

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 235 of 2004

Reserved on : 2nd February, 2012

Date of decision : 7th February, 2012

Hon'ble Mr. Justice Alok Kumar Singh , Member-J
Hon'ble Mr. S.P. Singh, Member-A

Vishambhar Dayal, S/o Sri Sukuru, R/o Village & Post Sidhour
Tara, P.S. Saraini, District Rae-Bareilly

.....Applicant

By Advocate : None

Versus.

1. Santosh Kumar Pandey, Branch Post Master, Sidhour
Tara, Rae-Bareilly.
2. Superintendent of Post Offices, District Raei-Bareilly.
3. Post Master Generl, District Lucknow.

.....Respondents

By Advocate : None

ORDER

By Justice Alok K Singh, Member-J

This O.A. has been field for the following relief(s) :-

- (i) *That respondent no.1 may be directed to pay the salary of the applicant for the period of 5.2.1999 to 31.3.1999 and 21.6.1999 to 19.7.1999.*
- (ii) *That the Hon'ble Tribunal may allow this Original Application in favour of the applicant with costs.*
- (iii) *That the Hon'ble Tribunal may kindly be pleased to pass any other suitable order or direction in favour of the applicant and against the respondents which he may deem it fit proper and judicious under the circumstances of the case".*

2. The case of the applicant is that he was discharging the duties as Extra Departmental Main Peon (In short EDMP) under the Branch post office Sidhour Tara, District Rae-Bareilly. But

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he went to Sidhour Tara on 5.2.1999, where the Branch Postmaster i.e. respondent no.1 did not give him 'Dak' for distribution and also started beating him with legs. He filed a report in this regard addressed to Superintendent of Post Offices, Rae-Bareilly (Annexure-2). Again on 10.5.1999 the respondent no.1 did not give him 'Dak' for distribution saying that he has engaged another person for distribution of 'Dak'. The Superintendent of Post Offices, Rae-Bareilly wrote a letter to Branch Postmaster, Sidhour Tara on 17.3.1999 directing him to permit the applicant to join his duties (Annexure-5). The applicant was not paid salary from 5.2.1999 to 31.3.1999 for which he made a representation to Assistant Superintendent of Post Offices (Annexure-6) on 20.4.1999. He also made a representation to Superintendent of Post Offices, Rae-Bareilly for payment of salary of the aforesaid period and also the period from 1.6.1999 to 20.7.1999 (Annexure-7). Then, he filed a representation dated 13.1.2007 to Postmaster General, Lucknow, but no action was taken. In the meantime, he filed a case before the District Consumer Forum, Rae-Bareilly (Case no. 112 of 2000). After hearing the matter, the District Consumer Forum, Rae-Bareilly dismissed the case on 30.5.2003 (Annexure-1) on the ground of jurisdiction, hence this O.A.

3. The respondent nos. 2 & 3 have contested the O.A. by filing a common Counter Reply saying that the applicant is now working as EDDA, at Gegason Branch Post Office, Rae-Bareilly, who had some individual problem and dispute with Sri Santosh Kumar Pandey, the then EDBPM, Sidhour Tara, Rae-Bareilly. In this regard, a complaint was made on 22.6.1999 by the applicant. Keeping in view the smooth functioning of Branch Post Office, the applicant was transferred from there to the present place of posting in the same district vide order dated 15.7.1999 and the applicant joined there on 20.7.1999. It has been conceded that the applicant was not allowed to perform his duties w.e.f. 5.2.1999 to 31.3.1999 by the aforesaid Sri Santosh Kumar Pandey, who without having any power to engage an outsider, engaged one Sri Jagdish Prasad Yadav to work as EDMP, Sidhour Tara w.e.f. 9.2.1999 and also furnished the charge report showing taking over the charge w.e.f.

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5.2.1999. Therefore, pay & allowances were paid to Sri Jagdish Prasad Yadav w.e.f. 5.2.1999 to 31.3.1999. The applicant was not paid salary for this period. However, the applicant joined on 31.3.1999 at Sidhour Tara, Rai-Bareilly under the orders of Superintendent of Post Offices, Rae-Bareilly dated 17.3.1999 and thereafter he performed his duties. It is further conceded that later-on the applicant was again not allowed to work w.e.f. 21.6.1999 to 19.7.1999 by the said Sri Santosh Kumar Pandey. But at the same time, it has been said that since the applicant did not perform his duties during the aforesaid period, the doctrine of "No Work No Pay" was applied in his case. It has also been pointed out in the Counter Reply that the applicant has filed this O.A. challenging the order passed by the District Consumer Forum, Rae-Bareilly in case no. 112 of 2000, which was not proper forum. As the cause of action lastly arose in June - July, 1999 (and this O.A. was filed on 6.1.2005), it is barred by limitation under Section 21 of Administrative Tribunals Act, 1985. It has been further pleaded that though an order has been passed by the authorities to credit Rs. 5838/- under head unclassified receipt within 03 days of the receipt of the letter, but the amount has not been credited by Sri Santosh Kumar Pandey, EDBPM, Sidhour Tara, Rae-Bareilly. The applicant has also filed an F.I.R. against Sri Santosh Kumar Pandey under case crime no. 42 of 1999 under Section 323, 504 and 506 IPC at P.S. Sareni. The Assistant Superintendent of Post Offices, Lalganj, Sub-Division, Rae-Bareilly who is appointing authority of the applicant, was directed by Superintendent of Post Offices, Rae-Bareilly vide order dated 8.8.2000 to recover the pay and allowances for both the aforesaid periods from the pay of Sri Santosh Kumar Pandey. In the meantime, it was learnt that the applicant had filed a case no. 112 of 2000 before the District Consumer Forum, Rae-Bareilly impleading Sri Santosh Kumar Pandey on 6.5.2000. Therefore, further action was postponed and the calculated amount was not paid to the applicant. Receiving of representation dated 7.8.1999, however, has been admitted in the Counter Reply.

4. It is noteworthy that the Counter Reply was filed in this case in June, 2005. But the applicant, however, did not file any



Rejoinder till date i.e. for the last about 5-6 years. Finally, therefore, this opportunity was closed and the learned counsel for the parties were directed to file Written arguments, if any. But from the side of the applicant, no Written argument has been filed. From the side of official respondents, however, written arguments have been filed, which are on record. Then, the case was listed for oral arguments, if any. But on the date so fixed, neither of the counsel appeared to make oral arguments. Therefore, this more than 7 years old O.A. was reserved for orders.

5. We have gone through the written arguments filed on behalf of respondents and also the pleadings of both the sides.

6. From the side of the official respondents, a preliminary objection regarding limitation has been raised. It is true that the matter pertains to February & June 1999 the period during which the salary was not paid to the applicant. From that point of view, this O.A. ought to have been filed within a year or at the most within one and half year including six months of grace period provided in the Administrative Tribunals Act. But instead of filing an O.A. before this Tribunal, the applicant filed a Complaint case no. 112 of 2000 before the District Consumer Forum, Rae-Bareilly, which had no jurisdiction on the subject matter. Therefore, that case was dismissed on 30.5.2003 and then only on 27.5.2004 this O.A. was filed. Technically, therefore, this O.A. appears to be squarely hit by the provisions of limitation under Section 21 of Administrative Tribunals Act, 1985. But time and again the Hon'ble Supreme Court has emphasized that instead of rejecting a claim on technical ground, it is always better to decide it on merits. Similarly, in respect of point of limitation also, the settled position of law is that a pragmatic approach should be taken instead of a pedantic approach. Undoubtedly, under the wrong legal advice, the applicant filed a Complaint case before the District Consumer Forum, Rae-Bareilly instead of filing an O.A. before this Tribunal in the year 2000. That complaint case was decided in the year 2003. Thereafter, within a year this O.A. was filed. It is also true that no formal application for condonation of delay

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has been filed and even the applicant's counsel has neither filed Rejoinder reply, nor has cared to file Written arguments or to make oral arguments. But a litigant should not be made to suffer for the laches, if any, on the part of his counsel. Therefore, in the interest of justice, having regard to the peculiar facts and circumstances of the case, delay is condoned and the point of limitation is accordingly decided in favour of the applicant.

7. A careful perusal of the entire pleadings contained in Counter Reply would show that it has been fairly admitted by official respondent nos. 2 & 3 that in compliance of their orders, the applicant did report at the required place i.e. Sidhour Tara, Rae-Bareilly and made himself available for performing his duties. But the respondent no.1 -Sri Santosh Kumar Pandey the then Branch Post Master, Sidhour Tara, Rae-Bareilly, who was immediate superior to the applicant, did not permit him to work and did not give 'Dak' (Posts) for distribution during both the periods in question i.e. from 5.2.1999 to 31.3.1999 and 21.6.1999 to 19.7.1999. Not only that, without any authority, he also engaged a person for performing the distribution of 'Dak' during the period. As if this was also not sufficient, he also misbehaved with the applicant and had allegedly beaten him with legs, in respect whereof, besides administrative complaint made to the official respondents, a FIR has also been lodged by the applicant against private respondent no.1 under Crime no. 42 of 1999 under Sections 323, 504 and 506 IPC, P.S. Sareni, District Rae-Bareilly. In the present case, despite service upon him, the respondent no.1 has not turned up to contest the claim of the applicant by filing any Counter Reply. Coming back to the official respondent nos. 2 & 3, they have also conceded that on the complaint received from the applicant that the respondent no.1 was not permitting him to join and to perform his duties, the Superintendent of Post Offices, Rae-Bareilly issued written directions dated 17.3.1999 only then the applicant was permitted to join duties on 31.3.1999. Similarly, it has also been pleaded that the authorities have also passed an order directing the respondent no.1 to deposit Rs. 5838/- under the head of unclassified receipt, but that amount has not

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been deposited by the respondent no.1. Earlier, Assistant Superintendent of Post Offices, Lalganj, Sub-Division, Rae-Bareilly, who is appointing authority of the applicant, was directed by the Superintendent of Post Offices, Rae-Bareilly vide order dated 8.8.2000 to recover the pay & allowance for both the aforesaid periods from the pay of Sri Santosh Kumar Pandey. Lastly, it has been pleaded that in the meantime, it was learnt that the applicant had filed the aforesaid Complaint case no. 112 of 2000 before the District Consumer Forum, Rae-Bareilly impleading Sri Santosh Kumar Pandey also. Therefore, further action was postponed and calculated amount was not paid to the applicant. This clearly means that the claim of the applicant has been found to be true by the official respondents and they intend to pay the calculated amount to the applicant. But on account of the aforesaid Complaint case no. 112 of 2000, they did not pay to the applicant. However, it has not been clarified as to why despite their intention to pay the calculated amount to the applicant, they did not pay it after dismissal of the aforesaid case by the District Consumer Forum, Rae-Bareilly. In para nos. 6 & 15 of Counter Reply a contradictory plea has been taken of the doctrine of "No Work No Pay" in respect of the applicant. But this plea has been diluted in para 16 of Counter Reply where it has been clearly stated that the calculated amount was not paid to the applicant because of pendency of Complaint case, though they intend to pay. Otherwise also, the claim of the applicant stands proved of his pleadings and documents, which have been brought on record, as discussed above.

8. The Official respondents have also admitted to have received the representation of the applicant dated 7.8.1999. They have not said anything regarding disposal which clearly means that the said representation is still pending with them. Perusal of this representation (Annexure -7) shows that it is for payment of salary/wages for both the aforesaid periods (from 5.2.1999 to 31.3.1999 [as mentioned under relief 8(1) and from 21.6.1999 to 19.7.1999. As already said, the official respondents are themselves intending to make payment to the applicant, but they could not do so because of pendency of

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Complaint case before the District Consumer Forum, Rae-Bareilly. But now that case has come to an end and the applicant has now knocked the door of proper forum and his claim is found to be admitted and proved as discussed above. As far as principle of "No Work No Pay" is concerned, first of all, the official respondents cannot be permitted to approbate and reprobate i.e. to blow hot and cold simultaneously. At one place, they have shown their intention to make payment to the applicant, which they could not do because of pendency of a case before the District Consumer Forum, Rae-Bareilly, which has already ended about eight years before. On the other hand they have unsuccessfully tried to take shelter of the aforesaid doctrine, which is not applicable at all in the present case. Because this principle can be applied where an employee himself strikes work. In other words, when he refrains himself from performing the work assigned to him. But here, it is other way round. In compliance of order/direction of the official respondents, the applicant immediately reported to the place and made himself available to perform the job. But his immediate superior in the hierarchy not only refused to give him joining but also refused to give 'Dak' for distribution, and also allegedly misbehaved with him. This immediate superior was none other than the private respondent no.1 who has not even turned up to contest the O.A. Infact he had vested interest for doing so as has come on records. Without any authority, he had engaged a person of his choice for performance of this work. Firstly, there was no occasion for such engagement because an employee was available for the job and secondly he had no authority to make such engagement as is case of the official respondents. That is why the official respondents have already passed an order of recovery of the relevant amount from private respondent no.1. Be that as it may. But if an employee/worker has not struck work on his own and has rather made himself available for the job, but he was unauthorisedly prohibited by his next superior himself from performing his job, then certainly the principle of "No Work No Pay" cannot be applied. Therefore, this point is also decided against the respondents.

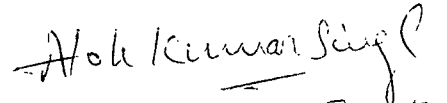
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9. Finally, keeping in view the aforesaid facts and circumstances of the case, in our opinion, it would meet the ends of justice if the official respondents are directed to decide the claim raised in the said representation dated 7.8.1999 of the applicant in the light of above observations made in this judgment, by passing a well reasoned and speaking order in respect of payment in favour of the applicant expeditiously say within a period of 45 days from the date of this order and accordingly it is so ordered.

10. The O.A. is disposed of in the aforesaid terms with no order as to costs.



(S.P. Singh)
Member-A



(Justice Alok K Singh)
Member-J

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