

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.1062 of 2012

Date of Reserve:07.02.2019
Date of Order:20.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Girish Chandra Behera, aged about 52 years, S/o. late Indramani Behera, at present working as GDSBPM, Post-Jagannathpur, Dist-Anugul

...Applicant

By the Advocate(s)-Mr.T.Rath

VERSUS-

Union of India represented through:

1. The Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi
2. The Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar GPO, Bhubaneswar, Dist-Khurda
3. Superintendent of Post Offices, Dhenkanal Division, At/Post/Dist-Dhenkanal
4. Post Master General, Sambalpur Region, Sambalpur-768 001

...Respondents

By the Advocate(s)-Mr.S.Behera
ORDER

PER MR.GOKUL CHANDRA PATI, MEMBER(A):

The applicant, working as a Gramin Dak Sevak (in short GDS) was put off duty from 31.3.2001 and was removed from service from 20.1.2003 (Annexure-A/2). Being aggrieved, he had earlier filed the OA No. 857/2004 and the Tribunal, vide order dated 21.3.2006 (Annexure-A/3) quashing the order removing him from service and directing to impose punishment except removal and dismissal from service. This order was challenged by the respondents in the Writ petition before Hon'ble High Court and the said WP was disposed of vide judgment dated 22.9.2008 (Annexure-A/4) confirming the order of the Tribunal. Thereafter, the respondents imposed revised punishment and allowed the applicant to join his post on 19.12.2008. But no order was passed by the disciplinary

authority regarding the period from 31.3.2001 till 19.12.2008. Vide order at Annexure-A/7 the respondents rejected the prayer of the applicant for back wages for the above period, which was challenged by the applicant before the Tribunal in second round of litigation (OA No. 481/2010). The OA was disposed of by quashing the order at Annexure-A/7 directing the competent authority to pass the order in this regard (Annexure-A/8). Thereafter, the respondent no. 3 has passed the order dated 11.4.2012 (Annexure-A/9) treating the period in question as non-duty and as no work no pay.

2. This OA has been filed challenging the order dated 11.4.2012 seeking to treat the period from 31.3.2001 to 19.12.2008 as duty with full TRCA for this period or in the alternative, to pay full TRCA to him for the period from 20.1.2003 to 19.12.2008.

3. The grounds advanced for the OA are as under:-

- (i) The impugned order does not mention any reason except the rule 12(3) of GDS (Conduct and Engagement) Rules, 2011 (in short Rule) and is cryptic. Under the said rules, if the order of removal is set aside, the sevak will be deemed to be under put off duty.
- (ii) No provision under the rule 12 to deny allowance for the period and the impugned order has been passed ignoring the Tribunal's order.
- (iii) There was no review undertaken of the order of put off duty.
- (iv) The rule was wrongly invoked by the respondents instead of the applicable rules.

4. The respondents have filed the Counter opposing the OA. It is stated in the Counter that the applicant had permitted excess withdrawal without obtaining sanction from the authority and for such irregularity, he was removed from service. The applicant approached the Tribunal and as per the order of the Tribunal, the punishment was modified and the applicant joined service. Since no specific direction was issued regarding the back wages, the respondents rejected the representation. Then as per the direction of the Tribunal, the impugned order dated 11.4.2012 (A/9), the period has been treated as no duty as the charges against the applicant were not dropped by the Tribunal, but the direction was to modify the punishment, which has been done. But the applicant was found guilty of the charges. It is further stated that the impugned order has been issued as per the Note (2) below the rule 12(3). It is stated that a sevak is entitled full allowance if he is exonerated from charges. It is stated that in this case, the applicant was found guilty of charge framed, hence, full allowance is not admissible.

5. Rejoinder has been filed in reply to the counter, stating that under the rule 12(3) the allowance can be denied after affording him the opportunity of hearing and by giving reasons. It is also stated as per the rule 12(5), after his removal order was quashed, he was entitled to be on deemed put off duty until further orders and for the period, the applicant could have been granted 37% of the TRCA for the period and in any case, the decision to treat the period as no duty as not tenable.

6. We heard learned counsels for both the parties and considered the pleadings on record. The dispute in this case is whether the applicant is entitled for relief as per the rule 12(3) and 12(5) of the Rules, 2011.

7. The provisions under the rules 12(3) and 12(5) of the GDS (Conduct and Engagement) Rules, 2011 are as under:-

"12. Put off duty
(1).....
(2).....

(3) A Sevak shall be entitled per month for the period of put off duty to an amount of compensation as ex-gratia payment equal to 25% of his/her Time Related Continuity Allowance together with admissible Dearness Allowance:

Provided that where.....

NOTE 1. The rate of Dearness Allowance will be based on the increased or decreased amount of compensation admissible under sub-clauses(i) and (ii) above.

NOTE 2. - The payment of compensation for the put off duty period shall not be subject to furnishing of a certificate that the employment, business, profession or vocation:

Provided that a Sevak who has been absconding or remains absent unauthorizedly and is subsequently put off duty shall not be entitled to any compensation as ex-gratia payment:

Provided further that in the event of a Sevak being exonerated, he shall be paid full admissible allowance for the period of put off duty. In other cases, such allowances for the put off duty can only be denied to a Sevak after affording him an opportunity and by giving cogent reasons.

(4).....

(5) Where a penalty of dismissal or removal from engagement imposed upon a Sevak is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case decides to hold a further inquiry against the Sevak on the allegations on which the penalty of dismissal or removal was originally imposed, the Sevak shall be deemed to have been put off his duty by the Recruiting Authority from the date of original dismissal or removal and shall continue to remain on put off his duty until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

NOTE. – The period of putting a Sevak off his duty including the period of deemed putting him off his duty shall be decided by the Competent Authority after de novo proceedings in this regard are finalized and compensation as ex-gratia payment for the concerned period shall be regulated according to provisions of sub-rule (3). The break caused due to putting the Sevak off his duty shall be regulated as per extant provisions issued from time to time by the Central Government for this purpose.

NOTE. - Any payment made under this rule to a Sevak on his reinstatement shall be subject to adjustment of compensation already paid as ex-gratia."

8. In this case, the applicant has not been exonerated from charges, since a revised penalty of debarring him from appearing in the recruitment examination for the Postman and from being considered from recruitment for Postal Assistant for a period of three years was imposed on the applicant vide order dated 11.12.2008 (A/5). Hence, the decision of the competent authority to deny the benefit of full TRCA to the applicant as per the impugned order dated 11.4.2012 (A/9), after considering the representation of the applicant, is in accordance with the second proviso to the Note-2 to the rule 12(3) and the applicant's claim for full TRCA is not permissible under the rules.

9. However, under the rule 12(5), the applicant's case can be considered for the status of the deemed to be put off duty after quashing of the first punishment of removal from service by the Tribunal vide order dated 21.3.2006 (A/3) in view of the provisions of the Note below the sub rule 12(5) in this regard. Hence, from the date of effect of the quashed removal order dated 20.1.2003 (A/2) i.e. from 20.1.2003 till 19.12.2008, the applicant is to be treated to be deemed to be put off duty under the Note below the rule 12(5) and for the said period, he is entitled for the ex-gratia payment at the rates as specified under the rule 12(3). It is made clear that since the reason for prolonged put off status for the above period is not directly attributable to the applicant, he will be entitled to the increased rate of ex-gratia payment as per the rules. In other words, the applicant is entitled for the period from 20.1.2003 to 19.12.2008 the ex-gratia payment at the rate which is higher by 50% of the ex-gratia payment @ 25% of TRCA allowed to him when he was first put off duty w.e.f. 31.3.2001 as per the rule 12(3) read with the rule 12(5). The respondents are accordingly directed to release the amount payable to the applicant as above within three months from the date of receipt of a copy of this order.

10. The OA is allowed in part in terms of the directions in para-9 above. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(J)

BKS

