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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 404 OF 1999.
Cuttack, this the 4th day of August, 2000.

SMT. NIRUPAMA ROUT.

....

APPLICANT.

- VERSUS -

UNION OF INDIA & OTHERS.

....

RESPONDENTS.

FOR INSTRUCTIONS.

1. whether it be referred to the reporters or not? ✓
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ✓

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

14.8.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 404 OF 1999.
Cuttack, this the day of August, 2000.

C O R A M:

THE HONOURABLE MR. SONNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

SMT. NIRUPAMA ROUT,
Aged about 38 years,
W/o. Late Natabar Rout,
EX-E.D.A., Manjuri B.O.,
Via. Akhuapada SO,
Dist: Bhadrak.

..... **APPLICANT.**

By legal practitioner: M/s. P. V. Ramdas, P. V. B. Rao, Advocate.

- Versus -

1. Union of India represented by the Chief Postmaster General, Orissa Circle, Bhubaneswar-1.
2. Superintendent of Post Offices, Bhadrak Division, Bhadrak-100.
3. Sub-Divisional Inspector (Postal), Bhadrak West Sub Division, Bhadrak-756 100.

RESPONDENTS.

By legal practitioner : Mr. A.K. Bose, Senior Standing Counsel.

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant's husband who was appointed as E.D.D.A. in Manjuri Branch Post Office in account with Akhuapada Sub Post Office on 5.1.1980, disciplinary proceedings was initiated against him and by order dated 13.12.1984, he was placed under put off duty. Ultimately, the Disciplinary Authority in order dated 21.1.1993 (Annexure-2) held him not guilty of the charges and directed his reinstatement with immediate effect. However, in the same order, he held that the period of put off duty, shall be treated as non-duty for all purposes though the same shall not constitute a break in service. After his reinstatement and

while in service, he died on 29-8-1996. Applicant made an application for payment of exgratia gratuity which would have been payable to her husband. The same was rejected by Supdt. of Post Offices, Bhadrak Division by order dated 9.4.1997 (Annexure-3). She made another representation, under Annexure-4 to re-consider the matter. This was turned down in letter dated 24.3.1999 (Annexure-5) on the ground that in view of the Circular dated 4.11.1980 (Annexure-6), the period under put of duty, will not be taken into account for computing the length of service for the purpose of grant of exgratia gratuity. The minimum period of service to be eligible for grant of exgratia gratuity is 10 years. Hence, this application has been filed.

2. In this application it has been urged that applicant's husband was under put off duty for morethan eight years for no fault of his, though normally, the disciplinary proceedings should have been finalised within a period of 120 days. As such, applicant's husband was entitled for salary for the period he was under put off duty. For not taking into account the put off duty period, ⁱⁿ for counting the period of service, substantial injustice has been done to the applicant's husband. If put off duty period is taken into account, the period of service of the applicant's husband would be morethan 16 years. The Circular dt. 4.11.1980 under Annexure-6 is violative of Article 14 and 16 of the constitution. Rule-9 of clause-3 of ED Agents (Conduct and Service) Rules having been struck down by the Bangalore Bench of the Tribunal in case of Peter J.D. Souza, the applicant's husband is entitled to full salary for the period, he was under put off duty. Hence, the applicant prays to strike down the ^{containing} Circular under Annexure-6 to the extent of the word, 'remained

on put off duty' and for issue of direction to the Respondents for payment of ~~exgratia~~ gratuity to the applicant and also for payment of other allowances such as salary for the period covered under put off duty.

3. In the counter, while opposing these prayers of the Applicant, Department stated that chargesheet under Rule-8 of the ED Agents Conduct and Service Rules was issued on 13.12.1984. After enquiry, the Disciplinary Authority found the applicant's husband guilty and by order dated 27.2.1987 removed him from service. The Appellate Authority, however, remanded the case for de novo enquiry by order dated 16.8.88. The Disciplinary Authority, issued fresh chargesheet and after conclusion of the enquiry by the Inquiring Officer, the Disciplinary Authority, after going through the report of the I.O. again passed punishment of removal by his order dated 31.12.1990. This order was challenged by the applicant before this Bench in OA No. 489/1990. By judgment dated 24.9.1991, this punishment order was quashed with a direction to the Disciplinary Authority to act according to the direction given by the Appellate Authority in his order dated 16.8.88. Thereafter, fresh enquiry was undertaken and the IO submitted his report on 30.9.1992 holding the charges not proved. The Disciplinary Authority accepted the report of the IO and exonerated the applicant from the charges by his order dated 21.1.1993 (Annexure- 2).

4. No rejoinder has been filed.

5. We have heard Mr. P. V. Ramdas, learned counsel for the Applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Respondents.

Facts are not in controversy.

6. As per the Director General Instructions, an ED Agent whose services are terminated otherwise than for unsatisfactory work or as a measure of disciplinary action or in consequence of he being appointed in regular post under P&T Department, can be sanctioned monetary grants termed as gratuity provided that he has put in not less than 10 years continuous service as ED Agent. If put off duty period of applicant's husband will be taken into account for counting his service period for the purpose of gratuity, his service period would come about 16 years and 7 months.

Mr. Ramdas, learned counsel for the applicant, in course of his argument, contended that an ED Agent, who while under put off duty is dismissed/removed in a disciplinary proceedings and which dismissal/removal order is set aside by a Court or by Disciplinary/Appellate Authority with an order of reinstatement, will no longer, under put off duty on reinstatement because the order of put off duty will lapse as soon as the order of removal or dismissal is passed and on reinstatement unless another order of put off duty is passed the Agent is presumed to be continuing on regular duty under law. In this connection he had taken us through the provisions of ED Agents and Conducts Rules, 1964 vis-a-vis CCS (CCA) Rules, 1965 and submitted unlike provision of Sub Rules 3 and 4 of Rule 10 of CCA Rules regarding continuation of suspension order even after setting aside of the removal/dismissal order by the higher authority or Court, there is no provision in ED Conduct Rules to that effect. Procedure for enquiry under Rule 14 of CCS (CCA) Rules, 1965, is required to be followed in a disciplinary enquiry against an ED Agent in spirit so that there may be no

occasion to challenge the same, and would not be necessary to follow the provisions literally as per DG Circular dt.

16.1.1980. In other words, the provisions which are beneficial to an ED Agent and are based on principle of natural justice are required to be followed and no other provisions under CCS (CCA) Rules, 1965. In this connection Mr. Ramdas placed reliance on the Apex Court's judgment in the case of OM Prakash Gupta Vrs. UOI reported in AIR 1955 SC 600 referred in HL Mahra's case reported in AIR 1974 SC 1281. There is no doubt that this submission of Mr. Ramdas is legally sound and in fact this Bench accepted such submission in OA No.186/94 disposed of on 20.11.1999 but in this particular application filed in the year 1999, this submission of Mr. Ramdas though legally sound can not be entertained as, ^{being} hopelessly time barred.

7. The main question for consideration is whether the Circular dated 4.11.1980 (Annexure-6) not counting the put off duty period to determine the eligibility for getting the exgratia can be legally sustained at this stage. In this connection it is worthwhile to quote paras 1, 2 and 3 of the relevant circular of DG P&T as mentioned at page 14 of the Swamy's compilation of Service Rules of Postal ED Staff (1999 edition)

"1. ED Agents as defined in P&T Extra-Departmental Agents (Conduct and Service) Rules, 1964, whose services are terminated otherwise than (i) for unsatisfactory work or (ii) as a measure of disciplinary action or (iii) in consequence of their being appointed in a regular post under the P&T Department, may be sanctioned monetary grants termed as 'Gratuity', provided that they ~~have~~ put in not less than ten years of continuous satisfactory service as ED Agents;

2. "Continuous Service" for the purpose of this order shall mean only such continuous service rendered in any capacity as an ED Agent;

3. In determining the period of continuous service,

periods where an ED Agent himself does not personally attend to the duties assigned to him shall be treated as breaks in service unless each such period is of a duration of 90 days or less and the absence from his duties is authorized by the written order of the appointing authority."

Guidelines mentioned in para-3 in regard to determining of the period of continuous service would not applicable to put off duty period of an ED Agent, who ultimately in a disciplinary proceedings is exonerated from the charges and reinstated to duty because during put off duty period no duty has been assigned to him. only when duty is assigned to an ED Agent and the ED Agent does not personally attend to duty , the period of not attending the duty shall be treated as break in service but for put off duty order in connection with a disciplinary proceedings an ED Agent was kept out of duty by the Department. So it is a case where the applicant's husband ,an ED Agent, though willing to perform his duty,was prevented from not attending to duty by put off duty order, in connection with a disciplinary proceedings which ultimately ended in exoneration from charges and order of reinstatement. Hence as per the principle of law, enunciated by the Apex Court in Jankiraman's case reported in AIR 1991 SC 2010 (K.V.Jankiraman Vrs. UOI and others) the put off duty of the applicant's husband should not be treated as such for the purpose of counting the period of service specially when the disciplinary authority ordered that the put off duty will not be treated as break in service.

This apart, the circular in Annexure-6 appears to be

discriminatory vis-a-vis the circular dated 22.12.1979 and 22.10.1982 as mentioned at Page-61 of EDA Conduct and Service Rules. (Swamy's compilation, 1994 edition) In circular dated 22.12.1979 it has been decided that if an ED Agent who is put off duty is reinstated and is completely exonerated of all the charges, he may be given credit for the period of put off duty upto a maximum of six months only for the purpose of counting the period towards continuous service to determine the eligibility for appearing in departmental examinations. In the other circular dated 22nd of October, 1982 it is made clear that in order to determine the eligibility of ED Agents for selection to regular post on the basis of length of service, the period during which an ED Agent remained put off duty for contemplated disciplinary or criminal proceedings shall be taken into account provided he has been taken back to duty without the penalty of dismissal or removal from service imposed on him. Thus, it is seen that while put off duty period of an ED Agent, subsequently reinstated is taken into account while determining his eligibility for selection to regular post or appearing departmental examinations, the same is denied in case of an ED Agent in respect of his claim of ex-gratia gratuity. Though ED Agents are not regular Govt. employees yet they hold civil posts. In respect of regular Govt. employees or their widows the Apex Court in the case of STATE OF KERALA VRS. M. PADMANAVAN, reported in AIR 1985 SC 356 held that payment of pension or gratuity is no longer bounty. It is a property right. The same analogy even if technically or strictly is not applicable to the ED Agents, yet it can not be said that payment of ex-gratia gratuity is a beneficial provision for

for the welfare and sustenance of the ED Agents or on his death while in service for his family members. Such a provision under law has to be liberally and beneficially construed. Viewed from this background, the Circular of 1980 under Annexure-6 even read with the circular dated 22.12.1979 and 22.10.1982 appears to be unduly harsh, in not counting the period of put off duty of an ED Agent exonerated from the charges without break in service. It is worthwhile to quote the circular as hereunder:

"(DGP&T Letter No. 40-25/80-Pen. dated the 4th November, 1980.

16. No break in service on exoneration and reinstatement but 'put off' period will not count for gratuity."

It is clarified that when an ED Agent is fully exonerated of all the charges and he is reinstated in service, there should be no break in service even though he had not been granted any allowance for such 'put off' period. However, the period during which an ED Agent was not in service or remained on 'put off duty', such period may not be taken into account for computing his length of service (also for purpose of ex gratia gratuity)".

8. The spirit behind the circular in not counting the put off duty period to the length of service is that during the put off duty period no allowance was being paid ~~as~~ for that time under Rule 9(3) of the Rules which lay down that an employee, shall not be entitled to any allowance for the period for which he is kept off duty under this rules. But this Rule-9(3) has been struck down by the Bangalore Bench of this CAT on 15.7.88 in OA No. 553 to 556/1987 (Peter J.D. Souza and others) as violative

of Article 14 and 16 of the Constitution of India.

This decision of the Bangalore Bench was confirmed by the Apex Court in various SLPs including SLP filed by the Govt. challenging the Bangalore Bench decision. This decision of the Apex Court was pronounced on 10.7.1995.

In both the Bangalore Bench as well as Apex Court, while striking down Rule 9(3) directed the Govt. of India to re-examine the matter and to frame a new set of rule substituting Rule 9(3). The Apex Court further directed that it would be open to the Union of India to examine each case to reach a conclusion as to whether individual is entitled to salary for the period he was kept off duty.

In the event of any of the Respondents being exonerated and reinstated the salary for the off duty period can only be denied to him after affording him an opportunity and by giving cogent reasons. It is clear from this judgment that Rule 9(3) was struck down as early as in 1988 and left the matter to the Govt. to decide the quantum of allowances to be paid to an ED Agent under put off duty and under what circumstances. There was a further direction to the Govt. to examine each case to reach conclusion as to whether the individual is entitled to salary for the period he was kept off duty and in the event of exonerated from the charges in the disciplinary proceedings and consequent reinstatement the salary for the off duty period can only be denied to the concerned ED Agent after affording him an opportunity and by giving cogent reason. In other words, under

such circumstances, an ED Agent is entitled to salary for off duty period.

It is, therefore, clear that atleast from the day the Bangalore Bench struck down Rule 9(3) in the year 1988, an ED Agent under put off duty on being exonerated from the charges and on reinstatement will be entitled to salary for the put off duty period unless the Department after giving an opportunity of hearing to the ED Agent denies such payment of salary with cogent reasons. While under put off duty, such ED Agent would be entitled to payment of allowances to be determined by the Govt. Thus, there is no legal justification for denying the put off duty period as period of service for the purpose of determining the eligibility of an ED Agent to receive ex-gratia payment.

9. For the reasons discussed above, it is no longer permissible under law to sustain the portion of the circular dated 4th November, 1980, under Annexure-6 not counting the put off duty period of an ED Agent towards his length of service and accordingly this portion of the circular needs to be quashed. The applicant being the widow of the deceased ED agent is legally entitled to be considered for payment of exgratia gratuity. We are, however, not inclined to grant the relief for payment of salary of the put off duty period from 13.12.1984 to 15.2.1993 as it is barred by limitation by the time this application was filed in the

year 1999.

10. In the result that portion of the Circular dated 4th November, 1980, (Annexure-6) not counting the put off duty period for computing the length of service of an ED Agent is struck down. Respondents are directed to count the off duty period of the deceased ED Agent for computing his length of service and pay the exgratia gratuity to the applicant within a period of 90(ninety) days from the date of receipt of a copy of this order.

11. Original Application is partly allowed but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

4.8.2000
(G. NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.