

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Date of order : 25th October, 2011

O.A. No. 711 of 2005

C O R A M

Hon'ble Mr. Justice Syed Md. Mahfooz Alam, Member [Judicial]
Hon'ble Mr. Naresh Gupta, Member [Administrative]

Ram Pukar Singh, S/o Late Ram Kishun Singh, r/o village – Hajipur Belaur, P.O. Belaur, P.S. Barh, District – Patna, Ex-GDS BPM, Hajipur Belaur B.O in account with Barh S.O in Nalanda Postal Division.

.....Applicant.

By Advocate : Shri S. K. Singh

Vs.

1. The Union of India through the Director General, Department of Posts, Government of India, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, Bihar circle, Patna.
3. The Director of Postal Services, Patna Region, Patna.
4. The Senior Superintendent of Post Offices, Patna Division, Patna.
5. The Superintendent of Post Offices, Nalanda Division, Nalanda.
6. The Asstt. Superintendent of Post Offices, Barh Sub- Division, Barh.

.....Respondents

By Advocate : Shri S.C. Jha

O R D E R

Naresh Gupta, M [A] :- This OA has been filed by one Ram Pukar Singh for directing the respondents to treat the period of suspension as on duty and payment of wages for this period. The facts of the case as presented in the OA are as follows :

2. The applicant was initially joined as EDBPM [GDSBPM] , Hajipur Belaur B.O in January, 1969. While serving in the said post, he was served with a put-off duty [suspension] order by the then Sub-Divisional Inspector of Post Offices vide his memo dated 18.1.1972. The Sub-divisional Inspector of Post Offices lodged a complaint on 12.02.1973 before the Barh Police Station in regard to three V.P articles, alleging therein that the applicant had committed forgery and temporary misappropriation of Government money. This case in No. GR 888 of 1975 / TR 798 of 1986 tried in the Court of Judicial Magistrate 1st Class Barh [District – Patna] ended in acquittal of the applicant vide judgment dated 19.08.1986 [Annexure A/1 of OA].

3. On acquittal, the applicant approached respondent No. 5, i.e., the

Superintendent of Post Offices, Nalanda Division with application dated 22.10.1986 and thereafter the higher authorities for his reinstatement with all back wages, but there was no response to his representations. The applicant was not paid, during the period of suspension [put-off duty], any subsistence allowance even after his acquittal by the Court, necessitating the filing of OA No. 428 of 1991 in this Tribunal wherein the Tribunal passed an order on 26.5.1992 directing the respondents to either revoke the order of put off duty [suspension] of the applicant and reinstate him within a period of three months from the date of receipt of a copy of the order or, if they so liked, initiate departmental proceedings against him during the said period. Following the order of the Tribunal, the applicant was asked vide letter dated 20.02.1992 as to whether he was willing to join any other post except the post of GDSBPM Hajipur Belaur BO to which the applicant submitted that as he working as GDS BPM at Hajipur Belaur BO from which post he was suspended, he should be reinstated in the said post and posted in any other post. The Superintendent of Post Offices, Nalanda Division [respondent No. 5] ordered the applicant to be put on duty as GDSMD Karjan BO [Annexure A/3 of OA]. Following several representations made to the higher authorities, the applicant was ordered to join as GDSBPM, Haipur Belaur BO vide order dated 16.04.1993 [Annexure A/4 of OA]. He joined there on 05.05.1993.

4. The applicant superannuated on 17.11.2002 and after his superannuation, the period of suspension from 18.01.1972 to 04.05.1993 was considered as qualifying service, and he was paid ex-gratia gratuity and also severance allowance [Annexure A/5 & A/6 of OA], but he has not been paid the wages for this period. The applicant has prayed for payment of wages for the period of suspension from 18.01.1972 to 04.05.1993 with interest contending that the period of put off duty had been counted for qualifying service, and he was paid severance allowance and ex-gratia gratuity, and further that he was not even paid subsistence allowance for this period.

5. While the above facts are not disputed, the respondents in their written statement have indicated that the applicant was placed on put off duty in

view of his involvement in a fraud case and during this period, one Jagdeo Singh was appointed as GDSBPM, Hajipur Belaur and on the latter's death, one Ram Suhavan Singh was appointed [with effect from 11.09.1975]. Following the decision of this Tribunal in OA No. 428 of 1991 [order dated 26.05.1992] , the applicant was reinstated relieving Ram Suhavan Singh, and thus the applicant remained under put off duty from 18.01.1972 to 04.05.1993. [He retired on 18.11.2002].

6. The period of put off duty was condoned only for the purpose of payment of ex gratia amount and severance amount vide letter of Chief Post Master General, Bihar Circle, Patna dated 19.08.2004 [Annexure R/2 of written statement] following which the whole amount of gratuity and severance amount was paid to the applicant. There was no provision then for payment of subsistence allowance in case of ED officials. The period of put off duty had not been treated as duty and full wages could not be paid for this period [on the principle of "no work no pay"].

7. Heard the learned counsel for the applicant and the respondents on 12.10.2011 and perused the entire records. It is seen that in OA 428 of 1991, the respondents had submitted that due to the fraudulent acts of the applicant, his integrity was not above board, and the department was contemplating disciplinary proceedings against him notwithstanding his acquittal in the criminal case. The delay in initiating departmental proceedings against the applicant was attributed to the fact that the relevant documents submitted in the Court could not be obtained despite several attempts.

8. In as much as the applicant has retired from service, it would serve no purpose to ascertain whether the records could be obtained from the Court and, if received in time, whether the department did not find any case for, or dropped the idea of, pursuing departmental action against the applicant. The Hon'ble Apex Court has had occasion to consider in a number of cases the question of payment of back wages etc., when an employee who was kept under suspension due to criminal proceedings or dismissed due to conviction is acquitted in appeal and consequently reinstated. It has been held that "the

department is not obliged to pay back wages for the period on reinstatement, unless the department had taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging his duties" [Corp. Mithiless @ Mithiless Singh vs. Union of India & Ors in CA Nos. 9601 – 9602 of 2010 decided on 9th November, 2010, in which a reference has been made to decision of the Apex Court in a number of earlier caes, viz., [1] Ranchhodji Chaturji Thapore vs. Superintending Engineer, Gujrat Electricity Board, Himmatnagar [Gujarat] and Anr., [1996] 11 SCC page 603, [2] Union of India & Ors vs. Jaipal singh, [2004] 1 SCC p. 121 and [3] Baldev Singh vs. Union of India & Ors , [2005 6SCC p. 747].

9. It is seen that the applicant has been paid severance amount for the period of put off duty from 18.01.1972 to 04.05.1993 [in lieu of subsistence allowance] in accordance with the rules of the Department [Annexure R/1A in W.S], and the authorities have condoned already the period of put off duty for the purpose of payment of ex-gratia gratuity / severance amount [Annexure R/1 in W.S].

10. In the light of the position set out in para 8 above, it is not possible to accept the prayer of the applicant for payment of back wages or subsistence allowance for the period he was on put off duty or provide any other relief. The OA is accordingly dismissed. No order as to costs.

Naresh Gupta
[Naresh Gupta] M [A]

Syed Md. Mahfooz Alam
[Syed Md. Mahfooz Alam] M [J]

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