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O.A. No. 569 of 2009

Benudhar Nayak Applicant
Vs
Union of India & Ors Respondents

Order dated: 13.12.2011

CORAM:

Hon'ble Shri C.R.Mohapatra, Member (Admn.)
&
Hon'ble Shri A. K. Patnaik, Member(Judl.)

Applicant while working as Extra Departmental Sub Post Master of Adaspur E.D.S.O. was put under off duty w.e.f. 7.12.1984. He, having faced departmental proceedings, has been imposed with the order of punishment of removal from service vide Annexure-A/9. According to the applicant, the appeal preferred by him has been rejected on the ground of limitation and communicated under Annexure-A/13. By filing this O.A., the applicant has made following prayers:

“....quash Annexure-A/9 and A/13 and direct the Respondents to reinstate the applicant in service with all consequential service benefits including back wages and direct to pay back wage and Exgratia compensation with due interest @ 18% per annum”.

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As an interim relief, the applicant seeks a direction to the Respondents "to release the exgratia compensation from 13.01.97 to 31.01.2000".

2. Heard Mr. P.K.Padhi, Ld. Counsel for the applicant and Mr. P.R.J.Dash, Ld. Additional Standing

Counsel appearing for the Respondents.

3. While admitting this case, notice was issued to the Respondents to file counter, and also opportunity was given to the applicant for filing of rejoinder, if any, on receipt of the counter. Accordingly, counter as well as rejoinder have been filed and the matter has been heard in extenso.

4. While challenging the order of removal passed vide Memo No. F/6-1/84-85/Ch.1 dated 31.01.2000, the applicant submits that he came to know about the order of removal only when he filed an application under the R.T.I. Act and got the response/information under Annexure-A/11 that he has been removed from service. Thereupon, he preferred an appeal on 13.09.2007, which has been rejected on the ground that the appeal is time barred. From the copy of the order of the Appellate Authority, i.e. Respondent No.3, under Annexure-A/13, it reveals that the appeal was

preferred on 13.09.2007, which is after a lapse of 7 years, 7 months and 11 days, whereas according to the Appellate Authority the appeal should have been preferred within 45 days from the date of receipt of communication of the punishment order. The applicant has disputed the communication of this punishment order submitting further that somebody on his behalf by forging his signature received the copy of removal order. The further contention of the applicant is that 45 days period for filing appeal as stated by the Appellate Authority is absolutely wrong as there is no such provision in the Rules.

5. We have perused the records. It reveals from the counter as well as the rejoinder that as per GDS (Conduct & Employment) Rules, 2001, the appeal should have been filed within 90 days from the date of communication of the order. Hence, the ground taken by the Respondent No.3 (Appellate Authority) that appeal should have been filed within 45 days is dehors the rules. We are of the considered view that in disciplinary cases where the punishment is in the nature of removal, dismissal or compulsory retirement which has the effect of taking away the means of livelihood of the family, the appeal could not have been disposed of in such a cavalier

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manner and that too on merely technical ground. Accordingly, we quash the order of the Appellate Authority as at Annexure-A/13. In view of the above, we have not gone into the other aspects of the case as brought out by the applicant in the O.A. and the stand taken by the Respondents in their counter.

6. As a consequence, we remand this case to the Respondent No.3 to reconsider the appeal, a copy of which is available at Annexure-R/8 to the counter, and pass a reasoned order taking into account the merit of the case. This should be done within a period of 90 days from the date of receipt of a copy of this order.

7. Since, we are quashing the order of rejection of the Appellate Authority, the applicant will be relegated to the position which he was holding prior to the date of removal and if he was under put off duty during that period, ex-gratia compensation as admissible under the relevant rules shall be paid to him.

8. With the above observation and direction, the O.A. stands disposed of. No costs.

Alka
MEMBER (Jud.)

Chintu
MEMBER (Admn.)