

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This is the 23rd day of August 2018.

ORIGINAL APPLICATION NO. 561 of 2016

Present:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

Girish Datt Sharma aged about 56 years son of Bisambhar Dayal R/o Village and Post Chulawali District Firozabad.

.....Applicant

By Advocate: Shri B.N. Singh/Smt S. Singh

Versus.

1. Union of India through its Secretary, Ministry of Communication and Information Technology, Department of Post Dak Bhawan, New Delhi.
2. The Supdt. Of Post Offices, Mainpuri Division, Mainpuri.

.....Respondents

By Advocate: Shri Neeraj Dwivedi.

O R D E R

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

1. Applicant Girish Datt Sharma has filed the present O.A. seeking the following reliefs:-

"(i) To issue a suitable order or direction to call for record and set aside the impugned order dated 21.5.2013 (Annexure No.1) and put back in duty with all consequential benefits.

(ii) To issue a suitable order or direction to the respondents to pay full

admissible allowances for the period of put off duty.

- (iii) To pass such other and further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- (iv) To award cost of the petition in favour of the applicants".

2. As per the applicant, while working as Branch Post Master, Chulhawali, vide order dated 21.05.2013, he was put 'of duty' in terms of Rule 12 (1) (a) of G.D.S. (Conduct and Engagement) Rules, 2011 (Hereinafter referred to as 'GDS Rules') which was confirmed vide order dated 24.05.2013 by respondent under Rule 12 (2) of GDS Rules. Since then no charge sheet which, has to be issued with 90 days, as per, Rules has been issued against the applicant.

3. Applicant's grievances are as follow:

- 1) *In terms of Rule 12 (3) (i), the increased ex gratia payment not exceeding 50% of such compensation admissible during the period of first 90 days has been paid to him;*
- 2) *The directions issued by the Hon'ble Apex Court and DoPT have not been be followed by respondent and the order dated 21.05.2013 of 'put off duty' be set aside.*

4. Hence, the present O.A. for setting aside the impugned order 21.05.2013, put back the applicant in duty and to direct the

respondents to pay the full admissible allowance for the period of put off duty.

5. In reply the respondents have averred that applicant was put off duty by order dated 21.05.2013 which was confirmed by the superior authority dated 24/28.05.2013. It was found that the applicant was involved in a fraud as he did not account for government money deposits of some saving bank accounts and during verification it was found that applicant had misappropriated Rs.212900/- . The applicant accepting his fault assured that he will make good the misappropriated money vide his statement dated 27.07.2013 (Annexure CA 12)recorded by Assistant Superintendent of Post Office, Firozabad but failed to do so.

6. It has been further averred in the counter affidavit that a charge sheet under Rule 10 of GDS Rules dated 18.07.2016 (Annexure CA 13) was issued to the applicant. The contention of the applicant that he filed application dated 29.10.2013 seeking enhancement of the exgratia payment but the same was not considered for enhancement as the applicant was found to be the main offender in the misappropriation of the bank money. That the applicant did not present himself for getting statement in the preliminary enquiry before 27.07.2013 as such it was not feasible to issue charge sheet against him for taken back on duty. And at present the enquiry proceedings is under progress. That as per

report of Assistant Superintendent of Post Office dated 12.10.2015 it came to light that applicant had misappropriated government money and removal from service would probably the ultimate punishment and therefore, it will not be proper to allow him to continue his duty. Respondents have further averred that all put off duty cases are being reviewed on monthly basis at R.O. level.

7. We have heard and considered the arguments of Learned Counsels for the parties and gone through the material on record.
8. In the present case, the applicant was suspended (put of duty) on 21.05.2013, which was confirmed vide order dated 24.05.2013. As per the counter affidavit, the charge sheet dated 18.7.2016 was served upon the applicant for misappropriation of Government money.
9. It was argued by LC for applicant that actions of respondents pertaining to his 'put of duty' and 'ex gratia' and the inaction of respondents have violated the rights of applicant available to him under law and placed reliance on Ajay Kumar Choudhary v/s Union of India (2015) 7 SCC 291.
10. On the other hand, LC for respondents submitted that the case of applicant has been dealt with under the provisions of GDS (Conduct and Engagement) Rules 2011 and also looking to the fact that applicant is involved

in a case of misappropriation of Government money.

11. The Hon'ble Apex Court in Ajay Kumar Choudhary v/s Union of India decided on 16.02.2015 dealing with suspension of an official and its aftermath consequences observed that:-

"Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is

to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement.

*It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in *Raghbir Singh vs. State of Bihar*, 1986 (4) SCC 481, and more so of the Constitution Bench in *Antulay*, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/ disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not*

been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal."

12. And thereafter the Hon'ble Apex Court proceeded to observe that:-

"We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/ Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension".

It is a settled provision of law that the direction given by the Hon'ble Apex Court to be followed scrupulously by all concerned.

13. In the present case, neither is there any averment in the counter affidavit to show that the direction of the Hon'ble Apex Court has been followed and nor any order has been placed on record by the respondents to show that reasoned order/s were passed for the extension of the suspension order of the applicant beyond the period of 90 days.

14. In this view of the matter, the suspension of the applicant beyond 90 days is totally

illegal and unwarranted and is liable to be quashed.

15. This O.A. is accordingly allowed. The suspension of the applicant beyond 90 days is hereby quashed. The respondents are directed to reinstate the applicant within one week from the date of receipt of copy of this order. The applicant shall be entitled to full salary, i.e., the differential amount between the subsistence allowance and the due salary, after 90 days. The same shall be released to the applicant within two months. Insofar as the period of initial suspension of 90 days is concerned, the same shall be decided by the Respondents on termination of the disciplinary proceedings in accordance with rules. No costs.

(Rakesh Sagar Jain) (Gokul Chandra Pati)

Member (J)

Member (A)

Manish/-