

Reserved

11-7-2016

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR

Dated: This the 10 ~~th~~ day of July 2016

CORAM

HON'BLE DR. MURTAZA ALI, MEMBER - J
HON'BLE MS. PRAVEEN MAHAJAN, MEMBER - A

Original Application No. 126 of 2012.

Chokha Ram, S/o Shri Govardhan Ram, aged about 35 years, b/c Meghwal (SC), R/o Vill- Ratari, P.O Bhiyad, District Barmer (office Address; worked as GDSBPM Bhiyad (Shiv), Post Office under Barmer HO presently placed on put off duty)

... Applicant

By Adv: Shri S.P Singh

VERSUS

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. Postmaster General Western Region, Jodhpur.
3. Director Postal Services, O/o Postmaster General, Western Region, Jodhpur.
4. Superintendent of Post Offices Barmer Division, Barmer.

... Respondent

By Adv. Shri KS Yadav

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER - J

The applicant has filed this O.A for quashing the impugned order dated 23.6.2009 (Annexure A-2) by

12.5% and also impugned order dated 19.3.2013 (Annexure A-1) by which the respondents continued the same amount of ex gratia. The applicant has also sought a direction for respondents to allow him to join his duties and treat the period of put off duty as duty for all purposes.

2. Shorn of unnecessary details, the facts in brief are that the applicant, who was working as GDS BPM at Bhiyad (Shiv) Post Office, was placed under put off duty vide order dated 25.2.2009 (Annexure A-13) due to a disciplinary proceedings contemplated against him and he was granted ex-gratia payment @ 25% of T.R.C.A. It has been alleged that the ex-gratia payment has wrongly been decreased from 25% to 12.5% in violation of Rule 12 (3) (i) of GDS (Conduct & Employment) Rules 2012 and guidelines issued by the department. It has further been stated that the delay in completion of enquiry is being caused due to inaction on the part of respondents and the applicant is entitled to get subsistence allowance even more than 50% of his wages.

3. Per contra, it has been stated on behalf of

BPM Bhiyad, had misappropriated a huge amount of Recurring Deposit and Rural Postal Life Insurance. The fraud came to light on 26.2.2009 and he was placed under put off duty vide memo dated 25.2.2009 and the competent authority i.e. SPO Barmer confirmed the order of put off duty vide memo dated 3.3.2009. After completion of departmental investigation, the disciplinary action was initiated against him and a charge-sheet was issued to the applicant vide memo dated 27.8.2010. The applicant was paid ex-gratia payment equal to 25% of his TRCA for 90 days vide memo dated 3.3.2009 and on review, the competent authority reduced the amount of ex-gratia payment by 50% for the reasons recorded in writing. Further reviews were carried out from time to time and the last review was carried out on 21.1.2014 and the amount of ex-gratia payment remained unchanged. It has been alleged that the applicant or his defence assistance remained absent continuously on the dates fixed by the enquiry officer for hearing and delaying tactics are being adopted by the applicant and thus he is responsible for the delay in finalization of enquiry. It has further been stated that limiting the period of put off duty to 45 days is in the form

binding. Revoking the order of put off duty before finalization of disciplinary proceedings, where the GDS is involved in fraud cases, is fraught with the risk and he cannot be allowed to hold the same post continuously. The competent Authority has found that the delay in completing the disciplinary proceedings is directly attributable to the applicant and there is no justification to increase the ex-gratia payment.

4. Heard Shri S.P Singh, learned counsel for the applicant and Shri K.S. Yadav, learned counsel for the respondents and perused the record.

5. Learned counsel for the applicant has contended that the order of put off duty was issued by an Incompetent Authority and it was ceased to be effective on the expiry of 15 days as it was not confirmed by the Appointing Authority. He relied upon Rule 12 (2) of GDS (Conduct and Employment) Rules 2001. It has also been argued that the respondents have wrongly reduced the ex-gratia payment from 25% to 12.5% whereas no fault was on the part of applicant and the respondents are responsible for the delay in conducting the departmental

by this Tribunal in O.A. No. 72/2011 Kishan Lal Vs. Union of India and others.

6. Learned counsel for the respondents has contended that the impugned order has been passed in accordance with Rule 12 of GDS (Conduct and Employment) Rules 2001 and the order dated 16.03.2011 passed in O.A No. 72/11 has already been quashed by Hon'ble Rajasthan High Court in the writ petition NO. 6892 of 2011 Union of India and tother Vs. Kishan Lal (Annexure A-8).

7. Rule 12 of GDS (Conduct and Employment) Rules 2001 is reproduced as under:-

"12. Put off duty

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

(a) Where as disciplinary proceeding against him is contemplated or is pending or

(b) Where as 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 Scheduled 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 Authority.

Division under sub-rule (1) shall cause to be effective on the expiry of fifteen days from the date of such order unless earlier confirmed or cancelled by the Appointing Authority or the authority to which the Appointing Authority is subordinate".

8. According to Sub Rule 2 of Rule 12, the order of put off duty is to be ratified within 15 days by the Competent Authority. Admittedly, the order of put off duty was passed by an Authority who was subordinate to the Appointing Authority. It has been stated in the reply that the order of put off duty was issued vide memo dated 25.2.2009 and the Competent Authority i.e. SPO Barmer confirmed the order of put off duty vide memo dated 3.3.2009. The said facts has not been contradicted by the applicant. It shows that the order of put off duty i.e. 25.2.2009 (Annexure A-4) was later on confirmed within 15 days by the Competent Authority. In such circumstances, there is no force in the contention raised on behalf of applicant that the order of put off duty was not confirmed by the Competent Authority as required under Rule 12 (2) of GDS (Conduct and Employment) Rules 2001.

9. We have also gone through the order of this

doubt the Tribunal enhanced the ex-gratia payment to 50% of wages during the period of suspension but the said order was challenged by the department by filing writ petition No. 6892 of 2011 before Hon'ble Rajasthan High Court at Jodhpur. Hon'ble High Court in its order dated 12.12.2012 (Annexure A-8) has observed that the Tribunal could not have directed the respondents to pay fix percentage of salary, as subsistence allowance. It has also been observed that the direction could have been issued to pay subsistence allowance as per Rules. In these circumstances, Hon'ble High Court modified the order of the Tribunal to the extent that the applicant Kishan Lal shall be paid subsistence allowance as per Rules during his suspension period. Thus, the judgment relied upon on behalf of applicant is of no help.

10. Our attention has also been drawn on the judgment dated 3.10.2013 passed by this Tribunal in O.A. No. 198/2012 Naresh Kumar Ramawat Vs. Union of India and Ors. In the said case, the applicant was working as GDS MC at Rajasthan Krishi Vishwavidyalaya Bikaner Sub Post Office. It appears that a fraud was committed by other employee of Sub Post Office and the applicant was held

minor punishment. It was alleged that the applicant was put off duty by an authority subordinate to the competent authority but the said order was neither confirmed nor cancelled under the Rules. The Tribunal found the order of put off duty as illegal mainly on the ground that the said order was neither confirmed nor cancelled by the appointing authority nor the authority to which the appointing authority was subordinate. In the instant case, it has categorically been stated in para 3 of reply that the order of put off duty dated 25.2.2009 was confirmed by the Competent Authority i.e. S.P.O. Barmer vide order dated 3.3.2009 and the applicant has not filed any rejoinder contradicting the said averments. Thus we are of the view that the facts of the case relied upon by the applicant are different from the instant case.

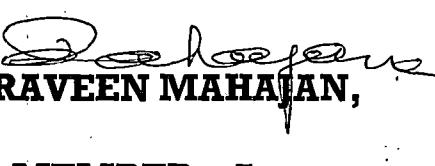
11. Learned counsel for the applicant, while relying on various instructions issued by Director General, has contended that the applicant is entitled to get atleast 25% of his wages as ex-gratia payment and also entitled to be reinstated as the disciplinary enquiry is being delayed due to action of respondents. We do agree with the submissions made on behalf of respondents that the

have no legal force and they are not binding but at the same time, it is also not permissible to keep the disciplinary enquiry pending for an indefinite period.

12. Considering all the facts and circumstances, we are of the view that there is no force on the contentions raised on behalf of applicant as the order of put off duty was got confirmed by the Competent Authority within 15 days and the Competent Authority has to decide the amount of ex-gratia payment as per Rules and the Tribunal has not to fix any amount of ex-gratia payment to be paid by the respondents as held by Hon'ble Rajasthan High Court at Jodhpur.

13. Accordingly, OA is dismissed. However the respondents are expected to finalize the disciplinary proceedings as early as possible and preferably within 3 months from the date of receipt of order of this Tribunal.

14. There is no order as to costs.


PRAVEEN MAHAJAN,

MEMBER - A


DR. MURTAZA ALI

MEMBER - J