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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

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DATE OF ORDER : 19.1.2001.

O.A. NO. 311/96

Harka Ram S/o Shri Tikama Ram, aged about 43 years, R/o Vill. 7 Post Office Hoodu Via Rawatsar 344 703, at present employed on the post of EDBPM, Hoodu Teh. Gudumalani, Dist. Barmer (Raj).

..... Applicant.

Versus

1. Union of India through Secretary to Government of India, Ministry of Communication, Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Barmer Division, Barmer.

..... Respondents.

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CORAM :

HON'BLE MR. A. K. MISRA, JUDICIAL MEMBER
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr. J. K. Kaushik, Counsel for the applicant.

Mr. Vineet Mathur, Counsel for the respondents.

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BY THE COURT :

The applicant has filed this O.A. with the prayer that the respondents be directed to treat the period of Put Off duty i.e. 27.3.82 to 25.4.94, as period spent on duty for all purposes and make payment of pay and allowances to the applicant for the aforesaid period along with interest at the market rate. The applicant be further allowed all consequential benefits.

2. The Notice of the O.A. was given to the respondents who have filed their reply to which a rejoinder

15

was filed by the applicant. The respondents also filed reply to the rejoinder.

3. We have heard the learned counsel for the parties and have gone through the case file. From the O.A., it appears that the applicant was initially engaged on the post of EDBPM, Taku Beri, on 1.3.79 and was subsequently given regular appointment on this post on 15.7.80. The respondent No.2 on 26.3.82, placed the applicant under Put Off Duty under Rule 9 of the EDA (Conduct and Service), Rules, 1964. Thereafter, no chargesheet was issued to the applicant. The applicant was neither taken on duty nor was paid salary or allowance during the put off duty period. By an order dated 5.3.90 the applicant was appointed on the post of EDBPM, Hoodu, but Shri Mala Ram, who was working as EDBPM, Hoodu, obtained a stay order from the Tribunal, therefore, the applicant could not take charge from Shri Mala Ram and Shri Mala Ram continued on the post of EDBPM, Hoodu. Vide order dated 25.8.93, passed in the OA No. 206/90 Mala Ram Vs. UOI and Ors., the respondents were directed that the services of Shri Mala Ram could only be terminated after following the provisions of Section 25-F of the Industrial Disputes Act. Thereafter, the applicant took-over the charge of the post of EDBPM, Hoodu, on 26.4.94. Thus, the applicant remained under put off duty initially from 26.3.82 to 4.3.90. Thereafter, he was given an appointment vide order dated 5.3.90, Annex.A/3. The applicant, inspite of appointment order dated 5.3.90, remained without charge upto 25.4.94 due to the fact that Shri Mala Ram did not hand-over the charge of the post of EDBPM, Hoodu, to him and secured stay order from the Tribunal. These facts are not in dispute.

20/IV

4. The only fact which is in dispute is, regarding appointment of the applicant. The respondents say that the applicant was appointed on stop-gap arrangement basis and not on regular basis. The claim of the applicant is disputed and denied by the respondents. On the other hand, learned counsel for the applicant submits that the applicant was regularly appointed on the post of EDBPM, Hoodu.

5. We have considered the rival arguments. In our opinion, the contention of the respondents that the applicant was appointed on stop-gap arrangement, has no legs to stand. If it were so, then instead of ordering the applicant Put Off duty his services could have been terminated at that stage. Further, if the applicant was appointed on stop-gap arrangement then he would not have been posted as EDBPM, Hoodu, vide order dated 5.3.90, Annex.A/3. Therefore, the contention of the respondents in this regard deserves to be rejected.

6. The next question to be decided is, whether the applicant is entitled to get allowance for the period he remained put off duty.

7. It was argued by the learned advocate for the applicant that the applicant was wrongly put off duty without keeping in view the departmental guidelines on the subject. Order relating to put off duty and its further continuance was not reviewed as per the Rule 9 of the Post and Telegraphs Extra Departmental Agents (Conduct and Service), Rules, 1964 (for short 'the Rules'), and the applicant was reinstated in service without any chargesheet having been served on him. Therefore,

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the applicant is entitled to receive full allowance from the respondents for the period of put off duty -as he was wrongly prevented to discharge his duties on account of such an illegal order. He has cited (1991) 17 ATC Page 138 - Trilochan Sarangi Versus Union of India and Another, and 1991 (2) ATJ Page 184 - K.Krishna-Murthy Versus Union of India.

8. On the other hand, it was argued by the learned counsel for the respondents that the applicant was put off duty because he was detained by the police from 18.3.82 to 29.3.82 and was facing prosecution for a criminal offence. Moreover, Rule 9 as it then existed, did not contain any provision for payment of any allowance or part thereof for the put off duty period, therefore, he was neither entitled to get nor was paid any amount by the department for the put off duty period. Further, as the applicant was acquitted of the criminal charges due to compromise between the parties, he was ordered to be reinstated. Therefore, the claim of the applicant deserves to be rejected.

9. We have considered the rival arguments and the rulings cited by the learned advocate for the applicant.

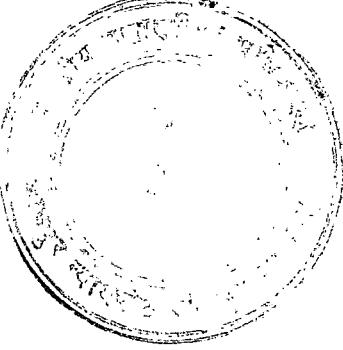
10. In our opinion, the applicant is entitled to the allowance for the entire period of put off duty i.e. from 27.3.82 to 25.4.94 as he was put off duty without any justification and further the put off duty period was continued without reviewing the same as per the guidelines. Moreover, the applicant was never served with any chargesheet by the department during the put off duty period for any alleged mis-conduct etc. which in the eye of the department necessitating initially for

30/4

putting him off duty. Not serving any chargesheet for number of years or applicants exoneration after inquiry, if chargesheet is served, cannot be put on different footings. Had the applicant been exonerated after the chargesheet and inquiry, he would have been entitled to full allowance as has been held in 1991 (2) ATJ Page 184 which reads as under :-

"Extra Departmental Agents (Conduct and Service) Rules - Rule 9(3) - Pay and Allowances - Applicant an E.D.D.A. was put off duty in contemplation of disciplinary proceedings for alleged misconduct - Charges not proved in inquiry - Reinstated - Whether entitled to pay and allowances for the period he was put off duty - Held Yes."

11. In another case, reported in (1991) 17 ATC Page 138, even warning was not found to be of any consequence for refusing the allowance for the put off duty period. In this case it was held that :



"Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 - Rules 7 and 9 (3) - Putting off the duty - Regularisation of period - Payment of allowance - No formal punishment imposed on applicant but let off with a warning whereas according to departmental instructions, an Extra Department Agent could be put off from duty only on a misconduct, if proved, was serious enough to warrant dismissal or removal - Held on facts, putting off was unjustified - Hence, allowance admissible on reinstatement though under Rule 9 (3) it was not admissible during the period an Extra Department Agent actually remained put off - Suspension - Fundamental Rules, Rule 54 -B (3) - Government of India, Department of Personnel and Training, O.M. No. 11012/15/85-Ett. (A) dated 3.12.1985."

12. As per the departmental guidelines, the Extra Departmental Agent should not be put off duty in a routine manner. It is in respect of serious cases relating to offences involving moral turpitude which may necessitate dismissal from service that such action can be resorted to and not otherwise. At the cost of repetition, we may say that in this case, the applicant was not involved in any such cases involving moral turpitude.

Even the respondents documents, Annex. R/1 and Annex. R/2 do not support the contentions of the department in this regard. The applicant was either acquitted in the cases or the FIRs were found to be "no incident case". Thus, keeping the applicant as on "put off duty" for such a long period, was bad in law.

13. In view of the above, we are of the opinion that the applicant is entitled to be treated on duty and all allowances for the put off period..

14. Considered the point of grant of interest to the applicant on the arrears. The applicant was taken on duty on 26.4.94. Therefore, he became entitled to allowance of the put off duty period only then. Therefore, the applicant shall be entitled to interest on the amount of allowance at the simple rate of 9% per annum from 26.4.94 till payment. only ↘ The O.A. deserves to be accepted in part accordingly.

15. The O.A. is, therefore, partly accepted. The respondents are directed to treat the period of put off duty i.e. 27.3.82 to 25.4.94 of the applicant, as period spent on duty for all purposes and make payment of his due pay and allowances for the said period along with interest at the simple rate of 9% per annum from 26.4.94 till the amount is paid, within a period of three months from the date of this order.

16. Both the parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

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Smt 19/11/2001
(A.K.MISRA)
Judl.Member

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Received
J. Regan 67
29/11/2001

Part II and III destroyed
in my presence on 29/11/2001
under the supervision of
section officer () as per
order dated 19/11/2001

Section Officer (Signature)

R/Coty
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