

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.537/1995

Date of order: 25/12/95

Jamil Ahmed Ansari, S/o Sh.Nazar Mohd, R/o V & Post
Indergarh, Bundi, at present working as EDMC at Vill.
Mohanpur, Distt.Bundi.

...Applicant.

Vs.

1. Union of India through Secretary to G/I, Mini.of
Communication, Dept.of Posts, Dak Bhawan, New Delhi.
2. Asstt.Director General(Trg.) Deptt.of Posts, Mini. of
Communication, Dept.of Posts, Dak Bhawan, New Delhi.
3. Superintendent of Post Offices, Tonk Division, Tonk.

...Respondents.

Mr.J.K.Kaushik - Counsel for applicant

Mr Hemant Gupta, Proxy of Mr.M.Rafiq- Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

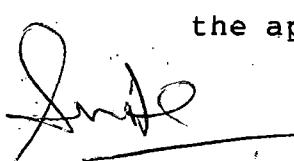
Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

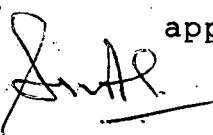
In this O.A under Sec.19 of the Administrative
Tribunals Act, 1985, the applicant claims the following
reliefs:.

- i) to declare the impugned order/instruction dated 24.4.94
(Annx.A1) as illegal and unconstitutional and the same
may be struck down;
- ii) to quash and set aside the order dated 11.11.94
(Annx.A2) and direct the respondents to treat the
period from the date of removal to the date of
reinstatement, as spent on duty for all purposes and to
direct the respondents to make payment of pay and
allowances for the entire period with interest.

2. Facts of the case as stated by the applicant are that
the applicant was initially appointed as EDMC on 4.7.75. It is



stated that the applicant proceeded on leave due to serious illness of his father and leave application was sent through one Shri Ramesh. The applicant was put off duty from 10.9.88, On 5.1.89, a charge sheet was issued to the applicant for the allegation of unauthorised absence. The applicant continued to remain under put off duty in spite of his repeated request for revocation of his put off duty. An enquiry was conducted and the applicant was removed from service vide order dated 29.3.90 and the appeal filed by the applicant was also rejected vide order dated 13.11.90. It is stated that the applicant filed O.A No.878/92 which was disposed of vide order dated 13.4.94. In pursuance of the order of the Tribunal, the appellate authority reconsidered the appeal and cancelled the order of removal vide order dated 7.7.94 and in pursuance of this order, the applicant was taken on duty on 12.7.94. It is stated that the respondents vide its order dated 11.11.94, sanctioned ex-gratia payment of Rs.500/- for the period of put off duty but nothing was paid for the period from 29.3.90 to 11.7.94 the period which the applicant remained out of job due to removal. It is stated that the applicant was fully exonerated of the charges and his put off duty was wholly unjustified, therefore, the whole period from put off duty to the date of removal and from the date of removal to the date of reinstatement ought to have been treated as spent on duty for all purposes and the applicant ought to have been paid full pay and allowances for this period. It is stated that denial of pay and allowances to the applicant is illegal, arbitrary and not sustainable in law and there was no justification to pay exgratia for the whole unjustified period as no delay can be attributed to the applicant in deciding the departmental proceedings against the applicant. Therefore, the applicant cannot be penalised for the wrong action of the



Article 14 of the Constitution of India.

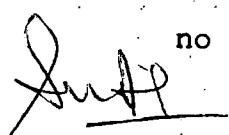
(2) We leave it open to the Govt of India to re-examine the matter and if it so chooses frame a new set of Rules substituting Rule 9(3)

(3) It would be open to the Union of India to examine such 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 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.

(4) We direct the appellants concerned to afford reasonable opportunity to the respondents in the disciplinary proceedings which are pending or in progress against any of them. This may be done as directed by the Tribunal in J.D'sa case.

7. In pursuance of the order of the Bangalore Bench which was affirmed by the Apex Court with certain directions, the Govt of India, vide its letter dated 23.4.94, issued instructions for payment of compensation/exgratia to ED Agents who are placed under put off duty pending disciplinary proceedings, till exoneration. In view of the aforesaid instructions, it appears that the impugned order dated 11.11.94 was issued, therefore, we do not find any infirmity/ illegality in the orders at Anxx.A1 and Anxx.A2.

8. As regards regularisation and pay and allowances for the period of put off duty and the period of removal till reinstatement in service is concerned, it is an undisputed fact that the competent authority did not pass any speaking order. Normal rule in regard to payment of salary is 'no work no pay', therefore, the Govt servant has no vested right to



claim salary for the period he remained under suspension/ without any work after removal, etc. His entitlement to salary and allowances can be regulated by laws/rules and regulations. Fundamental Rule 54(B) is an authority for the same. The relevant clauses of fundamental Rule 54(B) are reproduced as follows:

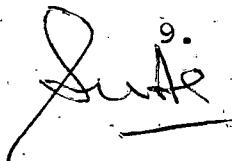
"3. Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified the government servant shall subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended.."

"(5) In cases other than those falling under sub-rules (2) and (3) the govt servant shall subject to the provisions of sub-rule 8 & 9 be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the govt servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice."

"(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53".

9. The above clauses do not contemplate automatic payment



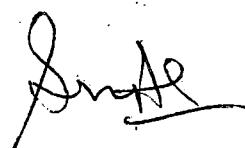
of full salary and allowances during the suspension period and thereafter an examination of the matter is required by the competent authority. The power of the competent authority is also not absolute. Therefore, according to the aforesaid rules the competent authority has to examine the claim of the applicant for entitlement of his pay and allowances and to regularise the period as to whether it has to be treated as spent on duty or not. Admittedly, the competent authority did not pass any order to this effect. Therefore, the competent authority has to pass such orders as required under the rules:

- (i) as to whether the period of put off duty w.e.f. 10.9.88 to 28.3.90 and the period of removal from 29.3.90 to the date of reinstatement on 11.7.94 is to be treated as spent on duty;
- ii) and whether the applicant is entitled to pay and allowances for the period of put off duty w.e.f. 10.9.88 to 28.3.90 and the period of removal from 29.3.90 to the date of reinstatement on 11.7.94.

10. We, therefore, direct the respondents to determine within a period of 3 months from the date of receipt of a copy of this order by a reasoned and speaking order:

- (i) as to whether the period of put off duty w.e.f. 10.9.88 to 28.3.90 and the period of removal from 29.3.90 to the date of reinstatement on 11.7.94 is to be treated as spent on duty;
- ii) and whether the applicant is entitled to pay and allowances for the period of put off duty w.e.f. 10.9.88 to 28.3.90 and the period of removal from 29.3.90 to the date of reinstatement on 11.7.94,

In case, the applicant has any grievance against the order passed by the respondents, the applicant shall be at liberty to approach the appropriate forum, if so advised.



11. With the above directions, the O.A is disposed of with no order as to costs.

Agp
(A.P.Nagrath)

Member (A).

S.K. Agarwal
(S.K. Agarwal)
Member (J).