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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

M.A.NO. 10/2012 IN O.A. No. 10/2012

Date of Order : 23.02.2012

CORAM:

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

1. Union of India through the Secretary, Government of India, Ministry of Communication, Post and Telegraphs Department, Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Rajasthan Western Region, Jodhpur (Raj).
4. Superintendent of Post Office, Sirohi Division, Sirohi (Raj).
5. Inspector of Post Office, Sub. Divisional Office, Bhinmal District - Jalore (Raj).

.....Applicants.

(By Mr. Ankur Mathur, for Mr. Vinit Mathur, Advocate)

Versus

Bhaga Ram Soni S/o Shri Maha Devji Soni by caste Soni aged about 55 years, R/o Village Balera, Tehsil Sanchoe, District Jalore (Raj) working as Assistant Departmental Branch Post Master / Postal Gramin Dak Sevak on put off duty under the Inspector of Posts, Bhinmal Sub Division, Indian Postal Department, Bhinmal District Jalore.

.....Respondent.

(By Mr. Girish Sankhla, Advocate)

O R D E R

[PER JUSTICE S. C. SHARMA, JUDICIAL MEMBER]

This M.A. 10/2012 has been moved on behalf of the respondents Union of India and Ors. for vacating/modifying the order passed by the Tribunal on 17th January, 2012.

2. We have heard the learned counsel for the parties on the stay vacation application. From a perusal of the order of the Tribunal it is evident that on 17.01.2012 an order was passed by this Tribunal

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stating that, "A prayer has also been made for grant of interim relief for the applicant, for him to be granted 50% of maintenance allowance, since much more 90 days have passed since he was placed on "put off duty" more than 19 months back on 01.05.2010 through Annexure-A-1". Under these circumstances a maintenance allowance was granted to the applicant at 50%, as more than 90 days had ~~been~~ elapsed after putting off the applicant from duty.

3. When specific provisions of Law provide a thing, then the Courts/Tribunals are supposed to act according to the such rules/law, as provided for that purpose, unless that law is declared ultra vires by a competent court having jurisdiction. The learned counsel for the respondents contended and cited the relevant provisions which empower the appointing authority for enhancement of ex-gratia compensation beyond 90 days of putting off ~~the~~ duty of Gramin Dak Sevak. In this connection Rule Sub Rule (3) of Rule 12 is most relevant, which is reproduced as follows :-

"(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 elated Continuity Allowance together with admissible Dearness Allowance.

Provided that where the period of put off duty exceeds 90 days, the Recruiting Authority or the authority to which the Recruiting Authority or any other authority empowered in this behalf, as the case may be, who made the order of put off duty shall be competent to vary the amount of compensation for any period subsequent to the period of first 90 days as follows:

(i) The amount of compensation as ex-gratia payment may be increased by a suitable amount, not exceeding 50% of such compensation admissible during the period of the first 90 days, if in the opinion of the said authority the period of put off duty has been prolonged, for reasons to be recorded in writing, not directly attributable to the Sevak.

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(ii) The amount of compensation as ex-gratia payment may be reduced by a suitable amount not exceeding 50% of such compensation admissible during the first 90 days, if in the opinion of the said authority, the period of put off duty has been prolonged due to reasons to be recorded in writing directly attributable to the Sevak."

4. It has been provided in Sub Rule (3) of Rule 12 that if a Gramin Dak Sevak is put off duty, then compensation as ex gratia payment equal to 25% of his/her Time Related Continuity Allowance (T.R.C.A., in short) together with admissible Dearness Allowance, shall be payable. From a perusal of the above provision, it is evident that when applicant has been put off duty, then ex-gratia compensation can be granted initially equal to 25% of his TRCA together with the admissible dearness allowance. Further, provision has also been made that if the period of put off duty is continued beyond 90 days, then the appointing authority has been empowered to enhance the amount of ex-gratia payment. The learned counsel for the respondents argued that in view of Sub Rule 3 (i), the compensation can be enhanced not exceeding 50% of such compensation which was admissible to the GDS during the period of first 90 days of his being put-off duty. It is the specific argument of the learned counsel for the respondents that the 50% of the ex-gratia compensation has to be enhanced above the level of the compensation admissible during the first 90 days of put-off duty, and not to the level of 50% of the full TRCA emoluments payable to the concerned employee. But the learned counsel for the applicant argued that the increase to flat 50% of the TRCA is admissible under Sub Rule (3). The learned counsel for the applicant further argued that the applicant has been put off duty nearly two years earlier, and the amount of compensation has not been increased by the respondents as per the

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provisions of the law, and interpretation of the respondents that 50% is to be enhanced only above 25% of the total TRCA emoluments is incorrect. But, we disagree with the argument of the learned counsel for the applicant, and it is apparent that whatever has been argued by the respondents counsel is the correct interpretation. A bare reading of the relevant provision shows that only 50% of the initially admissible ex-gratia amount, i.e. 25% of the T.R.C.A., can be the quantum of increase. The learned counsel for the respondents argued that thus only to the extent of 37.5% of the full T.R.C.A. emoluments can be the enhanced amount, which is correct. Hence, the order passed by the Tribunal earlier on 17.01.2012 appears to be in violation of the specific provisions of the rule.

5. Reliance has also been placed by the learned counsel for the respondents on an order passed by the Hon'ble High Court of Rajasthan in Writ Petition No. 6892 of 2011. We have perused the order passed by the Hon'ble High Court, and from a bare perusal of the order it is evident that this is an interim order passed by the Hon'ble High Court in the Writ Petition, and in that case before the Hon'ble High Court the compensation was granted to the extent of 50% of the wages as Subsistence Allowance, but, the Hon'ble High Court stayed that part of the order, and further provided that the applicant is entitled for ex-gratia ^{compensation} ~~compassion~~ as per Rule 12 of the GDS Rules, and in this order also it has been provided that "however the respondents shall be entitled for ex-gratia compensation in conformity with the Rule ¹² of the GDS (Conduct and Employment) Rules placed on record as Annex.A/4." Hence, from a perusal of the order of the Hon'ble High Court also, it is evident that we have to amend the earlier order in order to bring it

substantive


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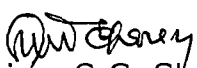
into conformity with the provision as provided in Rule 12 Sub Rule (3) (i). As the order passed by the Tribunal on 17.01.2012 appears to have been ^{passed} in violation of that provision, hence it will be just and proper to allow the Miscellaneous Application, and modify the order earlier passed by this Tribunal.

6. The Misc. Application No. 46 of 2012 for vacating /modifying the stay order dated 17.01.2012 is therefore allowed, and the order passed on 17.01.2012 is modified, and it is ordered that the applicant is entitled for ex-gratia compensation as per Rule 12 of the GDS Rules sub Rule (3), and it shall be 37.5% of the TRCA total emoluments. The ex-gratia compensation as modified above shall be paid within a month, and thereafter it shall be paid in continuity, till further orders of this Tribunal.

7. Mr. Ankur Mathur proxy for Mr. Vinit Mathur, requested for four weeks time to file counter reply to the O.A., which is allowed. The applicant may file rejoinder within two weeks thereafter. List the O.A. on 20.04.2012 for hearing.

8. The M.A. No. 10/2012 is disposed of.


(Sudhir Kumar)
Administrative Member


(Justice. S.C. Sharma)
Judicial Member

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