

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.336/2015

Ahmedabad, this the 08th day of March, 2018

Gulam Mohmed Ganchi
Son of Shri Sulemn Ganchi
Aged about 66 years,
Residing at : Dabasa
Padra, Vadodara 391 440.

Retired as Extra Departmental Branch Postmaster
While working under
Sub Post Master
Taluka : Padra,
Vadodara 391 440. Applicant

(By Advocate : Shri A.L.Sharma)

VERSUS

1. Union of India
Represented by
The Chief Postmaster General,
Gujarat Circle, Ahmedabad 380 001.
2. The Chief Postmaster
Gujarat Circle, General Post Office,
Ahmedabad- 380 001.

3. Sr. Superintendent of Post Offices
Vadodara West Division
Vadodara 390 002.. Respondents

(By Advocate : Ms. R.R.Patel)

ORDER – ORAL

Per : Hon'ble Shri J.V.Bhairavia, Member (J)

By filing the present Original Application under Section 19 of the Administrative Tribunal Act, 1985, the applicant has sought following reliefs :

- A. The Hon'ble Tribunal be pleased to quash and set aside the order No. B2/SCA/GSG/2015 dated 30.03.2015 and letter dated E2/CPT/GMSG/2-15-2016 dated 10.07.2015 as illegal, arbitrary, unconstitutional, contrary to settled legal position and in utter violation of principles of natural justice,;*
- B. Be pleased to direct the respondents to release the amount of ex gratia gratuity for the services rendered by the applicant in view of the facts and circumstances of the case.;*
- C. Be pleased to direct the respondents to pay interest at the rate of 9% p.a. on the amount of ex-gratia gratuity from the date the applicant is entitled to the said amount till payment.*

2. The duly filtered brief facts of the present case are as under.

(i) The applicant was engaged as Extra Departmental Branch Post Master (EDBPM) 30.01.1989. While working as such, he was put off duty on 31.08.1991. The applicant was served with the chargesheet for alleged misconduct that he had received one registered letter for delivery to Branch Manager of Central Bank of India, which he did not deliver to the said officer, but handed over to someone else which resulted into misappropriation of certain amount. The departmental proceedings was conducted against the applicant as per the provisions of Rules i.e.EDA(C&S) Rules, 1964. After, departmental inquiry, by way of an order dated 20.11.1992, the disciplinary authority had imposed punishment of “removal from service” to the applicant. The departmental appeal against the said punishment preferred by the applicant was dismissed by the Appellate Authority on 24.02.1993. Aggrieved with the said orders of Disciplinary Authority and the Appellate Authority the applicant, challenged the said orders before this Tribunal by way of filling of O.A. No. 664 of 1993. The said O.A. filed by the applicant was allowed vide order dated 31.07.2001 and the impugned inquiry called in question in that

OA was struck down and the applicant was directed to be reinstated with immediate effect in the same post and the amount of lump-sum compensation alongwith 12% interest was directed to be paid to the applicant for the period he remained under put off duty. It was further directed by this Tribunal that the applicant shall be regularly paid compensation/ex-gratia payment under the due instructions issued by the Government at a rate not exceeding 50% of the wages he would otherwise get had he continued in service with effect from date of order of the said OA. (refers Annexure A/3). Being aggrieved by the said order dated 31.07.2017, the respondents preferred Special Civil Application No. 11278 of 2001 before the Hon'ble High Court of Gujarat and it was finally dismissed on 24.06.2004. In view of the dismissal of the petition before the Hon'ble High Court as above, the respondents reinstated the applicant with effect from 09.08.2004.

(ii) After the reinstatement of the applicant, the applicant again preferred OA No. 603/2005 before this Bench of this Tribunal claiming full salary from the date of order of Tribunal till reinstatement, i.e. 31.07.2001 to 09.08.2004. The said OA

was allowed vide order dated 2.11.2006 and the respondents were directed to pay full salary from 31.07.2001 within three months from the date of receipt of the copy of the order date, failing which interest @ 9% was payable (Annexure A/5 refers). Being aggrieved and dissatisfied with the said order dated 2.11.2016, the respondent preferred Special Civil Application No. 6093 of 2007 before the Hon'ble High Court of Gujarat. The said writ petition of the respondents came to be dismissed on 23.07.2014 (Annexure A/6 refers) and thereby, the order of the Tribunal dated 2.11.2006 stood confirmed.

(iii) The applicant had submitted several representations and sought compliance of judgment passed by this Tribunal and Hon'ble High Court as above. However, the amount of arrears was not paid to the applicant. The applicant therefore filed Contempt Application bearing C.P. No. 02 of 2015 in OA 603 of 2005. During the pendency of the said Contempt Application, the respondent on 16.02.2015/10.03.2015 had sanctioned and paid an amount towards 50% of ex-gratia payment for the period from 31.07.2001 to 09.08.2004 alongwith interest @ 9% for the period from 15.02.2007 to

15.02.2015 and on 15.07.2015 paid payment of 50% salary for the period from 20.11.1992 to 31.07.2001. In view of this compliance, the Contempt proceedings were ordered to be dropped by order dated 06.08.2015 (Annexure A/11 refers).

(iv) The above long drawn marathon of the applicant did not rest there. After rendering long service, the applicant superannuated with effect from 31.08.2014. Thereafter, the applicant did not receive amount of gratuity. He, therefore, approached the office of the respondents and initially was promised that the same would be paid within one month. However, the said promise went in vain. The applicant submitted an application/representation dated 13.05.2015 and requested the respondents to release amount of gratuity as he being retired since 31.08.2014. But, the respondent did not pay ex-gratia gratuity and he was served with the impugned order dated 30.03.2015 by which the office of Sr. Supdt. of Post Office, Vadodara, West Division informed the applicant that he is not entitled to get the ex-gratia gratuity on the ground that the past service will be counted for gratuity only if reappointment takes place within one year from the date of last termination of

agency, the past service rendered by the applicant will not be counted for the purpose of gratuity as the break in service is more than one year. It is also stated in the said impugned order dated even if past service is counted, the applicant is not eligible for gratuity for not fulfilling the conditions under the provisions of Rules-6(15), (17)-(i), (iii) & (iv) of GDS (C&E) Rules, 2011 (Annexure A/1 refers). By this communication, the respondent had denied the claim of applicant with regard to ex-gratia gratuity.

3. On the above stated facts, to substantiate the reliefs sought by the applicant, learned advocate Mr. A. L. Sharma for the applicant submitted as under :

(i) That the impugned decision of the respondents denying ex gratia gratuity after retirement of the applicant is not proper against the provisions of rules as well as law laid down by the Hon'ble Supreme Court and Hon'ble Gujarat High Court.

(ii) The applicant was ordered to be reinstated in service with full back wages and the applicant has been paid accordingly. The said fact was admitted by the respondent. Therefore, by no

stretch of imagination it can be said that there is any break in service and the past service rendered by the applicant cannot be counted for gratuity.

(iii) The respondent erroneously denied the claim of the applicant by mis-interpreting the instructions contained in Rule 6(15) of GDS (C&F) Rules, 2011. The said Rule as such is not applicable in the case of applicant and the same was erroneously relied by the respondents.

(iv) The respondent are either oblivious of the difference between the “re-employment” as used in the Rules 6(15) of GDS (supra) and the term “re-instatement” with immediate effect to the same post and payment of the back wages or have deliberately interpreted the word ‘reinstatement’ as ‘re-employment in service’ with a view to harass and victimise the applicant.

(v) The reliance placed on Rule-17 of the GDS (C&E) Rules, 2011, for rejecting the claim of the applicant is also amounts to

non-application of mind on the part of the authorities, the said Rule also is not at all applicable to the case of the applicant.

(vi) The applicant is in continuous of the department for more than 15 years and he has discharged continuous long satisfactory service without any break as the applicant was directed to be reinstated in service with full back wages. The disciplinary action was declared illegal and was ordered to be quashed and set aside by this Tribunal and confirmed by the Hon'ble High Court. The respondents themselves had accepted the same and vide their order dated 16.02.2015 had paid all the arrears with interest on reinstatement of the applicant. Therefore, none of the conditions of the provisions of the said Rule 6(17) is applicable.

(vii) The learned counsel for the applicant further submitted that once reinstatement has been granted and implemented, there would not have been any effect of put off duty period which even otherwise merges with the order of reinstatement.

(viii) Learned counsel for the applicant to buttress his argument placed reliance on the decision of the Hon'ble Supreme Court in the case of *Gurpreet Singh vs. State of Punjab & Another* [(2003) SCC (L&S) 20] to submit that retirement benefits could not be denied once termination was set aside and consequential benefits needs to be granted by considering the employee to be in continuity of service. He further relies on a decision rendered by the Hon'ble High Court of Gujarat passed in Special Civil Application No. 1272 of 2010 wherein this Hon'ble High Court held that in case of reinstatement, continuity of service is impliedly included.

(ix) The applicant has not been paid his legitimate dues after his retirement that is ex-gratia gratuity and the said amount has been withheld by the respondents without any authority under the law. Therefore, the applicant is entitled to receive of amount of ex-gratia gratuity with 12% interest from the date of said amount has been illegally withheld and not paid to the applicant.

4. The respondents have filed their reply and denied the claim of the applicant. The learned advocate for the respondents Ms. R. R. Patel vehemently submitted that the applicant was engaged as Gramin Dak Sevak and as per the terms and conditions of engagement, a Sevak is outside the Civil Service of the Union, a Sevak shall not claim to be at par with Central Government employees. The applicant's engagement as ED (i.e. Sevak) was terminated and there is break in the said engagement. Therefore, as per the provision of Rule 15, the applicant's engagement is to be considered as continuous till his retirement. His re-engagement caused break in service and that period was not condoned by the authorities or any court of law. It is further submitted that the order of removal of applicant's services was set aside by the court of law only on the ground of non-compliance with the requirement of Clauses-1 & 2 of Article 311 of the Constitution of India and thus, the applicant was not exonerated on merits. Therefore, period of absence from duty including period of put off duty preceding applicant's removal shall not be treated/cannot be treated as period "spent on duty", unless the competent authority specifically directs that it shall be treated so for any specified purpose. It is also

submitted that as per the provisions of Rule 6 and Rule 17, clause (i), (iii), (iv), the applicant is not eligible for ex-gratia gratuity, the applicant has not completed 15 years of minimum continuous satisfactory service at the time of his superannuation and his service was terminated as a measure of disciplinary action. Therefore, the applicant cannot be said to have completed continuous 15 years of service. The applicant was ordered to be put off duty on 31.08.1991 and was reinstated on 9.8.2004. During this period, he was not on duty. The learned advocate for the respondents submitted that the applicant is, as such, not eligible for ex gratia gratuity only on the ground that the respondents have paid amount of arrears on his reinstatement as per the order passed by this Tribunal, but applicant has to complete 15 years of continuous service as E.D. (erstwhile GDS). In absence of any approval of competent authority of condonation of break in service or in absence of any order of court of law, the applicant cannot be benefit of ex gratia gratuity. Accordingly, the respondents prayed to dismiss the present OA.

5. Heard the learned advocates for the respective parties and carefully perused the material available on record.

6. In the instant OA, the applicant who was engaged as Gramin Dak Sevak now EDA i.e. Extra Department Agent, has been denied payment of ex-gratia gratuity on his retirement on the ground that he had not completed 15 years of continuous satisfactory service and there was break in his service, his re-instatement cannot cover the period of put off duty and therefore, there is a break. The said decision of the respondent for denying the claim for ex gratia gratuity is under challenge in the present OA.

7. The admitted facts on record are thus :

(i) That the applicant was engaged/appointed initially as GDS on 30.01.1980. While in service, the applicant was placed under put off duty on 31.08.1991 and thereafter, was chargesheeted for the alleged misconduct of appropriation 11.02.1992.

(ii) Subsequently, after departmental proceedings, the disciplinary authority imposed punishment of removal from service by order dated 20.11.1992. During, the disciplinary proceedings, the applicant was denied the statutory subsistence allowance. The appellate authority had confirmed the punishment order.

(iii) Against this, the applicant preferred OA No. 664/1993 before this Tribunal, which came to be allowed on 31.07.2011 and the applicant was directed to be reinstated in service alongwith further direction for payment of lump sum compensation as well as back wages as directed in that order. Being aggrieved with this order, the respondents filed Special Civil Application No. 11278 of 2001, which however came to be dismissed on 24.06.2004.

(iv) The respondents having been unsuccessfully before the Hon'ble High Court, implemented the order dated 31.07.2001 passed by the Tribunal and reinstated the applicant on his original post on 24.06.2004. However, the respondent did not extend the benefit of full salary to the applicant and therefore,

the applicant had to again knock the doors of the Tribunal by filing OA No. 603 of 20015, which also came to be allowed directing the respondents to pay full salary to the applicant from 31.07.2001. The said order was also challenged before the Hon'ble High Court of Gujarat by the respondents by filing Special Civil Application No. 6093 of 2007, which met with the same fate of failure on 23.07.2014. Even thereafter, the respondents did not comply with the order of the Tribunal in its true spirit and therefore, for compliance of the order, the applicant had to again visit the Tribunal by way of filing of Contempt Petition being C. P. No. 2 of 2015. The said Contempt Petition came to be disposed of as having dropped upon a statement being made by learned advocate for the respondents that the order of the Tribunal had been fully complied. The applicant had joined the service on 30.01.1989 and was paid back wages from the date of put off duty till he was reinstated on 24.06.2004 as per the order passed by this Tribunal. The applicant superannuated on 31.08.2014. These facts are not rebutted by the other side.

8. As per the Rule-6 of GDS (C&E) Rules, 2011, the Sevak i.e. GDS now termed EDA, shall be entitled to *ex gratia*

gratuity or any other payment as may be decided by the government from time to time, in this context the instructions were issued by the office of G.D. P&T from time to time. Therefore, the EDA is entitled for ex-gratia gratuity subject to conditions/instructions issued by the respondents.

(i) It is the submission of applicant that erroneously the respondents have denied the benefit of ex-gratia to the applicant on his retirement on the basis of instructions 6(15) of the GDS rules issued by the competent authority. Therefore, it is apt to reproduce the said instructions for ready reference hereinbelow.

“6(15). Counting of past satisfactory service for grant of gratuity:- There are possibly cases wherein individuals, who work as ED Agents, and leave the agency service, are re-appointed as ED Agents after a break. The Madan Kishore Committee on ED system has recommended that the past satisfactory service of ED Agent may be reckoned for the grant of gratuity, provided the agent had not already been granted gratuity on its basis. The P&T board has accepted the recommendation with a proviso that the past service will be counted for gratuity, only if reappointment takes place within one year from the date of last termination of agency. Such breaks in service will not, however, be automatically condoned and the cases have to be referred to the Competent Authority for condonation.

In view of the above decision, it is necessary to ensure that the service record of ED Agents who quit the agency are preserved at least for one year from the date of termination of service.”

(ii) It can be noticed that as per the above stated instructions that in case re-appointment takes place within one year from the date of last termination agency, the past service will be counted for the benefit of ex gratia gratuity. In the present case, the applicant was appointed on 31.01.89 was put off duty with effect from 31.08.1991 and removed from service on 20.11.1992, by way of disciplinary action, the said punishment of disciplinary authority was struck down by this Tribunal on 31.07.2011 and the applicant was ordered to be reinstated and the said order was upheld by the Hon'ble High Court of Gujarat. Pursuant to it, the respondent reinstated the applicant on 24.06.2004. There is no occasion of any re-appointment of the applicant. It was reinstatement of the applicant to his original position cannot be termed as re-appointment. In this regard, respectfully reference is made to a decision of the Hon'ble Apex Court in the case of ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) & Ors., reported in (2013) 10 SCC 324***, in which it has been held that "reinstatement" would mean putting the workman back to the stage when he was terminated. As a consequent to setting aside

the order of removal, the petitioner gets back to his position as prevailing on the date of his removal. On such reinstatement, the punishment of removal gets merged with the substituted order of lower penalty of withholding of increments. The learned counsel for the applicant has rightly placed reliance on the decision in ***Gurpreet Singh vs. State of Punjab reported in (2003) SCC (L&S) 20*** to submit that the direction to reinstate in service on setting aside the order of termination, therefore the right to claim continuity of service sustains. Therefore, the stand of respondents that as per the instructions contained in Rule 6(15) of GDS (C&E) 2011 the past service of the applicant cannot be counted because the applicant was taken back on service on 24.06.2004, the applicant is required to be considered as re-appointee in the service. This contention of the respondent is totally against the law laid down by the Hon'ble Apex Court in ***Deepali Gundu Surwase (supra)***. As also law laid down in the case of ***Gurpreet Singh vs. State of Punjab & Ors. (supra)*** as well as said contention of the respondent is amount to misinterpretation of the said provision. Therefore, I am of the opinion that the said ground for rejecting the claim of the applicant is not sustainable.

CAT, Ahmedabad Bench

9. The second ground put forth by the respondents for denying the claim of the applicant for grant of ex gratia gratuity was that even if past service is counted, the applicant is not eligible for gratuity for not fulfilling the conditions laid down under Rule 6(17)(i), (iii) and (iv) of GDS (C&E) Rules, 2011. The said Rule/instructions is also reproduced hereinbelow for ready reference.

“6(17). ED Agents to be apprised of the conditions relating to the eligibility for the grant of ex gratia gratuity:- In the Directorate’s Letter No. 40-58/78, Pen. Dated 14.8.1990, powers have been delegated to Heads of Postal Circles to condone the break in service for grant of ex gratia gratuity to an EDA provided the authorised leave/absence with prior permission does not exceed 180 days at a stretch. It has been observed that EDAs are not aware of the orders on authorised leave/absence and unauthorised leave/absence resulting in break in service and thereby lose the ex gratia gratuity at the time of termination of their services. It is thus considered desirable to apprise them with the conditions relating to eligibility for the grant of ex gratia gratuity so that they may not transgress unwillingly or willingly the prescribed limits by remaining absent in an authorised or unauthorised manner and losing the benefits of ex gratia gratuity at the end, of their service. The conditions under which ex gratia gratuity is admissible, are elaborated below,

- (i) EDA should have 15 years of minimum continuous satisfactory service at the time of termination of his service at the age of 65 or at earlier age, if permissible specifically;*

- (ii) Should have 58 years of age in case of EDAs desiring to quit service only on grounds of ill health,*
- (iii) It should be continuous service without any break due to (a) authorised leave/absence not acceding the prescribed limit or (b) unauthorised leave/absence.*
- (iv) Service should not have been terminated (a) for unsatisfactory work or (b) as a measure of disciplinary action or (c) in consequence of their being appointed in a regular post under the P&T department;*
- (v) Should not have resigned from service,
It is also necessary to differentiate between authorised leave/absence and unauthorised leave/absence.*

10. In the present case, the applicant was appointed in the service on 30.01.1989 and superannuated on 31.08.2014. During this period of service, due to disciplinary proceedings initiated against the applicant, he was ordered to be put off duty on 31.08.1991 and removed from service on 20.11.1992, however, pursuant to the order passed by this Tribunal and confirmed by the Hon'ble High Court of Gujarat, the said action under the disciplinary proceedings was struck down and applicant was ordered to be reinstated to his original position. This Tribunal in order dated 31.07.2001 passed in OA No.664/1993 and order dated

2.11.2006 passed in OA 603 of 2005 held that applicant is entitled to reinstatement to his original post and entitled to full salary. The contention of the respondent that the applicant was not exonerated in the enquiry and therefore the question of full back wages did not arise, was rejected. It was also held that as per the third proviso to Rules 12(3), (4) and (5) of GDS Rule, the action of respondent for denying the back wages was declared to be illegal. The applicant's removal on the basis of the disciplinary proceedings was struck down and he was reinstated without any further disciplinary proceedings.

11. It can be seen that in the present case, the termination was as a measure of disciplinary action was declared illegal and consequentially it was struck down. Therefore, the said action of termination does not remain in force. In view of this fact, the respondents' action for withholding the benefits of ex gratia gratuity cannot be said to be correct. The order of reinstatement cannot be termed as reappointment nor the action of respondent for making payment of back wages and arrears on the reinstatement on the original position of the

applicant can be said only for the purpose of payment of wages and not to be counting the continuity of the service. By the order of reinstatement to his original position of the employee, the punishment of removal gets substituted. In this regard, it is apt to notice the settled principle of law that an order of disciplinary authority merges into the order of appellate authority or with reviewing authority as the case may be. The same principle would apply to the judicial proceedings. This is based on a doctrine of merger. (refers the decisions of the Hon'ble Apex Court in ***Mi Gojer Brothers (P) Ltd. Vs. Shri Ratan Lal Singh*** reported in **AIR 1974 SC 1380** and in the case of ***Kunhayammad and others vs. State of Kerala*** reported in **AIR 2000 SC 2587**). The learned counsel for the applicant has also rightly relied on the order passed by the Hon'ble High Court of Gujarat in SCA No. 1272 of 2012 (*supra*) to submit that in the case of reinstatement continuity of service is impliedly included. Therefore, the reliance placed by the respondents on the above stated provisions is not applicable to the facts and circumstances of the case of the present applicant and the same has been wrongly relied upon to deny the claim

of the applicant as prayed in the present OA. Therefore, it goes without saying that the applicant had rendered qualifying service without any break for becoming eligible to get the benefit of *ex gratia* gratuity on the date of his retirement on superannuation.

12. In view of what has been discussed above and for the reasons mentioned above, the OA deserves to be allowed. As a result of which, the impugned orders dated 30.03.2015 (Ann. A/1) and 10.07.2015 (Ann. A/2) are hereby quashed and set aside. Consequentially, the respondents are directed to release the due amount of *ex gratia gratuity* from the date of applicant's superannuation with 9% interest per annum.

13. Looking to the peculiar facts of the present case, the respondents are directed to pay the costs of Rs. 10,000/- to be paid to the applicant.

(J.V.Bhairavia)
Member (J)

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