

**Central Administrative Tribunal
Principal Bench**

OA No.3458/2013

New Delhi, this the 16th day of September, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P. K. Basu, Member (A)**

Bankey lal
S/o Shri
Driver,
MMS,
Aligarh. Applicant.

(By Advocate : Shri Shoeb Shakeel)

Versus

1. Union of India through
Through Secretary
Ministry of Communication,
Department of Posts,
Dak Bhawan,
New Delhi.
2. The Director Postal Services
O/o the Postmaster General
Agra Region,
Agra.
3. The Supdt. Post Offices,
Aligarh. Respondents.

(By Advocate : Shri Rajender Nischal)

: O R D E R (ORAL) :

Justice Syed Rafat Alam, Chairman :

The applicant was issued a charge memorandum dated 18.02.2003 alleging that while working as MMS, Driver, Aligarh, he had submitted bogus LTC Bills of Rs.25,155/- for the Block Year 1994-1997.

2. Vide order dated 30.04.2004, he was awarded punishment of compulsory retirement by the Disciplinary Authority under the CCS (CCA) Rules, 1965. Vide order dated 22.03.2005, his appeal was disposed of and the penalty of compulsory retirement was modified to that of reduction of pay at the minimum of his pay scale for three years and that he will earn regular increment of that scale during the period of currency of punishment.

3. Vide order dated 15/16-02-2006, he was asked to submit his representation against the proposal to treat the period of absence from duty from the date of compulsory retirement to the date of reinstatement, i.e., 06.05.2004 to 23.03.2005 as the period spent under suspension and that nothing will be paid to the official except subsistence allowance admissible, had he been placed under suspension. Thereafter, vide order dated 23.05.2006, after considering his representation, the respondents ordered that the period of absence from the date of compulsory retirement to the date of reinstatement, i.e., 06.05.2004 to 23.03.2005 would be treated as the period spent under suspension and nothing would be paid to the official except subsistence allowance admissible had he been placed under suspension. It was also ordered that said period shall not be treated as the period spent on duty. Later, on his

appeal to the Chief Post Master General, his punishment was set aside vide order dated 31.03.2009.

4. The applicant's case is that since the punishment itself has been set aside, he should be paid full pay and allowances for the aforesaid period. The applicant has, therefore, prayed for the following reliefs:-

1. That the respondents may kindly be directed to pay full pay and allowances to the applicant for the period w.e.f. 06.05.2004 to 23.03.2005.
2. That any other benefit or relief which in the circumstances of the case deemed fit and proper be allowed to the applicant.
3. That the cost of the suit be awarded to the applicant.”

5. It is argued by learned counsel for the applicant that in para 4 of the order passed by the Chief Post Master General, the following observations have been made:-

“4.....I find that in Inquiry, it has not been proved that the petitioner and his family did not actually go for the LTC trip. In fact during the inquiry, the supporting documents like Exh-K-3 (Passenger list), Ka-5 (Cash receipt cum Ticket) & Ka-6 (Journey Certificate), Kh-2, (Tour Programme issued by ARTO (Admn) Sant Ravidas Nagar) Kh-3 (Temporary permit issued by ARTO) which was submitted by the petitioner were found to be genuine, as it was verified by Shri Moti Lal, the then Office Superintendent, Divisional Office, Aligarh. The contention of the Disciplinary Authority, wherein he has agreed with the Inquiry Report, that the charged official did not produce driver or conductor or any other co-passenger who accompanied him in the said LTC tour cannot be sustained as the petitioner has submitted supporting documents (as mentioned above) of having gone on the LTC tour. There is no evidence or proof discussed in the Punishment Order which proves conclusively that the petitioner did not actually go for the LTC tour....”

It is argued that the above would show that the Chief Post Master General had found that there is no evidence to show that the applicant had not actually gone for LTC tour and in this background set aside the punishment order. In view of this fact, the applicant claims that he should be paid full salary for the period mentioned above.

6. In reply, learned counsel for the respondents states that the respondents after considering all the rules and instructions in this regard and specifically FR-54 (5), vide order dated 23.09.2005 have ordered as follows:-

“ ORDER

I, K .K. Gagneja, Senior Superintendent of Post Offices, Aligarh Division, Aligarh Keeping all the rules and instructions issued in this regard in view hereby decide the issue and pass order as under:-

- (a) The official shall be paid “Half pay & allowances” for the period from 06.05.2004 to 23.03.2005.
- (b) The above period shall be treated as a period spent on duty.

The payment of allowances will be subject to other conditions under which such allowances are admissible and any amount earned by the official (Shri Bankey Lal) through employment elsewhere during the period of absence (i.e.06.05.2004 to 23.03.2005) has to be adjusted from the payment to be made to him and no payment would be due to him if such earnings are equal to or more than the amount determined and payable to him.”

The applicant submitted his representation dated 06.10.2005 against the aforesaid order dated 23.09.2005. Thereafter, orders dated 15/16-02-2006 and 23.05.2006 were passed.

Finally, vide order dated 31.03.2009, the Chief Post Master General set aside the punishment order.

7. We have heard learned counsel on both sides and perused the relevant orders passed in this regard.

8. The fact is that the Chief Post Master General after considering all facts set aside the order, passing a reasoned and speaking order in which based on documents and evidence, as cited above, he came to the conclusion that there is no evidence to prove that the applicant did not proceed on LTC tour. It is based on these that he set aside the punishment order. Having been thus fully exonerated, we are of the view that the period w.e.f. 06.05.2004 to 23.03.2005 should be treated as period spent on duty and counted for the purpose of working out his pension, increments etc. However, since he did not work during that period, on the principle of "no work no pay" he cannot be paid his full salary for the same.

9. The OA is accordingly disposed of with direction to the respondents to treat the period from 06.05.2004 to 23.03.2005 as period spent on duty and this period be counted towards determination of pension and increments, but no salary other than subsistence allowance, which has already

been sanctioned by the respondents, will be payable to the applicant. No costs.

(P. K. Basu)
Member (A)

/pj/

(Syed Rafat Alam)
Chairman