

RESERVED ON 02.02.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **16th** day of **FEBRUARY, 2018.**

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 1591 of 2015

Jay Prakash Yadav S/o Deenanath Yadav, Vill.- & P.O. Launda, District-Chandauli..

.....Applicant.

V E R S U S

1. Union of India through Secretary, Ministry of Communication, Department Dak Bhawan, Sansad Marg, New Delhi.
2. Inspector/Senior Superintendent of Post Office (East) Varanasi.
3. Sub Divisional Inspector of Post Office, Sub-Division, Chandauli.

.....Respondents

Advocate for applicant : Shri B.L. Yadav
Advocate for the respondents : Shri Vinod Mishra

O R D E R

By way of the instant original application, the applicant has prayed for following main reliefs: -

"(i) issue a writ order or direction and set aside order dated 13.10.2015 passed by Inspector/SDI, Chandauli, respondent no. 3..

(ii) appropriate writ, order or direction in the nature of mandamus and direct the respondent to pay remaining 75% pay and allowances for put off duty period between 01.02.2007 and 19.06.2007 with interest at the rate 15% per year w.e.f., from July-2007."

2. The brief facts of the case as stated in the O.A. are that the applicant who was working as GDS (Gramin Dak Sevak) in the Post Office

Chandauli was put off duty vide order dated 01.02.2007 (Annexure No. 2 to the O.A.). The applicant preferred an appeal dated 02.02.2007 (Annexure No. 3 to the O.A.) against the order dated 01.02.2007 before respondent no 2 & 3, however, the same was not considered and an inquiry was ordered. Subsequently, the respondent no. 3 vide order dated 19.06.2007 (Annexure No. 4 to the O.A.) revoked the order for put off duty and reinstated the applicant.

3. The applicant was also framed in a criminal case no. 380/2007 arising out of F.I.R. vide the case no. 61/07 under Sections 147, 323, 325, 506, I.P.C. at Police Station Ali Nagar of Chandauli district. The trial court acquitted the petitioner from all the charges vide judgement dated 22.04.2009 (Annexure No. 5 to the O.A.). In the meantime, the Inquiry Officer submitted inquiry report on 20.06.2013 (Annexure No. 6 to the O.A.) with the findings that no case was made out against the applicant. The Disciplinary Authority imposed a minor punishment of "NINDA" (displeasure). Then, the applicant filed representations dated 20.08.2013 and 05.10.2013 (Annexure No. 7 to the O.A.) against the inquiry report before respondent no. 2 and 3 praying for payment of outstanding 75% pay & allowances during suspension period i.e., from 01.02.2007 to 19.06.2007 but the same was not paid. The respondent no. 2 forwarded the representation to respondent no. 3 vide communication dated 22.10.2013 directing him to clear dues of the suspension period at his own level, however, till date no action has been taken by respondent no. 3. Thereafter, the applicant again submitted a representation dated 07.12.2013 (Annexure No. 9) to respondent no. 3 but then also no action was taken.

4. Thereafter, the applicant filed O.A. No. 101 of 2014 before this Tribunal and this Tribunal vide order dated 24.08.2015 (Annexure No. 9 to the O.A.) directed the respondent no. 3 to decide the representations dated 20.08.2013 and 05.10.2013 by reasoned order within three months. The applicant submitted certified copy of the order dated 24.08.2013 along with representation dated 01.10.2015 and the respondent no. 3 disposed of the representation vide order dated 13.10.2015 (impugned order annexed as Annexure No. 1 to the O.A.), denying the payment for put off period without mentioning any reason.

5. It has been further submitted in the O.A. that Rule 09 of the GDS (Conduct and Engagement rule) mentions 6 kinds of punishments, which do not include 'NINDA' or 'Displeasure' as a punishment. The punishment of 'NINDA' is not a prescribed punishment. As per the Director General Instructions no. 3 (2) put off duty shall fall under two category (i) fraud and (ii) AWL and complaint from the public. However, the case of the applicant does not fall under any of these categories. It has also been submitted that the third proviso to 12 (3) of the G.D.S. Rule provide that even in event of a Sewak is not exonerated his pay and allowance for the period of put off duty can be denied only after having afforded opportunity of hearing and giving cogent reason. But in this case, no clear order has been passed giving any reason for denying payment of pay and allowances for put off duty.

6. The respondents have filed C.A. by which it has been stated that as per the Rule 12 of GDS (Conduct & Engagement) Rules, 2011, if a Gramin Dak Sevak is exonerated in any disciplinary case, he is paid full admissible allowances for the period of put off duty. The applicant was

awarded punishment of 'NINDA' or 'Censure' by the then respondent no. 3 vide order dated 20.06.2013 and hence, the applicant was not exonerated. Therefore, the balance salary TRCA for the put off duty w.e.f., 01.02.2007 to 19.06.2007 is not admissible to the applicant as claimed. In this connection respondent no. 3 has already issued memo dated 13.10.2015 (Annexure CA-3). It has been further submitted that against the punishment of 'Censure' no appeal was submitted by the applicant to the Appellate Authority within time limit which shows that the applicant has accepted the punishment. It has also been submitted that the applicant was recruited by the then SDI (P) Chandauli and he is the competent authority to punish the applicant under Rule-9 of the GDS (Conduct & Engagement Rules, 2011). Further, as per Rule-12 (1) of GDS (Conduct & Employment) Rules 2011 (in short rules), the recruiting authority or an authority to which the recruiting authority is subordinate may put a Sevak off duty:- (a) where a disciplinary proceeding against him is contemplated or is pending; or (b) where a case against him in respect of any criminal offence is under investigation, enquiry or trial. However, in cases involving fraud or embezzlement, the Sevak holding any post specified in the Schedule to these rules may be put off duty by the Inspector of Post Offices or the Assistant Superintendent of Post Offices of the Sub Division, as the case may be, under immediate intimation to the Recruitment Authority.

7. Heard the learned counsel for the applicant and the respondents. While the applicant's counsel argued that 'NINDA' is not a prescribed punishment, it is communication of displeasure of authority and as a result, the disciplinary proceedings have been closed without any penalty. Per contra, the respondent's counsel argued that the applicant has been

awarded punishment of 'Censure' which has not been challenged by the applicant. Hence, as per Rule-12, the applicant would have been eligible for full salary for the period, if he would have been exonerated.

8. The pleadings and submissions of the parties have been considered by me. The issues relevant for this case are:-

- (i) whether the contention that the applicant has not been imposed any penalty in the disciplinary proceedings is correct; and
- (ii) whether the applicant is entitled to receive full salary for the period he was put off duty.

9. Regarding punishment imposed, the applicant's contention is that he was exonerated by the inquiry officer, but the disciplinary authority communicated "NINDA" to the applicant, which is not a punishment as per the Rule 9. Respondents have taken a plea that the punishment of 'Censure' has been imposed on the applicant. Since the punishment imposed on the applicant has been accepted by him without any challenge, the punishment as stated by the respondents will have to be accepted. Hence, as stated by the respondents, the applicant was imposed the punishment of censure and issue (i) of paragraph 8 above is answered accordingly.

10. The provisions relating to put off duty of a GDS are spelt out under the Rule 12(3) which states as under:-

"...(3) A sevak shall be entitled per month for the period of put off duty to an amount of compensation as ex gratia payment equal to 25% of his/her Time Related Continuity Allowance together with admissible Dearness Allowance.

Provided that where the period of put off duty exceeds 90 days, the Recruiting Authority or the authority to which the Recruiting Authority or any other authority empowered in this behalf, as the case may be, who made the order of put off duty shall be competent to vary the amount of compensation for

any period subsequent to the period of first 90 days as follows:-

- (i) The amount of compensation as ex gratia payment may be increased by a suitable amount, not exceeding 50% of such compensation admissible during the period of the first 90 days, if in the opinion of the said authority the period of put off duty has been prolonged, for reasons to be recorded in writing, not directly attributable to the Sevak.
- (ii) The amount of compensation as ex gratia payment may be reduced by a suitable amount not exceeding 50% of such compensation admissible during the first 90 days, if in the opinion of the said authority, the period of put-off duty has been prolonged due to reasons to be recorded in writing directly attributable to the Sevak.

Note 1 – The rate of Dearness Allowance will be based on the increased or decreased amount of compensation admissible under sub-clauses (i) and (ii) above.

Note 2 – The payment of compensation for the put-off duty period shall not be subject to furnishing of a certificate that the Sevak is not engaged in any other employment, business, profession or vocation.

Provided that a Sevak who has been absconding or remains absent unauthorizedly and is subsequently put off duty shall not be entitled to any compensation as ex gratia payment:

Provided further that in the event of a Sevak being exonerated, he shall be paid full admissible allowance for the period of put-off duty. In other cases, such allowances for the put-off duty can only be denied to a Sevak after affording him an opportunity and by giving cogent reasons..."

11. It is seen from the Rule 12(3) Note-2 as extracted above, that in the event of the Sevak being exonerated, he shall be paid full allowance for the period under put off duty and in other cases payment of such allowances can only be denied after affording him an opportunity and by giving cogent reasons. Before denying a GDS full allowance, the authority needs to give an opportunity of being heard. In para 5(t) of the OA, the applicant has stated:-

"(t) that third proviso to 12 (3) of G.D.S. Rule provide that even in event of a Sewak is not exonerated. His pay and

allowance for the period of put off duty can only be denied after having afforded opportunity of hearing and giving cogent reason. Whereas in the case of the applicant no positive and express order has been passed where by denying payment of pay and allowances for put off duty. The order dated 13.10.2015 is therefore incompetent unjust and illegal.

From above pleadings of the applicant, it is seen that the applicant's contention is that the no express order has been passes under Rule 12 (3), implying that the impugned order does not disclose any reason for not releasing the TCRA for the period he was put off duty.

12. The impugned order dated 13.10.2015 (Annexure No. 1) says that since the punishment of 'NINDA' or 'Censure' has been imposed vide order dated 20.06.2013, it cannot be said that the applicant has been exonerated. It is seen from the order dated 20.06.2013 that the misconduct against the applicant has been discussed in detail in the decision to impose penalty by the Disciplinary Authority. This was not challenged by the applicant and in the impugned order reference to this order dated 20.06.2013 has been given. Therefore, it cannot be said that the order dated 20.06.2013 does not indicate any reason and for the reasons both the orders dated 10.03.2013 and 20.06.2013 have to be referred.

13. Considering the above, I am of the view that the impugned order has discussed the reasons for the competent authority to take decision not to release applicant's TCRA dues for the period he was put off duty i.e., from 01.02.2007 to 19.06.2007 and therefore, the impugned order is not violative of Rule-12 (3) . Accordingly, the issue at sub para (ii) of Para-8 above are answered.

14. The other grounds taken in the O.A. relating to justification for the punishment of 'NINDA' and that this punishment is not defined as a

punishment under Rule-9 cannot be gone into at this stage because this has not been challenged in this O.A and the applicant has accepted the punishment which was imposed vide order dated 20.06.2013. Moreover, from the pleadings, it appears that he has not filed any appeal, therefore, other grounds are not acceptable.

15. In view of the above findings, I do not find any merit in this O.A. which is liable to be dismissed. Accordingly, the O.A. is dismissed. No order as to costs.

**(GOKUL CHANDRA PATI)
MEMBER-A**

Arun...