

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos.254/2005 & 233/2006
Cuttack, this the 17/4 day of April, 2007.

Jibardhan Biswal ... Applicant
Versus
Union of India and Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *ym*
2. Whether it be circulated to all the Benches of the CAT or not?.

M.R. Mohanty
(M.R.MOHANTY)
VICE-CHAIRMAN

B.B.Mishra
(B.B.MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.Nos. 254/2005 & 233/2006
Cuttack, this the 17/4 day of April, 2007

C O R A M:

THE HON'BLE MR. M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Jibardhan Biswal, aged about 48 years, S/o.Late Kalanidhi Biswal, permanent resident of Village-Panesura, Po-Loisingha, Dist. Bolangir, at present working as Postal Assistant, At/Po-Bhawanipatna HO, Dist. Kalahandi-766 001.

..... Applicant.

By legal practitioner: Mr. P.K.Padhi, Advocate

-Versus-

1. Union of India represented by its Member (Personnel), Postal Services Board, Government of India, Ministry of Communications & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Director of Postal Services, Berhampur Region, At/Po:Berhampur, Dist. Ganjam (O)-760 001.
3. Superintendent of Post Offices, Kalahandi Division, At/Po:Bhawanipatna, Dist. Kalahandi-766 001.

...Respondents.

By legal practitioner: Mr.R.N.Mishra, ASC

R

ORDER

MR.B.B.MISHRA, MEMBER(A):

Both the cases were heard analogously since they are interlinked. The Applicant was working as Postal Assistant of Bhawanipatna Head Post Office. In contemplation of a disciplinary proceedings, he was placed under suspension with effect from 10.02.1994. On 13.02.1997 a set of charges was drawn under Rule 14 of the CCS (CCA)Rules, 1965 and served on him. In pursuance of the order dated 18-02-1997 of this Tribunal (passed in OA No. 206 of 1996) quashing the order of suspension, in order dated 14.08.1997, he was reinstated in service. In another order dated 21.08.1997 of the Superintendent of Post Offices, Kalahandi Division, the entire period of suspension of applicant from 22.02.1994 to 14.08.1997 was treated as duty. The charges framed against the Applicant were duly enquired and ultimately, after following due procedure of Rules and principles of natural justice, the Applicant was visited with the following punishments by the order dated 31.3.1999 of the Disciplinary Authority:

“...the pay of Shir Jibardhan Biswal be reduced by 2 (two) stages from Rs.4800/- to Rs.4600/- in

the time scale of pay of Rs. 4000-100-6000/- for a period of 2(two) years with effect from 1-5-1999. It is further directed that Shri Jibardhan Biswal will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have effect of postponing his future increments of pay . I also hereby order that an amount of Rs.162.30ps may be recovered from the pay of Shri Biswal in one installment.”

2. The Appellate Authority in exercise of the powers conferred on him under the Rules, *suo motto* reviewed the order of punishment and accordingly vide notice dated 30.09.1999 called upon the Applicant to explain as to why the order of punishment shall not be enhanced. On receipt of the show cause of applicant dated 16.10.1999, the Appellate Authority vide order dated 31.3.2000, enhanced the order of punishment imposed by disciplinary authority to that of compulsory retirement. As a measure of punishment, the Applicant retired from service compulsorily with effect from 3.4.2000 and on 26.09.2000 he preferred revision to the Member, Postal Services, New Delhi, Respondent No.1. The Member(I&FS), Postal Services Board, New Delhi in exercise of the powers conferred under Rule 29 of the

CCS (CCA) Rules, 1965, in order dated 4th July, 2002 modified the order of punishment to the extent stated below:

“...Therefore, considering all aspects of the matter, the penalty imposed by the DPS, Berhampur Region is hereby modified to the penalty initially imposed by the disciplinary authority i.e. reduction of his pay by two stages for a period of two years w.e.f. 1.5.99 with further direction that the petitioner will not earn increments of pay during the period of reduction and that on the expiry of the said period, the reduction will not have the effect of postponing his future increments of pay and recovery of Rs. 162.30 from his pay.

3. In compliance of the above order, the Applicant was taken back to service vide order dated 22.07.2002. Since no payment was made in regularizing the period of his compulsory retirement till reinstatement (03.04.2000 to 01.08.2002), he made representation on 7.12.2002 and 11.5.2004. While his representations were pending, Member (Personnel), Postal Service Board issued a memorandum dated 21.07.2004, asking the Applicant to show cause as to why the period shall not be treated as duty for the purpose of pension only and not for any other purpose and as to why he shall not be paid pay and allowances @ 50% of the amount that he would have normally drawn had he not been

compulsorily retired from service. In response, the applicant submitted his representation on 23.08.2005 and, ultimately, the Respondent No. 1 vide order dated 03.11.2004 (Annexure-7) reiterated the proposal given in the show cause notice by treating the period for duty only for the purpose of pension and for payment of pay and allowances @ 50% of the amount that he would have normally drawn had he not been compulsorily retired from service. Hence this OA with prayer to quash the order dated 03.11.2004 under Annexure-A/7 with further direction to the Respondents to treat the entire period from 4.4.2000 to 1.8.2002 as duty for all purposes including full pay and allowances.

4. In support of his prayer to annul the order under Annexure-A/7, the Applicant has taken the following stand with some decisions:

- i. He was illegally kept out of his duty; though he was willing to work (**Union of India and others vs. K.V.Jankiraman and others**, (1993) 23 ATC 322;
- ii. Once an order was passed by an authority the same authority becomes functus officio either to revise or modify the said order;
- iii. The punishment imposed by the Disciplinary Authority and confirmed by the Revisional Authority comes under the head

of minor penalties and in case of minor penalties, the principle of no work no pay is not applicable;
iv. There is no strong reason to deny the benefits of pay for the period in question (1992 (2) ATJ 512- **Shri Vishnu Tukaram Sarang v. Superintendent of Post Offices and others**; and 1998 (3) ATJ 444 -**Shri Jagdish Prasad Sharma v. Union of India and others**)

5. • Respondents, by filing counter, have objected to the stand taken by the Respondents. By placing the Rules, it has been stated that the apprehension that the punishment comes under the minor penalties is far from truth. The punishment imposed by the Disciplinary Authority and confirmed by the Revisional Authority come under the purview of one of the major penalties. They have stated that the Revisional Authority did not *suo motto* review his earlier order. On receipt of the representation of the Applicant, the same was referred to the higher authority who, on consideration of the grievance, passed the order from administrative point of view. They have therefore, stated that the plea of *functus officio* is not applicable to this case. Their further case is that the Hon'ble Apex Court in many other cases held that an incumbent on reinstatement, is not necessarily entitled to full wages for the period if he/she was out of service. By filing written note of submission a plea has been

taken that since the Applicant did not challenge the earlier order of revisional authority under Annexure-A/2, he is estopped to challenge the order under Annexure-A/7. Also since the applicant has not been fully exonerated from the charges under FR 54 (2), his case is governed by FR 54(4). Accordingly, they have opposed the prayer of the Applicant.

6. We have heard the submission of rival parties reiterating the stand taken in the pleadings. Also we have gone through the materials placed on record. It is no more *res integra* that the Tribunal has no power to interfere in the decision of the authorities but can interfere in the decision making process. Keeping the above settled position in mind, now we are to examine as to whether the authorities were right in the decision making process. On perusal of records, it is found that the period of suspension has been regularized by the disciplinary authority prior to imposition of order of punishment under Annexure-R/2. This order of punishment imposed by disciplinary Authority was enhanced by the Appellate Authority to that of compulsory retirement vide order dated 31.03.2000; pursuant to which he was

✓

relieved from his duty w.e.f. 3.4.2000. Soon after the punishment, he submitted revision petition on 26.09.2000 whereas the Revisional authority took time till 04.07.2002 and Applicant was reinstated in service vide order dated 22.07.2002. No explanation has been given either in the order or in counter for the delay in taking such decision. This delay is also not in any way attributable to the Applicant. Besides, since the Revisional Authority has held the order of Appellate Authority unjustified, necessarily it applies that the Applicant was unnecessarily kept out of duty allowing to continue under mental tension and financial hardship. Once the order of the Appellate Authority was held unjustified/illegal and in absence of any specific order, the Applicant ought to have been paid the full wages during the period he was illegally kept out of duty. Once an order is passed by a statutory authority, the same authority has no power to make any variance as in the present case.

7. Besides, when the order of compulsory retirement imposed by the Appellate Authority was quashed by the Revisional Authority, it would take the Applicant to his original position i.e. before imposition of such punishment. Undisputedly, the Applicant

was in service at the time of punishment. Therefore, the Revisional Authority should not have ordered that the Applicant shall be paid pay and allowances @ 50% of the amount that he would have normally drawn had he not been compulsorily retired from service. This part of the order runs contrary to each other; because had he not been imposed with the punishment of compulsory retirement he would have normally drawn the full pay and allowances according to Rules.

8. We also find that the decisions relied on by the Applicant have the authority in support of his plea of entitlement of the full allowances during the period he was kept out of employment illegally as held by the Revisional Authority.

9. In the light of our analysis made above, we find no substantial force in the submissions made by the Respondents in their counter, notes of submission and argument advanced by Learned ASC. Hence the order under Annexure-A/7 dated 03.11.2004 to the extent of denying the applicant full benefits for the period from 03.04.2000 to 01.08.2002 is hereby quashed. The Respondents are directed to pay the full pay and allowances that he would have

normally drawn had he not been compulsorily retired from service (minus the payment already made) within a period of 60 (sixty) days from the date of receipt of a copy of this order.

10. In the event of the punishment of compulsory retirement from service, the Applicant was paid all his retirement dues such as pension, gratuity, leave salary etc. But in view of his reinstatement, the Department asked him to return the dues which he had received in lump sum under Annexure-A/5 dated 03.06.2005. No decision has been received on his appeal for recovering the said amount on installments and allowing him expenses incurred towards his journey from Bhawanipatna to Bolangir to join his duty, he has filed Original Application No. 233/2006, under section 19 of the Administrative Tribunals Act, 1985.

11. In the reply filed by the Respondents, it has been stated that the Applicant was awarded with the punishment of compulsory retirement and as per SR 147 of GIS 3 of (6) of FRSR, 2004, TA is not admissible to the official who retired compulsorily as a measure of punishment (Annexure-R/4). However, in view of

the peculiar facts of this case that the applicant has been reinstated in service by the order of the revisional authority, a doubt has arisen in the matter, the same has been referred to Respondent No.2 seeking further clarification in the matter. By denying the entitlement of TA claim of the applicant, the Respondents have prayed for dismissal of this OA.

12. Applicant has filed rejoinder stating that by wrong interpretation of Rules, he has been denied the TA claim. Since the order of punishment of compulsory retirement was declared wholly unjustified by the competent authority, for their fault, he should not be made to suffer. Therefore, he has prayed for grant of the relief claimed in this OA.

13. It is seen that on reinstatement, the Applicant was asked to return the retirement dues received by him in lump sum. Against this order the Applicant has made appeal to the Director of Postal Services Berhampur Region, Berhampur under Annexure-A/6 and A/7 to the OA. But in the counter Respondent No.3 has stated that he has no knowledge about the appeal preferred by applicant; as the same was forwarded by the Postmaster of Bhawanipatna HO.

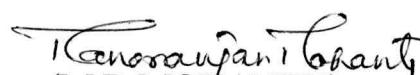
Also it is seen that Respondent No. 3 referred the TA claim of the Applicant to the Postmaster General Berhampur under Annexure-R/5. It is not clear from the record, what decision has been taken on the said letter by the Postmaster General. Prima facie it shows that the Rule based on which the TA has not been allowed to the Applicant is not applicable to the case of applicant, as based on the revisional authority's order quashing the order of compulsory retirement he has been asked to join. No objection has been raised by the Respondents in the counter with regard to the prayer for recovery of the retirement dues received by him on installment. Neither of the parties placed any rules showing the exact position of recovery of the said dues and the TA claim.

14. In the aforesaid premises, we refrain from passing any positive direction for sanction and payment of TA claim of the Applicant and recovery of the retirement dues received by Applicant on installment at this stage except to command the Director of Postal Services, Respondent No.2 to take a final view on the matter within a period of 20 (twenty) days from the date of receipt of a copy of this order. Liberty is also given to the

Q

Respondents to adjust the part of the dues received by applicant from the arrears to be received by him, as directed above.

15. In nut shell OA No. 254 of 2005 succeeds and the Applicant is to be given the relief as directed in paragraph 9 above. As regards OA No. 233 of 2006 direction in paragraph 14 is to be followed. In the result both the OAs are disposed of. No costs.


(M.R. MOHANTY)
VICE-CHAIRMAN

B317/2
17/4/07
(B.B.MISHRA)
MEMBER(A)

KNM/PS.