

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

OA 276/2009

Dated this the 16th day of March, 2011

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**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

Prakash Chandra Bothra,
S/o Shri Chintamani Dass,
b/c Oswal R/o 208 Dhani Bazar,
District Barmer, Office address
HO Churu (Postal Dept)
Dist. Churu employed on the post of Postal Assistant.

(By Advocate Mr. S.P.Singh)

Vs.

1. Union of India through the
Secretary, Government of India,
Ministry of Communications
Department of Posts, Dak Tar Bhawan,
New Delhi.
2. The Chief Post Master General,
Rajasthan Circle, Jaipur.302007.
3. Post Master General,
Western Region, Jodhpur.
4. The Director, Postal Services,
O/o Post Master General,
Western Region, Jodhpur.
5. Superintendent of Post Offices,
Barmer Division, Barmer0344001.

(By Advocate Mr.M.Godara, proxy counsel for Ad.Vinit Mathur)

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ORDER

Hon'ble Mr. Justice S.M.M. Alam, Judicial Member

Applicant Prakash Chandra Bothra who is presently employed on the post of Postal Assistant has preferred this Original Application for grant of following reliefs:

- (a) The respondents may kindly be directed to consider the intervening period (period from passing of punishment order to modifying of punishment order) from 1.9.1987 to 17.2.1990 as spent on duty for all purposes and all consequential benefits may kindly be granted.
- (b) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (c) That the costs of this application may be awarded to the applicant.

2. The brief facts of the case are as follows.

The applicant was appointed on the post of Postal Assistant on 1.6.1972 in the respondent department and thereafter he rendered unblemished service for a period of 38 years. Vide Memo No.DDPAtt/DA/1/87/2 dated 28.8.1987 the Deputy Director of Postal Services in a departmental proceedings imposed major penalty against the applicant of reduction of rank to a lower of post of Postman until he is found fit after a period of three years. Against the said order applicant preferred appeal before Respondent No.4 which was rejected by order dated 3.5.1988.

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Thereafter the applicant preferred a representation before the competent authority and then by order dated 15.1.1990 passed by Shri B.T.Menghani, Member (Personnel) Postal Services Board, the said order of the disciplinary authority was modified and modified order of reducing the applicant's pay in the scale of Postal Assistant by 5 stages from Rs. 1210/- for a period of three years with further direction that the petitioner will not earn increment of pay during the period of reduction and on expiry of the said period of reduction will not have effect of postponing future increments of his pay was passed.

The said order of the authority is Annexure.A6 of the OA. Further case of the applicant is that after modification of the order the applicant was directed to join as Postal Assistant after cancelling the previous order of taking duty of Postman. Immediately after getting the modified order the applicant joined his duty and filed representation to consider the period of 1.9.1987 to 17.2.1990 as spent on duty for all purposes but the respondents vide order dated 27.10.1994 (Annexure.A1) ordered that the said period of absence of the official (applicant) from 1.9.87 to 17.2.1990 be treated as period spent on leave as due and admissible. This order of the respondents is basically under challenge in this O.A with a prayer that the respondents may be directed to consider the intervening period (period from passing of punishment order to modifying of punishment order) from 1.9.1987 to 17.2.1990 as spent on duty for all purposes and to grant all consequential benefits.

3. On filing of the OA notices were issued to the respondents and in compliance of the notices respondents have appeared through lawyer and

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filed reply of the OA. As per reply a preliminary objection has been raised by the respondents that the OA is barred by limitation. It has further been stated in the reply that since no prejudice has been caused to the applicant, by order dated 27.10.1994 (Annexure.A.1) as the period of absence of the applicant from duty from 1.9.1987 to 17.2.1990 has been treated as period spent on leave as due and admissible with further observation that leave in case of Extra Ordinary Leave will also qualify for pension etc. and for all purposes. On the above grounds a prayer has been made to dismiss the O.A.

4. Shri S.P.Singh, advocate appeared for the applicant whereas Shri M.S.Godara, proxy counsel for Advocate Vinit Mathur appeared for the respondents and argued the case.

5. Shri M.S.Godara appearing for the respondents submitted that this O.A. is barred by limitation and so he submitted that this preliminary objection be decided first. On merits Shri Godara submitted that since no prejudice has been caused to the applicant by passing the impugned order (Annexure.A1) as it has been observed in the order that the entire period of absence will be treated as period spent on leave as due and admissible and in case of Extra Ordinary Leave the same will also qualify for pension etc. and for all purposes meaning thereby that there will be no break in service of the applicant and so he submitted that the cause of action as claimed by the applicant is imaginary.

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6. The learned advocate appearing for the applicant could not be able to refute the argument of the learned advocate of the respondents that the application is time barred. We are also of the view that this O.A. is hopelessly time barred as the order under challenge was passed on 27.10.2004 and as per the provisions contained under Section 21(1) of the Administrative Tribunals Act, (AT Act for short) 1985 the O.A. must have been preferred within one and half years period since the date of passing the order in case any representation is pending but we find that this O.A. was preferred after about 15 years of the passing of the final order and so we are of the view that as per provisions contained under Section 21(1) of the AT Act the O.A. is hopelessly time barred.

7. Learned advocate appearing for the applicant submitted that the limitation should be counted from the date of passing of the order by Member (Operations and Marketing), Postal Services Board, Government of India, Ministry of Communications, Department of Posts whereby his last representation dated 29.9.93 was rejected. In this regard we are of the view that even though this argument of the applicant's lawyer is accepted, it cannot be held that the application is within time as the order of Member (Operations and Marketing), Postal Service Board (Annexure. A5) is dated 17.4.2006 and admittedly this is the last and final order on the representation of the applicant which shows that even this last order was passed about three years before the filing of the OA and thus under Section 21(1) of the AT Act the OA is barred by limitation and the filing of fresh representation

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(Annexure.A13) will not revive limitation. Accordingly we hold that this O.A is barred by limitation.

8. As regards the merits of the case, we are of the view that the impugned order (Annexure.A1) whereby the applicant's period of absence from duty from 1.9.1987 to 17.2.1990 has been treated as period spent on leave due and admissible with observation that leave in case of Extra Ordinary leave will also qualify for pension and all purposes, establishes that by the said order no serious prejudice has been caused to the applicant as the period of absence was not treated as break in service rather it has been specifically stated in the order that the period of absence will be treated as period spent on leave including Extra Ordinary Leave and the same shall qualify for pension etc. and for all purposes. Under these circumstance, we are of the view that no interference is required in the impugned order when the O.A. itself has become time barred.

9. Before concluding our order, we want to place on record that the order dated 28.8.1987 passed by Deputy Director, Postal Services vide Memo No.DDPAtt/DA/1/87/2 whereby the said authority had passed the order against the applicant for awarding punishment of reduction to the lower post of Postman until he is found fit after a period of three years from the date of punishment order, was ab initio a wrong and illegal order and unfortunately the appellate authority without applying his mind also upheld the said wrong and illegal order until it was modified by the order dated 15.1.1990 (Annexure.A6) by Member (Personnel), Postal Services Board. We hope

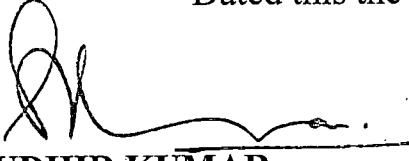
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that in future concerned authorities shall not commit such illegality and shall not pass such arbitrary and whimsical order. We, therefore, direct the Respondent No.1 to communicate this observation to the concerned disciplinary authority as well as appellate authority.

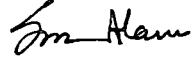
10. In the result we find no merit in the OA and as such the same is hereby dismissed. No costs.

Dated this the 16th day of March, 2011



SUDHIR KUMAR
ADMINISTRATIVE MEMBER

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JUSTICE S.M.M. ALAM
JUDICIAL MEMBER

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