

CENTRAL ADMINISTRATIVE TRIBUNAL: BOMBAY BENCH: BOMBAY

TR.NO.251/1987

Anna,
S/o Janbaji Dandale,
Aged 30 years, Postal Assistant,
Washim Sub-Post Office,
Akola Division, Washim
Presently working at
Nagpur City Division,
Vayusena Nagpur Post Office,
Nagpur-7.

.. Applicant.

(By Sri G.K.Masand, Advocate)

v.

1. Union of India
through the Ministry of Communications,
Central Secretariat,
New Delhi.

2. Chairman,
Post and Telegraphs,
Dak Tar Bhawan, New Delhi.

.. Respondents.

(By Sri S.R.Atre, Advocate)

CORAM:

Hon'ble Mr.Justice K.S.Puttaswamy,
Hon'ble Mr.M.Y.Priolkar,

.. Vice-Chairman.
.. Member(A).

ORAL JUDGMENT

(Per: Justice Sri K.S.Puttaswamy, VC)

Dated: 20-12-1988.

This is a transferred application and is received from the High Court of Judicature, Bombay (Nagpur Bench) under Section 29 of the Administrative Tribunals Act, 1985 ('Act').

2. Sri Anna Son of Janbaji Dandale, who is the applicant before us joined service as a Clerk in the postal department of Government of India on 9-9-1972 in which capacity he was working from that date at Akola Post Office. On the recommendations of the third pay commission the Rules and Orders made thereto, the pay of the applicant was fixed at Rs.268/- from 1-1-1973 in the then time scale of Rs.260-480.

3. When the applicant was working at Akola, the Superintendent of Post Offices, West Berar Division Akola ('Superintendent') by his memorandum No.B4-520/108 dated 4-10-1974 terminated his services under Sub-Rule (1) of Rule (5) of the Central Civil Services (Temporary Services) Rules, 1965 ('1965 Rules') giving him one month's notice and thus the applicant's services stood terminated from 4-11-1974. Some time thereafter, a prosecution was launched against

the applicant for offences punishable under Sections 409, 465 and 477 of the Indian Penal Code in the Court of the Chief Judicial Magistrate, Akola. On 22-1-1980 the learned Magistrate acquitted the applicant of the charges framed against him (Annexure-B).

4. On the termination of the proceedings before the criminal Court, the applicant made a representation on or about 7-7-1980 (Annexure-C) to the Chairman, P & T Board, New Delhi ('P & T Board') representing for his reinstatement to service. On an examination of that representation and the records, the P & T Board by its Order No.131/35/80-Vig.III dated 2-4-1981 (Annexure-D) directed the reinstatement of the applicant subject to the terms and conditions stipulated in that order. In pursuance of the said order, the applicant reported for duty on 3-5-1981 and is working ever since then.

5. On reporting for duty on 3-5-1981, the applicant represented to the P & T Board to extend him all the monetary benefits to which he was entitled to for the period from 4-11-1974 to 2-5-1981. On 16-6-1982 the P & T Board has rejected the same. On that, on 2-12-82 the applicant approached the High Court under Article 226 of the Constitution challenging the order dated 2-4-1981 and 16-6-1982 to the extent they deny him only the monetary benefits which on transfer has been registered as TR. No.251 of 1987.

6. In justification of the orders made, the respondents have filed their counter affidavit before the High Court.

7. Sri G.K.Masand, learned counsel for the applicant contends that the P & T Board having rightly reinstated the applicant to service, should have directed the payment of all financial benefits due to him for the period from 4-11-1974 to 2-5-1981 as if he was on duty and the denial of the same was illegal, improper and unjust.

8. Sri S.R.Atre for Sri P.M.Pradhan, learned counsel for the respondents refuting the contention of Sri Masand sought to support the orders made by the P & T Board.

9. In the order dated 2-4-1981 the P & T Board while directing the reinstatement of the applicant directed the intervening period from 4-11-1974 to 2-5-1981 to be regulated thus:

"The intervening period of unemployment in his case will be treated as dies non."


On the further representation made by the applicant the P & T Board has rejected the same on 16-6-1982 in these words:

"With reference to your letter No.DPE/Pet-55/81-82 dated the 4th January, 1982 on the above subject, I am directed to say that the petition of Sri A.J.Dandale, Postal Assistant, Akola Division against the treatment of period of unemployment after termination of service and upto reinstatement as dies non has been carefully considered by the President along with all relevant records of the case and he finds no justification to accept the petition for treating the period of unemployment as duty for all purposes. He has accordingly rejected the petition. The petitioner may be informed suitably."

While Sri Masand contends that these orders are in contravention of Fundamental Rule 54 ('FR-54'), Sri Atre contends that they are in conformity with the same.

10. In the two orders made, the P & T Board has not referred to FR-54. But, as both sides rely the same, we will assume that that Rule applies. But, even then, we are of the view that Rule 54 does not enable the applicant to claim full salary as of right for the period he was kept out of employment for reasons with which we are ^{now} not concerned. On the quantum of amount to be paid, the matter is one of discretion.

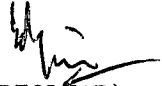
11. In his application, the applicant does not aver that he was not engaged in any other work during the period he was kept out of employment by the authorities. On taking this fact into consideration and all other relevant factors, we are of the view that it is reasonable to direct the authorities to make payment of $\frac{1}{4}$ th of the basic pay of the applicant only from time to time which necessarily means that the increments due from time to time should also be notionally sanctioned by the authorities and the amounts due on that basis calculated and paid to him without any further investigation on his employment or otherwise. On this conclusion, it follows that the intervening period cannot now be treated as dies non as directed by the P & T Board but has to be treated as on duty for all other purposes, except for payment of pay and leave.




12. In the light of our above discussion, we make the following orders and directions:

- a) We quash the last sentence occurring in the order dated 2-4-1981 at para 1 of the P & T Board and the order dated 16-6-1982 (Annexure-F).
- b) We direct the respondents to compute the pay which was admissible to the applicant for the period from 4-11-1974 to 2-5-1981 by notionally granting him all the increments due to him from time to time and then pay him only one fourth of the substantive pay he would have otherwise drawn during the said period however counting the said period for all other purposes except pay and leave with all such expedition as is possible in the circumstances of the case and in any event within a period of 4 months from the date of receipt of this order, without making any investigation on his employment or otherwise during the said period.

13. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.


(M.Y. PRIOLKAR)
MEMBER(A)


(K.S. PUTTASWAMY)
VICE-CHAIRMAN. 20/12