

4
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 107 OF 1998
Cuttack, this the 8th day of January, 1999

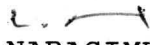
Karuna Mishra Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 8/1.99

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Karuna Mishra,
wife of late Jadumani Mishra,
village/PO-Gudavelipadar,
Via-Manmunda,
District-Boudh-762 016 Applicant

Advocate for applicant-Mr.D.P.Dhalsamant.

Vrs.

1. Union of India, represented through
Chief Post Master General, Orissa Circle,
Bhubaneswar-751 001.
2. Post Master General,
Berhampur Region, Berhampur-760 001,
Ganjam.
3. Superintendent of Post Offices,
Phulbani Division,
Phulbani-762 001. Respondents.

Advocate for respondents - Mr.U.B.Mohapatra,
Addl.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner, who is the widow of late Jadumani Mishra, has prayed for a direction to the respondents to pay all the claims of the applicant within a month and also for a further direction to the respondents to consider the case of the daughter of the applicant for compassionate appointment.

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2. Facts of this case, according to the petitioner, are that her husband Jadumani Mishra was working as E.D.B.P.M., Gudavelipadar in account with Manmunda S.O.. He was placed under put-off duty from 27.4.1994 and a chargesheet was served on him on 27.9.1996. Her husband had earlier approached the Tribunal in OA No.600 of 1996 which was disposed of in order dated 2.4.1997. In that O.A. a direction was issued to the departmental authorities to complete the enquiry positively within a period of three months from the date of receipt of copy of the order. It was also indicated that if the enquiry is not concluded within the period as aforesaid, the applicant shall immediately be reinstated in service in accordance with law. It was also directed that the authority should also consider desirability of paying compensation/ex gratia to the applicant for the period of put-off duty if he is exonerated from the charge or reinstated in the manner aforesaid. The applicant's husband expired on 2.4.1997, the date of the order of the Tribunal and the disciplinary proceeding abated. The applicant has stated that the period between the date of put-off duty and the date of death of Jadumani Mishra is required to be treated as duty for all purposes and the family of the deceased E.D.agent is entitled to be paid full pay and allowances for this period. The family is also entitled to other benefits like ex gratia gratuity, EDGIS amount and monetary assistance from P & T Compassionate Funds, etc., and the daughter of the deceased E.D.agent is also entitled to be considered for compassionate appointment. The applicant has made

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7
representations to Superintendent of Post Offices, Phulbani, from time to time, but no action has been taken and that is why he has come up in this application with the aforesaid prayers.

3. Respondents in their counter have stated that the applicant's husband Jadumani Mishra, while working as EDBPM, Gudvelipadar Branch Post Office, during the period from 11.3.1964 to 28.6.1994 misappropriated SB Deposits of general public made over to him for deposit and also fraudulently withdrew money from their accounts forging their signature and thereby misappropriated an amount of Rs.36,509.00 during the period from 8.5.1987 to 14.6.1994. Out of the above amount, he made good a sum of Rs.34,009/- by depositing in two S.B.Accounts and further credited a sum of Rs.2500/- on 2.7.1994. Thus, he has paid up the entire misappropriated amount of Rs.36,509/-, but still an amount of Rs.2843.45 towards penal interest in respect of the defrauded amount is outstanding against him. He was put off duty on 28.6.1994 in the order at Annexure-R/1 in which it was mentioned that he was not entitled to any allowance during the period he was placed under put-off duty. He came up before the Tribunal in OA No.600 of 1996 and in order dated 2.4.1997 a direction was issued to complete the enquiry within three months. Chargesheet had been issued to the applicant's husband on 27.9.1996 and Inquiry Officer and Presenting Officer were also appointed for oral hearing on the charges. Two sittings of the enquiry were held on 14.1.1997 and 21.3.1997. The applicant's husband attended the first sitting of the enquiry on 14.1.1997, but did not attend the second sitting. He expired on 2.4.1997 for which further enquiry could not be done. According to the

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respondents, there was clear prima facie evidence about commission of fraud by Jadumani Mishra which is also borne out by his written statements dated 23.6.1994, 24.6.1994 and 28.6.1994 in which he clearly admitted before the Complaints Inspector, Phulbani and outsider witnesses, to have misappropriated the Government money. After death of Jadumani Misra, the present petitioner applied for payment of ex gratia gratuity and compensation/ex gratia payment for the put-off duty period. Besides, another application in plain paper was received from one Sobhagini Mishra, daughter of deceased Jadumani Misra and the present applicant seeking appointment in Class III post on compassionate ground. The respondents have stated that payment of ex gratia gratuity is payable to E.D. Agents who have put in not less than 10 years of continuous satisfactory service. The case of the respondents is that as the service of Jadumani Mishra was not satisfactory due to the fact that he had committed misappropriation. Therefore, no ex gratia gratuity is payable in his case. With regard to payment of put-off duty allowances, the respondents have stated that in accordance with the instructions at Annexure-R/5 conveyed in Director-General, P & T's letter dated 23.3.1978 and printed in **Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department**, the applicant's husband was not entitled to any such allowance. The respondents have further stated that Jadumani Mishra, the husband of the applicant was not covered under EDGIS as he was overaged and as such he was not entitled to any money under the Scheme. The respondents have not stated anything about the claim of assistance from P & T Department Compassionate Funds. On the question of appointment of the daughter of

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9

the deceased ED agent, the respondents have stated that ward of an ED agent who dies in service can be considered for compassionate appointment in ED post by way of rehabilitating the family, if the family is in indigent condition. Such ward cannot be straightaway given appointment in Class III post in the Department. In the instant case, the respondents have stated that compassionate appointment of ward of a deceased ED agent to an ED post can be considered by the Circle Relaxation Committee if the ED agent died in service having good record of service. The applicant's husband died after committing major fraud, the eligibility of his ward for compassionate appointment can be considered by the Circle Relaxation Committee on receipt of application in prescribed form from the daughter. As the respondents have stated that no such application in prescribed form has been received so far for compassionate appointment of the applicant's daughter. On the above grounds, the respondents have opposed the prayers of the applicant.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

5. The first point to be noted in this connection is that the applicant's husband was appointed as ED agent on 11.3.1964 and therefore by the date of his death he had put in more than 30 years of service. On his death, the family would thus normally be entitled to ex gratia gratuity. The respondents have denied their liability to pay ex gratia gratuity on the ground that the applicant's husband Jadumani Mishra had committed fraud and misappropriation, and he had also admitted the same and returned the misappropriated amount but not the penal

interest due on the amount. In this connection, it has to be noted that because of the unfortunate death of the applicant's husband, the enquiry could not be completed. The respondents have stated that the applicant's husband had admitted his lapses in three statements dates of which have been quoted by us earlier, but that was during the preliminary enquiry before the Complaints Inspector, Phulbani. In the departmental proceeding he had obviously denied his liability which is borne out by the fact that an oral enquiry was being made into the charges against him and Inquiry Officer and Presenting Officer were also appointed and two sittings of the enquiry were held. Since the husband of the applicant had denied his liability and passed away while the enquiry was in progress, it cannot be held that the charges have been brought home to him. Even in a criminal case an accused is presumed to be innocent until proved guilty. To draw the comparison a little further, an extrajudicial confession by an accused in a criminal case does not prove his guilt till the trial is concluded and the accused is held guilty. In view of this, merely because of his alleged statements on three dates referred to by us earlier and mentioned by the respondents in their counter, it cannot be held that the guilt of the accused is proved. The respondents have not stated that besides these charges, there was anything unsatisfactory with the service of the applicant's husband. In view of this, the conclusion is inescapable that ex gratia gratuity is payable in this case and to the heirs of the deceased ED employee. It is ordered that ex gratia gratuity amount should be calculated and paid to the applicant and other heirs of the deceased ED agent, who are entitled to the same, within a period of 90

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(ninety) days from the date of receipt of copy of the order.

6. As regards put-off duty allowance, originally ED Agents (Conduct & Service) Rules, 1964 provided that during the put-off duty no put-off duty allowance need be paid. But this matter came up before the Hon'ble Supreme Court and on the basis of direction given by the Hon'ble Supreme Court, Rule 9 of the 1964 Rules was amended with effect from 13.1.1997. This amendment provided that during the period of put-off duty an employee shall be entitled per month to an amount of compensation as ex gratia payment equal to 25% of his basic allowance together with admissible DA on such 25% of the basic allowance. This amendment being prospective in nature has come into force from 13.1.1997 and therefore, the husband of the applicant whose guilt has not been established in course of the departmental enquiry, would be entitled to put-off duty allowance at the above rate from 13.1.1997 to 2.4.1997. The rule provided for a review after expiry of period of 90 days for increasing the put-off duty allowance/ex gratia compensation. But in this case before the expiry of 90 days from 13.1.1997 the applicant's husband had expired. Therefore, the put-off duty allowance should be paid at the rate of 25% of the basic allowance plus DA on that for the period from 13.1.1997 to 2.4.1997. This amount should be paid to the present applicant and other heirs of the deceased ED employee within a period of 60 (sixty) days from the date of receipt of copy of this order.

7. The applicant has also prayed for payment of EDGIS amount. As the respondents have pointed out that the applicant's husband was not covered under the

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EDGIS, no amount is payable on this count.

8. The last item for which payment has been claimed is assistance from P & T Department Compassionate Funds. The learned counsel for either side has not enlightened us with regard to terms of payment from this Fund and what are the entitlements. In view of this, it is not possible to pass any order on this claim. We direct the respondents to consider the question of payment of assistance from P & T Compassionate Funds, if under the rules/instructions governing the operation of the Funds such payment is admissible in this case, to the family of the deceased ED employee. This should be considered and final decision taken within a period of 90 days from the date of receipt of copy of this order.

9. As regards compassionate appointment to the daughter of the applicant, the respondents have correctly pointed out that she cannot be given regular job in Postal Department straightaway. She can at best be considered for an employment as an ED agent. The respondents have stated that if such an application in proper form is received from the applicant's daughter, the same will be considered. In view of this, the prayer of the applicant is disposed of with a direction to the respondents that in case the applicant's daughter files an application in prescribed form within a period of 60 days from the date of receipt of copy of this order, praying for compassionate appointment in an ED post, then her case should be considered strictly in accordance with rules and appropriate decision taken within a period of 90 (ninety) days from the date of receipt of the application and the result thereof should be intimated to the applicant and her daughter within a period of 15 (fifteen) days thereafter.

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13

10. In the result, therefore, the Original Application is partly allowed but, under the circumstances, without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN

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