

11

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

O.A.No. 148/2010

Reserved on: 19.7.2012 Date of decision: 23.07.2012.

CORAM:

**HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER**

Suresh Chandra Sharma
S/o Shri Bal Mukand, aged 45 years,
Ex-Gramin Dak Sevak Branch Post Master,
Avleshwar, District Pratapgarh
R/o Village Avleshwar, District Pratapgarh.Applicant

(By Advocate Mr. Vijay Mehta)

Vs.

1. Union of India, through the Secretary
Ministry of Communication
(Department of Posts)
Sanchar Bhawan, New Delhi.
2. Superintendant of Post Offices,
Chittorgarh.Respondents

(By Advocate Mr. Vinit Mathur, ASGI with Adv. Ankur Mathur)

ORDER

Per: Dr. KBS Rajan, Judicial Member

The applicant was appointed as ED BPM (now called GDS BPM) in the year 1996. Having been allegedly involved in the criminal offence, he was detained in custody on 9 July 2006. Consequently, he was kept on put off duty in terms of Rule 12(i)(b) of the GDS Rules, 2001 vide order dated 31-07-2006 at Annexure A- 1. On the charge of misappropriation of government money, (which is independent of the criminal case), the applicant was issued with a charge sheet under Rule 10 of the GDS Rules which was served on 16-

11

✓ 12

09-2008 and as no reply was filed by the applicant, the proceedings were concluded by way of penalty of dismissal from service, vide order dated 30-03-2009. Appeal filed by him against the order of penalty was dismissed on 12-07-2010. The applicant moved the Tribunal in OA No. 246 of 2010 which was allowed vide order dated 21-11-2011 and the order of penalty was quashed and set aside, with liberty to the respondents to conduct a de-novo inquiry.

2. In the criminal case the applicant was acquitted honourably vide order dated 3 February 2010 at Annexure A-2. The applicant has filed representation intimating about the honourable acquittal in the criminal case but of no avail. Hence, this OA seeking the following reliefs:-

"The applicant prays that the respondents be directed to regularize the intervening period of 9/7/2006 to 31/3/2009 and to make full payment of full TRCA with due increments, dearness allowance and other admissible allowances as per the recommendation of Natarajan Murti Committee and as revised from time to time wef 9/7/2006 to 31/3/2009. It is further prayed that the respondents may kindly be further directed to make payment of bonus for the years 2006-2007, 2007-2008 and 2009-10."

3. Respondents have contested the O.A. According to them, when the applicant was not performing any duties, the question of payment of TRCA does not arise. They have also stated that yet another charge sheet (as stated above) is against the applicant.

4. The applicant in his rejoinder has stated that the other case is independent of the case of the applicant having been put off duty which was on account of the applicant's criminal case, but the

Y3

applicant having been honourably acquitted in the criminal case, he is entitled to full amount of TRCA.

5. Counsel for the applicant argued that Proviso to Rule 12 clearly provides that in the case of exoneration, the individual is entitled to full amount of TRCA.

6. Counsel for the respondents submitted that during the period of put off duty, the respondents had to engage another individual and the said individual had also to be paid TRCA. And, the applicant did not perform any duties for which he has claimed TRCA, which is not permitted.

7. Counsel for the applicant referred to proviso to Rule 12 of the GDS Rules, which reads as under:-

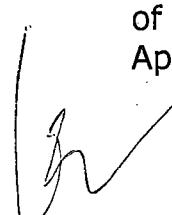
(1) The appointing authority or any authority to which the Appointing Authority is subordinate or any other authroity empowered in that behalf by the Government, by general or special order, may put a Sevak off duty:

(a) where a disciplinary proceeding against him is contempalated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation, enquiry or trial:

Provided that in cases involving fraud or embezzlement, the Sevak holding any post specified in the Schedule to these rules may be put-off duty by the Inspector of Post Offices or the Assistant Superintendent of Post Offices of the Sub Division, as the case may be, under immediate intimation to the Appointing Authroity.

(2) An order made by the Inspector of Post Offices or the Assistant Superintendent of Post Offices as the case may be, of the Sub-Division under sub-rule (1) shall cease to be effective on the expiry of fifteen days from the date of such order unless earlier confirmed or cancelled by the Appointing Authroity or the authroity to which the



Xu

Appointing Authority is subordinate.

(3) A sevak shall be entitled per month for the period of put off duty to an amount of compensation as ex gratia payment equal to 25% of his./her Time Related Continuity Allowance together with admissible Dearness Allowance.

.....

.....

Provided further 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."

8. The above rule does apply in all the four to the case of the petitioner for the period from the date of his put off duties in July 2006 till his dismissal in end March, 2009 in the wake of the departmental inquiry. The applicant's claim is limited to payment of full TRCA for the period from 09-07-2006 till the time date of dismissal from service on 30-03-2009 in connection with another charge sheet. In addition, his claim is payment of bonus for the years from 2006 onwards.

9. The period from 09-07-2006 onwards till the date of dismissal on 30-03-2009 has to be bifurcated as -

- (a) period spent in custody for which the applicant cannot be granted full TRCA as he would not have been available to perform his duties during the period of his detention.
- (b) period from the date the applicant was not in detention till the date of his dismissal in end March, 2009 for which he is entitled to full TRCA under the provision of proviso to Rule 11 extracted above.

10. In addition, the applicant would be entitled to bonus for the

Bh

X5

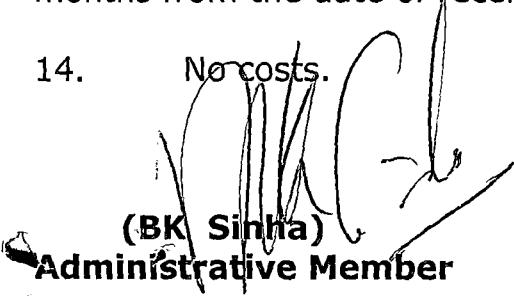
years 2006-07, 2007-08 and 2008-09. For the period beyond the same, the entitlement depends upon the outcome of the pending departmental inquiry.

11. It is accordingly declared.

12. Thus, the OA is allowed to this extent that the applicant shall inform the respondents of the period he was under detention and the respondents shall grant the applicant full TRCA for the period thereafter till 30-03-2009. In addition, the respondents shall also pay the bonus for the years 2006-07 to 2008-09.

13. This order shall be complied with, within a period of three months from the date of receipt of copy of this order.

14. No costs.


(BK Sinha)
Administrative Member

pps


(Dr. KBS Rajan)
Judicial Member