

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOS.741/1996

Dated: 18.4.2001.

Smt. Sharda Gajanan Damankar.

Applicants.

Shri C.B.Kale.

Advocate for

Versus.

Union of India & Anr.

Respondent(s)

Shri S.S.Karkera for Shri P.M.
Pradhan.

Advocate for
Respondent(s)

CORAM :

Hon'ble Member (A), Shri B.N.Bahadur,
Hon'ble Member (J), Shri S.L.Jain.

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to *x*
other Benches of the Tribunal?
- (3) Library. *x*



(B.N. BAHADUR)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.741/1996.

Wednesday, this the 18th day of April, 2001.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

Smt.Sharda Gajanan Damankar,
E.D.B.P.M.,
Karanja Taluka, Uran,
District Raigad.
(By Advocate Shri C.B.Kale)

...Applicant.

Vs.

1. Shri K.Vasudevan,
Superintendent,
Regional Stamp Depot,
Ballard Estate,
Bombay - 400 001.
2. The Superintendent of Post Offices,
New Bombay Division, At Panvel,
Panvel - 410 206.
3. The Director of Postal Services,
Bombay Region,
Bombay - 400 001.
4. Union of India, through the
Director General,
Department of Posts,
New Delhi - 110 001.

...Respondents.

(By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan).

: O R D E R (ORAL) :

{Per Shri B.N.Bahadur, Member (A)}

This is an application made by Smt. G.D.Dhamankar seeking the relief from this Tribunal for a direction to Respondents to make full payment of pay and allowances of Rs.23,009/- to the Applicant for the period that she was irregularly put off duty i.e. 22.3.1993 to 1.5.1995. Another relief sought is for a direction to pay to Applicant ^{the} House Rent for the period of seven months from 23.3.1994 at the rate of

...2.


B.N.B.

Rs.500/- p.m. Interest on the above amounts is also sought.

2. The facts of the case, as relevant, are that the applicant who had been working for 14 years as Extra Department Branch Post Master (EDBPM) at Karanja, Taluk Uran, District Raigad, had been put off duty w.e.f. 22.3.1993 and that after an inquiry which lasted for long time was finally acquitted vide order dt. 1.5.1995 (page 27 of the paper book). The grievance of the applicant is that for the intervening period from 22.3.1993 to the date of her reinstatement on 1.5.1995 she has not been provided with any payments. It is her stand that she is entitled to pay and allowances since she has been reinstated by the Respondents as per the aforesaid order dt. 1.5.1995. Details of her contentions and the Rule position have been made in the application.

3. The Respondents have filed a written statement in reply, in which the claim of the Applicant is resisted and it is stated that the applicant is not entitled to any pay and allowance for the period of put off duty in view of a Full Bench decision of this Tribunal in the matter of Surendranatha Mehra. Further, a stand is taken that the applicant had been put off duty due to misdemeanor and the incident which led to her being put off duty is described. In fact, the main stand of the Respondents have come in the arguments made before us by the Learned Counsel, and we shall come to these ahead.

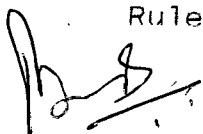
4. We have seen all the papers in this case and have heard Learned Counsels on both sides. The Learned Counsel for the applicant Shri C.B.Kale narrated the facts of the case, and took defence from three documents/judgments. The first one is a Judgment of the Supreme Court in the case of Ministry of



Communications Vs. S.Gundu Achary. The second one is a matter decided by the Cuttack Bench of this Tribunal in Smt. Nirupama Rout Vs. Union of India & Ors. decided on 4.8.2000 (2000 (1) ATJ 139). The third document is a copy of a letter 13.1.1997 from the Department of Posts, New Delhi addressed to all Post Masters General etc. In fact, it relates to direction flowing from the Supreme Court Judgment in the matter of S. Gundu Achary, referred to above. These case laws/Government Orders were relied upon for arguments by the Learned Counsel for Respondents also and the interpretation taken by him was that as per Note-III on Item - IX of the aforesaid instructions dt. 13.1.1997, (the instructions flowing out of the Supreme Court Judgment), in fact, went against the applicant.

5. We have taken a total view of the arguments raised by Learned Counsels on both sides, with reference to these three documents before us. In fact, the decision in this case will come from a perusal of these documents. We come first to the orders of the Government dt. 13.1.1997 where it is stated that the Supreme Court Judgment dt. 10.7.1995 on the Judgment of the CAT, Bangalore Bench had reached the conclusion that the Rule No.93 of the Extra Departmental Agents (Conduct & Service) Rules, were violative of Constitution of India. It is also stated that the Hon'ble Supreme Court after leaving open to Government of India to re-examine the matter for a new set of Rules substituting Rule 9(3) had stated as follows :

"It would be open to the Union of India to examine each case to reach the conclusion as to whether the individual is entitled to the salary for the period when he was kept off duty under Rule 9 (1) of the Rules. In the event of any of



the respondents being exonerated/reinstated in the disciplinary proceedings, the salary for the off duty period can only be denied to him after affording him an opportunity and by giving cogent reasons."

This, in fact, was an important part relied upon by the Learned Counsel Shri Kale who stated that in applicant's case there was no show cause notice or any opportunity provided as was specifically laid down by the Supreme Court, in case a decision was to be taken that the salary for the off duty period was to be denied to her.

6. The Learned Counsel Shri Kale, then sought to draw our attention to the ratio of the decision made by the Cuttack Bench dt. 4.8.2000, where he pleaded that the issue in the present case has been fully discussed, with reference to the Judgment of the Supreme Court and also with reference to the Rules made by the Respondents thereafter. We have carefully gone through this, and find that paragraph 8 is relevant in this connection. We reproduce para 8 below:

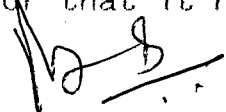
"The spirit behind the circular in not counting the put off duty period to the length of service is that during the put off duty period no allowance was being paid for that time under Rule 9(3) of the Rules which lay down that an employee, shall not be entitled to any allowance for the period for which he is kept off duty under this rules. But this Rule - 9(3) has been struck down by the Bangalore Bench of this CAT on 15.7.1988 in OA No.553 to 556/1987 (Peter J.D.Souza and others) as violative of Article 14 and 16 of the Constitution of India. This decision of the Bangalore Bench was confirmed by the Apex Court in various SLPs including SLP filed by the Government challenging the Bangalore Bench decision. This decision of the Apex Court was pronounced on 10.7.1995. In both the Bangalore Bench as well as Apex Court, while striking down Rule 9(3) directed the Govt. of India to re-examine the matter and to frame a new set of rule substituting Rule 9(3). The Apex Court further directed that it would be open to

the Union of India to examine each case to reach a conclusion as to whether individual is entitled to salary for the period he was kept off duty. In the event of any of the Respondents being exonerated and reinstated the salary for the off duty period can only be denied to him after affording him an opportunity and by giving cogent reasons. It is clear from this judgment that Rule 9(3) was struck down as early as in 1988 and left the matter to the Government to decide the quantum of allowances to be paid to an ED Agent under put off duty and under what circumstances. There was a further direction to the Govt. to examine each case to reach conclusion as to whether the individual is entitled to salary for the period he was kept off duty and in the event of exoneration from the charges in the disciplinary proceedings and consequent reinstatement the salary for the off duty period can only be denied to the concerned ED Agent after affording him an opportunity and by giving cogent reason. In other words, under such circumstances, an ED Agent is entitled to salary for off duty period.

It is, therefore, clear that atleast from the day the Bangalore Bench struck down Rule 9(3) in the year 1988, an ED Agent under put off duty on being exonerated from the charges and on reinstatement will be entitled to salary for the put off duty period unless the Department after giving an opportunity of hearing to the ED Agent denies such payment of salary with cogent reasons. While under put off duty, such ED Agent would be entitled to payment of allowances to be determined by the Government. Thus, there is no legal justification for denying the put off duty period as period of service for the purpose of determining the eligibility of an ED Agent to receive ex-gratia payment."

The above ratio is certainly applicable in this case and we agree with the Cuttack Bench.

7. We have also carefully seen the Note-III under the caption put off duty in Government Circular/orders dt. 13.1.1997 referred to by the Learned Counsel for the Respondents. We are not at all convinced that this is relevant to the case before us or that it helps the case of the Respondents.



8. In our view, the matter has been amply clarified in the aforesaid Judgment of the Cuttack Bench which comes after the Supreme Court Judgment and the issue of Government instructions. The applicant certainly has a case in the background of this ratio, and in not even bothering to giving applicant any show cause notice and take a decision, the applicant has been caused undue hardship. Also it will serve no purpose now asking a show cause notice to be provided as it would be an empty formality since both sides have now been provided opportunity to state their respective cases. Under the circumstances, the applicant certainly deserves relief on this count.

9. With regard to the other prayer made for the House Rent, we will not go into this, as this is a matter that should be agitated between the applicant and the respondents in any other appropriate forum as per law. This Tribunal cannot go into the matter.

10. In the consequence, this OA is allowed to the extent and in terms of the following orders:

(1) The Applicant shall be paid full pay and allowances as per Rules for the period during which she was put off from duty i.e. during the period 23.3.1993 to 30.4.1995.

(2) The Prayer for House Rent has not been gone into as discussed in para 9 above.

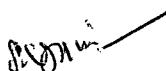
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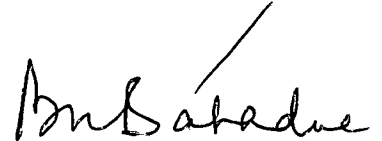
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(3) The above order shall be implemented within a period of three months from the date of receipt of copy of this order.

(4) There will be no order as to costs.


(S.L.JAIN)

MEMBER (J)


(B.N.BAHADUR)

MEMBER (A)

B.