

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 481 of 2010
Cuttack, this the 03rd day of January, 2012

Girish Chandra Behera Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to the PB for circulation?


(A.K. Patnaik)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)

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CORAM:
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
And
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....
Girish Chandra Behera, aged about 51 years, Son of Late
Indramani Behera, at present working as GDSBPM,
Po.Jagannathpur BO, Dist. Anugul.

.....Applicant

By legal practitioner :Mr.T.Rath, Counsel
-Versus-

1. Union of India represented through CPMG, Orissa Circle,
At/Po.Bhubaneswar-GPO,Bhubaneswar,Dist. Khurda.
2. Superintendent of Post Offices, Dhenaknal Division, At-
Dhenaknal, Po.Dhenkanal HO, Dist. Dhenaknal.

.....Respondents

By legal Practitioner: Mr.S.Mishra, ASC

O R D E R
MR.C.R.MOHAPATRA, MEMBER(A):

Briefly stated the uncontested facts of the case are that the Applicant while working as EDBPM/GDSBPM in contemplation of disciplinary proceedings was placed under off duty w.e.f. 31.3.2001. Thereafter, under Rule 10 of the GDS (Conduct & Employment) Rules, 2001 a set of charges was served on him vide Memorandum under Annexure-A/1 dated 23.1.2001. The proceedings initiated against him ultimately ended with imposition of punishment of removal from service vide order dated 22.12.2002/20-01-2003. His preferred appeal



against the said order of punishment but the appeal was rejected and he was communicated with the reason of rejection vide order dated 27.08.2004. The Applicant challenged the said orders before this Tribunal in OA No. 857 of 2004 and vide order dated 21-03-2006 this Tribunal disposed of the matter relevant portion of the order is quoted herein below:

"15. Having regard to the discussions held in the preceding paragraphs, we hold that the quantum of punishment (imposed under Annexure-A/17 dated 22.12.2002/20.01.2003) in removing the applicant from service (as confirmed in Appellate order under Annexure-A/19 dated 27.8.2004) is grossly disproportionate and shocking to the judicial conscience. In the circumstances, we have no option but to quash both the orders and leave this matter to the disciplinary authority to pass an order of punishment on the applicant other than the dismissal/removal."

2. The Respondent-Department challenged the aforesaid order of this Tribunal dated 21-03-2006 in WP (C) No. 16289 of 2006 before the Hon'ble High Court of Orissa. The Hon'ble High Court for the reasons recorded in the order dated 22.09.2008 dismissed the Writ Petition filed by the Respondent-Department thereby upholding the order of this Tribunal. Thereafter, alleging non compliance of the order of this Tribunal upheld by the Hon'ble High Court, the Applicant filed CP No. 75 of 2008 before this Tribunal. Respondent No.2 vide Memo No.B/CAT-116/04 dated 11.12.2008 modified the punishment of

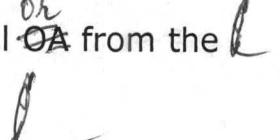
removal from service earlier imposed on the Applicant to that of debarring him from appearing in the Postman and PA examination for a period of three years and in compliance of the aforesaid order dated 11.12.2008, the applicant was reinstated in service vide Memo dated 20.12.2008. Hence by making representations dated 25.8.2009, 17.11.2009 and 09.01.2010 the applicant sought payment of the salary/TRCA for the period from 1.3.2001 to 30.3.2001 as the applicant has performed his duty during the aforesaid period; and to treat the entire period from 31.3.2001 to 19.12.2008 as duty and to pay Full salary/TRCA at the admissible rate with 18% interest. The Respondent No.2 intimated the Applicant in letter under Annexure-A/7 dated 25.2.2010 that as there is no specific direction about regularization of past service by this Tribunal and the Hon'ble High Court no action can be taken on his representation. Aggrieved by the said communication under Annexure-A/7, the Applicant has filed the instant OA seeking the following relief:

- "(i) Quash the order under Annexure-A/7;
- (ii) Direct the Respondents to pay the salary/TRCA for period of duty from 1.3.2001 to 30.3.2001 as the applicant has performed his duty during the aforesaid period;
- (iii) Direct the Respondents to treat the entire period from 31.3.2001 to 19.12.2008 as duty and to pay Full salary/TRCA at the admissible



rate with 18% for the delay on such payment."

3. Respondents have filed their counter contesting the case of the Applicant. The main contention of the Respondents is that direction to reinstate the applicant with all consequential benefits by treating the period of put off duty till reinstatement as duty for all purposes was one of the reliefs sought by the Applicant in the OA No. 857 of 2004. This Tribunal remanded the matter holding that the quantum of punishment (imposed under Annexure-A/17 dated 22.12.2002/20.01.2003) in removing the applicant from service (as confirmed in Appellate order under Annexure-A/19 dated 27.8.2004) is grossly disproportionate and shocking to the judicial conscience. But no order was passed with regard to the specific prayer of the applicant for grant of all consequential benefits by treating the period of put off duty till reinstatement as duty for all purposes. The order of this Tribunal was upheld by the Hon'ble High Court of Orissa. Thereafter the order of punishment was modified and consequently, the applicant was reinstated in service. Hence, the applicant is not entitled to the relief claimed in this OA.

4. It was contended by Learned Counsel for the Applicant that despite the fact that the order of removal from service did not find favour from either this Tribunal ^{or} OA from the 

Hon'ble High Court, the Respondent No.2 ought not to have remained silent on the question of payment of salary for the period of put off service which compelled ^{him} once again to approach through representation before his authority. It was contended by him that the order of the Hon'ble High Court is dated 22.9.2008 whereas the Respondent took three months time and modified the order of punishment vide Memo dated 11.12.2008. But unfortunately without application of mind the Respondent No.2 rejected the prayer of the applicant on the plea that no order was passed by this Tribunal to the above effect while disposing of the OA. It was further contended by him that as the Tribunal did not pass any order cannot be a ground to deny the legitimate benefit to the applicant. His contention is that under the general rules it was the bounden duty of the Respondents to pass orders as to how the relevant period would be counted and having not done so the Respondents ought to have passed a reasoned order on the representation of the applicant in the facts and circumstances of the case. Hence he has reiterated his prayer made in this OA.

5. The above argument of the Learned Counsel for the Applicant was vehemently opposed by Mr. Mishra, Learned ASC appearing for the Respondents. It was contended by him that it



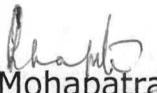
was not a case of clear exoneration of the applicant in the disciplinary proceedings. He was visited with the punishment of removal but the same was modified by imposing lesser punishment in compliance of the order of this Tribunal upheld by the Hon'ble High Court of Orissa. When the applicant has been visited with the punishment and is not completely exonerated, the applicant is not entitled to the relief claimed by him in this OA more so when no order was passed by this Tribunal on his said prayer made in the earlier OA. Therefore according to Mr. Mishra, the Applicant is estopped under law to claim such benefit by filing the instant OA. Hence, he has prayed to dismiss this OA. As regards delay in implementing the order of this Tribunal it was contended by him that after receipt of the order of the Hon'ble High Court the matter was processed and routed through various authorities and finally order modifying the order of removal was passed by the competent authority on 11.12.2008 based on which the applicant was reinstated in service vide Memo dated 20.12.2008.

6. We have considered various submissions put forth by the Learned Counsel appearing for respective parties and perused the materials placed on record. As a matter of principle, which has also sanction of law, the disciplinary authority while

imposing punishment other than removal/dismissal has to decide how the period of suspension i.e. put off duty would be treated. Unless this period is decided by the competent authority ordering any punishment other than removal/dismissal or compulsory retirement the Government servant is bound to suffer as this period cannot be treated as vacuum. Therefore, when the Tribunal disposed of the matter remanding the authority to consider imposition of punishment other than dismissal/removal there was no scope for this Tribunal to pass any specific order regarding the relevant period. As a matter of fact the nature of treatment of the period was contingent upon the decision of the competent authority on the revised punishment. In view of the above, we do not agree with the pleas made by the Respondents in this regard. Accordingly, we quash the order under Annexure-A/7 and remand the matter to the Respondent No.2 to give consideration to the request of the Applicant and pass a reasoned order within a period of 90 days from the date of receipt of copy of this order.

6. In the result, with the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K. Patnaik)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)