

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/473/2011

Bilaspur, this Monday, the 03rd day of December, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Prakash Chandra Mishra (deceased applicant) through LR Yagnyawalky Mishra, S/o Late Prakash Chandra Mishra, aged about 40 years, R/o Sattipara, Bechan Colony, Ambikapur (C.G.)
-Applicant

(By Advocate – Shri Aman Tamboli, proxy counsel of Shri R.S. Marhas)

V e r s u s

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Parliament Street, New Delhi 110001.

2. Director, Postal Services (Appellate Authority) Office of Chief Post Master General, Head Post Office, Raipur, Chhattisgarh 492001.

3. Superintendent of Post Offices, Raigarh Division, Raigarh, Chhattisgarh 496001
-Respondents

(By Advocate – Shri Manish Chourasia)

O R D E R (R E A S O N E D)

By Ramesh Singh Thakur, JM.

This Original Application has been filed by the applicant against the order dated 14.03.2011 [wrongly mentioned as 14.03.2010 (Annexure A-1)], whereby the period from 05.02.1988 to 31.07.2008 has been treated as on duty for

pensionary benefits and has not been counted for payment of salary and allowances.

2. The applicant has sought for the following reliefs:

“8.1 The Hon’ble Tribunal be pleased to call for all the records pertaining to the case of the applicant for perusal and hold that the punishment quashed by this Hon’ble Tribunal in OA No.533 of 1999 vide order dated 17/03/2004 was based on merits of the case.

8.2 Direct the respondents to regularize the period of interruption from 05.08.1998 to 31.07.2008 under the provisions of Rule 54-A (3) of the Fundamental Rules and further direct them to treat the period of interruption to be on duty for all purposes.

8.3 In the light of the facts and grounds contained hereinabove the applicant prays that this Hon’ble Tribunal may pass such other order/orders, as it may deem fit in the facts and circumstances of the case in favour of the applicant against the respondents.”

3. The brief facts of the case, as stated in the Original Application, are that the applicant was appointed as Time Scale Clerk on 11.01.1973. While working as Postal Assistant at Kurasia and then as Sub-Post Master, he was served with a chargesheet on 27.04.1993. The Inquiry Officer was appointed to investigate into the charges, who concluded the enquiry holding the Charge No.1 as proved and charge No.2 not proved. The findings of the Inquiry Officer were sent to the applicant to submit his representation. However, the Disciplinary Authority

recorded a note of disagreement about Charge No.2 and held the same as proved. The applicant challenged the order of Disciplinary Authority in appeal and the Appellate Authority, vide its order dated 25.08.1998, rejected the appeal of the applicant. The revision petition filed against the order of the Appellate Authority was also rejected by the Revisionary Authority on 13.07.1999.

4. Assailing the orders passed by the aforesaid authorities, the applicant filed Original Application No.533 of 1999 before this Tribunal, which was disposed of vide order dated 17.03.2004 by quashing the orders passed by the Disciplinary, Appellate and Revisional Authorities. However, the Disciplinary Authority was directed to impose any penalty on the applicant other than compulsory retirement, removal and dismissal with a further direction to regularise the intervening period as per rules.

5. The applicant has also filed Original Application No.256 of 1999 against the order dated 02.07.1998, whereby recovery of penal rent from the applicant was directed to be recovered alleging that he occupied by the accommodation given to him by the South Eastern Coalfields Limited though the penalty of

compulsory retirement was already inflicted on him. The aforesaid O.A was allowed vide order dated 17.06.2004 (Annexure A-3) with a direction to the respondents not to further recover the amount of penal rent from the applicant. The amount of penal rent, already recovered from the applicant, was directed to be paid to him within a period of three months from the date of receipt of copy of the order. It was further directed that the respondents may charge normal licence fee from the applicant as per relevant rules.

6. The respondents preferred Writ Petitions Nos.2563 of 2004 and 3166 of 2004 (Annexure A-4 & A-5 respectively) before the Hon'ble High Court of Chhattisgarh at Bilaspur, which were dismissed on 10.01.2008 affirming the orders passed by this Tribunal in Original Applications Nos.256 of 1999 and 533 of 1999.

7. The respondent No.3 passed the order dated 18.06.2008 (Annexure A-6) imposing punishment of lowering applicant's scale to the minimum payable to Postal Assistant w.e.f. 04.02.1998. It was further mentioned in the order that the applicant would not be entitled to any increments during the period of punishment. The applicant preferred an appeal on

04.08.2008 (Annexure A-7) to the Appellate Authority. On 01.05.2009 (Annexure A-8), the Appellate Authority remitted the matter back to the Disciplinary Authority to proceed *de-novo* in the matter. Accordingly, on 16.06.2009 (Annexure A-9), the Disciplinary Authority issued a notice to the applicant for regularising the period and pay and allowances of compulsory retirement from 05.02.1998 to 31.07.2008 for pensionary benefit only and non-duty for other benefit. Further, the applicant was asked to show cause why the whole amount of DCRG paid to him should not be recovered in whole.

8. The applicant submitted his representation on 04.07.2009 (Annexure A-10) stating that the provisions of Rule 54-A of Fundamental Rules provides for regularisation of the period of absence from duty as on duty for all purposes. So far as the recovery of DCGR is concerned, an amount of Rs.2,000/- may be deducted from his salary. However, on 07.08.2009 (Annexure A-11), the Disciplinary Authority issued yet another notice to the applicant substantially containing the same allegations as contained in the notice dated 16.06.2009. Thereafter, vide memo dated 20.10.2009 (Annexure A-13), the punishment of lowering the scale to the minimum of pay band

w.e.f. 01.08.2008 to 30.01.2011 was imposed on the applicant and the intervening period was regularised as period on duty for the purposes of pension and calculating DCRG only. The pay and allowances of the period of absence was limited to the pension already paid to the applicant during that period. The applicant was also directed to deposit the amount of DCRG in full.

9. Aggrieved by the same, the applicant preferred an appeal on 15/18.12.2009. The Appellate Authority, vide its order dated 28.09.2010 (Annexure A-15), modified the punishment to the extent of lowering of scale in pay band for one year with cumulative effect w.e.f. 20.10.2009 and remitted the matter back to the Disciplinary Authority to consider the matter regarding regularisation of the period from compulsory retirement till reinstatement of the applicant. Now, vide order dated 14.03.2011 (Annexure A-1), the Disciplinary Authority has again passed the same order, as passed on 20.10.2009, reiterating its earlier stand. Hence, this O.A.

10. The respondents, in their reply, have not disputed the factual accuracy. It has been submitted that the applicant was inflicted with the punishment of reduction from TBOP (4500-

120-7000) to the scale of Postal Assistant (4000-100-6000) at the minimum stage of Rs.4000 till the competent authority does not find him fit for promotion to TBOP. Also he will not earn increment during the period of punishment. The applicant was served notice by the memo dated 16.06.2009 to regularise the period and pay and allowances of compulsory retirement from 5.2.1998 to 31.07.2008. The above period was treated duty for pensionary benefit and non-duty for other benefit vide office memo dated 20.10.2009. The Appellate Authority directed the Disciplinary Authority vide order dated 28.09.2010 to issue separate order for regularisation of said period from the stage of consideration of representation. Hence, a separate order for regularisation of period from 5.2.1998 to 31.07.2008 has been issued vide order dated 14.03.2011.

11. It has been further submitted by the respondents that in compliance of the orders passed by this Tribunal and after dismissal of W.P, the applicant was reinstated on duty on 18.06.2008. Therefore, the intervening period between the date of dismissal, removal or compulsory retirement from 05.02.1998 to 31.07.2008 has been regularised as per provision

of Sub Rule 4 of FR 54. Therefore, the O.A is devoid of merit and deserves to be dismissed.

12. During the pendency of this O.A, the applicant died on 25.03.2018 and he has been substituted by his only son Yagnyawalky Mishra.

13. We have heard the learned counsel for the parties and have gone through the pleadings available on record.

14. From the pleadings, there is no dispute regarding the service of chargesheet dated 27.04.1993 to the applicant. Further, there is also no dispute regarding the fact of inquiry and the punishment awarded by the Disciplinary Authority on 31.12.1997. The appeal and revision petition filed by the applicant was also rejected on 25.08.1998 and 13.07.1999 respectively. It is also not in dispute that the applicant filed OA No.533 of 1999 before this Tribunal and vide order dated 17.03.2004 (Annexure A-2), the orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority, were quashed and the Disciplinary Authority was directed to impose any penalty on the applicant other than compulsory retirement, removal and dismissal and the intervening period was directed to be regularised as per rules.

15. It is pertinent to mention that in pursuance to the orders passed by this Tribunal in OA 533 of 1999, the Disciplinary Authority had passed order dated 18.06.2008 (Annexure A-6) and has imposed the punishment of lowering applicant's scale to the minimum payable to Postal Assistant w.e.f. 04.02.1998 till he becomes eligible for the higher post of TBOP. The aforesaid punishment of the applicant got modified by the Appellate Authority vide order dated 28.09.2010 to the extent of lowering of scale in pay band for one year with cumulative effect w.e.f. 20.10.2009. In regard to the period of applicant's compulsory retirement till reinstatement, the Appellate Authority remanded the matter back to the Disciplinary Authority to consider the matter regarding regularisation of the aforesaid period.

16. It is the contention of the applicant that the OA No.533 of 1999 was decided on merits and the Disciplinary Authority was directed to impose the penalty other than compulsory retirement, removal and dismissal and regularise the intervening period as per rules. Though the Disciplinary Authority had imposed the punishment of lowering applicant's scale to the minimum payable to Postal Assistant w.e.f. 04.02.1998 till he

becomes eligible for the higher post of TBOP, which was subsequently modified by the order of the Appellate Authority dated 28.09.2010 to the extent of lowering of scale in pay band for one year with cumulative effect w.e.f. 20.10.2009, however, the intervening period, i.e. the date of his compulsory retirement till the date of reinstatement has not been dealt with as per the provisions of Sub Rule 3 of Rule 54-A of Fundamental Rules, which provides for treatment of the absence period as duty for all purposes and entitlement of full pay and allowances for the period.

17. We may note that while disposing of the OA No.533 of 1999, this Tribunal had passed the following orders on 17.03.2004:

“9. In the facts and circumstances of the case, we quash the orders passed by the disciplinary, appellate and revisional authorities on 31.12.1997, 25.8.1998 and 13.7.1999 (Annexure A-1 to A-3) respectively. We direct the disciplinary authority to impose any penalty on the applicant other than compulsory retirement, removal and dismissal. The intervening period shall be regularised as per rules.”

18. A bare perusal of Para 9 of the order makes it clear that there was a direction to the respondents to impose any penalty on the applicant other than compulsory retirement, removal and

dismissal and regularise the period of applicant's compulsory retirement till reinstatement as per rules.

19. Government of India's orders (3) dated 25.05.1962 and the 9th August, 1962, read with provisions of FRs 54, 54-A and 54-B, deals with the treatment of period of absence and payment thereof. The same reads, as under:

“(3) Treatment of period of absence and payment thereof.- The Government of India have conveyed the following clarifications in regard to certain points which have been raised in connection with the application of FRs 54, 54-A and 54-B:-

(1) The decision of the competent authority under FRs 54, 54-A and 54-B is in respect of two separate and independent matters, viz, (a) pay and allowances for the period of absence, and (b) whether or not the period of absence should be treated as duty.

It is not necessary that the decision on (a) above should depend upon the decision on (b) above.

The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose(s) or only to pay the proportionate pay and allowances. It has no discretion to pay full pay and allowances when the period is treated as “non-duty”.

If no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as ‘non-duty’. In such event, the past service (i.e.,) service rendered before dismissal, removal, compulsory retirement or suspension will not be fortified.

(2) As Fundamental Rule 54 is absolute, the law of limitation restricting payment of arrears of subsistence allowance only for a period of three years in certain

circumstances need not be invoked at the time of paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement in respect of all cases where the pay and allowances are regulated on reinstatement in accordance with the provisions contained in FR 54, FR 54-A and FR 54-B.”

(emphasis supplied)

20. In the instant case, the applicant was reinstated back in service in view of our orders passed in Original Application No.533 of 1999 and the period of his compulsory reinstatement till the date of reinstatement has been regularised as per the provisions of FR 54-A (1) and (2) and Government of India's orders (3) read with provisions of FRs 54, 54-A and 54-B, which clearly provides that if no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as 'non-duty'.

21. Admittedly, there was no such direction from this Tribunal, which entitles the applicant to claim pay and allowances for the intervening period. The only direction was to regularise the intervening period as per rules, which has been regularised as per the provisions contained in FR 54-A (1) and (2) of the Fundamental Rules. As there was no order directing to treat the period of absence as duty for any specified purpose, the intervening period has rightly been treated as 'non-duty' for

counting the same for the purposes of pensionary benefits only. Hence, we do not find any illegality in the orders passed by the Disciplinary Authority on 14.03.2010 (sic).

22. Accordingly, the O.A is dismissed being devoid of merits. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-