

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 147/93

Friday, the Eighth day of April, 1994.

MR. N. DHARMADAN (J)
MR. S. KASIPANDIAN (A)

M. V. Viswanathan, EDDA
Parambil Post Office
Via Marikunnu P.O.
Calicut District

Applicant

By Mr. Abraham Kurian, Advocate

vs.

1. The Sub Divisional Inspector (Postal)
Calicut North Sub Division, Calicut
2. The Asstt. Supdt. of Post Offices
Calicut South Sub Division, Calicut
3. The Sr. Supdt. of Post Offices,
Calicut Division, Calicut
4. The Chief Postmaster General,
Kerala Postal Circle, Trivandrum
5. The Postmaster General, Northern
Region, Calicut
6. Union of India represented by the
Secretary, Ministry of Communications
Secretariat, New Delhi

Respondents

By Advocate Mr. Sebastian for S. Krishnamoorthy, ACGSC

ORDER

N. DHARMADAN (J)

Applicant is working as E.D.D.A., Parambil Post Office. He was placed under 'put off' duty on 20.8.88 in contemplation of disciplinary proceedings which culminated in removal from service as per the punishment order dated 28.3.90, Annexure-IV. That order was upheld by the Appellate authority. But, both the orders - the orders of the disciplinary authority and the appellate authority were set aside by the Revisional authority as per Annexure-VI order dated 15.6.92. The operative portion of the order is extracted below:

"...On appreciation of the evidence also, I find that there are deficiencies. Some important witness such as addresses of the letters, the material objects, etc. are not questioned or

examined. In the circumstances, I am not inclined to uphold the punishment. It is therefore, set aside. The petitioner will be reinstated. The period he remained put off and out of ED Service will not however count for any purpose."

2. The applicant's grievance is only against the last sentence in the said order. The Revisional authority denied the applicant remuneration and regularisation of service for the period of 'put off' out of the E. D. Service from the date of the penalty. That period will not count for any purpose according to the Department.

3. This conclusion according to the applicant is against the provisions of FR 54-B(5) and the decision of the Madras Bench of the Central Administrative Tribunal in P.M. Rusamma V. Inspector of Post Offices, (1988) 7 ATC 833.

4. Respondents have raised the contention that the applicant is not entitled to any relief because the Revisional authority did not exonerate the applicant from the guilt. The punishment order was set aside on technical grounds. Since the applicant was reinstated, he cannot claim any remuneration for the period referred to above.

5. It is an admitted fact that after the judgment of the Bangalore Bench of the Tribunal in Peter J. D' Souza vs. Supdt. of Post Offices, 1989(9)ATC 225, no statutory provision is existing in the statute for dealing with the question of allowances for the period of 'put off' of an E.D. Agent. The said decision is even now pending before the Supreme Court. In O.A. 612/92, a question similar to the one raised in this case was considered and the claim of the employee for subsistence allowance during the period of put off was discussed and held as follows:

"Since the validity of Rule 9(3) and the correctness of the decision of the Bangalore Bench is now pending consideration before the Supreme Court, we are of the view that it is not proper for us to consider the contentions of the applicant and the respondents at this stage. The applicant can await the judgment of the Supreme Court. ..."

We are of the view that the decision of the Tribunal in O.A. 612/92 ~~cannot~~ be applied in the case of the applicant for considering his right for remuneration during the period when he was placed under ~~put off~~ before actual punishment. The order of 'put off' was passed on 20.8.88. On that day and till the date of punishment viz. 28.3.90, sub rule (3) of Rule 9 was in the statute book. It operates against the applicant. Saradamma vs. Supdt. of Post Offices, ILR (1983) 2 Ker 741 also holds that during the period of ~~put off~~ this rule applies and the right to get remuneration can be defeated. Accordingly, we held against the applicant in the claim pertaining to the period of 'put off.' but can raise it later.

6. With regard to the period from 28.3.90 the date of removal to 25.6.92 the date of reinstatement, the decision of the Madras Bench of the Tribunal will apply and the applicant is entitled to all service benefits particularly when the punishment order has been set aside by the Revisional authority. The distinction between quashing the order either on technical ground or other grounds has no relevance in the facts of this case to grant reliefs to the applicant. Accordingly, we follow that decision and direct the respondents to pay the remuneration actually payable to the applicant had he been in service from 28.3.90 to 26.5.92. In regard to the break in service during the currency of punishment, we direct the respondents to consider whether the

same can be condoned so as to get continuity of service of the applicant. The question of eligibility of the applicant to get remuneration during the period of put off will depend upon the decision of the Supreme Court on the SLP filed by the Department against the decision of the Bangalore Bench referred to above as indicated in Annexure R-3 and judgment in O.A. 612/92.

7. With these observations/directions, we dispose of the application.

8. There will be no order as to costs.

S. Kasi Pandian

(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE)

N. Dharmadan
8.4.94

(N. DHARMADAN)
MEMBER (JUDICIAL)

8.4.94

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