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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.462 of 2011
Cuttack this the 3rd day of January, 2014

Ashok Kumar Behera.....Applicant

VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Ashok Kumar Behera
Aged about 39 years
S/o. Shri Aparti Charan Behera
Village-Mangadeipur,
PS-Kishorenagar
PO-Khentalo
Dist-Cuttack
At present working as GDSMD, Kalarabank B.O.
In account with Raghunathpur S.O.
Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.S.P.Mohanty
Rati Mohanty
P.Lenka
M.Barik

VERSUS-

Union of India represented through

1. The Secretary to Government
Department of Posts
Dak Bhawan
Sansad Marg
New Delhi
2. Chief Post Master general
Orissa Circle, Bhubaneswar
Dist-Khurda
3. Superintendent of Post Offices
Cuttack South Division
Cantonment Road
Cuttack
4. Inspector of Posts,
Cuttack Central Sub-Division
Cuttack

...Respondents

By the Advocate(s)-Mr.R.C.Behera



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ORDERR.C.MISRA, MEMBER(A)

Applicant, who is working as G.D.S.M.D. at Kalarabank Branch Office in account with Raghunathpur S.O. in the District of Cuttack has approached this Tribunal seeking a relief that the Memo dated 7.6.2011 issued by the Inspector of Posts, Cuttack Central Sub Division, copy of which has been filed at Annexure-A/10 should be quashed and further a direction should be issued to the Respondents to regularize the services of the applicant by maintaining continuity in his service career from the date of his initial appointment till the date of his joining after reinstatement on 31.3.2010. The applicant has also prayed that the arrear salary at least from the date of order of this Tribunal passed in O.A.No.154 of 1999 i.e., from 7.11.2000 till 31.3.2010 may be disbursed to the applicant and T.R.C.A. of the applicant should also be fixed with effect from 1.1.2006 in the maximum revised scale of Rs.4220-75-6470/-.

2. The background of the case is that the applicant was selected through a regular selection process for appointment to the post of EDDA, Kalarabanka B.O on 21.3.1998 and he joined the post on 26.3.1998. While serving in this post, he was given a show cause notice dated 14.9.1998 by the Inspector of Posts, i.e., Respondent No.4 for his proposed cancellation of the provisional appointment of the applicant to the post of EDDA, Kalarabanka B.O. on the ground that this has been made in contravention of the executive and administrative instructions. The applicant being aggrieved by the show cause notice, approached this Tribunal in O.A.No.503 of 1998. The Tribunal disposed of this case on 28.9.1998

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directing the Respondents to issue fresh show cause notice indicating therein the grounds on which the appointment of the applicant was in contravention of the executive and administrative instructions and to give an opportunity to the applicant to make a representation regarding the same. In deference to the orders of this Tribunal, a fresh notice was issued by the Respondents on 12.1.1999 and in response to that the applicant submitted representation on 21.1.1999. After that Respondent No.4 vide order dated 5.4.1999 cancelled the provisional appointment of the applicant. Therefore, the applicant moved this Tribunal again in O.A.No.154 of 1999. This Tribunal vide order dated 7.11.2000 allowed the O.A., quashed the impugned order of cancellation dated 5.4.1999 and directed the Respondents to reinstate the applicant forthwith in the post of EDDA. Since the Respondents did not reinstate the applicant as per the orders of this Tribunal, the applicant filed a Contempt Petition No.50/2001 before this Tribunal. In this C.P., the Respondents filed a show cause indicating that they had moved the Hon'ble High Court of Orissa in O.J.C.No.3768/2001 challenging the order of the Tribunal in O.A.No.154/99. The Hon'ble High Court of Orissa, in their order dated 18.1.2010 passed in O.J.C.No.3768/2001 dismissed the Writ Petition and confirmed the orders of this Tribunal passed in O.A.No.154/99. Thereafter, Respondent No.4 directed the applicant to join the post of GDS MD, which was earlier known as EDDA at Kalarabanka with effect from 31.3.2010.

3. At this stage, the applicant has approached this Tribunal with a grievance that in the order of reinstatement with effect from 31.3.2010, his pay which was earlier known as consolidated allowance has been fixed in

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the scale of Rs.2665-50-4165/- which is meant for new appointees. In view of the order of the Tribunal, continuity of the service of the applicant should have been maintained from the date of initial appointment in the year 1998 and accordingly, his TRCA should have been fixed since the impugned order of cancellation was quashed with a direction to reinstate the applicant in his service forthwith and this order was confirmed by the Hon'ble High Court of Orissa, ^{and P} the applicant is entitled to arrears salary at least from the date of the order of this Tribunal dated 7.11.2000 passed in O.A.No.154/99 with continuity of service from the date of his initial appointment and further the applicant is also entitled to revised TRCA in the maximum scale with effect from 1.1.2006. The applicant made representation to Res.No.4 making such prayers. However, since the representation was not disposed of, the applicant approached this Tribunal again in O.A.No.20/11. In this O.A., the Tribunal disposed of the matter with direction to Respondents to consider the representation of the applicant and pass a reasoned order within a stipulated time frame. Thereafter, the Respondents, in obedience to the orders of the Tribunal passed an order dated 7.6.2011 disposing of the pending representation by a speaking order which is the subject matter of challenge in this O.A.

4. It is the case of the applicant that the speaking order is in clear violation of the directions issued by the Tribunal in O.A.No.154/99, which was confirmed also by the Hon'ble High Court of Orissa in OJC No.3768/2001.

5. Respondent-Department have filed their counter-affidavit mentioning that while working as GDSMD, Kalarabanka, the appointment

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of the applicant was cancelled by the Respondents since it was made in contravention of the executive instructions. After the orders of the Court which have been already mentioned in the O.A., the applicant was taken into service on 29.3.2010 by the Respondent No.4 and he has also joined his duty on 31.3.2010. The Respondents have pleaded that the applicant had not rendered his service from 7.11.2000 till the date of reinstatement in service and his joining on 31.3.2010. The Rule is that the GDS will be paid pay and allowances for the period of duties performed by him and during the period of paid leave only and except in these two cases, the GDS will not be entitled to any pay and allowances. According to Respondents, when the applicant has not performed his duties during this period, he shall not be entitled to pay and allowances as per Rules. The Respondents have further contended that since the applicant has not performed his duties his continuity in service from 7.11.2000 to 31.3.2010 can also not be maintained.

6. Regarding fixing up his TRCA , the Respondents have argued that new slab of TRCA for GDS upto 3 hours of work load is applicable to the new entrants to be engaged from the date of issue of the order No.6-1/2009-PE.II dated 9.9.2009. The work load of the post of GDSMD, Kalarabanka S.O is upto 3 hours and the GDS has joined duty only on 31.3.2010. Therefore, the official is being paid the TRCA in the new slab of Rs.2665-50-4165/-, which is meant for work load upto 3 hours and for those GDS entered into Govt. service on or after 9th October, 2009. Therefore, the prayer of the applicant for fixing TRCA in the maximum slab of Rs.4220-75-6470/- has been challenged by the Respondents.



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 Respondents have submitted that they have complied with the directions of this Tribunal as confirmed by the Hon'ble High Court of Orissa with due diligence by applying the extant rules applicable in this regard and therefore, any further relief claimed by the applicant is not at all acceptable.

7. Learned counsel for the applicant has filed a written note of submission after conclusion of the hearing of this case. The main thrust of the written note of submission is that the impugned order of Res.No.4 vide Annexure-A/10 is completely illegal and not sustainable in law as the same completely violates the order of this Tribunal in O.A.No.154/99, which was confirmed by the Hon'ble High Court in their order dated 18.1.2010 in OJC No.3768/01. It is his case that the date of initial appointment of the applicant should be taken as 26.3.1998 since the order of termination from service dated 5.4.1999 has been quashed by the Tribunal. Before termination the applicant was getting the maximum TRCA meant for the work load of more than 3.45 hrs. upto 5 hours. The EDMC working in the same post office is getting the TRCA in the maximum scale whereas the applicant has been deprived of the same on flimsy grounds. With regard to the contention of Respondents that the applicant is not to be paid pay and allowance during the period when he was not discharging his duties, the learned counsel for the applicant has cited a decision of the Honble Apex Court in AIR 1991 SC 2010 (Union of India vs. K.V.Janakiraman) which has dealt with the question of payment of back wages in Para-7 of this judgment. Normal rule of 'no work no pay' is not applicable to such cases where the employee is kept away from the work by the authorities for no

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fault of his. It has been further mentioned that the Hon'ble High Court of Delhi in an unreported judgment dated 3.7.2009 passed in W.P. © No.14349-51/2004 (Union of India vs. Ex.SI Jeewan Lal & Ors.), taking into consideration that the Tribunal had set aside the order of removal of the Respondents held in Para-7 of the said judgment that the intervening period between the date of removal and the date of reinstatement has to be treated as on duty for all purposes and they have to be paid full salary and allowances for the said period as would have been paid to them had they not been removed from their services. The learned counsel for the applicant has reiterated his prayer that the Respondents may be directed to regularize the service of the applicant by maintaining continuity of service from the date of termination till the date of his reinstatement in service and a further direction to pay the arrear salary of the applicant from the date of order of this Tribunal passed in O.A.No.154 of 1999 till the date of his reinstatement, i.e., from 7.11.2000 to 31.3.2010 and to fix the TRCA of the applicant from 1.1.2006 in the maximum revised scale of Rs.4220-75-6470/-.

8. The Respondents in this case had mentioned that the review of the appointment of the applicant to the post of EDDA was taken up by the authority superior to the appointing authority. In this regard the Tribunal had mentioned the Full Bench decision of the Tribunal in the case of Ambujakshi vs. UOI dealt and relied on by the CAT, Bangalore Bench of the Tribunal in O.A.No.1407/95, wherein it has been held that ^{it is} ~~only~~ appointing authority who has power under Rule-6 of the EDA(Conduct & Service) Rules, 1964 to issue order of termination. The Tribunal had concluded that



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the order dated 5.4.1999 was not sustainable on the grounds of its having been initiated and issued on the basis of external direction by the higher authority. In view of this, the Tribunal quashed the order dated 5.4.1999 and directed the Respondents to reinstate the applicant in the post of EDDA, Kalarabanka. On perusal of this order, it is quite evident that there was neither any prayer made by the applicant nor any finding of this Tribunal with regard to payment of the back wages. However, since the Tribunal had directed that the applicant should be reinstated forthwith and had also quashed the order of termination, it will be inferred that the reinstatement should have been done on 26.3.1998, i.e., the date on which the applicant originally joined EDDA, Kalarabanka and this service continuity will be maintained. However, the subsequent development in this case is that the Respondents had approached the Hon'ble High Court of Orissa in O.J.C.No. 3768/2001 challenging the order of the Tribunal dated 7.11.2000 passed in O.A.No.154/99. The Hon'ble High Court of Orissa had, in course of their order while disposing of the above said OJC on 18.1.2010, observed as under.

"The only question for consideration before this Court is as to whether the higher authority has any authority under the relevant rules for reviewing a selection. This question has been settled by the Hon'ble Supreme Court in the case of Union of India and Others vs. Bikash Kuanar in Civil Appeal No.4388 of 2006 disposed of on 10.10.2006. In the said judgment, the Hon'ble Supreme Court held that in terms of the Rules, 1964, the superior authority had no statutory power to direct cancellation of selection. The aforesaid judgment was followed by this Court in the case of Union of India and others vs. Radhashyam Sahoo and another (O.J.C.No.1394 of 2000 disposed of on 5.8.2008). These two decisions were followed by this Court in the case of Asrasada Surya Mouli vs. Union of India and others reported in 2008(II) OLR-646. Admittedly, the higher authority in this case

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exercised its power under Rule 6 of the E.D.A. (Conduct and Service) Rules, 1964 and directed the appointing authority to cancel the selection. The higher authority having no such statutory power under the said Rules, as held by the Apex court; followed by this Court in the aforesaid two judgments and the Tribunal having followed the said judgments while quashing the notice, we find no infirmity in the order of the Tribunal impugned before us.

Accordingly, the writ application being devoid of merit, is dismissed".

9. Subsequently, the Respondents have carried out the orders of the Hon'ble High Court by permitting the applicant to join against the post of GDSMD, Kalarabanka with effect from 31.3.2010. Thereafter, in obedience to the order dated 15.4.2011 of this Tribunal passed in O.A.No.20/2011, the Respondents have considered the representation of the applicant and passed the impugned order dated 7.6.2011, in which they have decided that continuity in his service from the date of initial appointment upto the date of reinstatement, i.e. 7.11.2000 to 31.3.2010 could not be maintained and the official was not entitled to any pay and allowance for this period.,

As already discussed, the implication of the orders of this Tribunal dated 7.11.2000 would be that the applicant would be entitled to reinstatement from the date of his original appointment on 26.3.1998 since the order of termination dated 5.4.1999 has been quashed by the Tribunal. Since this order of the Tribunal has been confirmed by the Hon'ble High Court of Orissa in their order dated 18.1.2000, therefore, after the decision of the Hon'ble High Court in this matter, the reinstatement will take effect from 26.3.1998 only. By inference the service continuity of the applicant in the post of GDSMD from this date till 31.3.2010 shall be maintained. The contention of the Respondents in this regard that the service continuity

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should not be granted is without any valid ground since the matter has been finally decided after the decision of the case in the Hon'ble High Court on 18.1.2010.

10. The next question which remains to be discussed is regarding the payment of arrears salary of the applicant at least from the date of order of the Tribunal passed in O.A.No.154/1999, i.e., 7.11.2000 to 31.3.2010 as per the prayer made by the applicant in this O.A. It is an admitted fact that the applicant has not performed his duty as GDSMD during the period mentioned above. The normal rule adopted in this case is 'no work no pay', which means that an employee who is not working for a particular period shall not be entitled to receipt of pay and allowances for this period.

11. Having heard both the learned counsels in this matter, we have perused the records. It will be required to have a look at the order in O.A.No.154/99 disposed of by this Tribunal on 7.11.2000. On a perusal of the orders in this case it is found that the applicant had made a prayer for quashing the order of termination of appointment in respect of the post of EDDA, Kalarabank with further direction to allow him to continue in the said post. This Tribunal after hearing the case had come to a finding that termination of service of an E.D.Agent, can be ordered by an appointing authority and such order cannot be passed on the basis of external direction.

12. The Service Rules For Postal Gramin Dak Sevak should decide the case of the applicant since he was appointed as GDSMD. No specific rule has been brought to our notice by the learned counsel for either side which would govern this situation. However, the learned counsel for the applicant

has cited the decision in Union of India vs. K.V.Jankiraman wherein the Hon'ble Apex Court had decided ^{that} the normal rule of 'no work no pay' is not applicable to a case where the employee was kept away from the work by the authorities for no fault of his and therefore, the provision of FR 17(1) will be inapplicable to this case. However, the Hon'ble Apex Court had also made an observation in Para-7 of the judgment that where the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of that promotion and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies the arrears of salary or part of it, it will record its reasons for denying so. To quote further from the observation of the Hon'ble Apex Court is as under;

"Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. Therefore, to deny the salary to an employee would not in all circumstances be illegal".

13. Present case is not one of any disciplinary proceedings/criminal prosecution. As already discussed in this order, the Tribunal had come to a finding that the termination of the applicant was on the basis of direction of the higher authorities and therefore, was not sustainable under Rule-6 of EDA(Conduct & Service) Rules, 1964 and this finding was confirmed by the Hon'ble High Court. The learned counsel for the applicant has also

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mentioned about the orders of the High Court of Delhi in W.P. (C) No.14349-51/04 pronounced on 3.7.2009, in which the Hon'ble Delhi High Court had decided that setting aside the removal order of the Respondents having no merit, the intervening period has to be treated as on duty for all purposes. However, we have to look at the facts of this case in order to arrive at a conclusion in this case. Since the GDS Rules do not throw much light in this regard, it will be salutary to mention about FR-17(1), which governs the case of the Central Government Servants in this matter and reads thus.

FR-17(1)-Subject to any exceptions specifically made in these rules and to the provisions of sub-rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge these duties".

14. The meaning of this provision of the F. R is very clear that an officer will draw his pay and allowance attached to his post only when he assumes the duties of that post and will ceases to draw the salary as soon as he ceases to discharge the duties.

15. Further, FR-54(A)(3) deals with treatment of the intervening period when the order of dismissal/removal/compulsory retirement of a Government servant is set aside by a Court of Law. The provision of FR-54 will obviously not apply to this case since it is not a case of disciplinary proceedings or criminal prosecution on account of which the order of removal was issued. On the other hand, the Tribunal quashed the order of termination of the services of the applicant on the ground that termination was done at the instance of the higher authorities and not by the appointing authority. It



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was not due to any orders passed by the Disciplinary Authority in a disciplinary proceedings matter. Therefore, the facts of this O.A. are different and on consideration of this fact, it does not appear to be legitimate to allow payment of pay and allowances to the applicant for the period for which he did not render any service to the Department. The normal provision is that no pay shall be disbursed when work has not been performed by the employee and this normal rule will prevail in case of the applicant. However, in our view, the Respondents having ~~not~~ considered the matter properly to the extent that they have reinstated the applicant only with effect from 31.3.2010 after the judgment of the Hon'ble High Court of Orissa which is not sustainable. When the Tribunal had already quashed the order of termination passed in the year 1999 and the High Court has now upheld the orders of the Tribunal, the reinstatement of the applicant shall take effect from 26.3.1998, i.e., the date on which the applicant was first appointed to the post. Therefore, while we decide that the applicant is not entitled to back wages, with effect from the date of termination of his service till the date of his reinstatement, we direct the Respondents to take into consideration the service continuity of the applicant from the date of his appointment till the date of his reinstatement and accordingly, ~~and~~ his pay/TRCA etc. shall be fixed taking into account his service continuity.

In the result, the O.A. is allowed to the extent indicated above. No costs.

R.C.MISRA
(R.C.MISRA)
MEMBER(A)
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A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)