

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 95 of 2012

Present: **Hon'ble Mr. Gokul Chandra Pati, Member (A)**
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Brajabandhu Sahoo, Ex GDSBPM, S/o Late Khali Sahoo, resident of Vill/PO – Kuruma Bankatara, Via – Odagaon, Dist. – Nayagarh, 752081.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Chief Post master General, Odisha Circle At/PO – Bhubaneswar, Dist. – Khurda, 751001.
3. Director of Postal Services (Hqrs), At/PO – Bhubaneswar, Dist. – Khurda, 751001.
4. Sr. Superintendent of Post Offices, Puri division, At/PO/Dist. – Puri, 752001.
5. Inspector of Posts, Nayagarh West Sub division, At/PO/Dist. – Nayagarh, 752069.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 13.2.2019

Order on : 27.2.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this Original Application (in short OA) under section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the order to put him off duty, the charge sheet dated 9.8.2004 and order dated 31.12.2010 removing him from service as Gramin Dak Sevak Branch Post Master (in short GDSBPM) as a measure of punishment in pursuance to a disciplinary proceeding. The OA is filed seeking the following reliefs:-

"In view of the facts stated above applicant humbly prays that Hon'ble Tribunal may be pleased to quash Annexure A/3, A/4, A/5, A/9 & A/10 and direct the respondents to reinstate the applicant with all consequential service benefits including back wages, so also cost & compensation from respondents at fault.

And for this act of kindness, the applicant as in duty, bound shall remain ever pray.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice."

2. The applicant's case is that he was appointed as a GDSBPM when he was working as a teacher which was within the knowledge of the respondents. Vide order dated 29.4.2004, he was put off his duty and then a charge memo dated 9.8.2004 was issued to him under the GDS (Conduct and Employment) Rules, 2001 (in short 'Rules') on allegation that as he was working as a teacher also he was unable to devote his time in both the institutions simultaneously and is not adhering to the rule-5 for branch offices as from 13.30 hours to 15.30 hours he cannot attend the work in both the institutions. The Inquiry Officer (in short IO) after inquiry held that the charges have not been proved. The disciplinary authority (respondent no. 4) issued a disagreement note on 29.11.2010 (Annexure-A/8) and then passed the impugned order of removal from service vide order dated 31.12.2010 (Annexure-A/9). The applicant filed the appeal which was rejected vide order dated 10.6.2011 (Annexure-A/10) by the respondent No. 3.

3. Main grounds urged in the OA are as under:-

(i) The order of put off duty dated 29.4.2002 has not been ratified by higher authority within 15 days as respondent no.5 is not competent for passing the order to put the applicant off duty, for which the order is not sustainable.

(ii) Order of put off duty has not been reviewed by the respondents.

(iii) Applicant had rendered about 30 years of service as GDS and GDSBPM without any public complaint.

(iv) The impugned orders are non-speaking orders as the points raised by the applicant have not been discussed by the respondents.

(v) Before receiving the applicant's reply, the respondents no.4 had come to conclusion that the charge is proved, for which the applicant is prejudiced.

(vi) The findings of respondent no.4 are based on surmises and on no evidence and hence, it is liable to be set aside.

4. The counter filed by the respondents did not dispute the facts of the case. It opposed the OA on the grounds that the procedure has been followed while imposing the impugned orders and the action against the applicant was justified since the timing of the school clashed with the timing post office where the applicant was working and there was violation of the circular dated 17.4.1979 of the respondent no. 1 (Annexure-R/6). It is further stated that the findings of the IO are not binding on the respondents and that the applicant was asked to resign from either of the jobs.

5. Learned counsel for the applicant at the time of hearing pointed out that as per the report of the IO the charges were not proved and that the disciplinary authority proceeded with assumption that the charges were proved before receiving the reply of the applicant. To strengthen the case, the applicant's counsel submitted copy of order dated 24.6.2011 in OA No. 381/2007 (Madan Mohan Samal vs. UOI and others) in which under similar circumstances, the petitioner's punishment order was set aside since the fact of being a teacher was not suppressed by him at the time of his selection as GDS. Copy of the order dated 6.12.2005 in the case of Premananda Biswal vs. UOI and others in OA No. 47/2005 was also submitted by applicant's counsel.

6. Learned counsel for the respondents denied the submissions and stated that the order of the Appellate authority (R/8) has considered the grievance of the applicant and passed a detailed order dated 10.6.2011 (Annexure-A/10). It was also submitted that the provisions in the rules have been strictly complied.

7. In this case the undisputed facts are that the applicant was working both as a teacher and a GDSBPM and the timings of the school and the post office clashed. Under such a situation, the circular of the DG (P & T) dated 17.4.1979 (Annexure-R/6) in which it is stated that in cases where the working hours of the post office and the school clash, then the GDS concerned should be advised to resign from one post and if they fail, then action be taken to remove them from service. It is noted that in such cases where timings clash, action to remove the GDS from service can be taken even when there is no complaint about their performance. In this case, since there is a clash between the timing of the school and the post office where the applicant was working and he refused to resign from one post as advised by the respondents (para 4.7 of the Counter), the punishment of removal from service is in accordance with the circular DG (P&T) dated 17.4.1979. Further, there is nothing on record to show that the proceedings have been vitiated due to violation of the statutory rules or the principles of natural justice.

8. The averment of the applicant that the disciplinary authority had presumed that the charges are proved vide the disagreement note dated 29.11.2010 (Annexure-A/8) before receipt of the applicant's reply. We are unable to accept that argument since there is nothing on record to show that the reply of the applicant submitted in response to the disagreement note contained materials which could have forced the authorities to rethink. It is not the case of the applicant that he was not allowed the opportunity to submit his representation on the disagreement note. No specific instance of violation of the statutory rules by the respondents has been pointed out in the OA.

9. The averment that the put off duty order of the applicant was defective as the competent authority did not approve it within 15 days and it was not reviewed, has not much force, since in case that averment is accepted then the applicant would be treated to be in duty and with clash in timing of the school and post office, there would have been violation of working hours of both the institutions. Moreover, the applicant had already retired from the school at the age of 60 years as stated in the order dated 10.6.2011 (A/10). In other words, as on date the applicant would be more than 65 years and hence, reinstatement in service is not possible.

10. It is noticed from the statement of the ex-headmaster of the school where the applicant was working, was taken over by the Government on 10.8.1994 (i.e. by State Government), which has not been contradicted by the parties. After working in the Government school he had retired from the service, as stated in the order dated 10.6.2011 of the Appellate authority. Hence, the applicant had a full time Government service as a Teacher in addition to the post of the GDS.

11. It is seen from the order of the Tribunal in the case of Madan Mohan Samal in OA No. 381/2007, that the DG (P&T)'s circular dated 17.4.1979 (Annexure-R/6) was not considered in that order in which it is stipulated that in cases where there will be clash of timing of both institutions, the GDS will be advised to resign either as a GDS or as a Teacher. But in this case, in view of such plea taken by the respondents, it is not possible to take a different view without impugning the said circular dated 17.4.1979. In the case of Premananda Biswal (supra) in OA No. 47/2005, the dispute was the put off duty and the GDS in that OA was not working as a Teacher in addition to GDS. Hence, the present OA is distinguishable from the OA No.47/2005. Hence, the cited judgments will not be helpful for the case of the applicant.

12. In view of the facts and circumstances and the reasons discussed above, we are not inclined to interfere in the matter. Hence, the OA is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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