

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1219/92

Transfer Application No.

Date of Decision : 24/5/92

Shri M.B.Kshirasagar

Petitioner

Shri R.C.Kotiankar

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

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

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

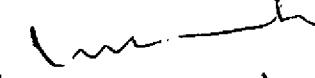
The Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?


(P.P.SRIVASTAVA)

MEMBER (A)


(M.S.DESHPANDE)

VICE CHAIRMAN

(6)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA. NO. 1219/92

Shri Muralidhar Baburao Kshirasagar ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri R.C.Kotiankar
Advocate
for the Applicant

Shri S.S.Karkera
for Shri P.M.Pradhan
Advocate
for the Respondents

JUDGEMENT

Dated: 26.5.1995

(PER: P.P.Srivastava, Member (A))

The applicant was working as a Branch Post Master (ED) at Kumthe Post Office. A case of payment of money order amounting to Rs.120/- payable to Smt. Jawale was enquired into. The applicant was put off duty on 2.5.1987 and thereafter his services were terminated on 20.7.1987. Simultaneously a put off duty order which was issued was revoked by an order also dated 20.7.1987. The applicant challenged the termination order first in the Civil Court wherein the Civil Court held that the Suit was without jurisdiction and thereafter the applicant filed an OA. in this Tribunal No. 800/89. The termination order dated 20.7.1987 was quashed by the order of the Tribunal passed on 21.8.1991. However, the Tribunal made it clear that it is open to the respondents to hold an inquiry against the applicant in accordance with the rules. The applicant was reinstated on 25.5.1992. The applicant had filed contempt petition which was discharged on 28.9.1992 with the observation



that the respondents should consider the case of the applicant with regard to the payment of back wages and pass a speaking order.¹ The respondents had passed an order dated 19.8.1992 which is placed at page 19 of the OA, giving the reasons for non-payment of back wages for the period from 20.7.1987 to 25.5.1992. The respondents have brought out that the applicant was put off duty vide their order dated 24.1.1992 which is placed at page 17 of the OA, with effect from the date of his termination, i.e. 20.7.1987. Aggrieved by the order of 19.8.1992 the applicant has filed this OA, and has sought the relief that order dated 24.1.1992 placing the applicant under put off duty w.e.f. 20.7.1987 be set aside and the applicant be treated as on duty w.e.f. 20.7.1987 for all purposes and the applicant be paid salary and other dues for the period from the date of his termination to the date of his reinstatement.

learned counsel of
2. The main argument of the applicant is that once the order of termination has been quashed by the Tribunal, the period between the date of termination to the date of re-instatement should be treated as duty and that there is no provision under rules for passing an order treating the applicant as put off duty retrospectively since the respondents had revoked the put off duty orders passed on 2.5.1987 by their order dated 20.7.1987 and then issued the termination order dated 20.7.1987, therefore, the applicant was not on put off duty at the time of termination of his services.

learned counsel for
The applicant has also argued that once the penalty order is set aside, the respondents would have to treat the period during termination as if the penalty order did not exist and therefore the applicant would be treated as on duty. The learned counsel for the applicant has further argued that Rule 9(3) of EDA (Conduct & Service) Rules, 1964 have been struck down by Bangalore Bench of the Tribunal and therefore the applicant is entitled to payment of allowances for the put off duty.



3. The counsel for the applicant, however, very fairly stated that the said order of the Tribunal has been challenged in the Supreme Court and stayed by the Supreme Court pending disposal of the appeal in the Supreme Court.

4. The counsel for the respondents has brought to our notice the Full Bench judgement on this issue in OA.No. 25/92 decided on 22.2.1994, Surendra Nath Bera vs. Union of India & Ors. The Full Bench has decided as under :-

"An E.D.A. will not be entitled to any allowance for the period for which he is kept off duty under rule 9 of P&T E.D.A (Conduct) Rules - Further he is not entitled to payment of allowance for the period of kept off duty even if he is subsequently exonerated in the complaint or allegation of misconduct levelled against him. Rule 9 (3) of the P&T E.D.A. (Conduct) Rules is not analogous to Rule 10 of CCS(CCA) Rules."

5. In this case, there is no dispute about the facts and the question which is to be decided in this OA. is if the action of the respondents in placing the applicant in put off duty by their order dated 24.1.1992 from the date of termination, i.e. 20.7.1987 till the date of reinstatement would be valid within the frame work of rules and law. Since the Full Bench held that the payment of allowance for the period an employee is kept off duty would not depend upon the outcome of complaint or allegation of misconduct levelled against him, we are of the view that the respondents were within their rights to pass an order placing the applicant on put off duty from the date of termination to the date of reinstatement. The applicant is not entitled to any payment for this period. We see no infirmity in the order passed by the respondents dated 24.1.1992 at page 17 of the OA. The OA. is dismissed as being devoid of any merit. There will be no order as to costs.

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN