

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.40/2011

Reserved on 28.04.2015.

Pronounced on 12.05.2015.

HON'BLE MR. NAVNEET KUMAR, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Asad Ali, aged about 61 years, S/o Sri Rahmatullah retired GDS BPM Hunhuna R/o village & P.O. Hunhuna (Patranga RS) Distt. Barabanki.

(Died)

1/2. Kalim, aged about 38 years, son of Late Sri Asad Ali, ED, BPM, Hunhuna (Patranga, District Barabanki.

1/3. Smt. Shahjahan, aged about 60 years, widow of Late Sri Asad Ali, ED, BPM, Hunhuna (Patranga, District Barabanki.

1/4. Mohd. Faheem, aged about 25 years, son of Late Sri Asad Ali, ED, BPM, Hunhuna (Patranga, District Barabanki.

1/5. Km. Asmin, aged about 17 years, daughter of Late Sri Asad Ali, ED, BPM, Hunhuna (Patranga, District Barabanki.

...Applicant.

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India through the Secretary, Department of Post, New Delhi.

2. Director of Postal Services, Lko Regn.O/O CPMG UP Lko.

3. Superintendent of post offices, Barabanki.

...Respondents.

By Advocate: Sri Shravan Kumar.

ORDER

Per Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“(a). That this Hon’ble Tribunal may kindly be pleased to direct the Ops to sanction the remaining amount of Rs.62,175/- to the applicant alongwith interest @ 24% on delayed payment of Rs.57,825/- from 03.02.2010 to 07.02.2010 and on Rs.62,175/- from 03.02.2010 till date of payment.

(b). Direct Ops to pay full pay & allowances during the period of put off duty (Suspension) from 14.1.94 to 3.9.94.

(c). Any other relief deemed just and proper in the circumstances of the case with cost of O.A. in favour of the applicant.”

2. The facts of the case as averred by the applicant are that the applicant was initially appointed as BPM Hunhuna w.e.f. 23.12.1968. He had been working from that date till his retirement on 02.02.2010. He was put off duty vide order No.FX/Hunhuna/94 dated 14.01.94 and was reinstated to duty vide order No.F-2/1/93-94 dated 30.08.94. He was charge-sheeted under Rule-8 of EDA (Conduct & Service) Rules, 1964 on 19.04.1994 and was awarded the penalty of “Censure” by order dated 30.01.1995 (Annexure-5). According to Rule-9 of GDS (Conduct & Employment) Rules, 2001 censure is a minor penalty. Thus, he remained on suspension/put off duty from 14.01.1994 to 03.09.1994 i.e. for 7 months and 19 days. If the period is excluded from his entire service period, he has rendered over 40 years of service as such in terms of relevant rules he is entitled to payment of Rs.1,20,000/- only on account of Ex-Gratia and severance allowance but on his retirement, he has been paid only Rs.57,825/- (Ex-Gratia Rs.35,325/- plus severance allowances Rs.22,500/-)

vide order dated 07.07.2010. He approached to SPO, Barabanki for payment of full entitled amount through various representation dated 30.06.2010, 15.07.2010 & 09.09.2010 (Annexure A-8, A-9 to the OA). However, his representations were turned down by an order dated 07.07.2010. The OA has been filed claiming full pay for the period of suspension from 14.1.1994 to 03.09.1994 as 'Censure' is a minor penalty and as per the DOPT O.M. No.11012/15/85-Estt. (A) dated 03.12.1985 (Annexure-6) period of suspension is to be treated as duty if minor penalty is imposed. Further, during the course of hearing, he cited the order passed by Madras Bench of this Tribunal in O.A.No.817/1990 by which the period of put off duty was held analogous to that suspension and that after retirement the suspended person is eligible for full wages. Accordingly, he has quoted para-13 of the aforesaid order which is as follows:-

"Para-13

It is thus seen that a case of put off duty is very much comparable with suspension in vital details. We are of the opinion that the criteria for paying full wages after re-instatement from suspension, should be applicable for payment of EDA allowances for the period of put off after re-instatement. If only a minor penalty is imposed under the CCS (CCA) Rules, the employee is entitled for full wages as _ _ _ (illegible) _ _ _ _ _ . If an employee is let off with the warning after a proceeding under the CCS (CCA) Rules, obviously he is to be paid full wages. We are clearly of the opinion that the same position should apply in the case of ED Agents also. In the present case, there is no punishment under any statutory rule imposed on the applicant. Only a warning has been administered on the applicant, which cannot be taken as a major penalty at all. In this view of the matter, we have to hold that put off the applicant was

unjustified. That being so, it follows that the applicant is entitled for being paid the full allowances during the period of put off."

3. He has further cited the judgment of the **Hon'ble High Court of Karnataka at Bangalore dated 26.11.1979 passed in Writ Petition No.7603 of 1978 R.S. Abbaiah Vs. U.O.I. & Others**, in which it was held that the pensioner is entitled to full salary from the date he was put off duty till his reinstatement.

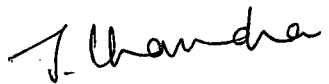
4. The respondent have filed their Counter Affidavit and Supplementary Counter Affidavit through which they have stated that the applicant had been put off duty w.e.f. 14.1.1994 to 03.09.1994 and he was not fully exonerated from the charges levelled against him but he was awarded a penalty of "Censure" on conclusion of the disciplinary proceedings. As per the instructions issued by D.G. P&T letter dated 15.12.1995 and 04.11.1980 and Rule 16 of GDS (Conduct & Employment), Rules, 2011. It is only when the GDS employee is fully exonerated in the disciplinary proceedings, only then put off duty is not treated as break in service. In this case, the applicant was awarded punishment of censure, therefore, the period of put off duty period is to be treated as break in service resulting in forfeiture of past service before 04.09.1994. He has rendered 15 years, 4 months and 28 days of continuous service and has been paid ex-gratia to the tune of Rs.35,325/- only $(4710 \times 15/2)$ and severance allowances of Rs.22,500/- (1500×15) .


5. The applicant through Rejoinder Affidavit and Supplementary Rejoinder Affidavit denied the contention of the respondents and reiterating averments made in the OA.

6. We have seen and heard the learned counsel for both the parties and perused the material available on record.

7. It is seen that the applicant was put off duty for the period from 14.1.1994 to 03.09.1994. In this OA the second relief claimed by the applicant is for full payment and allowances during the period in question. This claim has been made by the applicant through this OA in the year 2011, which is 16 years after the date of cause of action. The OA has been filed without any delay condonation application. **The Hon'ble Supreme Court in the case of Uma Shankar Vs. U.O.I. 2002 (2) ESC-343** that the OA is liable to be dismissed on the ground of delay and latches. Therefore, the relief no.2 is liable to be dismissed on the ground of delay. Coming to the relief no.1, the applicant's whole case rest on the premises of put off duty is tantamount of suspension as per the DOPT order OM No.11012/15/85 Estt. (A) dated 3rd December, 1985 such suspension is to be treated as the period spent on duty where a govt. servant is awarded only a minor penalty. It is admitted that the applicant was a GDS employee and as such, his case is to be considered under the GDS (Conduct & Employment) Rules, 2011. As per DG instructions dated 04.11.1980 which were further reaffirmed by letter dated 15.12.1995 Ex-gratia etc. is admissible if the GDS is fully exonerated from all the charges and reinstated in service. In this case, admittedly, the applicant was reinstated after being awarded "Censure", which has become final. In the case of the applicant in O.A.No.817/1990, he was given only a warning and the facts and circumstances of the Writ Petition No.7603 of 1978 are separate and distinguishable from the present OA.

8. Therefore, the present OA does not require any interference by this Tribunal. The OA is dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-