

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/00896/2014

Date of Reserve:25.01.2019

Date of Order: 15.02.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Krushna Chandra Padhi, aged about 60 years, S/o. Late Parsurama Padhi of Village/PO-Podangi, Via-Pital, PS-Hingilicut, Dist-Ganjam.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha  
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Odisha Circle, AT/PO-PMG Square, Town-Bhubaneswar, Dist-Khurda.
3. Post Master General, Sambalpur Region, At/PO/PS/Dist-Sambalpur.
4. Senior Superintendent of Post Offices, Sudeargarh Division, At/PO/PS/Dist-Sundargarh.

...Respondents

By the Advocate(s)-Mr.L.Jena

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, while working as Sub Post Master (SPM) Rourkela-13 S.O., was transferred and posted as Treasurer, Rourkela-11 MDG vide Memo dated 29.03.2012 (A/4). In pursuance of instructions issued by the Superintendent of Post Offices, Sundargarh Division (Res.No.4) vide Memo dated 17.04.2012, applicant handed over the charge of SPM to one Kuleswar Singh, PA and got himself relieved on the Forenoon of 19.4.2012. He joined the transferred post at Rourkela-11 MDG on 20.04.2012. While the matter stood thus, vide Memo dated 17.05.2012 (A/8) applicant's transfer as Treasurer, Rourkela-II MDG as ordered vide A/4 dated 29.03.2012 stood cancelled and thereby the applicant

was posted on transfer as SPM, Gurundia SO. Aggrieved by this, the applicant submitted a representation dated 28.5.2012 (A/9) to the Director of Postal Services, Sambalpur Region requesting cancellation of modified transfer order vide A/8 dated 17.5.2012 and allow him to continue at the present place of posting at Rourkela-11, MDG as Treasurer. Due to illness, applicant proceeded on leave from 2.7.2012. In the meantime, Respondent No.4 by his letter dated 6.7.2012 (A/11) directed the Postmaster, Rourkela-11 Post Office not to allow the applicant to join on expiry of leave period and to direct the applicant to join his new place of posting. The representation of the applicant for cancellation of modified transfer having not been acceded to, this gave rise to filing of O.A. No.695 of 2012 by the applicant before this Tribunal. This Tribunal vide order dated 10.10.2012 directed status quo to be maintained in respect of the applicant. Respondent No.4 in pursuance of the order above order clarified to this Tribunal that the applicant had not been relieved from his post in terms of the modified order of transfer.

2. After recovery from illness, the applicant was declared fit by the treating physician on 6.11.2012. In the above background, the applicant submitted a representation dated 6.11.2012 to the Senior Superintendent of Post Offices (Res.No.4) to allow him to join his duty as P.A., Rourkela-II. He also subsequently went on filing representation after representation, the last one being dated 29.11.2012 (A/18) in which he prayed before the authorities to comply with the direction of this Tribunal and then to treat the period of his absence due to his illness till his joining as duty for all purposes. Vide letter dated 19.12.2012 (A/19), Respondent No.4 directed the Post Maser to allow the applicant to join as P.A., Rourkela-11, MDG until further orders.

3. On 4.3.2013, the applicant submitted a representation to Respondent No.4 requesting sanction of leave from 3.7.2012 to 5.11.2012 and to release his duty pay from 6.11.2012 to 20.12.2012. Since no action was taken, applicant again submitted a representation dated 3.2.2014. Respondent No.4 vide his letter dated 5.2.2014(A/22) passed an order treating the period from 3.7.2013 to 5.11.2013 + 126 days as commuted leave and it was directed that the said period will count towards increment. On the same day on 5.2.2015, Respondent No.4 directed the applicant to apply EL for the period from 6.11.2012 to 20.12.2012. Aggrieved with this, applicant submitted an appeal dated 24.12.2014 to the Post Master General, Sambalpur Region requesting regularization of the period from 6.11.2012 to 20.12.2012 during which period he was not allowed to join his duty. In consideration of the same, the PMG, Sambalpur Region vide Memo dated 1.8.2014 (A/26) rejected his representation. Being aggrieved, the applicant has approached this Tribunal in this O.A. praying for the following reliefs:

- i) The Original Application may be allowed.
- ii) The operation of the impugned orders under Annexure-A/23 and Annexure-A/26 may be quashed.
- iii) The respondents may be directed to consider the period from 06.11.2012 to 20.12.2012 spent on duty and release the pay for the aforesaid period within a time to be stipulated by this Tribunal.
- iv) Sanction of commuted leave for the period from 03.07.2012 to 05.11.2012 by respondent no.4 after more than 14 months may kindly be held to be improper and the respondent no.4 may be directed to compensate the applicant by giving suitable interest over the amount.

4. The grounds on which the applicant has based his claim mainly are that after he being declared fit by the treating physician, submitted his joining report on 6.11.2012 and in this regard, Respondent No.4 was requested to

instruct the Post Master to allow the applicant to join as PA, Rourkela-II. But Respondent No.4 did not pass any order. Secondly, the applicant has contended that although he was willing to work, he was prevented from discharging his duties and therefore, for no fault of his, he should not be made to suffer. It has been urged that the principle of no work no pay is not applicable to his case inasmuch as he was not allowed to join his duty. In this respect, the applicant has relied on the decision of the Hon'ble Supreme Court in Union of India vs. K.V.Janakiraman (AIR 1991 SC 2010).

5. Per contra, respondents have filed their counter. According to respondents, the applicant was under orders of transfer to Gurundia SO vide Memo dated 17.05.2012. But he proceeded on leave on medical ground and relieved from duty on 02.07.2012. He was therefore, directed to join at his new place of posting after expiry of medical leave producing medical certificate of fitness.

6. It has been pointed out that the applicant had filed O.A.No.695 of 2012 before this Tribunal challenging modification of transfer order from Rourkela-11 to Gurundia SO. The interim order dated 10.10.2012 passed by this Tribunal was not received till 09.12.2012. Therefore, the applicant was not allowed to join his duty. After receipt of the interim order dated 10.10.2012, the SSPOs Sundargarh sought for instructions from RO Sambalpur vide his letter dated 14.12.2012 regarding its implementation. The instruction of RO Sambalpur was received by the SSPOs Sundargarh on 18.12.2012 whereafter the applicant was permitted to join at Rourkela-11 MDG on 19.12.2012. Therefore, there is no delay in implementing the interim order of this Tribunal. Respondents have pointed out that the period of leave from 03.07.2012 to 05.11.2012 of the applicant has already been sanctioned vide

Memo dated 05.02.2014. For the period from 06.11.2012 to 20.12.2012 during which the applicant had not performed duty, leave has not been sanctioned as he has not applied for leave for the said period. There is no provision of rule to count a period as duty for which an official has not performed his duty.

7. With these submissions, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

8. Heard the learned counsels for both the sides and perused the materials including the memo of citation filed by the applicant. From the pleadings of the parties, the first point to be decided is whether the applicant had been relieved from his present place of posting. Although it has been mentioned in the impugned order dated 1.8.2014(A/26) that the applicant had been relieved on 02.07.2012 is belied in view of letter dated 12.10.2012 (A/15) addressed to Shri S.Barik, ACGSC in which the Senior Superintendent of Post Offices, Sundargarh Division has categorically mentioned that "The Postmaster Rourkela-11, Mukhya Dak Ghar did not relieve the official for his new place of posting despite reminder for which disc. Action has been initiated against the Postmaster, Rourkela-11 Mukhya Dak Ghar on 17.09.2012. In the meantime on 02.07.2012, Shri K.C.Padhi produced Medical Certificate of unfitness along with application for leave and remained absent without prior sanction/permission of leave application which is unauthorized and subversive of discipline. The official has therefore asked to join at Gurundia Sub Office producing certificate of medical fitness". Thus, it goes without saying that the applicant had not been relieved from his present place of posting on 02.07.2012 notwithstanding the fact that he proceeded on leave by producing medical certificate. Besides, it is the case of the respondents

that on receipt of the interim order of this Tribunal dated 10.10.2010 and soon after receipt of the said order, follow up action was taken and on 19.12.2012 the applicant was allowed to join his duty. Even though this statement of the respondents has not been countered by the applicant, yet, we fail to understand as to why the applicant himself did not produce the interim order of this Tribunal dated 10.10.2012 before the respondents drawing their attention to implement the same. In our considered view, had this been done by the applicant, certainly, there would not have any bottleneck in his joining duties on 06.12.2012 soon after his recovery from illness. Be that as it may, since the applicant had admittedly not been relieved from his present place of posting and undoubtedly, he was prevented from joining his duties although he was willing to work, he ought not to have been asked to apply for EL for the period in question. In this context, it would be profitable to quote hereunder the relevant portion of observation of the Hon'ble Supreme Court which reads as under:

“...We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases”.

9. Viewed from the above, the Tribunal is of the opinion that it is clearly a case where the applicant has been prevented by the authorities from discharging his duties. In view of this, impugned orders under A/23 and A/26 are quashed and set aside. Consequently, respondents are directed to work out the duty pay of the applicant for the period from 6.11.2012 to 20.12.2012

and disburse the same to him within a period of forty-five days from the date of receipt of this order.

10. In the result, the O.A. is allowed to the extent indicated above, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

*BKS*