

8

O.A. No. 76 of 2006

Banshidhar Swain.....Applicant

Vs

Union of India & Ors.....Respondents

Order dated: 18.10.2011

CORAM:

Hon'ble Shri C.R.Mohapatra, Member (Admn.)

&

Hon'ble Shri A. K. Patnaik, Member(Judl.)

Heard Mr. S.P.Mohanty, Ld. Counsel for the applicant and Mr. S.B.Jena, Ld. Additional Standing Counsel appearing for the Respondents.

2. This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- “(i) Admit this O.A.
- (ii) Call for the relevant records,
- (iii) After hearing the parties further be pleased to quash the impugned notice of enhancement of punishment dated 1.8.2005 under Annexure-A/7”

3. In nutshell, the case of the applicant is that he was proceeded against under Rule 8 of the GDS (Conduct and Service) Rules, 1964 (Rule 10 of GDS (Conduct and Employment) Rule 2001) by Sr. Superintendent of Post

Offices, Bhubaneswar Division vide memorandum No. F-73/99 dated 20.04.2001 on the charge of committing fraud/misappropriation of Govt. money. The Sr. Superintendent of Post Offices, Bhubaneswar Division, (disciplinary authority) after examining the Charge Sheet, IO's report, the depositions, the relevant records and documents, disagreement notes and representation of the applicant finalized the disciplinary case by awarding punishment of 'Censure' vide memo No. F-73/99 dated 28.03.2005. The Director of Postal Services, Bhubaneswar reopened the case as, according to him, the penalty was not commensurate with the gravity of offence. Accordingly, he proposed to enhance the punishment of 'Censure' to that of 'Removal' from service under Rule 19(iii) of the GDS (Conduct and Employment) Rules, 2001 and issued a notice proposing this enhancement vide Annexure-A/7 dated 01.08.2005 giving opportunity to the applicant to make any representation against such proposal. Against this notice, the applicant filed the present O.A. with the above prayer.

4. While issuing notice to the Respondents, it was also ordered by this Tribunal on 24.01.2006 that no coercive

action should be taken against the applicant without the leave of this Tribunal.

5. The applicant after receiving notice on 03.08.2005 through SSPO, Bhubaneswar submitted his representation against the proposed enhancement of penalty. Director, Postal Services vide his order No. Vig/Disc-Review/2005-1015 dated 28.12.2005 (Annexure-R/3) removed the applicant from service. The Misc. Application Nos. 26/08 and 838/11 filed by the applicant to amend the O.A. by challenging the order at Annexure-R/3 dated 28.12.2005 and grant of pensionary benefits respectively have been listed today along with the O.A. for final hearing.

6. In course of hearing it was submitted by the Ld. Counsel for the applicant that pursuant to the interim order dated 24.01.2006, the applicant was allowed to continue in the post of GDS BPM, Dhigalo B.O. in account with Nimapara S.O. and he has also been allowed to retire on superannuation at the age of 65 on 28.05.2011. The contention of the Ld. Counsel for applicant is that though the applicant has retired, he has not received pensionary benefits i.e. severance allowance and ex gratia compensation etc.,

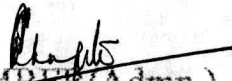


which need to be released to him as admissible under the rules.

Mr. S.B.Jena, Ld. A. S. C. stated that the order of removal from service was not served on the applicant before his retirement because of the interim order of this Tribunal and the applicant has been allowed to retire from service on 28.05.2011. Thus the fact remains that the applicant has retired from service without any punishment. Since, there is no provision for any pension under the GDS (Conduct and Employment) Rules 2001, there is no question of payment of any pension. However, the applicant is entitled to other payments as admissible to the GDS employees, who retire on superannuation in the normal manner.

7. Hence, as agreed to by the Ld. Counsel for the parties, without going into merit of this case, this O.A. stands disposed of with direction to Respondent No.2 to grant the applicant all the pensionary benefits as admissible under the GDS Rules within a period of three months from the date of receipt of a copy of this order. Accordingly, M.A.Nos. 26/08 and 838/11 are also disposed of. No costs.


MEMBER (Judl.)


MEMBER (Admn.)