

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No.: 506 of 1996

Date of decision : 1<sup>st</sup> JAN-2001

Kapildeo Pandey, son of Shri Ram Udar Pandey, Postman,  
Dhapra Head Post Office at Chapra, Resident of village  
& P.O.: Saraon, P.S.: Rasulpur, District Saran.

.....APPLICANT

By Advocate : Shri S.N. Tiwary.

Vs.

1. The Union of India through the Secretary, Govt. of India, Ministry of Communication, Department of Posts, New Delhi-cum-The Director General, Department of Posts, India, Dak Bhavan, New Delhi 110 001.
2. The Chief Postmaster General, Bihar Circle, Patna 800 001.
3. The Director of Postal Services, Patna Region, Patna-800 001.
4. The Senior Superintendent of Post Offices, Saran Division, Saran.
5. The Senior Postmaster, Chapra Head Post Office at Chapra, District Saran. ....RESPONDENTS 1st SET.
6. Shri Syed Raza Imam, son of (Father's name not known), Postman, Chapra Head Post Office at Chapra, District Saran. ...RESPONDENT 2ND SET.

By Advocate : Shri S.C. Jha,  
Addl. Standing Counsel.

C O R A M

HON'BLE MR. JUSTICE S. NARAYAN, VICE-CHAIRMAN  
HON'BLE MR. L. HMINGLIANA, MEMBER (ADMINISTRATIVE).

O R D E R

JUSTICE S. NARAYAN, V.C.:- The applicant herein has sought for relief by way of quashing and setting-aside an order dated, 5th November, 1996 (Annexure-A/10), issued by the respondent no.4 treating the applicant's absence from duty for the period from 12.02.1993 to 09.05.1995 as dies-non. It has been further prayed for direction upon the respondents to disburse the pay and allowances, togetherwith

*Singh*

increments for the aforesaid period and also to appoint him on the post of Postman substantively from the date his junior, Syed Raza Imam (Respondent no.6) was made permanent.

2. On factual score, it was simply relevant to point out that the applicant was initially appointed as Extra-Departmental Delivery Agent w.e.f. 31st May, 1974, and, on being declared successful at the Postman's cadre, he was approved for appointment to the said cadre by an order dated, 13th May, 1992, issued by the respondent no. 2, vide Annexure-A/1. Subsequently, he was appointed as Temporary Postman of Chapra Head Post Office by an order dated, 17th October, 1992, of the respondent no.5 and he (the applicant) joined the duty as such, on 17th October, 1992. Subsequently, by an order dated, 30th October, 1992 (Annexure-A/4) of the respondent no.5, he was appointed as Temporary Reserve Postman w.e.f. 1st November, 1992. While the applicant was working on the post, his appointment was cancelled by an order dated, 10th February, 1993 (Annexure-A/5), of the respondent no.4, vide Annexure-A/5. Being aggrieved by and dis-satisfied with this order, the applicant filed O.A. No.85 of 1993 before this Tribunal which was ultimately decided in favour of the applicant by an order dated. 16th November, 1994, by quashing the order dated, 10th February, 1993 (Annexure-A/5), and directing the official respondents to reinstate him on the post of Temporary Reserve Postman, Chapra.

3. In pursuance of the order dated, 16th November, 1994, passed by this Tribunal in

*Sanyal*

O.A. No.85 of 1993, the applicant was reinstated to the post of Temporary Reserve Postman by an order dated 10th May, 1993 (Annexure-A/7), issued by the respondent no.5. The applicant, thereupon, joined his duty as Postman on 10th May, 1993, on reinstatement, but the period of his absence from 12.02.1993 (i.e., the date from which his service was terminated) to 09.05.1995 (just before his retirement), had not been regularised and, therefore, there was the necessity for the applicant to come-up with the instant OA togetherwith a prayer for providing seniority over his junior (Respondent no.6), who has been appointed on the post of Postman substantively w.e.f. 9th October, 1995. However, during the pendency of the O.A. the official respondents issued an order dated, 5th November, 1996 (Annexure-A/10) treating the period of the applicant's absence as dies-non, but the applicant felt aggrieved even of this order.

4. On the other side, the official respondents have tried to justify their stand as taken in the impugned order dated, 5th November, 1996 (Annexure-A/10), on the ground already therein.

5. In order to resolve the issue raised, it is worthy of notice that the applicant's claim originates from the order dated, 16th November, 1994, of this Tribunal, passed in OA 85 of 1993 and, therefore, much depends upon the letter and spirit of the said order. It would be thus, useful first, to give an extract (directive portion) of the said order as noted below :-

"For the reasons discussed herein above  
the application is allowed and the

*Sanyal*

impugned orders at Annexure-A/13 dated 10.02.1993 is hereby quashed and set-aside. The interim orders issued vide orders of this Tribunal dated 23.02.1993 and 16.03.1993 are made absolute. We further direct the respondents to reinstate the applicant in the post of temporary reserved Postman, Saran Division, Chapra which post the applicant was holding prior to termination of his service by the impugned orders. This order should be complied with within a period of two months from the date of receipt of a copy of this order dated, 16th November, 1994 (Annexure-A/6)."

6. It would be derived from the above order that the applicant's service as Temporary Reserve Postman had been terminated by an order dated, 10th February, 1993, of the respondents authority and the same was impugned in the aforesaid O.A. No.85 of 1993. The said O.A. was allowed in no uncertain terms directing the official respondents to reinstate the applicant on the post of Temporary Reserved Postment, which post the applicant was holding prior to termination of service by the impugned order. The applicant's appointment on the said post was upheld as valid and in accordance with statutory rules framed for filling-up of the said post.

*Sanyal*

7. Even though the earlier order of this Tribunal (Annexure-A/6) did not clearly spell out as to how the period of absence, subsequent to termination and prior to reinstatement, was to be dealt with, but the whole purpose of the order was explicit on the record that the letter by which the applicant's service was terminated was declared to be invalid and, to put it in other words, as null and void. On a careful scrutiny of the aforesaid order, we are confident that the real purpose of the order was to reinstate the applicant on the post which he was holding prior to the termination while treating the order of termination as non-est.

8. For a situation as noticed above, the Supreme Court has clearly laid down a principle in a judgment delivered in the case of Manorama Verma Vs. State of Bihar & Ors.; reported in 1995 SCC (L&S) 193. In the case before the Supreme Court, the finding of the High Court was that initial appointment of the employee was valid and no appeal was filed by the State against such finding. Since the termination was declared to be illegal, the Supreme Court expressed his opinion that ordinarily the consequential order of grant of backwages must follow unless there were reasons on record which would justify a departure from the normal order. That being as such, even though the High Court denied backwages to the concerned employee from the date of termination of the service till he was reinstated in service, the Supreme Court directed payment of backwages. The case in hand also squarely falls in the category of the



aforesaid case determined by the Supreme Court. There was no reason for the present official respondents to deny payment of salary and allowances for the period of absence, which was just an outcome of the order of termination which was subsequently determined to be invalid. It goes without saying that had the order of termination been not passed, the applicant would have continued in service on full payment of wages.

9. While denying salary and allowances for the period of absence and treating it as dies-non, the official respondents have taken a stand in the following terms, as mentioned in the impugned order dated, 5th November, 1996 (Annexure-A/10) :

"That, whereas, Shri Kapildeo Pandey (applicant) remained absconded from the office w.e.f. 12.02.1993 to 09.05.1995 and joined duty only on 10.05.1995 (F/N), after the decision of the Hon'ble CAT, Patna Bench, in OA No.85 of 1993, now, therefore, the period of wilful and unauthorised absence from duty of the said Shri Kapildeo Pandey from 12.02.1993 to 09.05.95 is treated as dies-non."

The above reasons, as assigned in the impugned order (Annexure-A/10) is just contrary to the facts on the record. Whereas, the applicant's absence was on account of positive order of termination of his service, the official respondents have treated as if he absconded from service wilfully and in an unauthorised manner. The truth was definitely otherwise as it would be explicit from the order passed in extenso on 16th November, 1994, by

*Sanyal*

this Tribunal in OA 85 of 1993. Thus, in no way, the impugned order (Annexure-A/10) could be treated to be narrating the truth and, for this reason alone, it would be treated to be against the letter and spirit of the earlier order passed by this Tribunal and hence, liable to be quashed.

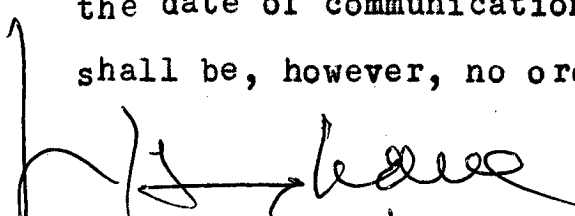
10. In order to strengthen our view, as expressed above, we have also placed reliance on the order passed by this Tribunal in Ernakulam Bench in the case of 19 EDs Vs. Union of India & Ors in O.A. No.K 535 of 1988, the decision being dated, 30th October, 1988, a copy of which was produced on the record at the time of hearing. In a case almost raising the same issue as in the case in hand, there was a direction upon the official respondents that full backwages and other consequential benefits should be made available to the applicants for the period of removal from service as if the order of termination of their service had never been issued. While taking a decision as such, due care was taken <sup>also</sup> of the earlier decisions of the Supreme Court passed in the case of Nawab Khan Abbas Khan Vs. State of Gujarat; AIR 1974 SC 1471; ~~and~~ the case of Surendra Nath Kapoor Vs. Union of India & Ors; reported in AIR 1988 SC 1777; <sup>and</sup> Case of Union of India Vs. Shri Babu Ram Lal; reported in AIR 1988 SC 344, wherein, the Supreme Court held that if the order of termination is a nullity, full pay and arrears have to be paid as if there was no termination. Yet in another case of A.L.Kalra Vs. Project and Equipments Corpn. of India Ltd., (1984) 3 SCC 316, it was held by the Supreme Court that when removal from service is bad in law, no other punishment in the guise of

*Singh*

denial of backwages can be imposed.

11. Regard having had to the above legal propositions, we find no alternative than to direct the official respondents to make full payment of salary and allowances admissible in law to the applicant for the relevant period from 12.02.1993 to 09.05.1995 with all consequential benefits such as, maintaining his seniority vis-a-vis, respondent no.6 (Syed Raza Imam) and further, to consider his case for appointment on substantive basis. This OA, therefore, must succeed and, accordingly, it is allowed. The official respondents are directed to pass appropriate order in the light of the observations above within three months from the date of communication of this order. There shall be, however, no order as to the costs.

skj

  
(L.HMINGLIANA) / 2.01  
MEMBER(A)

  
(S.NARAYAN)  
VICE-CHAIRMAN