CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO : 567/99

WEDNESDAY the 15th day of JANUARY 2003

CORAM: Hon'ble Shri B.N. Bahadur - Member (A)

Hon'ble Shri S.L. Jain - Member (J)

Tukaram Deorao Ghodke
Residing at G.S. Patel Chawl,
Shivajinagar Kurar Village,
Malad (East), Mumbai. ...Applicant.

By Advocate Shri S.P. Kulkarni.

V/s

1. Union of India through
Senior Superintendent of
Post Offices, North West
Division, Borivli Post Office
Mumbai.

2. Director of Postal Services(MR)
Mumbai Region,
Office of the Chief Postmaster
General, Maharashtra Circle,
Old G.P.O. Building, Fort,
Mumbai.

3. Chief Postmaster General
Maharashtra Circle,
Old G.P.O. Building,
Fort, Near Central Railway
Mumbai. ...Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

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

The applicant in this case has come up before the Tribunal seeking prayers enumerated in detail in para 8 of the OA which reads as below:

(a) This Hon'ble Tribunal be pleased to call for the records of the case for perusal of this Hon'ble Tribunal.

(b) Hold and declare that the Order (s) issued by Respondents on 15.4.1997 (A-3), dated 12.6.1998 (A-2) and 2.2.1999 (A-1) are arbitrary and illegal being founded on misconceptions and misconstruing of provisions of Rules as also being illegal and arbitrary.

(c) The orders and decisions dated 15.4.1997 (Show Cause) 12.4.1998 (decision) and 2.2.1999 (Rejection of Appeal) be quashed and set aside.

(d) Respondents be directed to pass an appropriate Order as per FR - 54 B within one month.

(e) Direct Respondents to treat the period of Suspension as "Duty" for all purposes and grant all consequential benefits flowing from such order within two (2) months.

(f) Direct Respondents to substantiate para 5 & 7 of Appellate Order dated 2.2.1999 with rules or the law.

(g) Direct Respondents to pass 'Order' in the matter strictly within the confines of FR - 54 B as well as on the basis of Case - law.

(h) Direct Respondents to pay interest at 12% on the payment of Pay and Allowances illegally denied.

(i) Direct Respondents to pay, Pay and Allowances during 7.11.1997 to 18.12.1997 (i.e. the period of Compulsory Wait with the interest at the rate of 12% till the date of payment.

(j) Hold and declare no proper order for treating the period as duty is passed by Respondents.

(k) Hold para 2 and 3 of letter dated 2.2.1999 as arbitrary.

(l) Any other and such further order / relief as may be deemed fit and proper by this Hon'ble Tribunal.

(m) Cost of Rs. 7000/- if awarded be paid to the applicant.

2. The applicant was prosecuted under Section 302 of IPC and came to be placed under deemed suspension with effect from 3.12.1994. He was acquitted vide order dated 5.11.1997 (Exhibit A - 4) and was reinstated with effect from 18.12.1997. The grievance of the applicant as brought out in the OA, and as argued by Shri S.P. Kulkarni learned counsel for the applicant, can be divided into two broad parts. The first part is that order made treating his period of suspension is wrong and that

this period of suspension should be treated as duty for all purposes and full duty pay provided. The second part is that even assuming that the period cannot be treated as duty for all purposes, then the period of suspension must be treated as duty for other purposes. In this regard Shri Kulkarni pointed out the notice issued dated 15.4.1997 (Exhibit A -3) and the order dated 12.6.1998 (Exhibit A -2). Shri Kulkarni made the point that it is clear from the order of the Court of Additional Session Judge Greater Mumbai (Exhibit A -4) that the statement of the witnesses were assailed. However the fact is that acquittal is honourable, though such a word (honourable) is not used. It must follow from the reading of the full order that it was a clear acquittal.

3. It was argued on behalf of applicant that the order of appellate authority inflicted a higher punishment compared to order of Disciplinary Authority. The averments in the relevant part of OA were depended upon in agreement.

4. The learned counsel for the respondents, Shri V.S. Masurkar resisted the claim of the applicant stating that the orders made vide Exhibit A1, A2 and A3 are within the law and should be upheld by the Tribunal. All dues have been paid to the applicant and the regularisation of the period of suspension is in accordance with FR 54. The point about acquittal of the applicant in view of the witnesses in the case turning hostile made in the written reply was reiterated and it was stated that in para 6 and 7 of the order of the judgement the reasons for acquittal of applicant are clearly reflected. Hence this acquittal cannnot be considered either as honourable or ~~full~~.

total. The learned counsel sought to take support from the ratio of the case of State of Andhra Pradesh V/s K Allabakash (2000) 10 SCC 177 decided by the Hon'ble Apex Court. Support also was sought from the case law in the matter of Ram Kumar Yadav Vs Union of India and others reported in 1994-96 AT Full Bench Judgements and 1994 SCC (L & S) 594 in the case of Managaement of Reserve Bank of India, New Delhi V/s Bhopal Singh Panchal.

5. We have seen all papers in the case and considered the arguments of both sides and gone through the case law.

6. On the first prayer of applicant for declaration for treating the entire period of suspension as duty for all purposes, we need not go into detail since valuable guidance is available from the onerable reading of the three judgements of the Hon'ble Supreme Court cited. The judgements deals with all the points raised and it is clear that the period of suspension cannot be treated as duty for all purposes.

7. Now, while the period of suspension can be treated as one where pay and allowances will be equivalent to the subsistence allowance provided from time to time, we certainly note the glaring fault in the operative part of the order dated 12.6.1998. This part is as below:

> Hence I hereby order that the period of suspension of Shri T.D. Ghodke, PA, Motilal Nagar (then PA Kandivli West) from 3.12.94 to 18.12.97 be treated as 'Suspension' only for all purposes and that he is eligible for pay and allowances for the above period at par with subsistence allowance already granted to him.

The notice issued by the same authority vide order dated 15.4.1997 (Annexure A -3). The last para of this however, reads as below:

> Shri T.D. Ghodke, PA is hereby directed to submit his written representation if any on the above proposal within 15 days from the receipt of this notice. On his failure to represent the suspension period will be regularised as proposed.

8. The substantial point is that while the pay and allowances during the period 3.12.94 to 18.12.97 can be provided at par with subsistence allowance as already granted, the same period will have to be treated as duty for all other purposes, like retiral benefits, seniority or any other purposes (except payment of dues for the period as already discussed). In the final order, the show cause notice cannot be exceeded.

9. Orders on the above line will need to be made afresh and give all benefits due as a consequence. For this purpose it will be desirable and justifiable to quash both orders namely the order dated 12.6.1998 and 2.2.1999. Hence the following order:

O R D E R

The order of Appellate Authority dated 2.2.1999 (Annexure A - 1), order dated 12.6.1998 (Annexure A - 2) are hereby quashed and set aside.

BS

The respondents are directed to pass a fresh order to the effect that the applicant will be eligible for pay and allowances for the period 3.12.1994 to 18.12.1997 at par with subsistence allowance. The above period of suspension shall be treated as duty for all purposes under the Rules. Order to this effect shall be issued by the respondents within six weeks from the date of receipt of copy of the order.

(S.L. Jain)
Member(J)

(B.N. Bahadaur)
Member(A)

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