

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 394/91
T.A No.

198

DATE OF DECISION 23-10-1991

Ashok Vithal Pawar Petitioner

Mr.A.L.Kasturey Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr.V.M.Bendre Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. A.Y.Priolkar, Member(A)

The Hon'ble Mr. N.Dharmadan, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ²/₁₀₀
2. To be referred to the Reporter or not ? ¹⁰/₁₀₀
3. Whether their Lordships wish to see the fair copy of the Judgement ? ¹⁰/₁₀₀
4. Whether in needs to be circulated to other Benches of the Tribunal ? ¹⁰/₁₀₀

(N. DHARMADAN)

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.394/91

Ashok Vithal Pawar,
Extra Departmental Branch Post Master,
of Bamrud(Raniche),
Now Postman Post office Jalgaon,
at & Post Dist. Jalgaon 425 001. .. Applicant

vs.

1. The Supdt. of Post Offices,
Jalgaon Division, Jalgaon.
2. The Director of Postal Services,
Aurangabad Region,
Aurangabad.
3. The Union of India
through
The Chief Post Master,
Maharashtra Circle,
Bombay - 400 001. .. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Hon'ble Shri N.Dharmadan, Member(J)

Appearances:

1. Mr.A.L.Kasturey
Advocate for the
Applicant.
2. Mr.V.M.Bendre &
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per N.Dharmadan, Member(J))

Date: 23-10-1991

The applicant against whom a disciplinary proceedings ²were conducted and put off duty was passed with effect from 22-11-85 was found to be not guilty of the charges and consequently he was reinstated in service on 5-12-1988 with a warning. After the reinstatement Annexure 'E' order dt. 21-3-1989 was passed. The operative ⁴portion of the order reads as under:

"The period during which Shri A.V. Pawar, EDBPM Bamrud(Raniche) B.O. remained as "Put Off" from duties from 22-11-85 A/N to 5-12-88 A/N for contemplated disciplinary proceedings is hereby treated as "Leave Without Allowances" and the aforesaid period is added to the

actual duty, and he is not entitled to any allowances during the aforesaid period under provision of D.G.instructions (2) and (4) of Rule 9 of CCS(EDA'S Conduct and Service)Rules 1964."

The applicant is challenging this order and claiming full wages for the period he was put off duty from 22-11-85 to 5-12-1988. He is also supporting his claim from Annexure 'K' judgment of the CAT Cuttack Bench in O.A.344/1990.

2. When the matter came up for admission we issued notice before admission. Accordingly the learned counsel appearing on behalf of the respondents appeared before us today.

3. We have heard the argument of both the sides. The only question that arises for consideration is whether on the facts and circumstances of the case the applicant is entitled to full wages for the period he was put off duty from 22-11-85 to 5-12-88. It is an admitted fact that the order putting the applicant off duty was passed in contemplation of a disciplinary proceeding. Accordingly an enquiry was also ~~contemplated~~ ^{enquired}. But in the inquiry the applicant was not punished, ~~but~~ ^{was} ~~After~~ ^{After} the completion of the inquiry the applicant was not punished ~~after~~ ^{after} finding ~~him~~ ^{him} guilty of the charges levelled against him. It is seen that there was only a warning and thereafter the impugned order at Annexure 'E' has been passed. In the impugned order nothing is mentioned about the punishment. But it is clearly stated that on completion of the departmental proceedings under Rule 8 of the EDA Conduct Rules, 1964 the applicant was reinstated with effect from 5-12-88. By the impugned order the period of put off was treated as "Leave without allowances".

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4. The decision of the respondents in Annexure 'E' appears to be not in accordance with law. The argument of the learned counsel for the applicant is that since there is no punishment after the enquiry he is entitled to be relegated to the same position which ^{he is} was occupying on 22-11-85 when he was placed on put off duty.

5. We have gone through the judgment in O.A.344/90 of the Cuttack Bench, ^{A is} where more or less ~~a~~ similar question ~~is~~ came up for consideration before that Bench. Applying the analogy of the provisions of the CCS(CCA) Rules the Tribunal in that case held that "if only a minor penalty is imposed under CCS(CCA) Rules, the employee is entitled to full wages as stated above. If ~~the~~ an employee is let off with the warning after a proceeding under the CCS(CCA) Rules obviously he is to be paid full wages."

6. There is no provision in the EDA Conduct rules for giving full wages. But however, the principles under the CCS(CCA) Rules will apply in a case like this by incorporating the analogy of ^{enlarged version. 2} the provisions. In a case where there is no provision it is invariably necessary that the provisions in any statute having analogous situation can be imported for filling the vacuum. It is ^{by 4} applying this principle ^{with 4} the CAT, Cuttack Bench has decided to grant full wages to the delinquent employee who has been let off with a warning.

7. The position is identical in this case and we follow the judgment in ^{this} case. Accordingly we set aside the Annexure 'E' and direct the respondents to pay the applicant full wages and other service benefits for the

period from 22-11-1985 to 5-12-1988 as if there
there^{is} no put off duty. The application is
disposed of as above. There will be no order as to
costs.

N. Dharmadan
23.4.91.

(N.DHARMADAN)
Member(J)

M.Y. Priolkar

(M.Y.PRIOLKAR)
Member(A)

MD