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O.A. No. 598/2005

Order dated : 23/11/2006

Non-payment of *ex gratia* amount during the put off duty period (i.e. 13.01.1997 to 31.03.2003) to the applicant is the subject matter of consideration in this OA.

Respondents by filing counter have contested the case of the Applicant. It has been submitted that while the applicant was continuing as EDBPM/GDSBPM of Podamarai Branch Post Office, he contested for the Panchayat Samiti Member of Podamarai GP held on 01.06.1992 without taking prior permission from his authority nor did he inform that he was elected to the said post. Since the conduct of the applicant was found violative of Rule 18 of the EDAs (Conduct and Service) Rules, 1964 [now Rule 22 of GDS (Conduct & Employment) Rules, 2001] (Annexure-R/1), it was decided to place the Applicant under put off duty in Memo No. B/ED-374 dated 05.08.1992 pending drawal of disciplinary proceedings. But the Applicant deliberately avoided to receive the off duty Memo and proceeded on leave by providing an unauthorized substitute w.e.f. 11.08.1992. Thereafter vide Memo No. B/ED-374 dated 04.01.2000 (Annexure-R/2) charge sheet was framed against the Applicant. After

enquiry, the charges levelled against the applicant having been established he was removed from service vide Memo No.B/ED-374 dated 31.03.2003 (Annexure-A/5) and the period of off duty was treated as non duty for all purposes. As regards payment of *ex gratia* during the put off duty period, it has been submitted by the Respondents that as per Rule 9(3) of EDAs (Conduct & Service) Rules, 1964, if an ED Agent (now GD) absconds or remains absent unauthorizedly and placed off duty, he is not entitled to any compensation as *ex gratia* for the off duty period. According to the Respondents as the applicant remained absent unauthorizedly by providing unapproved substitute, he was not rightly paid the *ex gratia* amount.

By filing additional counter the Respondents have disclosed that on consideration of the appeal preferred by applicant against order of punishment of removal from service, the appellate authority, vide order dated 18.1.2006 while directing de novo enquiry from the stage of requisitioning additional documents has specifically ordered that the applicant is not entitled to any *ex gratia*. It has been pointed out that pursuant to the above directions of the Appellate

Authority the enquiry has already commenced allowing the applicant to continue under deemed suspension.

Heard learned counsel appearing for the parties and went through the materials placed on record.

Before adverting the various arguments advanced by the parties, it is necessary to record the Rule 9 (3) of EDAs (Conduct & Service) Rules, 1964 [Rule 12 (3) of GDS (Conduct and Employment) Rules, 2001] and they are as under:

“12. Put-off duty

- (1) The Appointing Authority or any authority to which the Appointing Authority is subordinate or any other authority empowered in that behalf by the Government, by general or special order, may put a Sevak off duty:
 - (a) where a disciplinary proceeding against him is contemplated or is pending; or
 - (b) where a case against him in respect of any criminal offence is under investigation, enquiry or trial;

Provided that in cases involving fraud or embezzlement, the Sevak holding any post specified in the Schedule to these rules may be put-off duty by the Inspector of Post Offices or the Assistant Superintendent of Post Offices of the Sub-Division, as the case may be, under immediate intimation to the Appointing Authority.

- 2) An order made by the Inspector of Post Offices or the Assistant Superintendent of Post Offices as the case may be, of the Sub-Division under sub rule (1) shall cease to be effective on the expiry of fifteen days from the date of such order

unless earlier confirmed or cancelled by the Appointing Authority or the authority to which the Appointing Authority is subordinate.

(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 Allowance together with admissible Dearness Allowance:

Provided that whether the period of put-off 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

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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 unauthorisedly and is subsequently put-off duty shall not be entitled to any compensation 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.

4. Where a penalty of dismissal or removal from employment imposed upon a Sevak putting him off the duty under this rule is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action with any other direction, the order of putting him off the duty shall be deemed to have been continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

5. Where a penalty of dismissal or removal from employment imposed upon a Sevak, is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case decides to hold a further inquiry against the Sevak on the allegations on which the penalty of dismissal or removal was originally imposed, the Sevak shall be deemed to have been put off his duty by the Appointing Authority from the date of original dismissal or

removal and shall continue to remain on put off his duty until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

NOTE:- The period of putting a Sevak off his duty including the period of deemed putting him off his duty shall be decided by the Competent Authority after *de novo* proceedings in this regard are finalized and compensation as *ex gratia* payment for the concerned period shall be regulated according to provisions of sub rule (3). The break caused due to putting the Sevak off his duty shall be regulated as per extant provisions issued from time to time by the Central Government for this purpose.

NOTE:- Any payment made under this rule to a Sevak on his reinstatement shall be subject to adjustment of compensation already paid as *ex gratia*."

(emphasis provided)

From the records, it is revealed that by filing OA No. 37 of 1993 the Applicant has challenged his order of put off duty which was heard and disposed of on 26th March, 1999. But the Applicant did not pray in that OA for release of his *ex gratia* compensation for the period from 13.1.1997 to 31.3.1993. In that OA, the Respondents have specifically pointed out that the concerned SDIP was directed to serve the put off duty order on the applicant. Accordingly, the SDIP, Salipur visited Padamari BO on 10.08.1992. R

and it was found that the office was closed and the applicant was absent. On the next visit of the SDIP it was found that the applicant had proceeded on leave providing a substitute. It was reported that the applicant was present in the village on the date of visit of the SDIP and he had instigated the villagers to humiliate the SDIP and threatened him; for which the SDIP lodged an FIR against the villagers at Mahanga Police Station. Thereafter, the put off duty order was sent to the applicant by post but it was returned with an endorsement that the applicant was long absent and has not yet resumed duty and his whereabouts was not known. (emphasis supplied).

Although during argument, the applicant has controverted the plea of the Respondents that the applicant has not deliberately avoided to receive the off duty order, it is not for this Tribunal to make a roving enquiry to find out the truth of the matter, Learned Counsel for Applicant has submitted that *ex gratia* is made available to an ED employee during his off duty period for his sustenance. Therefore, this clause in the Rules is offending Article 21 of the Constitution of India, and, therefore, the same is liable to be struck down. The Applicant did not challenge the Rules, if according

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to him it is unconstitutional. The Respondents are bound to act according to the Rules that a Sevak who has been absconding or remains absent unauthorisedly and is subsequently put-off duty shall not be entitled to any compensation as *ex gratia* payment. Therefore, denial of *ex gratia* to the applicant cannot be faulted.

Hence, this Original Application stands dismissed by leaving the parties to bear their own costs.

B.B.MISHRA²
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MEMBER (A)