the post of Asstt. Supdt.

9. We direct that his pay and emoluments should be calculated on the above basis and after adjusting the payment already made to him for this period, the balance should be paid to him within a period of four months from the date of this order and if it is delayed beyond that period interest at the rate of 12% be paid to him for the period of such delay. There shall be no order as to cost.


(S. SANTHANAKRISHNAN)
Judicial Member


(P.H. TRIVEDI)
Vice Chairman