

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.38/2010

Jodhpur, this the 21st day of January, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, JUDICIAL MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Kheta Ram s/o Shri Chhoga Lal Sharma, aged about 60 years,
resident of village Marwar Mathania, Tehsil Osia, Distt. Jodhpur, last
employed on the post of Postman, Residency Road at Jodhpur.

.....Applicant

By Advocate : Mr. J.K.Mishra

Vs.

1. Union of India through the Secretary to the Government,
Ministry of Communication & Info Technology, Department of
Posts, Dak Bhawan, Sansad Marg, New Delhi
2. Chief Postmaster General, Rajasthan Circle, Jaipur
3. Senior Superintendent of Post Offices, Jodhpur Division,
Jodhpur (Raj).
4. Senior Postmaster, Jodhpur HO, Jodhpur

...Respondents

By Advocate : Ms. K. Parveen

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The applicant, Kheta Ram, has filed this OA praying for the
following reliefs:-

- (i) That impugned order dt. 30.11.2009 (Annexure A-1) may
be declared illegal and the same may be quashed. The
respondents may be directed to treat the penalty of

reduction from the post of Postman to the post of Group 'D' and also the suspension order as non-est and allow all the consequential benefits including grant of due benefits under TBOP and BCER Scheme from due dates, revision of pensionary benefits etc. The amount of arrears thereof may be directed to be paid along with market rate.

- (ii) 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.
- (iii) That the costs of this application may be awarded.

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed to the post of Extra Departmental Mail Carrier (EDMC) at Mathania on 1.9.1980. Thereafter on passing the requisite departmental examination he was deputed for practical training and was promoted to the post of Postman vide letter dated 24.6.1980. While working as Postman, HO, Jodhpur, he was placed under suspension on 10.4.1987 and was issued a chargesheet for major penalty vide memo dated 8.1.1988 alleging that he did not make payment of certain MOs. Subsequently, vide memo dated 4.1.1989, a penalty of reduction to a lower post of Group-D for a period of two years was imposed on the applicant with the direction that the period of reduction shall operate to postpone future increments on restoration after above specified period, and on promotion, the seniority will be fixed by giving credit for the period of service rendered as Postman. The penalty was over and he was brought back to the cadre of Postman w.e.f. 3.1.1991 vide letter dated 4.1.1991.

The applicant has averred that he was not appointed to a Group-D post but was promoted/selected from the post of EDMC,

therefore, his reversion to a post to which he was never appointed, cannot be made even as a measure of penalty. The applicant has further averred that due to non regularization of his suspension period, he could not get the due benefits of TBOP and BCR Schemes. The applicant retired from service on 30.9.2009 and after retirement, he was issued a show cause notice dated 9.11.2009 as to why the period of suspension from 10.4.1987 to 5.1.1989 should be treated as 'Non-duty'. The applicant replied the same vide representation dated 15.11.2009, which was decided by the respondents vide letter dated 30.11.2009 (Ann.A/1) and the period of suspension has been directed to be counted towards qualifying service for pension purposes only. The applicant has further stated that he has rendered EDA service as EDMC form 1.9.1967 to 15.6.1980 i.e. for a period of 12 years and 2 and ½ years. As per rules for ED agents no pension is payable but DCRG is payable and in the case of the applicant the services rendered as EDA has not been counted even for the purpose of DCRG. Therefore, the applicant has filed the OA praying for the reliefs as stated in para-1 above.

3. By way of filing reply the respondents have raised preliminary objection stating that the applicant has approached the Tribunal without availing the departmental remedies available to him under the statutory provisions. It has been submitted that as the suspension was wholly justified, therefore, there was no question of counting the same as a period spent on duty for all purposes. As per para-1 of Government of India order No.3 under sub-rule 9 of Rule 45 (B) of

FRSR Part-I, if no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as 'non-duty'. The competent authority has taken a lenient view and has ordered to take the period of suspension as qualifying service for the purpose of pension. The respondents have further submitted that the judgment of the Hon'ble Supreme Court to reduction to a lower grade/service/post, referred by the applicant, was conveyed vide Government of India, DOPT OM dated 2.2.1989 whereas the order to revert the applicant was passed on 4.1.1989, i.e. before issuance of the above OM. It has been further submitted that there is no provision in the rules to count the service rendered as EDA towards qualifying service for the DCRG purpose. Therefore, the respondents have submitted that the applicant is not entitled to any relief as prayed for.

4. The applicant has filed rejoinder reiterating the submissions made in the OA.

5. Heard both the parties. Counsel for the applicant contended that the applicant was appointed by way of direct recruitment on the post of Postman from the Extra Departmental Mail Carrier in the Postal Department and by way of punishment in pursuance to the inquiry conducted by the department, order of penalty of reversion to the post of Group 'D' was passed by the Disciplinary Authority, whereas in case of direct recruits to the post of Postman, no such penalty could be passed by the Disciplinary Authority. In support of his argument, he cited the case of Hussain Sasansaheb Kaladgi v. State of Maharashtra reported in AIR 1987 SC p. 1627 and contended

that when the applicant has not been promoted to the post of Postman, the order is non-est, therefore, it was not necessary for the applicant to prefer any appeal before the Appellate Authority. However, later on the applicant filed revision petition and the respondents decided the revision by observing that he should file an appeal before the competent authority (Ann.A/4), and the suspension period of the applicant vide Ann.A1, was counted as qualifying service not for all purposes except pension, whereas in case of a non-est order Disciplinary Authority ought to have passed the order to consider the entire suspension period as qualifying service for all other purposes also.

6. Counsel for the applicant in support of his argument also cited the case that in case of non-est order, there is no need to challenge the order and he relied upon the judgment of Hon'ble Apex Court passed in the State of Madhya Pradesh vs Syed Qamarali case reported in SLR 1967 p. 228 .

7. Per contra counsel for the respondents contended that the applicant has failed to file an appeal against the order of punishment, therefore, he came to this Tribunal without exhausting all the remedies available to him. Thus, the OA is liable to be dismissed.

8. We have considered the rival contentions and also perused the material available on record.


9. After considering rival contentions, it is admitted position that the applicant was recruited to the post of Postman as direct recruit while working as EDMC and punishment of reversion to Group 'D' post was passed by the Disciplinary Authority. Although, we normally dispose of such

type of OAs by directing the applicant to file appeal before the Appellate Authority, but since the matter relates to the year 1989 and the applicant has also superannuated in the year 2009, therefore, we are settling this controversy without directing the applicant to file an appeal before the Appellate Authority.

10. As per the facts as averred in the application, reply as well as arguments advanced by both the counsels and in view of the judgment of the Hon'ble Apex Court passed in Hussain Sasansaheb Kaladgi (supra), it is settled position of law that a person who is direct recruit cannot be awarded the punishment of reversion to a lower post on which he was not recruited as direct recruit. Accordingly, the order of punishment dated 04.01.1989, though, has not been challenged and not produced in the OA, but has been referred in Annex. A/1 and A/4, is a non-est order. Therefore, the applicant is allowed to have his suspension period counted towards qualifying service as well as for other purposes also.

11. In view of the discussions made hereinabove, the OA is allowed and the respondents are directed to count the suspension period from 10.04.1987 to 05.01.1989 of the applicant, who is now retired from service, as qualifying service for all purposes and as the penalty order, as observed above, being non-est, the applicant be allowed all consequential benefits admissible under law.

12. The OA stands allowed in the above terms with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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