

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 290/00312/2016

RESERVED ON : 02.02.2018

**JODHPUR, THIS THE 9TH DAY OF MARCH,
2018
CORAM
HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER**

**OM PRAKASH KALWAR S/O SHRI GEESA LAL, AGED 29 YEARS, R/O SHRAM
DEEP H 88, R.K. COLONY, BHILWARA, POSTAL ASSISTANT, HEAD POST
OFFICE, BHILWARA.**

**.....APPLICANT
BY ADVOCATE: SHRI VIJAY MEHTA
VERSUS**

**1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF
COMMUNICATION (DEPARTMENT OF POST) SANCHAR BHAWAN, NEW
DELHI.**

2. SUPERINTENDENT OF POST OFFICES, BHILWARA.

.....RESPONDENTS

BY ADVOCATE : MR. B.L.TIWARI

**ORDER
PER SURESH KUMAR MONGA, MEMBER (J)**

**SERVICES OF THE APPLICANT HEREIN WERE TERMINATED BY
THE RESPONDENTS VIDE ORDER DATED 30.05.2011. THE SAID ORDER WAS
CHALLENGED BY HIM IN OA NO.293/2013 AND THE SAME WAS SET-ASIDE
BY THIS TRIBUNAL VIDE ORDER DATED 04.12.2014. THE APPLICANT WAS
ORDERED TO BE REINSTATED IN SERVICE FORTHWITH. WHILE PASSING
THE SAID ORDER, THE APPLICANT WAS DIRECTED TO FILE A
REPRESENTATION BEFORE THE RESPONDENT AUTHORITIES IN ORDER TO
CLAIM SALARY FOR THE PERIOD DURING WHICH HE REMAINED OUT OF
SERVICE BECAUSE OF THE ORDER OF TERMINATION OF HIS SERVICES.
THOUGH, PURSUANT TO ORDER DATED 04.12.2014 PASSED BY THIS
TRIBUNAL, THE RESPONDENT AUTHORITIES WERE REQUIRED TO
REINSTATE THE APPLICANT IN SERVICE FORTHWITH, BUT IT WAS NOT**

DONE. THE RESPONDENTS OPTED TO PREFER DB CIVIL WRIT PETITION NO.2161/2015 BEFORE THE HON'BLE HIGH COURT OF RAJASTHAN AT JODHPUR WHEREIN NO INTERIM STAY WAS GRANTED TO THEM. THE APPLICANT PREFERRED A CONTEMPT PETITION NO.1/2015 ALLEGING CONTEMPT BECAUSE OF THE NON-COMPLIANCE OF THE ORDER DATED 04.12.2014 PASSED BY THIS TRIBUNAL. THEREAFTER, HE WAS ORDERED TO BE REINSTATED IN SERVICE ON 31.12.2015. NOTICING THE SAID FACT, THE DB CIVIL WRIT PETITION NO.2161/2015 WAS ALSO DISMISSED BY THE HON'BLE HIGH COURT OF RAJASTHAN ON 04.03.2016. AFTER REINSTATEMENT IN SERVICE, THE APPLICANT GAVE A REPRESENTATION DATED 12.1.2016 IN ORDER TO CLAIM SALARY FOR THE PERIOD DURING WHICH HE REMAINED OUT OF SERVICE BECAUSE OF ILLEGAL TERMINATION ORDER DATED 30.05.2011. THE SAID REPRESENTATION WAS ALSO NOT DECIDED AND, THEREFORE, A DIRECTION WAS GIVEN TO THE RESPONDENT IN CONTEMPT PROCEEDINGS BY THIS TRIBUNAL ON 16.05.2016 TO DECIDE THE SAME WITHIN A PERIOD OF TWO WEEKS. CONSEQUENT THERETO, THE RESPONDENT NO.2 PASSED AN ORDER DATED 20.06.2016 DECLINING SALARY TO THE APPLICANT FOR THE PERIOD COMMENCING FROM 30.05.2011 TO 31.12.2015 BY REFERRING THE PRINCIPLE OF 'NO WORK NO PAY'. AGGRIEVED BY THE SAID ORDER, THE APPLICANT HAS PREFERRED THE INSTANT OA WHILE INVOKING THE JURISDICTION OF THIS TRIBUNAL U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

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 CAUSE OF TERMINATION IS IMPUTABLE TO THE APPLICANT HIMSELF AND HE CANNOT TAKE ADVANTAGE OF HIS OWN WRONG. IT HAS ALSO BEEN PLEADED THAT DURING THE PERIOD FOR WHICH THE APPLICANT IS CLAIMING SALARY, THE RESPONDENTS HAD BEEN PURSUING THEIR LEGAL REMEDIES BEFORE THE COURTS OF LAW AND, THEREFORE, HE CANNOT BE PAID SALARY FOR THE SAID PERIOD.

3. HEARD LEARNED COUNSEL FOR THE PARTIES.

4. SHRI VIJAY MEHTA, LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT IN VIEW OF THE ORDER DATED 04.12.2014 PASSED BY THIS TRIBUNAL IN OA NO.293/2013, THE RESPONDENTS OUGHT TO HAVE REINSTATED THE APPLICANT IN SERVICE FORTHWITH. HOWEVER, THEY TOOK A LONG TIME TO REINSTATE HIM IN SERVICE WITHOUT ANY PLAUSIBLE REASON. THOUGH THE APPLICANT SUBMITTED REPRESENTATION DATED 16.01.2015, BUT STILL HE WAS NOT REINSTATED IN SERVICE UPTIL 31.12.2015. HE FURTHER SUBMITTED THAT THE APPLICANT REMAINED OUT OF SERVICE BECAUSE OF AN ILLEGAL ORDER OF HIS TERMINATION PASSED BY THE RESPONDENTS ON 30.05.2011. HE WHILE PLACING RELIANCE UPON A DIVISION BENCH JUDGMENT OF THE HON'BLE HIGH COURT OF RAJASTHAN IN THE CASE OF LIFE INSURANCE CORPORATION OF INDIA VS. RAJPAL SINGH, 2005 (10) RDD 4336 (RAJ) (DB)

AND ALSO UPON A JUDGMENT OF THE HON'BLE SUPREME COURT IN THE CASE OF UNION OF INDIA & ORS. VS. CENTRAL ADMINISTRATIVE TRIBUNAL & ANR., 2005 (104) FLR 404 CONTENDED THAT THE APPLICANT WAS NOT AN UNWILLING WORKER DURING THE PERIOD HE WAS KEPT OUT OF SERVICE BECAUSE OF AN ILLEGAL ORDER DATED 30.05.2011 AND, THEREFORE, HE CANNOT BE DENIED THE SALARY FOR THE SAID PERIOD.

5. PER CONTRA, SHRI B.L.TIWARI, LEARNED COUNSEL FOR THE RESPONDENTS CONTENDED THAT THE APPLICANT CANNOT BE PAID SALARY FOR THE PERIOD DURING WHICH HE REMAINED OUT OF SERVICE AS HE DID NOT WORK. HE WHILE RELYING UPON THE PRINCIPLE OF 'NO WORK NO PAY' SUBMITTED THAT THE APPLICANT CANNOT BE GIVEN SALARY FOR THE PERIOD FOR WHICH HE DID NOT WORK. HE FURTHER CONTENDED THAT THE RESPONDENT AUTHORITIES HAD BEEN PURSUING THEIR LEGAL REMEDY BEFORE COURTS OF LAW AND, THEREFORE, THE STATE EXCHEQUER CANNOT BE BURDENED BY MAKING THE PAYMENT OF SALARY TO THE APPLICANT FOR THE PERIOD FOR WHICH HE DID NOT WORK.

6. CONSIDERED THE RIVAL CONTENTIONS OF THE LEARNED COUNSEL FOR BOTH THE PARTIES AND PERUSED THE RECORD.

7. ADMITTEDLY, WHILE SETTING ASIDE THE ORDER OF TERMINATION DATED 30.05.2011, THIS TRIBUNAL VIDE ORDER DATED 04.12.2014 ORDERED REINSTATEMENT OF THE APPLICANT IN SERVICE FORTHWITH. THE RESPONDENTS DID NOT REINSTATE THE APPLICANT IN SERVICE IMMEDIATELY AFTER THE SAID ORDER. THE REPRESENTATION DATED 16.01.2015 (ANN.A/3) GIVEN BY THE APPLICANT CLEARLY ESTABLISHES THAT HE CANNOT BE TERMED AS AN UNWILLING WORKER. THE RESPONDENT AUTHORITIES FAILED TO GET ANY STAY ORDER FROM THE HON'BLE HIGH COURT OF RAJASTHAN IN DB CIVIL WRIT PETITION NO. 2161/2015 WHEREIN THE ORDER DATED 04.12.2014 PASSED BY THIS TRIBUNAL WAS UNDER CHALLENGE. THE RESPONDENTS WAITED FOR FILING OF CONTEMPT PETITION BEFORE THIS TRIBUNAL AND DURING THE PENDENCY OF THE CONTEMPT PROCEEDINGS, THE APPLICANT WAS REINSTATED IN SERVICE ON 31.12.2015. THE REPRESENTATION DATED 12.01.2016 SUBMITTED BY THE APPLICANT IN ORDER TO CLAIM HIS SALARY FOR THE PERIOD DURING WHICH HE REMAINED OUT OF SERVICE WAS ALSO NOT CONSIDERED BY THE RESPONDENTS TILL SUCH TIME A DIRECTION WAS GIVEN BY THIS TRIBUNAL ON 16.05.2016 IN CONTEMPT PROCEEDINGS. AFTER THE ORDER DATED 16.05.2016 PASSED BY THIS TRIBUNAL IN CONTEMPT PROCEEDINGS, THE RESPONDENT NO.2 PASSED THE ORDER DATED 20.06.2016 DECLINING THE SALARY TO APPLICANT WHILE RELYING UPON THE PRINCIPLE OF 'NO WORK NO PAY'. IT APPEARS THAT RESPONDENT NO.2 WHILE PASSING THE ORDER DATED 20.06.2016 HAS TOTALLY IGNORED THE FACT THAT THE APPLICANT REMAINED OUT OF SERVICE BECAUSE OF TERMINATION ORDER DATED 30.05.2011, WHICH WAS HELD TO BE BAD IN LAW BY THIS TRIBUNAL ON 04.12.2014. HE ALSO REMAINED OBLIVIOUS ABOUT THE FACT THAT AFTER THE ORDER DATED

04.12.2014, THE APPLICANT WAS REQUIRED TO BE REINSTATED IN SERVICE FORTHWITH, BUT STILL NO ACTION WAS TAKEN IN THIS REGARD. EVEN THE REPRESENTATION DATED 16.01.2015 (ANN.A/3) GIVEN BY THE APPLICANT WAS ALSO KEPT PENDING. THERE WAS NO PLAUSIBLE REASON WITH THE RESPONDENTS TO NOT TO REINSTATE THE APPLICANT IN SERVICE IN TERMS OF ORDER DATED 04.12.2014 PASSED BY THIS TRIBUNAL IN OA NO.293/2013.

8. IN THE FACTS AND CIRCUMSTANCES OF THE CASE HEREIN, THE APPLICANT CANNOT BE TERMED TO BE AN UNWILLING WORKER. THE PRINCIPLE OF 'NO WORK NO PAY' HAS BEEN ARBITRARILY INVOKED BY RESPONDENT NO.2 WHILE DECLINING HIM SALARY FOR THE PERIOD DURING WHICH HE REMAINED OUT OF SERVICE BECAUSE OF AN ILLEGAL ORDER DATED 30.05.2011.

9. IN THE CASE OF LIFE INSURANCE CORPORATION OF INDIA VS. RAMPAL SINGH (SUPRA) A DIVISION BENCH OF THE HON'BLE HIGH COURT OF RAJASTHAN HAS HELD THAT WHERE AN INCUMBENT IS RESTRAINED FROM WORKING IN SERVICE FOR NO FAULT ON HIS PART AND THE ORDER OF TERMINATION HAS BEEN FOUND TO BE BAD IN LAW, IN THAT EVENTUALITY, THE PRINCIPLE OF 'NO WORK NO PAY' CANNOT BE APPLIED. IN THE MATTER OF UNION OF INDIA VS. CENTRAL ADMINISTRATIVE TRIBUNAL (SUPRA), THE HON'BLE SUPREME COURT HAS LAID DOWN THAT THE PRINCIPLE OF 'NO WORK NO PAY' CANNOT BE MADE APPLICABLE BY AN EMPLOYER WHERE THE EMPLOYEE IS NOT FOUND TO BE AN UNWILLING PERSON.

10. SINCE, IN THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE, THE APPLICANT CANNOT BE TERMED AS UNWILLING WORKER, THEREFORE, HE CANNOT BE DENIED SALARY FOR THE PERIOD FOR WHICH HE REMAINED OUT OF SERVICE BECAUSE OF THE TERMINATION ORDER DATED 30.05.2011 WHICH WAS HELD TO BE BAD IN LAW BY THIS TRIBUNAL VIDE ORDER DATED 04.11.2014 IN OA NO.293/2013. THUS, THE ORDER DATED 20.06.2016 PASSED BY RESPONDENT NO.2 DESERVES TO BE QUASHED.

11. ACCORDINGLY, THE INSTANT OA IS ALLOWED. THE ORDER DATED 20.06.2016 (ANN.A/1) IS QUASHED. THE RESPONDENTS ARE DIRECTED TO MAKE THE PAYMENT OF SALARY TO APPLICANT FROM 30.05.2011 TO 31.12.2015 WITH INTEREST @ 6% P.A. WITHIN A PERIOD OF 3 MONTHS FROM THE DATE OF RECEIPT OF A CERTIFIED COPY OF THIS ORDER. NO ORDER AS TO COSTS.

(SURESH KUMAR

MONGA)

MEMBER (J)

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