

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application no. 157/2007**

**Date of Judgement.** 30.01.09

**Hon'ble Mr. N.D. Raghavan, Vice chairman.**

**Hon'ble Dr. R.C. Panda, Administrative Member.**

Ishwar Lal S/o of Shri Kanhaiya Lal aged 48 years, GDS Branch Post Master, Thoor Post Office, District Jalore, r/o village Thoor, District Jalore.

: applicant.

Rep. By Mr. Vijay Mehta : Counsel for the applicant.

**VERSUS**

1. Union of India through the Secretary to the Government, Ministry of Communication ( Deptt. Of Posts) Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Sirohi.

: Respondents.

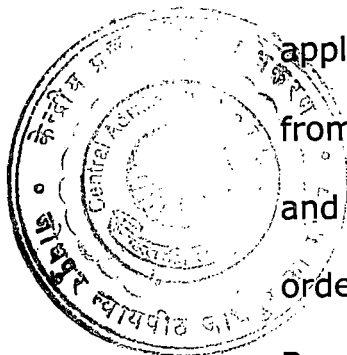
Rep. By Mr. M. Godara Proxy counsel for  
Mr. Vinit Mathur : Counsel for the respondents.

**ORDER**

**Per Mr. N.D. Raghavan, Vice Chairman.**

The facts of the case are as under:

This is the third round of litigation by the applicant. The applicant is an EDBPM, under the respondents. He was removed from service by the second respondent vide order dated 02.09.96, and the same was also upheld by the Appellate Authority vide his order dated 06.02.97. The applicant had challenged it before this Bench of the Tribunal by filing O.A. NO. 283/2000. After hearing both sides, this Tribunal vide its order dated 11.04.2002 quashed

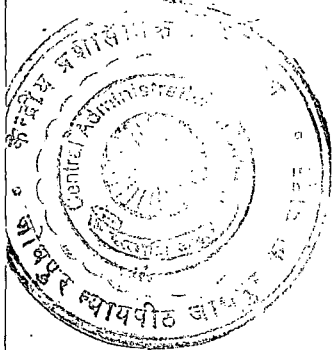


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the penalty of removal on the ground that it was excessive and disproportionate to the charges proved and the matter was remitted to the disciplinary authority for passing appropriate order with-in a period of thirty days from the date of receipt of a copy of that order.

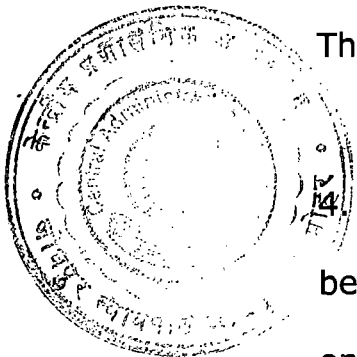
2. On receipt of a copy of the order of this Tribunal, the second respondent by his order dated 30.04.2002 imposed the penalty of debarring the applicant for being considered for recruitment to Group D for a period of three years. It was also mentioned in that order that the period from the date of his removal i.e. from 09.09.96 till the date of reinstatement i.e. 07.05.2002 shall not be treated and counted as service and the applicant shall not be entitled to receive salary for the said period. The appeal preferred by the applicant against that order was also dismissed on 17.07.2003. Against it the applicant filed O.A. No. 288/2003 before this Bench of the Tribunal. This Tribunal by its order dated 16.07.2004, while retaining the debarment, gave liberty to the respondents to pass appropriate order regarding treating the period from 09.09.96 to 07.05.2002 i.e. from the date of removal till reinstatement for the purpose of seniority and pay and allowances after issuing show cause notice to the applicant. Thereafter a show cause notice dated 14.08.2004 (Annex A/3) was issued to the applicant. The applicant had submitted his reply on 25.08.2004 (Annex. A/4). On receipt of the reply from the applicant, the second respondent cancelled the earlier notice dated



14.08.2004 and issued <sup>(3)</sup> another show cause notice dated 28.02.2005.(Annex. A/5) without dealing with the points raised by the applicant. The applicant gave a reply dated 09.03.2005 (Annex. A/6). The second respondent again without dealing with the points raised therein issued another order dated 14.05.2007(Annex. A/1) stating that the period from 09.09.96 to 07.05.2002 shall not be counted as service and that the applicant is not entitled for salary for the said period. The applicant is challenging it in the instant O.A. and has prayed for quashing it. Number of grounds have been raised by the applicant in support of the prayer made in the O.A in para5 and its sub paras.

3. The respondents have countered the O.A by filing a detailed reply. They have stated that the competent authority after taking into account the reply submitted by the applicant and the order passed by this Tribunal in O.A. No. 288/2003 as well as the rules on the subject, they have passed the impugned order dated 14.05.2007 as per law. They have also contended that the present O.A is premature as the applicant has approached this Hon'ble Tribunal without exhausting the remedy of appeal available to him. They have generally denied the grounds raised the O.A.

A rejoinder has been filed by the applicant in which it has been stated that the applicant was never <sup>imposed</sup> put off duty and he was only removed from service, which order has been quashed by this Tribunal. It has been denied by the applicant that the Rules and



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provisions applicable to regular government servants are not applicable to the applicant. It is also stated by the applicant that in the impugned order no reasons have been given as to why the applicant is not entitled to get pay for the said period from 09.06.96 to 07.05.02

5. We have heard the learned counsel for both sides and perused the records carefully. This Tribunal on both the earlier occasions, in the O.As filed by the applicant, while setting aside the termination order, directed the competent authority to pass appropriate orders for treating the period from 09.09.96 to 07.05.2002 for the purpose of seniority and pay and allowances after issuing show cause notice to the applicant. The respondents have reinstated the applicant as per the orders of this Tribunal dated 11.04.2002 passed in O.A. No. 283/2000.

6. In support of his contention the learned counsel for the applicant relied on a decision of the Cuttack Bench of this Tribunal in the case of **Trilochan Sarangi vs. UOI and another** [(1991) 17 ATC 138], wherein the Cuttack Bench of this Tribunal has held that as no formal punishment imposed on the applicant but let off with a warning, the applicant therein was entitled to salary/wages for the period when he was under put off duty.

7. We have gone through the above case and note that there was no formal punishment imposed on the applicant, whereas in

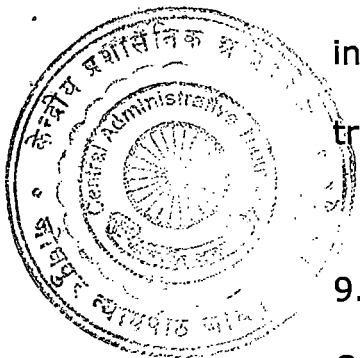


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the instant case, the penalty of debarring the applicant for being considered for recruitment to Group D post for a period of three years had been imposed on the applicant for the misconduct. Hence the facts of this case are distinguishable from the one cited by the learned counsel for the applicant.

8. We have also gone through the Swamys' compilation of Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001. We are of the view that there is no provision in the Rules to deal with a situation as in the instant case. It is seen from para 5 (e) at page 27 of the paper book (page 5 of the reply), the respondents themselves admitted indirectly that there is no clear provision in the GDS rules to deal with the situation as arose in the instant case. It is also seen from the Rules governing the applicant, Extra Departmental Agents are entitled to ten days paid leave for every half year commencing from 01.07.98, but at the same time there is no provision to carry forward or encashment of this leave. Further this Tribunal has set aside the termination of the applicant by its order dated 11.04.2002 passed in O.A. NO.283/2000. The respondents were also further directed by this Tribunal by its order dated 16.07.2004 in O.A No. 288/2003, to pass appropriate orders regarding the treatment of the period from 09.09.96 to 07.05.02.


9. Having gone through the facts of the case, this Tribunal in O.A. No. 283/2000, decided on 11.04.2002, set aside the



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punishment of removal imposed by the respondents on the applicant. However, the respondents were given liberty to re-examine the case from the angle of proportionality of the punishment, as a result of which, the competent authority has passed the order dated 30.04.2002, imposed the penalty of debarring the applicant for being considered for recruitment to Group D post for a period of three years. We ~~have~~ find that the penalty so imposed on the applicant has not been challenged by him in the present O.A and as such the penalty has reached its finality. We also find that the mis-conduct for which he was removed in the first instance and imposing a lesser penalty later on still holds good against the applicant.

10. In this background, we consider that the applicant being out of service from 09.09.1996 to 07.05.2002, ~~and has~~ <sup>- having been</sup> not worked for the period, the said period cannot be considered to have been spent on duty. Further, since penalty has been imposed for the misconduct, break in service and starting the service afresh by the applicant would fall within the ambit of double jeopardy. Therefore, the applicant cannot be made to suffer twice for the same misconduct.

11. In our considered view, we come to the following conclusion:- 

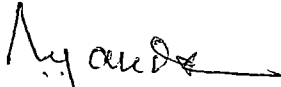


- (i) the applicant's <sup>(7)</sup> service should be continuous with no break and be treated from the date he joined duty initially; and

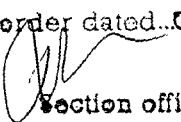


the period between the date of removal to the date of reinstatement when he has not worked during the period from 09.09.96 to 07.05.2002, he will not be entitled to get any salary/wages for the said period as per the principle of 'no work no pay'.

12. In view of the total facts and circumstances of this case, the O.A is disposed of with the directions as at para 11 above. No order as to costs.

  
[ R.C. PANDA ]  
Administrative Member.  
Jsv.

  
[ N D RAGHAVAN ]  
Vice Chairman.

Part II and III destroyed  
in my presence on 7/2/15  
under the supervision of  
section officer (J) as per  
order dated 07/07/2015  
  
Section officer (Records)

  
P. S. A. Chetty

  
A. S. P.