

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 99 OF 2010

Order Reserved on 23.4.2014

Order Pronounced on 19-05-2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Udai Pal Singh aged about 66 years,
Son of Sri Nageshwar Singh,
Resident of Villate Dhaurahra,
Post Antoo,
District Pratapgarh.

Applicant

By Advocate Sri R. K. Upadhyaya.

Versus

1. Union of India through
The Secretary, Ministry of Telecommunication
(Postal) Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices,
Pratapgarh.

Respondents

By Advocate Shri Praveen Kumar holding brief for Shri Amarnath Singh Baghel.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J).

1. The present Original Application is preferred by the applicant under
Section 19 of the AT Act, 1985 with the following relief(s):-


- “(i) To issue a suitable order or direction to the respondents thereby quashing the impugned order dated 13.7.2009 passed by the Respondent No. 2 as contained in Annexure No. 1.
- (ii) To issue a suitable order or direction to the respondents to treat the put off duty period the applicant i.e. with effect from 28.3.1972 to 2.2.1979 as duty period and to give all consequential benefits of arrears of along with interest prevailing at the market rate for the said period admissible on the Class-IV post and also to fix salary of the applicant in the pay scale of Class-IV category properly and further to give the benefit of first time bound promotion with effect from the date a person junior to the applicant namely Sri Chhedi Lai was given the said benefit i.e. 18.12.1971 and also to re-fix pension of the applicant.
- (iii) To issue any other order or direction, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case.



(iv) To all the instant O.A. with costs. "

3. The brief facts of the case are that the applicant was initially appointed on the post of Extra Departmental Branch Post Master in 1971. The applicant was required to be promoted in the Class-IV, but a F.I.R. was lodged against the applicant in 1972 and thereafter the applicant was acquitted by the competent criminal court by means of an order dated 30th March 1978. No appeal or revision was filed against the said judgment as such the same became final. The applicant was reinstated in service after acquittal and he was subsequently allowed to join his promotional Class IV post giving him the benefit of merit list, but the applicant was neither given the back wages of his put off duty w.e.f. 28.3.1972 to 2.2.1979 nor he was given his notional promotion. The applicant preferred several representations and he has also filed O.A. before the Tribunal vide O.A. No. 559 of 1996 which was disposed of by the Tribunal vide order dated 13.10.2003 directing the respondents to consider and take appropriate decision regarding put off duty w.e.f. 28.3.1972 to 2.2.1979. In pursuance thereof, the respondents have passed an order dated 4.6.2004 whereby, the period w.e.f. 28.3.1972 to 2.2.1979 was not treated to be a duty period and the consequential benefit of pay and allowances were also denied. The applicant again preferred O.A. and the said O.A. was disposed of by means of an order dated 16.3.2009 again directing the respondents to pass a reasoned and speaking order within a period of three months and accordingly, the respondents have passed an order on 13.7.2009 which is impugned in the present O.A.


4. The learned counsel for the respondents have filed there reply and through reply, the respondents have categorically indicated this fact that the applicant was involving in a criminal case and therefore he was put off from duty vide office order dated 28.3.1972. Subsequently, after the acquittal, he was taken back to duty in 1979 and later on he was promoted to Class cadre in 1979 on the basis of result declared vide



memo dated 7.1.1971 and the pay of the applicant was ordered to be fixed equal to the pay of one Shri S. Chhedi Lai Yadav who was junior in the seniority list. Since the fixation of pay and seniority/promotion was not found justified as such the applicant filed an O.A. No. 559/1996 and after the decision of the Tribunal, he again preferred an O.A. No. 68/2005 O.A. and the said O.A. was also disposed of and thereafter, the respondents have passed this order. The learned counsel for the respondents categorically pointed out that the Director General's instruction issued vide letter dated 23.3.1978 in rule 9 of Extra Departmental Agent (conduct & Service) Rules 1964, the applicant is not entitled to get the benefit and as such, it was not paid and accordingly, it was decided that the period of put off duty w.e.f. 28.3.1972 to 2.2.1979 cannot be treated as duty and he will not be entitled for any pay and allowances for that period. Accordingly, the respondents passed the orders on the basis of the said rules.

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant was appointed on the post of Extra Departmental Branch Post Master in the year 1961. Thereafter, the applicant appeared in a departmental examination of Class IV and he was declared successful. Before the applicant could be promoted, criminal proceedings were initiated against the applicant. As such, he was put off from duty. Subsequently, the said criminal case was decided and the applicant was acquitted and he was reinstated. When the claim of the applicant was not considered, he preferred two OAs vide O.A. No. 559 of 1996 and 68 of 2005. While deciding the O.A. 559 of 1996, this Tribunal directed the respondents to take a decision with regard to the period in which the applicant was on put off duty or not to be on duty and also with regard to pay and allowances. The said decision of the Tribunal was duly complied with and the respondents have passed an order in 1994 itself. The applicant feeling aggrieved by the said action preferred an O.A. and the said O.A. was again decided with a direction

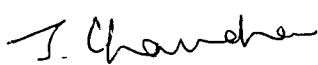


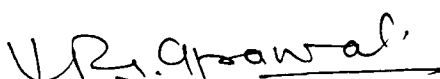
to the respondents to pass an order on the basis of acquittal to treat the put off duty in accordance with law. After the said decision of the Tribunal, the respondents again passed an order dated 13.7.2009 indicating there in the rule position and for ready reference, Rule 9 of Extra Departmental Agent (Conduct and Service) Rules, 1964, reads as under:

“9. An employee shall be liable to be put off from duty by or under the orders of the appointing authority or any authority to which it is subordinate pending enquiry into any complaint or allegation of misconduct against him. During such period, he will not be entitled to any allowance.”

6. The bare perusal of the aforesaid rule are absolutely clear and since the applicant was put up from duty on account of criminal proceedings pending against him. As such, he is not entitled for any allowances.

7. Considering the submissions made by the learned counsel for the parties, we do not find any reason to interfere in the present O.A accordingly, the O.A. is dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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