

CIRCUIT COURT SITTING HELD AT INDORE

ORIGINAL APPLICATION NO. 959 OF 2005

Indore, this the 20th day of April, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri K.B.S. Rajan, Judicial Member

Balmukund Borde,
S/o. late Shri Lalchand Borde,
aged 58 years,
PA (Reverted Postman),
r/o. H. No. 620/B, Nehrunagar,
Indore 452 008.

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Applicant

(By Advocate – Shri D.M. Kulkarni)

V e r s u s

1. Union of India, through
Member (Personal), Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi – 110 001.
2. Director, Postal Services,
O/o. Post Master General,
Indore Region, Indore.
3. Senior Superintendent of
Post Offices, Indore City Division,
Indore.

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Respondents

(By Advocate – Shri Umesh Gajankush)

O R D E R (Oral)

By K.B.S. Rajan, Judicial Member -

The applicant was kept under suspension by a ^{valid} ~~bad~~ order with effect from 8.10.1991 on account of certain disciplinary proceedings contemplated against him. The proceedings culminated in a penalty of compulsory retirement vide order dated 21.1.1993. Simultaneously, there were some criminal proceedings against the applicant.

2. The applicant challenged the order of compulsory retirement in OA No. 441/1997. The same was decided on 19.9.2002 and the operative portion of the order is as under :

"6. In the result, the O.A is allowed. The impugned orders dated 21.9.1993, 27.4.1994 and 17.6.1996 are quashed and set aside. The respondents are directed to reinstate the applicant within a period of two months from the date of receipt of a copy of this order. Fresh punishment

(2)

order if any may be passed as per the direction contained in the preceding paragraph within the same period of two months. No costs."

3. Meanwhile the criminal appeal was also decided in 1998 resulting into acquittal of the applicant.

4. Notwithstanding a clear direction of ^{time bound} reinstatement, according to the applicant he was allowed to join duties only with effect from 15.9.2004 in the post from which he was kept under suspension. Fresh proceedings were initiated against him and by order dated 30.11.2004 the disciplinary authority has imposed the penalty of reduction in the rank from the pay scale of Rs. 4000-6000/- to the pay scale of Rs. 3050-4590/- fixing the pay with effect from 1.12.2004 at Rs. 3,950/- in the reduced pay scale.

5. The applicant had preferred an appeal against the aforesaid penalty order.

6. During the pendency of the aforesaid appeal, the applicant has filed this OA, whereby he has prayed for a) payment of subsistence allowance with interest at the rate in accordance with the rules for the period from 8.10.1991 to 14.9.2004 and b) for a direction to the respondents to decide the appeal.

7. As on date, the appeal has already been decided by the appellate authority upholding the order of penalty and dismissing the appeal vide order dated 27.9.2005. As such the applicant does not press the later relief in this OA as he intends pursuing his remedy in this regard separately.

8. The scope of this OA is, therefore, reduced to consideration of the applicant's prayer for subsistence allowance. As per the order dated 19.9.2002 the applicant was to be reinstated by the respondents within two months from the date of communication of the said order. For implementation of this order what was required was a formal order of revocation of suspension clearly stipulating as to how to treat the period of suspension in respect of payment of subsistence allowance i.e. 50% or 75% as the case may be. Admittedly this has not been done. In the alternative it was expected that decision relating to treatment of the period of suspension and rate of payment of subsistence allowance would be reflected in the penalty order. Here again this aspect was conspicuously missing.

9. The authorities are therefore required to pass a formal order relating to payment of subsistence allowance including the period after which the applicant shall be paid 50% of subsistence allowance and thereafter at the higher rate if the authorities so decide.

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10. However, this matter has certain further complications. This is not a clear case of suspension through out. Initially the applicant was kept under suspension from 8.10.1991 to 20.1.1993 and from 21.1.1993 he was compulsory retired. Though in OA No. 441/1997 while quashing the order of compulsory retirement the applicant was to be reinstated, technically in such matters where the court orders are for quashing the penalty order with liberty to proceed with the departmental proceedings, the period of absence is taken as suspension and as such in this case, as well, the respondents kept the applicant under continued suspension till 14.9.2004. And in between the Pay Commission recommendations were accepted and revised pay scales have been brought into existence with effect from 1.1.1996. As such the order of revocation shall have to be passed keeping in view the following:-

- a) the total period of suspension (actual and deemed),
- b) rate of subsistence allowance for the aforesaid period, and
- c) the pay on the basis of which the subsistence allowance have to be fixed.

11. The counsel for the applicant submits that in view of the fact that the penalty order clearly stipulates the scale of pay at the revised pay scale his rate of subsistence allowance shall be based on the same with effect from 1.1.1996. In this regard the counsel for the applicant relies upon the decision of the Apex Court in Umesh Chandra Mishra Vs. Union of India & Ors., 1993 SCC (L&S) 441, wherein it has been directed that the subsistence allowance be paid on the basis of the revised scale and salary if ^{any} ~~not~~ which was prevalent and due to the appellant during the relevant period for which the subsistence allowance was directed to be paid.

12. In view of the above, this OA is disposed of with a direction to the respondents to pass a formal order of revocation of suspension with retrospective effect from 15.9.2004 and clearly stipulate as stated above the period of suspension, rate of subsistence allowance admissible and the pay on the basis of which the subsistence allowance shall be worked out. In case the respondents are of the view that higher rate of subsistence allowance is not applicable to the case of the applicant they shall pass a reasoned order in this regard.

13. In addition to the above, aforesaid order of revocation of suspension/reinstatement as the penalty order has already been passed, the respondents shall keep in view the following general rule:

"2. Nature of orders to be passed


1. When a Government servant is reinstated in service, the authority competent to order the reinstatement has to make a specific order-

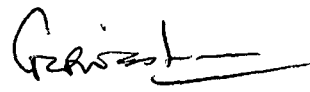
(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, viz., period of unemployment and suspension, if any, and

(b) whether or not the said period shall be treated as a period spent on duty.

2. The decision of the competent authority in this regard is in respect of two separate and independent matters, viz., (a) pay and allowances for the period of absence, and (b) whether or not the period of absence should be treated as duty. It is not necessary that the decision on (a) above should depend on the decision on (b) above. The competent authority has the discretion to pay the amount (not being the whole) of pay and allowances and at the same time treat the period as duty for any specified purpose(s) or only to pay the amount (not being the whole) of pay and allowances and treat the period as non-duty for all purposes. It has, however, no discretion to pay full pay and allowances when the period is treated as 'non-duty'.

14. The above direction shall be complied with within a period of two months from the date of receipt of copy of this order. No costs.


(K.B.S. Rajan)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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