

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.107 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Sri Krishnagopal Mukherjee, S/o Bhupati
Mukherjee, residing at Vil. Srikrishnapur
Post Office Kulgachhia, Dist. Howrah
... Applicant

VS

1. Union of India, service through the
Secretary, Ministry of Communication,
Post and Telegraph, New Delhi-1

2. Postmaster General, Howrah Region,
Jogajog Bhavan, Calcutta-700 012

3. Senior Superintendent of Post Office,
Howrah Division, Kadamtala, Dist. Howrah
... Respondents

For the Applicant(s): Mr. M.K. Bandopadhyay, counsel

For the Respondents : Mr. S. N. Das, counsel

Heard on 30.5.2000 : : Date of order: 13-06-2000

O R D E R

D. Purkayastha, JM

The dispute arose in this case regarding entitlement of salary for the period from 1.9.93 till the date of reinstatement of the applicant in pursuance of the judgment dated 7.1.1993 passed in OA 376/90 filed by the applicant where it has been directed by the Tribunal that the order passed on 1.3.1990 terminating the appointment of Ram Prasad Manna is hereby revoked and Krishna Gopal Mukherjee shall also get all his emoluments admissible to him w.e.f. the date of put-off duty till he is reinstated also within a period of three months from the date of communication of that order.

2. The grievance of the applicant is that while he was working as EDBPM, Kulgachia Branch Office, he was put off duty w.e.f. 30.7.1975 and he was reinstated by the respondents on the direction of the Tribunal passed in OA 287/90 and OA 376/90. OA 376/90 has been filed by the applicant and OA 287/90 has been filed by Ram Prasad Manna, who has been appointed in place of the

applicant when he was put off duty and both the cases were disposed of by the Tribunal by an order dated 7.1.1993 revoking the termination order of appointment of Ram Prasad Manna and at the same time the order of put off duty of the applicant has been set aside with a direction upon the respondents to reinstate the applicant in some other Post Office in some equivalent post within three months from the date of communication of that order and also to pay all his emoluments admissible to him w.e.f. the date of put-off duty till he is reinstated. In pursuance of the order of the Tribunal the applicant was offered the post of Branch Post Master, Mansingpur vide letter dated 24.8.93, which, however, the applicant declined to accept vide letter dated 8.9.93 and he contends that only the allowances have been paid to him for the period upto 31.8.93 and no bonus and other allowances have ~~not~~ been paid and he filed a contempt petition bearing No.166/94 and the said contempt petition No.166/94 has been disposed of by this Tribunal on 21.1.97 holding, as follows:

"Further if the petitioner is not satisfied about the accuracy of the amount paid to him, remedy lies in filing a fresh O.A. and it cannot be the subject-matter of an enquiry in an application seeking a contempt rule. Also the amount claimed by the petitioner appears to be erroneous on the face of it because he has worked out his supposed dues up to 16.1.95 when he had taken over charge as E.D.B.P.M. of Pirpur Branch Office to which he was appointed in pursuance of an order made in another application filed by him being O.A. 1403/94. At any rate, in terms of order passed in the previous O.A. i.e., 376/93, the respondents had no obligation to pay emoluments for any period after the petitioner had declined the offer of appointment in August, 1993. Thus, the statement of accounts annexed to the supplementary application is manifestly erroneous."

After that the applicant filed this present OA seeking direction upon the respondents to pay all emoluments as arrears with effect from 1.9.93.

3. The respondents filed written statement denying the claim of the applicant. It is stated by the respondents that the applicant, Shri Krishnagopal Mukherjee was appointed as E.D.B.P.M. with effect from 14.2.73 and since he was involved in

a criminal case for committing fraud, he was placed on put off duty w.e.f. 30.7.75 and the applicant was ultimately acquitted from the charge by the Special Judge, Howrah on 29.1.88 and the applicant was reinstated as E.D.B.P.M. in the same Post Office vide letter dated 1.3.90, Annexure 'B' to the application, but Sri Rampada Manna the substitute who was appointed on a stop gap arrangement as EDBPM, Kulgachia during the period the applicant was undergoing trial filed one application challenging the order of reinstatement of Sri Krishnagopal Mukherjee and his termination of the service by filing DA 287/90 and the applicant also moved CAT by filing OA 376.90. Both the cases were disposed of by a common judgment dated 7.1.93 holding that the applicant should be reinstated in some other post office in some equivalent post. The applicant was first reinstated at Kulgachia vide order dated 22.6.93, Annexure 'B', then he was offered the post of EDBPM, Sarenga P.O. vide Annexure 'R/1' but he did not join the post. Thereafter the applicant was again appointed as Branch Post Master, Mansingpur vide letter dated 24.8.93, Annexure/R-2. The applicant did not join the said post of EDBPM, Mansingpur. Thereafter he filed an application bearing CPC 47/93 alleging non-reinstatement and non payment of back wages and that CPC has been disposed of with the following observation:

"Therefore, we do not wish to issue any contempt rule on on the ground that no alternative appointment has been given to the applicant when the applicant has already been offered appointment as E.D.B.P.M. in the Post Office, but only on the ground that it is distant from his place, he has not accepted the said offer."

It is stated by the respondents that in pursuance of the direction of the Tribunal arrears of salary admissible to the applicant for the period from 1.8.75 to 31.8.93 amounting to Rs.71,034/- has been paid to the applicant on 14.10.93 and no payment of salary has been made to him for the period from 1.9.93 since he did not join duty though he received the order of appointment. So, the application is devoid of merit and liable to

be dismissed.

4. Learned advocate of the applicant contended that the applicant is entitled to get his arrears of salary from 1.9.93 since he was not allowed to join in the post in pursuance of the reinstatement order issued by the respondents on 1.3.1990. It is contended by the learned advocate that since the applicant was not allowed to join the post from where he was put off duty; therefore, he is entitled to get the salary from the date of reinstatement till the date of joining. On the contrary, learned advocate of the respondents contended that the question of entitlement, as claimed in the application, has become barred by the principle of resjudicata since by an order dated 21.1.1997 in CPC 166/94 out of OA 376/90, Annexure/R-4 the question of entitlement has been decided by this Tribunal holding that the respondents had no obligation to pay emoluments for any period after the petitioner had declined the offer of appointment in August, 1993. We find that the applicant filed CPC 166/94 for non compliance of the direction given in OA 376/90 filed by the applicant and we find that the question of payment of arrear salary has been considered, as alleged by the applicant in CPC and the Tribunal had specifically ordered that the respondents had no obligation to pay emoluments for any period after the petitioner had declined the offer of appointment in August, 1993 and it is found that the said order has not been challenged by the applicant in the higher forum and the order is still in force. Learned advocate of the applicant submits that in the said order dated 21.1.97 the Tribunal held that if the petitioner is not satisfied about the accuracy of the amount paid to him, remedy lies in filing a fresh O. A. So, the application cannot be said to be barred by limitation.

5. In view of the divergent contention of the learned advocate we find that the matter in issue has been decided by the Tribunal rightly ~~or wrongly~~ and it was found by the Tribunal that

the applicant declined to accept the offer of appointment issued to him in pursuance of the direction given by the Tribunal and therefore, the Tribunal came to a conclusion that the respondents had no obligation to pay emoluments after August, 1993 after the petitioner declined to accept the offer of appointment. So, the matter has been decided by the Tribunal and it is binding on both the parties. Therefore, the instant application is barred by the principle of res judicata and the applicant is not entitled to get any relief as sought for in this application. Accordingly, the application is dismissed awarding no costs.

G. S. Maingi
13.6.2002

(G. S. Maingi)

MEMBER (A)

D. Purkayastha
12/10/2002

(D. Purkayastha)

MEMBER (J)

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