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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Original Application No. 288/2003
Date of Decision : this is the 16th day of July, 2004

Hon'ble Mr. M.L.Chauhan, Judicial Member

Hon'ble Mr. M.K. Misra, Administrative Member

Ishwar Lal S/o Shri Kanhaiya Lal aged 45 years,
R/o Village Thoor, District Jalore, Gramin Dak Sevak,
Branch Post Master, Thoor, District Jalore.

.....Applicant.

(By Mr. Vijay Mehta, advocate for the applicant)

Versus

1. Union of India through the Secretary
Ministry of Communication,
(Department of Post), Sanchar Bhawan,
New Delhi.
2. Superintendent of Post Offices, Sirohi.
3. Director, Postal Services, Western Region,
Rajasthan, Jodhpur.

.....Respondents.

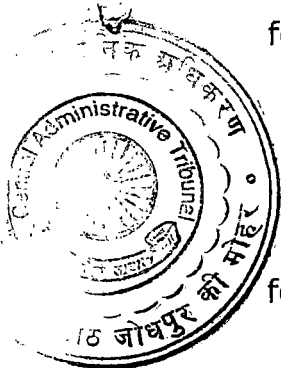
(By Mr. M.Godara, brief holder for Mr. Vineet Mathur, Advocate,
for respondents)

Order
(By M.L.Chauhan)

The applicant has filed this O.A. thereby praying for the
following reliefs :-

"The applicant prays that the impugned orders
Annex. A/1 and Annex. A/4 may kindly be quashed and the
applicant be awarded all consequential benefits. Any other

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order, as deemed fit giving relief to the applicant may kindly be passed. Costs may also be awarded to the applicant."

2. The facts of the case are that the applicant while working as Extra Departmental Branch Post Master (for short 'EDBPM') was removed from service after departmental inquiry vide order dated 2.9.1996. The charge against the applicant was that he did not exchange the mail bags which resulted in stopping of mail exchange between Thoor and Mudtarashi Branch Post Office, consequently the postal service between Thoor and Sandhare was not smooth between the period 1.12.1992 to 4.12.1992 and that from 5.12.1992 the applicant absented himself from duty in an unauthorized manner. Against this order of removal from service, the applicant filed O.A. before this Tribunal which was registered as O.A. No. 283 of 2000. This Tribunal came to the conclusion that the charge which was proved against the applicant was that he did not perform duties of Extra Departmental Mail Career (for short 'EDMC') for a period of four days and disobeyed the orders of his superiors. There is no allegation of misappropriation or squandering of public money against the applicant. This Tribunal taking overall view of the matter found that the penalty imposed by the department was excessive and disproportionate to the charge which stand proved. Ultimately, the impugned order of removal of the applicant from service passed by the disciplinary authority dated 2.9.1996 (Annex.A/1) and the order of the appellate authority dated 6.2.1997 (Annex. A/14) confirming the order of disciplinary authority was quashed and the case was remitted to the disciplinary authority for passing appropriate order of punishment (other than dismissal / removal from service or reduction in rank) taking into consideration the observation within a period of thirty thirty days from the date of receipt of a certified copy of this order. Pursuant to the order passed by this Tribunal respondents have passed the impugned order dated 30.4.2002 (Annex.A/1) and imposed penalty of debarring the applicant for being considered for recruitment to Group 'D' for a

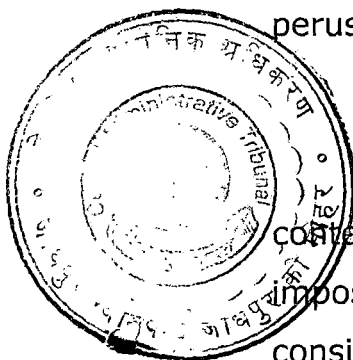


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period of three years. It was further ordered that the period from the date of his removal i.e. 9.9.1996 till his instatement which is 7.5.2002 shall not be treated and counted in service and the applicant shall not be entitled to receive the salary for the said period. The applicant preferred an appeal against this order which was also dismissed vide order dated 17.7.2003 (Annex.A/4). The grievance of the applicant in this O.A. is that though the respondents were competent to pass penalty pursuant to the earlier judgement rendered by this Tribunal in O.A. No. 283 of 2000 but, the respondents could not have treated the period w.e.f. 9.9.1996 to 7.5.2002 (the date of removal till reinstatement of the applicant) as period not to be treated and counted in service and also declining the salary for the said period without affording an opportunity to the applicant to show cause.

The respondents have filed a reply thereby justifying the order passed by the disciplinary authority and as confirmed by the appellate authority.

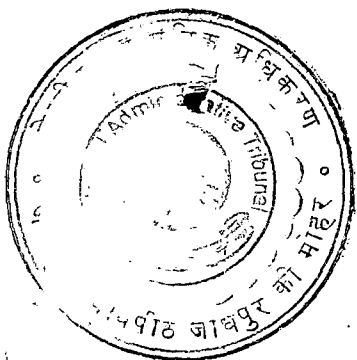
We have heard the learned counsel for the parties and perused the material placed on record.



We are of the view that there is substance in the contention raised by the learned counsel for applicant. Though, imposition of penalty of debarring the applicant for being considered for recruitment to Group 'D' for a period of three years, is in consonance with the ^{relevant} ~~Railway Rule~~ but, definitely the period w.e.f. 9.9.1996 to 7.5.2002 which is from the date of removal of the applicant till his reinstatement could not have been treated as period not to be counted for the purpose of service and also for the purpose of salary atleast without affording an opportunity to the applicant to show cause and make representation regarding this aspect. Admittedly, the respondents have not issued any show cause notice in this

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regard. As such, the order passed by the disciplinary authority whereby holding that the period from the date of removal i.e. 9.9.1996 till reinstatement which is 7.5.2002, shall not be treated and counted to have been spent in service and applicant shall not be entitled to receive his salary for the said period as held by the disciplinary authority and as confirmed by the appellate authority cannot be upheld. Accordingly the order Annex. A/1 dated 30.4.2002 and as confirmed by the appellate authority vide order dated 17.7.2003 (Annex.A/4) are quashed to that extent. It is made clear that the order at Annex. A/1 and as confirmed vide Annex. A/4 shall be valid so far as imposition of penalty of debarring the applicant for being considered for recruitment to Group 'D' for a period of three years is concerned. It is further made clear that the respondents will be at liberty to pass appropriate order regarding treating the period w.e.f. 9.9.1996 to 7.5.2002 i.e. from the date of removal till reinstatement for the purpose of seniority and pay and allowances after issuing a show cause notice to the applicant and pass appropriate order after considering his representation. The O.A. is accordingly disposed of with no order as to costs.




[M.K.Misra]

Adm.Member


[M.L.Chauhan]

Judl.Member

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Part II also in destroyed
in my presence on 25/10/13
under the supervision of
section officer (1) as per
order dated 18/10/13

JH. Shu
Section officer (Record) 25.10.2013