

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.840 OF 2010

Cuttack this the 13th day of August, 2013

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Brundaban Behera

Aged about 41 years,

S/o.Janardan Behera, At/PO-Raj Berhampur,

Dist-Balasasore

Presently working as Postal Assistant,

Sambalpur H.O., Sambalpur

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant

N.M.Rout

-VERSUS-

Union of India represented though

1. The Director General of Posts,
Govt. of India
Ministry of Communications
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi, Pin-110001
2. Chief Post Master General,
Odissa Circle,
Bhubaneswar,
Dist-Khurda, Pin-751001
3. Director Postal Services,
O/o-The PMG, Sambalpur Division, Sambalpur.
4. Superintendent of Post Offices,
Sambalpur Division, Sambalpur.
5. Senior Superintendent of Post Offices,
Sundergarh Division, Sundergarh.

...Respondents

(By the Advocate(s)-Mr.U.B.Mohapatra)



ORDER
HON'BLE SHRI R.C.MISRA, MEMBER(A)

The applicant, who is an employee of the Department of Posts has approached this Tribunal seeking direction to be issued to the Superintendent of Post Offices, Sambalpur Division, Sambalpur, to treat the applicant's period of suspension from 6.2.2001 to 8.8.200⁵~~8~~^R as duty by quashing the orders passed by the Respondents vide Annexure-A/7, Annexure-A/9 and Annexure-A/11 of this O.A.

2. In short, the facts of this case are that the applicant, while working as a Postal Assistant was placed under suspension by Respondent No.4 vide order dated 6.2.2001(Annexure-A/1) in connection with contemplation of a departmental proceedings and also criminal case. The applicant subsequently was charge sheeted under Rule-14 of CCS(CCA) Rules, 1965 by Respondent No.4 on 19.4.2001 on the action of fraudulent withdrawal from Sambalpur Head Office NSS(A/C) No.71617 of an amount of Rs.1,19,759/-. After the enquiry was over, the Respondent No.5, who was empowered to function as the Disciplinary Authority, imposed the order of recovery of an amount of Rs.90,000/- from the pay of the applicant and reduced the pay of the applicant to initial stage of Rs.4000 from Rs.4500 for a period of three years with cumulative effect. After finalization of the departmental proceedings, Respondent No.4 vide Memo dated 3.8.2005 revoked the order of suspension and the applicant was reinstated in service with effect from 9.8.2005. The applicant, aggrieved by the order of the Disciplinary Authority preferred an appeal to



the Appellate Authority, i.e., Respondent No.3, who vide Memo dated 17.1.2006 confirmed the order of recovery of Rs.90,000/-, but reduced the punishment by two stages from Rs.4600-4400 for a period of two years without cumulative effect. Since the period of suspension of the applicant with effect from 6.2.2001 to 8.8.2005 was not regularized, the applicant submitted a representation dated 6.4.2009¹ for regularizing the period of suspension to Respondent No.4. Respondent No.5, thereafter on 1.6.2009 asked the applicant to submit his reply as to why the period of suspension will not be treated as non- duty. In response to this, the applicant submitted his reply on 26.6.2009. Thereafter, the Respondent No.5 vide Memo dated 4.8.2009 passed an order that the period of suspension is treated as non- duty and the applicant is entitled to subsistence allowance that has been already paid to him. Against this order of respondent No.5, the applicant preferred an appeal to Respondent No.3 on 3.9.2009 and the Respondent No.3 did not find any reason to modify the order passed by Respondent No.5. Thereafter, the applicant approached this Tribunal in O.A.No.488/2010 challenging the orders passed by Respondent No.5 as well as Respondent No.3. This Tribunal vide order dated 6.10.2010 disposed of the aforesaid O.A. at the stage of admission with direction to consider the case regarding the treatment of period of suspension of the applicant in terms of the provision FR 54-B(1) within a period of thirty days from the date of receipt of copy of the order and further ordered that



copy of the order along with O.A. be sent to Respondent ~~to Res.~~^P No.4 for compliance. Respondent No.4, after receiving copy of the order forwarded the same to the Respondent No.5 and the Respondent No.5 vide its order dated 18.11.2010 decided to treat the period of suspension of the applicant as non- duty subject to payment of subsistence allowance. Copy of this order dated 18.11.2010 has been filed to the O.A. as at Annexure-A/11. The applicant now has challenged the order dated 4.8.2009 (Annexure-A/7) passed by Respondent No.5, the order dated 30.11.2009 (Annexure-A/9) passed by Respondent No.3 and the order dated 18.11.2010 (Annexure-A/11) passed by Respondent No.5. It is to be mentioned here that out of these orders the order dated 18.11.2010 passed by Respondent No.5 is in compliance of the direction issued by this Tribunal in O.A.No.488/2010.

3.The learned counsel for the applicant has made out a case that Respondent No.5 has no jurisdiction to pass this order dated 18.11.2010 and therefore, this order is a nullity. Direction has been issued by the Tribunal in the aforesaid O.A. for disposing of the representation in terms of FR 54-B(1) to Respondent No.4 who is the competent authority. However, the disposal has been made at the level of Respondent No.5, who is not the competent authority under the provisions of FR as quoted above. On this ground, the applicant has prayed that this order should be

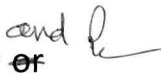
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quashed and also the applicant's period of suspension should be treated as duty.

4. The Respondents have filed their counter affidavit in this matter wherein the facts regarding the disciplinary proceedings in respect of the applicants have been further reiterated. It has been stated in the counter affidavit that the applicant was appointed initially by the Sr. Superintendent of Post Offices, (in short SSPOs) Sambalpur Division, while Sambalpur Division was a Class-I Division. The Senior Superintendent of Post Offices, Sambalpur Division is the normal appointing authority in respect of the official. The Superintendent of Post Offices, Sambalpur Division initiated the disciplinary proceedings against the applicant. But being lower in rank to the appointing authority, the Superintendent of Post Offices cannot exercise the power of the disciplinary authority to impose the penalty. Therefore, the Senior Superintendent of Post Offices, Sundargarh Division was empowered to function as the Disciplinary Authority of the applicant with power to impose all penalties as specified in Rule-11 of CCS(CCA) Rules, 1965, in pursuance of the provisions of Rule-12 of CCS(CCA) Pension Rules, 1965. An appeal against the order passed by the Senior Superintendent of Post Offices Sundergarh Division will lie to the Director of Postal Services, Sambalpur Region, Sambalpur. It has been further stated that the Director of Postal Services, Sambalpur Region, who is the appellate authority has ordered reduction of the pay



- of the applicant by two stages, for a period of two years without cumulative effect. The penalty of reduction of two stages is not a minor penalty.

5. Further in the counter affidavit it has been mentioned that this Tribunal in its order dated 6.10.2010 in O.A.No.488/10 directed to consider the case of the applicant regarding treatment of the period of suspension in terms of the provision of FR 54-B (1) and communicate the result thereof to the applicant within thirty days. The SSPO, Sundargarh vide his order dated 18.11.2010 has decided that the period of suspension will be treated as non-duty subject to the payment of subsistence allowance. In effect therefore, the argument advanced in the counter affidavit is that the SSPO Sundargarh being the Disciplinary Authority ^{and} ~~or~~  competent authority has passed this order regarding treatment of the period of suspension as directed by this Tribunal.

6. We are here considering the question of treatment of the period of suspension after the conclusion of the disciplinary proceedings. It is pertinent to note here that the SPO, Sambalpur (Res.No.4) in the O.A. vide his order dated 6.2.2001 has placed the applicant under suspension with immediate effect in view of the contemplated disciplinary proceedings and also a criminal offence under investigation (Annexure-A/1). The same authority, i.e., Respondent No.4, vide his order dated 3.8.2005 (Annexure-A/2) has passed an order revoking the earlier order of suspension with immediate effect in view of the finalization of the disciplinary proceedings



and imposition of punishment. On 6.4.2009, the applicant has made a representation to the ^{SPO} ~~SSPs~~ (Res.No.4) to consider his case of regularization of the suspension period. This representation is placed at Annexure-A/4. However, it is the Senior SPOs, Sundargarh (Res.No.5) who has written to the applicant on 1.6.2009 asking him to give a reply as to why the period of suspension will not be treated as non-duty. The applicant has submitted his reply on 26.6.2009 to Respondent No.5. Thereafter, Respondent No.5 vide order dated 4.8.2009 (Annexure-A/7) has taken a decision that the period of suspension is treated as non-duty. Thereafter, the applicant made a representation to the Director of Postal Services (Res.No.3) on 3.9.2009 making an appeal against the order of respondent No.5. By issuing the order dated 30.11.2009 (Annexure-A/9), the DPS has passed his order that he has not found any potent reason to modify the orders of the Disciplinary Authority. Thereafter the applicant approached this Tribunal challenging this order in O.A.No.488/10, wherein this Tribunal directed the Respondents to consider the case of the applicant in terms of the provision FR 54-B(1) and communicate the result thereof to the applicant with a reasoned order. It is also found that copy of the order of this Tribunal along with O.A. was sent to Res.No.4 for compliance. However, it is Res.No.5 who has complied with the orders of the Tribunal by his order dated 18.11.2010 (Annexure-A/11).

7. In this regard the directions of the Tribunal were very specific. First of all the case has to be considered in terms of the provision of FR-54-B(1). In this regard FR 54-B(1) is quoted below for convenience.



"FR-54-B(1)-When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty".

8.The above provision clearly stipulates that the authority competent to order reinstatement shall consider the matter of treating the period of suspension of the Government servant, *as duty or non-duty.*

9.Coming to the facts of the case in question, the relevant point for consideration is that it is the Superintendent of Post Offices, Sambalpur (Respondent No.4), who had placed the applicant under suspension vide his order dated 6.2.2001. It is noted that Respondents have mentioned that it was Senior SPOs, Sundargarh (*Res.* ~~Res.~~ No.5) who was the Disciplinary Authority of the applicant in this case, and therefore, he has imposed the order of punishment on conclusion of the inquiry. However, the SPO, Sambalpur(Res.No.4) vide order dated 3.8.2005 has issued the order of revocation of the suspension order and thereby has reinstated the applicant. As per the provision of FR 54B(1) as quoted above, the authority competent to order reinstatement shall make a specific order

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regarding whether or not the period of suspension shall be treated as period spent on duty. From the papers which have been made available to us, it is found that the SPO(Res.No.4) was the competent authority not only to put the applicant under suspension but also to revoke the suspension thereby reinstating the applicant in service. Strictly speaking, according to provisions quoted above, it is the Respondent No.4, who is to pass the specific order regarding how the period of suspension of the applicant would be treated. That is the reason also ^{why} the Tribunal in the earlier O.A. as indicated above, has issued the direction to Respondent No.4 for passing an appropriate orders. It may be the case of the Respondents that Res.No.5 is the Disciplinary Authority and to them Res.No.5 and Res.No.3 being higher authorities than Res.No.4 have already passed orders treating the period of suspension as non- duty. Moreover, they have pleaded that the order passed by Res.No.5 in compliance of the orders of the Tribunal in the earlier O.A. which is placed at Annexure-A/11 is also a valid order since it was passed by the concerned Disciplinary Authority. We however, have to go according to the provisions of the Rules and also the specific direction of the Tribunal in O.A.No.488/2010. Examined from this perspective, it is crystal clear that it is the Res.No.4 who is to be treated as the competent authority under FR 54-B(1). A Specific order ^{passed} by the Tribunal in consonance with the rules applicable to this case cannot be interpreted differently by the Respondents even though they might argue that an officer higher in rank

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and status has disposed of this matter. We however, would not like to go into the merit of this case, because at the initial stage we find that the order was not passed by the authority competent under FR-54-B(1) and strictly as per the direction of this Tribunal. Therefore, we quash the orders at Annexure-A/7, A/9 and also Annexure-A/11 which have been passed regarding the treatment of the period of suspension of the applicant and remand the matter back to the Superintendent of Post Offices, Sambalpur Division (Res.No.4) as the competent authority under the provisions of FR-54-B(1) for fresh consideration of the matter and to pass appropriate orders having regard to extant rules and instructions and communicate the decision to the applicant within a period of three months from the date of receipt of this order.

The O.A. is allowed to the extent indicated above. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(A)