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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

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OA NO.290/00134/2013
RESERVED ON: 09.11.2017

PRONOUNCED ON: 06.02.2018

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CORAM:

HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)
HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)

OM PRAKASH GAUR SON OF SHRI NARAIN GAUR, AGED ABOUT 55 YEARS, RESIDENT OF DEGANA JN, DISTT. NAGAUR-341302, AT PRESENT EMPLOYED ON THE POST OF GDS MESSENGER/ MAIL CARRIER AT DEGANA POST OFFICE, DISTRICT NAGAUR-341302.

...APPLICANT

BY ADVOCATE : MR. J.K. MISHRA

VERSUS

- 1. UNION OF INDIA THROUGH SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF COMMUNICATION & INFO TECHNOLOGY, DEPTT. OF POSTS, DAK BHAWAN, SANSAD MARG, NEW DELHI.**
- 2. SUPERINTENDENT OF POST OFFICES, NAGAUR DIVISION, NAGAUR.**
- 3. SUB POSTMASTER, DEGANA POST OFFICE, DEGANA-341503.**

RESPONDENTS

BY ADVOCATE: MR. K.S. YADAV

ORDER

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PER HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J):-

THE APPLICANT HEREIN WAS INITIALLY APPOINTED AS EDA MESSENGER AT DEGANA W.E.F. 31.01.1978. THE POST OF EDA MESSENGER WAS LATER ON RE-DESIGNATED AS GDS MAIL MESSENGER. AT A SUBSEQUENT STAGE, THE POST OF GDS MAIL MESSENGER WAS PHASED OUT BY THE RESPONDENTS W.E.F. 10.10.2005 DUE TO DECLINE IN TELEGRAPH TRAFFIC. THEREAFTER, VIDE ORDER DATED 27.12.2006, THE APPLICANT WAS ORDERED TO WORK AS GDS MAIL CARRIER. THE POSTMASTER, DEGANA VIDE HIS ORDER DATED 12.03.2011 ORDERED THE APPLICANT TO EXCHANGE MAILS WITH THE SECTIONS OF RAILWAY MAIL SERVICE RUNNING IN VARIOUS TRAINS PASSING THROUGH DEGANA RAILWAY STATION. THE GRIEVANCE OF THE APPLICANT IS THAT HE HAS BEEN COMPELLED TO PERFORM THE DUTIES OF EXCHANGING THE MAIL AT RAILWAY STATION, DEGANA FROM 05.00 PM TO 09.00 AM AND HE PERFORMS THE DUTIES FOR MORE THAN 16 HOURS IN A DAY. THE DAILY WORKING HOURS OF GDS MAIL CARRIER ARE SUBJECT TO A LIMIT OF

MAXIMUM OF 5 HOURS. HE HAS NOT BEEN PAID THE COMPENSATION OR OVER TIME ALLOWANCE FOR DETAINING HIM ON DUTY BEYOND THE PERIOD OF 5 HOURS. IT HAS FURTHER BEEN AVERRED THAT THE APPLICANT IS PERFORMING THE DUTIES BETWEEN 05.00 PM TO 09.00 AM SINCE 01.10.2010. THE INSTANT OA HAS BEEN FILED SEEKING THE FOLLOWING RELIEFS:-

“(I) THAT IMPUGNED ORDER DATED 31.1.2013 (ANNEXURE-A/1) A/2 ORDER DATED 12.3.2011 MAY BE DECLARED ILLEGAL AND THE SAME MAY BE QUASHED. THE RESPONDENTS MAY BE DIRECTED TO REGULATE THE WORKING HOURS OF THE APPLICANT AS PER THE PROVISIONS MADE IN SECTION VI TRCA, BONUS AND OTHER ALLOWANCES FROM SERVICE RULES FOR POSTS GDS AND ALLOW ALL CONSEQUENTIAL BENEFITS.

(II) THAT THE RESPONDENTS MAY BE FURTHER DIRECTED TO MAKE PAYMENT OF COMPENSATION/ OVERTIME ALLOWANCE FOR THE EXTRA HOURS OF DUTY PERFORMED/ BEING PERFORMED BY HIM SINCE 01.10.2010 FOR 17 HOURS A DAY I.E. MORE THAN FIVE HOURS AND AMOUNT OF ARREARS THEREOF MAY BE DIRECTED TO BE PAID ALONG WITH MARKET RATE OF INTEREST.”

2. THE RESPONDENTS BY WAY OF FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE CLAIM OF THE APPLICANT PRIMARILY ON THE GROUND THAT THE APPLICANT AND ONE SHRI RAMSUKH SUNDARIYA WERE PUT ON DUTY TO EXCHANGE THE MAIL WITH THE SECTIONS AND THE TOTAL DUTY HOURS OF THE APPLICANT ARE LESS THAN 5 HOURS IN A DAY. IT HAS BEEN AVERRED IN THE REPLY THAT THE APPLICANT DELIBERATELY STARTED DISLOCATING THE MAIL AND ORALLY REFUSED TO CARRY OUT THE DUTIES ASSIGNED TO HIM. THE ORDER DATED 12.03.2011 VIDE WHICH THE APPLICANT WAS ASKED TO PERFORM THE DUTIES WAS ISSUED ONLY TO MANAGE THE WORK AND HIS TOTAL DUTY HOURS COME TO LESS THAN 5 HOURS IN A DAY. WITH THESE ASSERTIONS, DISMISSAL OF THE OA HAS BEEN PRAYED.

3. HEARD LEARNED COUNSEL FOR THE PARTIES.

4. LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT A GRAMIN DAK SEVAK CANNOT BE ASKED TO PERFORM THE DUTIES FOR MORE THAN 5 HOURS IN A DAY AND IN CASE HIS DUTY PERIOD EXCEEDS THE SAID LIMIT, HE BECOMES ENTITLED TO COMPENSATION OR OVERTIME ALLOWANCE IN TERMS OF A CIRCULAR CONTAINED IN SECTION VI TRCA BONUS AND OTHER ALLOWANCE, DG POSTS LETTER NO.6-1/2009-PE.II DATED 09.10.2009.

5. ON THE OTHER HAND, LEARNED COUNSEL FOR THE RESPONDENTS CONTENDED THAT THE TOTAL WORKING HOURS OF THE APPLICANT ARE NOT MORE THAN 5 HOURS IN A DAY AND, THEREFORE, HE CANNOT LAY DOWN ANY CLAIM FOR PAYMENT OF COMPENSATION / OVERTIME ALLOWANCE.

6. CONSIDERED THE RIVAL CONTENTIONS OF THE LEARNED COUNSEL FOR THE PARTIES AND PERUSED THE RECORD. THE ORDER DATED 12.03.2011 PRODUCED ON RECORD BY THE APPLICANT AS

ANNEXURE-A/1 CLEARLY REVEALS THAT THE APPLICANT WAS DEPUTED TO COLLECT THE MAIL AT 05.00 PM AND THEN TO EXCHANGE THE SAME ON VARIOUS TRAINS THROUGHOUT THE NIGHT. A SPECIFIC PLEADING HAS BEEN MADE BY THE APPLICANT WITH REGARD TO HIS WORKING HOURS IN PARAGRAPH 4.3 OF THE APPLICATION WHICH IS REPRODUCED HERE AS UNDER: -

“ 4.3 THAT THE APPLICANT PERFORMED HIS DUTIES WITH HIS BEST OF EFFICIENCY AND EFFORTS BUT STILL HE WAS SUBJECTED TO HUMILIATION AND COMPULSIONS FROM TIME AND AGAIN. HE WAS PUT TO WORK ON THE VACANT POST OF GROUP D SINCE 01.10.2010. THE APPLICANT IS COMPELLED TO PERFORM THAT JOB DURING THE PERIOD FROM 5 PM TO NEXT DAY 9 AM I.E. 16 HOURS EVERY DAY. HE IS EMPLOYED TO PERFORM THE FOLLOWING DUTIES SINCE 01.10.2010: -

- (I) 5 PM- RECEIVING MAIL BAGS FROM DEGANA POST OFFICE.
- (II) 9.38 PM- EXCHANGE OF MAIL FROM ST 11 OUT.
- (III) 10.30 PM- EXCHANGE OF MAIL FROM JP301N.
- (IV) 12.00 NIGHT- EXCHANGE OF MAIL FROM ST 11N.
- (V) 1.30 AM- EXCHANGE OF MAIL FROM ST 1 OUT.
- (VI) 2.58- EXCHANGE OF MAIL FROM JP 30 OUT.
- (VII) 5.10 AM- EXCHANGE OF MAIL FROM ST 11N.
- (VIII) 9.00 AM-EXCHANGE OF MAIL FROM ALL TRAINS COMING LATE.”

7. THE RESPONDENTS, WHILE FILING REPLY, HAVE GIVEN AN EVASIVE DENIAL TO AFORESAID PLEADINGS. THE ORDER DATED 12.03.2011 IS SOUGHT TO BE JUSTIFIED ON THE GROUND THAT THE SAID ORDER HAS BEEN ISSUED TO MANAGE THE WORK AND THE TOTAL DUTY HOURS OF THE APPLICANT COME TO LESS THAN 5 HOURS IN A DAY.

8. AFTER GIVING THOUGHTFUL CONSIDERATION TO THE RESPECTIVE ARGUMENTS OF THE LEARNED COUNSEL FOR THE PARTIES AND THE PLEADINGS LAID DOWN IN THE APPLICATION AND REPLY, WE FIND THAT THE APPLICANT HAD BEEN PERFORMING HIS DUTIES OF COLLECTING THE MAIL AT 5.00 PM AND THEREAFTER HE KEPT ON EXCHANGING THE SAME THROUGHOUT THE NIGHT AS PER THE SCHEDULE GIVEN BY THE RESPONDENTS VIDE ORDER DATED 12.03.2011 (ANNEXURE-A/1). IT CANNOT BE DISCERNED FROM THE RECORD THAT THE SAID DUTIES OF THE APPLICANT WERE LESS THAN 5 HOURS IN A DAY. THUS, WE HOLD THAT THE APPLICANT WHO HAD BEEN PERFORMING HIS DUTIES BEYOND THE SPECIFIC PERIOD OF 5 HOURS IN A DAY, IS ENTITLED TO COMPENSATION IN TERMS OF SECTION VI TRCA BONUS AND OTHER ALLOWANCE, DG POSTS LETTER NO.6-1/2009-PE.II DATED 09.10.2009 AS HE WAS BEING DETAINED TO EXCHANGE THE MAILS BEYOND STIPULATED PERIOD OF HIS DUTY HOURS.

9. ACCORDINGLY, THE INSTANT ORIGINAL APPLICATION IS DISPOSED OF WITH A DIRECTION TO THE RESPONDENTS TO CALCULATE THE TOTAL WORKING HOURS DURING WHICH HE REMAINED POSTED AS

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GDS MAIL CARRIER TO EXCHANGE THE-mails ON VARIOUS TRAINS AT DEGANA AND PAY HIM THE COMPENSATION FOR THE PERIOD BEYOND 5 HOURS IN A DAY IN TERMS OF SECTION VI TRCA BONUS AND OTHER ALLOWANCE, DG POSTS LETTER NO.6-1/2009-PE.II DATED 09.10.2009. A FURTHER DIRECTION IS ISSUED TO THE RESPONDENTS TO UNDERTAKE THE WHOLE EXERCISE WITHIN A PERIOD OF THREE MONTHS FROM THE DATE OF RECEIPT OF A CERTIFIED COPY OF THIS ORDER. NO ORDER AS TO COSTS.

**(SURESH KUMAR MONGA)
MEMBER (J)**

**(PRAVEEN MAHAJAN)
MEMBER (A)**

RSS/KDR

(OA NO.290/00134/2013)

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