

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 847 of 2003

Jabalpur, this the 30th day of July, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

S.L. Jharia, S/o. Kokelal Jharia,  
aged 51 years, Postal Asstt. Sub  
Post Office, High Court, Jabalpur, M.P. ... Applicant

(By Advocate - Junior to Shri Dinesh Upadhyaya)

V e r s u s

1. Union of India, through  
Secretary, Department of Posts  
and Telegraphs, New Delhi.

2. Chief Post Master General,  
Chhattisgarh Circle, Raipur,  
C'garh.

3. Senior Supdt. of Post Offices,  
Jabalpur Division, Jabalpur  
M.P. ... Respondents

(By Advocate - Shri P. Shankaran)

O R D E R (Oral)

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant  
has claimed the following main relief :

"(i) quash the letter dated 14.8.2003 (Annex.  
A-1) and order dated 9.7.2003 Annex. A-9 and  
order dated 21.4.2003 (which has not been served  
to the applicant) restraining the respondents from  
treating the period of suspension as non duty  
(instead of half average pay) declaring the same  
as illegal and against the fundamental rights of  
the applicant."

2. The brief facts of the OA are that the applicant  
is presently working in the office of Sub Post Office at  
High Court, Jabalpur. He was suspended vide order dated  
24.7.1993. Thereafter, a departmental enquiry was held  
and he was found guilty of misconduct. The disciplinary  
authority passed the order of major penalty imposing  
punishment of reduction of pay by one stage i.e. from  
Rs. 1150/- to Rs. 1125/- for a period of four years without

effecting his future increment vide order dated 4.6.1997. On imposition of the penalty as above, the respondent No. 3 has written a letter to respondent No. 2 asking about recovery of the amount of subsistence allowance from the applicant to which the respondents issued a corrigendum to Annexure A-3 stating therein that "Duty for all purposes but the allowances will be restricted to the subsistence allowance already paid to the official in place of leave on half average pay under the provisions of FR-54-B. The suspension allowance already paid will not be recovered." Vide order dated 9.7.2003 (Annexure A-9) the earlier orders dated 10.7.1997 and 30.7.1997 were set aside by the respondents and notice was issued to the applicant dated 10.7.2003 (Annexure A-10) to show cause as to why the suspension period which has already been treated as half pay of average pay be not treated as not on duty. The applicant replied to the show cause notice vide his reply dated 16.7.2003 stating therein that he has already been punished for his mistakes and looking into his financial position and responsibility his case be considered sympathetically. But respondent No. 3 passed order dated 14.8.2003 (Annexure A-1) treating the period of suspension as "non duty". This order was passed after about 6 years, which is unjust and bad in law. Hence, the OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the applicant was punished in the departmental proceedings by the disciplinary authority vide order dated 4.6.1997. He did not prefer any appeal against it and vide corrigendum dated 30.7.1997 it was ordered that the subsistence allowance already paid to the applicant would not be recovered but subsequently vide letter dated 9.7.2003 (Annexure A-9)

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orders issued on 10.7.1997 and 30.7.1997 were set aside while the applicant was not given opportunity of hearing and subsequently thereafter on 14th August, 2003, the order was passed thereby the period of suspension of the applicant is ordered to be treated as non duty and his pay and allowances for that <sup>period</sup> would be restricted to subsistence allowance already paid. This order was passed after a lapse of about 6 years while in the earlier corrigendum dated 30.7.1997 it was ordered that the subsistence allowance already paid would not be recovered, in place of leave of half average pay under the provisions of FR-54-B. Hence, the action of the respondents is unjust and illegal. Hence, this OA deserves to be allowed.

4. In reply, learned counsel for the respondents argued that on conclusion of departmental action, the period of suspension was treated as leave on half average pay vide memo dated 10.7.1997. However, on verification of leave account of the applicant, it was found that there was no sufficient half pay leave at his credit. It was, therefore, decided to treat the period of suspension as Duty for all purposes but the allowances would be restricted to the subsistence allowance already paid and suspension allowance already paid to the applicant would not be recovered and ordered accordingly vide corrigendum dated 30.7.1997. He further argued that regularisation of suspension period as duty for all purposes was subsequently noticed as not in accordance with the rules on review by respondent No. 2 and directed the disciplinary authority i.e. respondent No. 3 to pass proper order. Accordingly, respondent No. 3 cancelled the previous orders and issued a show cause notice to the applicant as to why the suspension period should not be



treated as non duty. Applicant submitted his representation and after considering the relevant rule position and representation of the applicant, disciplinary authority vide memo dated 14.8.2003 issued a fresh order regularising the suspension period from 24.7.1993 to 7.3.1994 as non duty and restricting the pay and allowances for that period equal to the subsistence allowance already paid. According to Rule 5 of Rule 54 B of FR, the respondents are authorised to review the order regarding subsistence allowance and the period of suspension whether it is to be treated as duty or non duty. Hence, the respondents have not committed any irregularity or illegality in passing the impugned orders.

5. After hearing the learned counsel for both the parties, and carefully perusing the records, we find that in earlier corrigendum dated 30.7.1997 (Annexure A-3) it is mentioned that the subsistence allowance already paid would not be recovered. The applicant did not prefer any appeal against the punishment passed by the disciplinary authority on 4.6.1997. Thereafter, the respondents passed an order dated 9.7.2003 thereby earlier orders dated 10.7.1997 and 30.7.1997 were set aside and thereafter on 14th August, 2003 a fresh order was passed by which the period of suspension of the applicant was ordered to be treated as non duty and his pay and allowances for that period was restricted to subsistence allowance already paid. We have perused the Rule 54 B Sub Rule 5 but the respondents have not given any cogent reason in passing the impugned order after a long lapse of time and particularly when the applicant did not prefer any appeal against the order passed by the disciplinary authority imposing punishment on him on 4.6.1997 and in the earlier order dated 30.7.1997 it was



clearly mentioned that the subsistence allowance already paid to the applicant would not be recovered.

6. Considering the facts and circumstances of the case, the impugned orders dated 14.8.2003 and 9.7.2003 are quashed and set aside. The applicant may file an appeal to the respondents within two weeks. The respondents are directed to consider and decide the appeal within a period of three months, in case the applicant complies with the aforesaid direction. No costs.

  
(Madan Mohan)  
Judicial Member

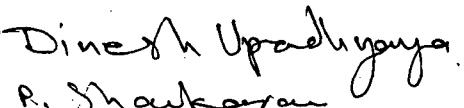
  
(M.P. Singh)  
Vice Chairman

"SA"

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....  
प्रतिलिपि द्वारा दिता:-

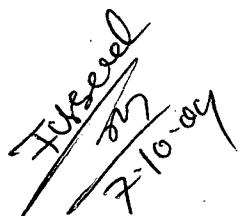
- (1) सचिव, उच्च न्यायालय धारा एकार्डिनेशन, जबलपुर
- (2) आरोग्य बोर्ड/मीम्यू/एस/.....काउंसल
- (3) एस. बोर्ड/मीम्यू/एस/.....काउंसल
- (4) एस. बोर्ड, जबलपुर, जबलपुर

संघर्षा एवं आवश्यक कार्यकारी देतु

  
Dinesh Upadhyaya

  
R. Shankar

  
Bhup Singh

  
File No. 2/10-001