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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

O.A. No. 293 OF 2006

Thursday, this the 26th day of April, 2007

CORAM :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. TARSEM LAL, ADMINISTRATIVE MEMBER**

Jeev Raj Panwar
resident of Village & Post Giri, District Pali
(Rajasthan)
Presently working as GDS BPM
(Gramin Dak Sevak Branch Postmaster) Rendri,
Sojat Road, District Pali Marwar : **Applicant**

(By Advocate Mr.K.S.Yadav & Mr.K.K.Maharishi)

Versus

1. Union of India through the Secretary
Ministry of Communications
Department of Post Offices
Dak Bhawan, New Delhi

2. The Post Master General
Department of Post Offices
Jodhpur

3. The Superintendent of Post Offices
Pali Division, Pali Marwar : **Respondents**

(By Advocate Mr. Vinit Mathur)

ORDER

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The question involved in this case is whether order dated 13-01-1997 relating to payment of allowances during put off duty would be admissible only in respect of put off duty on or after 13-01-1997 or would be applicable also to such a case where the suspension is anterior to the afore said date.

2. Brief Facts of the case as per the OA are as under:-

(a) The applicant while working as EDBPM in the Post Office Giri was put off duty vide memo dated 24.11.1970.

(b) A criminal case was lodged against the applicant in the Court of District Magistrate, 1st Class Brr District Pali. Said case was decided vide order dated 27.06.2000 wherein the applicant has been acquitted from the charges.

(c) After acquittal since nothing was heard from the respondents he filed an Application No.118/2001. Respondents have filed reply stating that the departmental enquiry has already been initiated. This Hon'ble Tribunal; vide order dated 27.02.2002 directed that respondent shall make ex-gratia payment as contemplated in the relevant rules.

(d)  Respondents sent a cheque dated 08.03.2002 of Rs.776/- to the applicant being the arrears of put off duty allowance payable with effect from 13.01.1997 to 28.02.2002 vide letter dated 08.03.2002. Applicant returned the same stating therein that he is allowed suspension allowances upto 90 days from the day of passing the order of putting him from duty i.e 24.11.1970 @ 25% + DA till 28.02.2002 and thereafter regular payment as directed by this Hon'ble Tribunal should be made. But respondent have not paid a single penny till today.

(e) Later on, the applicant was served with a memo of charge sheet dated 20.08.2001 on the same set of facts on which criminal case was registered and even witnesses are the same.

(f) The applicant challenged the charge sheet by filing an Application No.214/2002 and the same was allowed vide order dated 25.07.2003 and charge sheet was quashed.

(g) Respondent No. 3 issued an order dated 06.11.2003 whereby applicant was reinstated and posted as GDS BPM Rendri but the arrears of salary has not been paid to the applicant. Arrears of ex-gratia payment have not even been paid to the applicant despite clear direction of this Hon'ble Tribunal.

(h) The applicant filed an Original Application No.188/2004 and the same was disposed of with a direction to decide the period of put of duty and allowances/salary for the period of put of duty by a speaking order. In pursuance of the direction respondent served a notice under Rule 12 of the rules 2001 and the applicant was called upon to submit his representation within a period of 15 days. The applicant submitted his representation in pursuance of notice dated 15.06.2005 but the same has been turned down by non-applicants vide order dated 23.07.2005. The denial of allowances for the period put of duty on the ground that sub rule (3) of 12 of the rules, 2001 was not in force at the time of putting the applicant under suspension.

3. The applicant has sought for the following relief:-

(i) *That impugned order dated 23.07.2005 may be quashed and set aside and non-applicants may kindly be directed to pay the arrears of full pay allowances / ex-gratia payment with effect from 24.11.1970 to 24.12.2003 alongwith interest @ 12% PA from the day as and when the same became due.*

(ii) *To give the benefits of annual grade increments etc. and to fix the payment of salary after such fixation.*

4. Respondents have contested the OA. Their contentions are as under:-

After consideration the period of put-off duty was ordered to be counted for benefits of severance/ex-

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gratia gratuity and other retiral benefits to the applicant, but for TRCA/salaries the put off duty period was disallowed vide office order dated 23.07.2005. It will be relevant to mention that the applicant is seeking put off duty allowance in pursuance of the OM dated 13th January, 1977 wherein it has been clearly stated in last para that this order will come into force from the date of its issuance. Therefore, even in the light of this order also, the applicant is not entitled for any of the put off duty allowance prior to the date of issuance of this order dated 13th January, 1997.

5 Counsel for the applicant invited our attention to the observations in para 2 of the order dated 12-04-2005 of this Tribunal wherein the Rule position with he direction given to the respondents has been reflected and the same is as under:-



The facts as apprised by the applicant in brief are that while the applicant was working on the post of EDBPM in the Post Office Giri via Sendara, he was ordered to put off duty (suspension) vide order dated 24.11.1970. The applicant filed OA which was allowed vide order dated 24.11.1970. The applicant filed OA which was allowed vide order dated 25th July, 2003. Now the applicant has grievances that once the charge-sheet has been quashed and he has been taken back on duty, the department was liable to release him the entire arrears of salary with full pay allowances/ex-gratia payment etc but the same has not been released. The learned counsel for applicant has also stated that under Rule 12 of the Postal Gramin Dak Sevak Rules, (hereinafter referred as Rules) wherein it has been provided that in the event of a Sevak being exonerated, he shall

be paid full admissible allowance for the period of put off duty. In other cases, such allowances for the put-off duty can only be denied to a Sevak after affording him an opportunity and by giving cogent reasons. The applicant has also made a representation vide Annexure A-3 by speed post for seeking the same. The learned counsel for applicant also submits that Note under Rule 12 says that the period of putting a Sevak off his duty including the period of deemed putting him off his duty shall be decided by the competent authority after de novo proceedings in this regard are finalised and compensation as ex gratia payment for the concerned period shall be regulated according to provisions of sub-rule 3. This postulates a duty upon the respondents to pass an order after exoneration by competent authority to decide about the period of put off duty. In this case no order has been passed by the department so far, despite the representation at Annexure A-3. Thus, the OA can be disposed of with a direction to pass such order.



In view of the observation made above, the Original Application deserves to be allowed and the respondents are directed to pass a speaking order to decide the period of put off duty and also to decide as to how much allowances/salaries are to be paid to the applicant. If the applicant feels any grievances, thereafter, he will at liberty to approach this Tribunal again.

6. Counsel for the applicant submitted that the respondents are thoroughly in error when they had refused payment during put off duty right from 1970 till date of reinstatement though provision exists for payment of full amount in the case of exoneration vide order dated 27-01-1997 (Annexure R-1), which is also provided for in proviso to

Rule 12 of the Service Rules for Postal GDS. The said proviso states, "**Provided further that in the event of an ED agent being exonerated he shall be paid full admissible allowance for the period of put off duty. In other cases, such allowances for the put off duty can only be denied to the ED Agents after affording him an opportunity by giving cogent reasons.**"

7. The counsel argued that in the instant case, when the criminal case ended in acquittal by the Criminal Court and when the charge sheet stood quashed by the Tribunal, there is no justification in not granting the full admissible allowance of put off duty. That the applicant was put off duty much prior to the introduction of the above provision cannot be taken as a ground to deny this entitlement to the applicant.

8. Counsel for the respondents on the other hand reiterated the stand taken in the impugned order and the reply filed by them, and submitted that as the applicant was on put off duty even prior to the introduction of the above said proviso, there is no question of any amount payable to the applicant.

9. Arguments were heard and documents perused. True, the applicant was put off duty in 1970 and as such, whatever the rule was then extant that would have become applicable. However, when once the rules had undergone certain material changes from a particular date, then uniformly that rule should be applied to the cases of put off even though the put off in such cases may be anterior to the introduction of the new Rules. If the new rules are applicable from

13-01-1997 for any put off duty cases posterior to the coming into force of the rule, equally that rule should apply from that date in respect of put off duty cases of anterior date. As for example, when an individual is under suspension and during the period of that suspension, the Revised Pay Rules come into force, as to the payment of subsistence allowance, it is the revised pay that has to be considered (unless the option is otherwise) and the respondents cannot be allowed to contend that the revised pay rules having come into force after the suspension of the individual, subsistence allowance shall be only on the basis of the pre-revised rules. See *R.P. Kapur v. Union of India, (1999) 8 SCC 110*, where the subsistence allowance on the basis of the revised pay was afforded "in terms of the Central Administrative Tribunal, Guwahati's judgment in Case No. GC 171 of 1987" and *Umesh Chandra Misra v. Union of India, 1993 Supp (2) SCC 210*, where the payment based on the revised pay was at the direction of the Apex Court. Thus, the applicant is entitled to the benefit of the provisions of the proviso as contained in order dated 13-01-1997, but the same is effective only from 1997 and not earlier.

10. In so far as the discretion available to the authority to deny the same subject to notice to the applicant, it is to be held that since there is no charge sheet and further, since the criminal case has ended in acquittal, there cannot be a justification to deny the subsistence allowance to the applicant.

11. Thus, the OA is allowed to the extent that it is declared that the applicant is entitled to full admissible allowance for the period of put off duty from 13-01-1997 onwards till the date of his reinstatement

i.e. 24-12-2003. Respondents are directed to work out the same and pay the amount to the applicant within a period of eight weeks from the date of communication of this order.



12. Under the circumstances, there shall be no orders as to cost.

Tarsem Lal
TARSEM LAL

ADMINISTRATIVE MEMBER

K.B.S.Rajan

K.B.S.RAJAN
JUDICIAL MEMBER

vs

(Copy Received)
JMB 2004/07

Part II and III destroyed
in my presence on 03-6-14
under the supervision of
Section Officer () as per
order dated 26-5-14.

Section Officer (Record)

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