

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

M.A. 391 of 97.
O.A. 621 of 97.

Date of order: 16.07.2003

Present : Hon'ble Mr. B.P. Singh, Administrative Member
Hon'ble Mr. N. Prusty, Judicial Member

Madan Mohan Pradhan

- Vs -

Union of India & Ors.

For the applicant : Mr. B.R. Das, Counsel
Mr. B.P. Manna, Counsel

For the respondents : Mr. B. Mukherjee, Counsel.

ORDER

Mr. B.P. SINGH, AM:

This application has been filed by the applicant against non-compliance of the order dated 28.03.1995 passed in the O.A. No. 29 of 1995 ~~by which~~ the respondent authorities were directed to conclude the disciplinary proceedings against the applicant within a period of 6 months from the date of communication of the said order and in case the disciplinary proceedings is not concluded within the said period of six months, the respondents shall re-instate the applicant and revoke the 'put off' duty order. The applicant submits that the said order was not complied with. Therefore, he filed this application and prayed for the following reliefs.

- i) ~~Remind, recall, withdraw, cancel and/or set aside the order~~ directing "put-off" duty upon the petitioner with effect from 11.04.1989 (AN).
- ii) Declare the disciplinary proceedings purportedly commencing the date of Order 28.03.1995 in O.A. No. 29 of 1995 as abandoned after the expiry of

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six months reckoned there from and all acts done and/or orders/notices/direction/directions issued by the Respondents relating thereto as cancelled, set aside and quashed for all intents and purposes.

- iii) Reinstate the ptitioner in the post of EDBPM at Naul P.O. forthwith and declare him as on regular duty w.e.f. 12.04.1989 (EN) for all intents and purpose.
- iv) Pay him all the arrears of salary and allowances and all other wages w.e.f. 12.04.1989 with a suitable interest thereupon, forthwith.
- v) Certify and transmit the entire records and papers pertaining to the case of the applicants so that after the causes shown thereof consonable justice may be done to the applicant by way of grant of reliefs as prayed for in (i) to (iv) above.
- vi) Any further order/orders and/or direction/directions as deemed fit and proper.

2. The brief fact of the case is that the applicant was appointed as Extra-Departmental Branch Post Master at Naul Branch Post Office and has been working in that capacity since 13.10.1972. The applicant was "put-off" from his duty by Sub-Divisional Inspector/Postal for Uluberia Sub-Division in Howrah vide memo. dated 11.04.1989. The said order of "put-off" was confirmed by the respondent No.04 vide order dated 19.04.1989.

3. A criminal case was started against the petitioner by the respondent authorities by way of an F.I.R. filed before the Police Authorities by respondent No.04 and registered in Shyampur P.S. case No. 32(4) 89 under section 409 of the Indian Penal Code being G.R. No. 262/89. A charge-sheet was filed by the investigating officer before the 1d. Sub-Divisional Judicial Magistrate, Uluberia and the applicant was ultimately discharged from charges on 02.02.1994. Against the said order of the 1d. SDJM no appeal was preferred by the respondent authorities

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and the applicant was not reinstated on the post of EDBPM at Naul Post Office. Applicant therefore filed application 29 of 1995 before the Tribunal. The said Original Application was disposed of vide order dated 29.03.1995 which is enclosed as annexure-'B'.

4. The applicant submits that during the said period a charge memo. dated 16.03.1995 enclosed as annexure (C) was served upon the petitioner and the very same charges were the subject matter in the criminal matter in which the applicant was discharged from charge by the Ld. Court. The proceedings was started against the applicant and enquiry officers were appointed on 19.06.1995 and 20.6.1995 enclosed as annexure 'D/2'. Thereafter, another enquiry officer was appointed on 21.08.1995. The Enquiry Officer conducted enquiry and submitted his report before the disciplinary authority.

Applicant could not participate in the enquiry due ^{to} circumstances beyond his control and communicated the same to the enquiry officer vide communications marked as annexure F1 & F2. The applicant also remained for a brief period out of head quarters from 18.09.1995 to 01.10.1995. When he returned he came to know that two registered letters were sent to the petitioner by the respondent authorities and the same could not be delivered to him as he was not present and the said letters were also not detained as requested by his family members. The applicant was served with another letter being Annexure 'G'. The applicant made representation against the same in which he submitted since he has been acquitted of / discharged from the charges by the competent Court of Law on 02.02.1994 for the same allegations, the respondents

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should allow him subsistence allowance to establish a 'Master' and 'servant' relations that exists between the petitioner and respondent authorities. The respondent No.4 did not consider the said representation instead quoted order dated 18.07.1996/16.8.96 in the charge sheet enclosed as Annexure 'A' by which the applicant was "Discharged" from the post of EDBPM of Naul B.O. with immediate effect. The applicant preferred an appeal against the said order on 29.9.1996 enclosed as annexure 'J'. He submits that the said appeal is still pending before the respondent authorities. Aggrieved by the above, the applicant has filed this O.A. and prayed for the reliefs stated above.

4. Sri B.R. Das, 1d. counsel leading Sri B.P. Manna, 1d. counsel appears for the applicant and Sri B. Mukherjee, 1d. counsel appears for the respondent authorities. Reply to the O.A. has been filed by the respondent authorities. We have heard the 1d. counsels and gone through the application and the reply.

5. The 1d. counsel for the applicant drew our attention to the operative portion of the order dated 28.03.1995 passed in O.A. 29 of 1995. He submitted that the order of the Tribunal was to conclude the disciplinary proceedings instituted against the applicant within a period of six months from the date of communication of the said order. In case the proceedings is not concluded within a period of six months the respondents shall re-instate the applicant and revoke 'put-off' duty order. The 1d. counsel for the applicant submits that neither the disciplinary proceedings were concluded

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within the period of six months from the date of communication of the order dated 28.03.1995. nor the applicant was re-instated by the respondent authorities immediately after expiry of six months nor the 'put-off' duty order was revoked immediately after expiry of period of six months. The 1d. counsel for the applicant submitted that according to the judgement in case of K.V. Gnanasampadan Vs. Union of India & Ors passed by Chennai Bench of C.A.T. reported in A.T.J. 2001(2) in page No.64 and the judgement in the case of Pandhu Gopal Banerjee Vs. Union of India & Ors. passed by Calcutta Bench of C.A.T. reported in A.T.J. 1992(20) in page No. 595, if a period has been prescribed for passing a final order, the final order must be passed within the said prescribed period unless prayer for extension of the said period has been made before expiry of the prescribed period and if any order is passed after the prescribed period then the same will have no validity and will not be acceptable. The plea of non-cooperation or administrative exigencies will not be acceptable.

6. The 1d. counsel for the applicant further submitted that due to non-grant of subsistence allowance to the applicant enquiry was vitiated as per judgement in the case of V.E. Ravel Vs. Union of India & Ors. passed by Ahmedabad Bench of C.A.T. reported in A.T.J. 2000(2) in page No.336. The 1d. counsel further referred to the judgement of Hon'ble Supreme Court passed in 1999(2) Supreme Court Service Law Judgement page No.404 in the case of Secretary, Deptt. of

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Post & Ors. Vs. Chander Pal Singh on the above point.

7. In view of the above the 1d. counsel for the Applicant submitted that since the respondent authorities have failed to comply with the order dated 28.03.1995 passed in O.A. No.29 of 1995, the punishment order passed on 18.7.1996/ 16.08.1996 is without any authority and should be quashed. The applicant should be treated to have been re-instated from the date following the date of 6 months and 'put-off' duty order should be treated to have been revoked w.e.f. the said date i.e. from the completion of six months after communication of the said order.

8. Mr. B. Mukherjee, 1d. counsel for the respondents submitted that the order dated 18.07.1996/16.08.1996 annexure 'A' to the O.A. was passed within six months as ordered by the Hon'ble C.A.T. in O.A. No.29 of 1995 dated 28.03.1995. The respondents reiterated the facts in paragraph-6, and paragraph-19 of the reply.

9. The 1d. counsel for the respondents further submitted that the applicant has been discharged from service. According to him discharge means that the applicant has been Dismissed/ Removed from service according to the meaning of the word discharge in the legal dictionary, which he referred to at the time of hearing. Therefore, the question of reinstatement of the applicant and the revocation of the 'put off' duty order do not arise.

10. Keeping in view the above submissions we would like to refer to the operative part of the order of the Disciplinary authority order enclosed as annexure 'A' to the above O.A.

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The same is reproduced as under.

"I, Sri S.S. Bera, Senior Superintendent of Post Offices, Howrah Division hereby ordered that Sri Madan Mohan Pradhan, E.D.B.P.M., Naul B.O. (now under Put-off-duty) be discharged from the post of E.D.B.P.M. of Naul B.O. with immediate effect".

11. We further asked the 1d. counsel as to whether the penalty of discharge from the post has been imposed on the applicant as per Rule(7) of E.D.A. Conduct and Service, the 1d. counsel for respondents submitted in affirmative. We again drew his attention to Rule (7) of the E.D. Conduct & Service Rules and asked whether discharge from service is a penalty enumerated therein. The 1d. counsel for the respondents submitted that discharge from the service post also means dismissal or removal from service as per legal dictionary and therefore discharge from the post be treated dismissed or removed from post/service and accordingly submitted that we should not go literally by the provision of the rules in mechanical manner.

12. The 1d. counsel for the respondents also submitted that the order of the disciplinary authority was passed within the time. He referred to the operative portion of the order dated 28.03.1995 in O.A. No. 29 of 1995 and submitted that there was no direction in the said order that in case no final order is passed within the period of six months, the respondent authorities shall not proceed further after expiry of the 6 months period. Since there was no such clear-cut direction in that order, the respondent authorities were free to pass the order within 6 months or as early as possible

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after 6 months which they have done in this case. On our specific query, if the disciplinary authority failed to pass the final order within the period of 6 months, why the order of reinstatement of the applicant and revocation of the 'put-off' duty order were not passed as directed in the said order, he submitted that since the applicant was discharged from service, there was no need to pass any such order after completion of six months period as per order of the Tribunal.

13. In view of the above, the ld. counsel submitted that the order of the Tribunal dated 28.03.1995 passed in O.A. No. 29 of 1995 has been fully complied with within the period stipulated therein and therefore there is no merit in the O.A. and the O.A. is required to be dismissed.

14. From the above it is clear that the Tribunal has passed the order dated 28.03.95 in O.A. No. 29 of 95 giving six months period for concluding the disciplinary proceedings pending before them from the date of communication of that order. The said order was communicated on 05.04.1995 and six months period continued up to 04.10.1995. The disciplinary proceedings was required to be concluded by 04.10.1995. In case it was not concluded by them then the applicant was to be reinstated and 'Put-off' duty order in respect of the applicant was to be revoked from the following dated i.e. on 05.10.1995. From the above submissions as well as reply to the O.A. it is clear that the disciplinary proceeding was not concluded within the period of six months by 04.10.95 and the same concluded by 18.07.96/ 16.08.96 i.e. after about 09 to 10 months from the specified period in the order and the applicant has not been reinstated and the 'put-off' duty order has not been revoked immediately

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after 04.10.1995. The 1d. counsel has also not explained in his brief reply as well as submission as to how the said order is said to have been complied with within the said stipulated period. However, we found that the said order was complied with with 9 to 10 months delay. We thus find that the order of the Tribunal dated 28.03.1995 has not been complied with within the stipulated period.

15. We have also seen the order of the disciplinary authority and we find that the applicant has been imposed the penalty of discharge from the post. Extra Departmental Agents Conduct and Service Rules does not list out discharge from the post as a punishment Under Rule(7) of the Rules. On our specific query regarding this, the 1d. counsel for the respondents referred to the legal dictionary meaning of the word discharge which also means removal/dismissal and submitted that all the three are one and the same according to the legal dictionary. We do not subscribe to this view or submission of the 1d. counsel for the respondents regarding the specific provisions of statutory rules. The list of the penalties has prescribed the specific penalties and the administrative authorities, namely respondents in this case, are required to impose one of such penalties on sufficient cause and justification. They cannot invent new penalty and impose the same taking help of dictionary etc.,. We find on this account the order dated 18.07.96/16.8.96 enclosed as annexure-A against the provisions of Rule(7) of the E.D.A. Conduct and Service Rules and the same cannot be sustained as it is illegal and against the provisions of Rules. From the dates given on the orders etc.,. it is clear that the disciplinary proceedings was not finalised within a period of six months and there

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might have been administrative delay and other problems.

If it were so, the respondents should have approached the Court praying for extension of time but they have not made any application for extension of time at any stage for concluding the disciplinary proceedings.

16. In view of the above, we are of the confirmed view that since the respondents has failed to comply with the order within the stipulated period given in the order dated 28.03.96, & the said order has not imposed any of the penalties enumerated in Rule(7) of the E.D. Conduct & Service Rules, therefore, the order dated 18.07.96/16.08.96, in whatever form it has been passed by the respondents after the stipulated period is non-existent in the eyes of law. We accordingly quash the said order dated 18.7.96/16.08.96 enclosed as annexure 'A' and direct the respondents to reinstate the applicant on the post of EDBPM, Naul w.e.f. 05.10.95 with all consequential benefits. All admissible service benefits w.e.f. 05.10.95 shall be granted to the applicant within a period of two months from the date of communication of this order.

17. Since the M.A. No. 391 of 97 was filed for granting of subsistence allowance and the same was not disposed of earlier and no order was passed therein earlier, keeping in view the fact that the O.A. has already been disposed of, the same need not be considered further and therefore the same stands disposed of accordingly.

18. We don't pass any order as to cost in O.A. & M.A.

MEMBER (J)

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MEMBER (A)