

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00186/2015

This, the 27th day of March, 2019

Reserved on 07.03.2019

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CORAM:

**HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

...

Prakash Chandra Bothra S/o Shri Chintamandas, aged about 63 years,
R/o Dhani Bazar, Barmer-344001. Retired PA Churu HPO.

...APPLICANT

BY ADVOCATE : Mr. T.C. Gupta

VERSUS

1. Union of India, through the Secretary, Ministry of Communication, Department of Post, Government of India, New Delhi.
2. Director of Postal Services, Western Region, Jodhpur-342001.
3. Superintendent of Post Offices, Barmer Division, Barmer-344001.

RESPONDENTS

BY ADVOCATE : Mr. K.S. Yadav

ORDER

Per Hon'ble Smt. Hina P. Shah, Member (J)

The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"In view of the facts and grounds enumerated above, it is most respectfully prayed that the order dated 31.03.2015 passed by the Superintendent of Post Offices, Barmer Division, Barmer rejecting the representation dated 05.10.2013 of the applicant, may be quashed and allow the Original Application may be allowed in terms of the prayer made and the

respondents may be directed to treat the intervening period as spent on duty and full pay and allowances may be paid with interest at the rate of 15%..”

2. Brief facts as stated by the applicant is under:

The applicant joined service as Postal Assistant in the year 1972 and retired on superannuation from the post of BCRPA from Postal Department, Churu, Rajasthan. The Deputy Director Postal Services, Western Region Jodhpur had passed an order dated 28th August, 1987 whereby the applicant was punished by reduction to the rank of Postmant, which he never held. The applicant intimated to the respondents on 31.08.1987 that unless he got appropriate order he will not join on the reverted post of Postman. Thereafter, he preferred an appeal to the Director Postal Services, Western Region, Jodhpur, which was rejected vide order dated 03.05.1988. Against the order dated 03.05.1988, the applicant filed representation to the Member (P) Postal Board, New Delhi. The Member (P) vide its order dated 15.01.1990 modified the punishment order of reversion, by reducing the pay of the applicant in the pay scale of Postal Assistant. The applicant after receiving the said order dated 15.01.1990, joined his duty as Postal Assistant on 17.02.1990. But, the Intervening period from 01.09.1987 to 17.02.1990 was not treated as period spent duty by the respondents. The applicant made several representations for considering the aforesaid period as periods spent on duty for all purposes. The respondents vide order dated 27.10.1994 treated the intervening period as period spent on leave. Against the said order dated 27.10.1994, the applicant preferred many representations to the respondents, but the same were rejected by

the respondents on the ground that no duty was performed by the applicant for the said period. The last representation was rejected vide order dated 10.11.2009 by the respondents. Being aggrieved by the said rejection of his representation, applicant filed OA No.276/2009 before this Tribunal and this Tribunal vide its order dated 16.03.2011 dismissed the OA. Against the dismissal order of this Tribunal, the applicant filed DBCWP No.6950/2011 before the Rajasthan High Court. The Hon'ble Rajasthan High Court vide its order dated 27.11.2012 dismissed the writ petition filed by the applicant. The High Court allowed the applicant to make appropriate representation in this regard, if so advised, and the department was required to consider the said representation strictly in accordance with law. The applicant thereafter filed representation 05.10.2013 before the Superintendent of Post Offices, Barmer Division, Barmer, which was rejected vide order dated 31.03.2015. Since the grounds raised in the representation dated 05.10.2013 is considered in arbitrary and injudicious manner therefore he has filed the present OA for quashing and setting aside the order dated 31.03.2015 and he further prays that the intervening period to be treated as period spent on duty with full pay and allowances with interest.

3. Respondents have filed their reply dated 12.08.2016 raising preliminary objections/ submissions on two folds namely principles of res judicata and on limitation. It is the plea of the respondents that the applicant after imposition of penalty in the year 1987 remained absent from duty and did not perform his duty anywhere and only after the

rejection of his punishment order in the year 1990, he joined to work as Postal Assistant on 17.02.1990. Therefore, the period between 01.09.1987 to 16.02.1990 i.e. 2 years 5 months and 15 days, the applicant remained unauthorized absent. During this period the applicant disobeyed the order of the Disciplinary Authority and also left the headquarters without prior permission of the Competent Authority. It is the submission of the respondents that against the rejection order dated 27.10.1994 the applicant filed OA No.276/2009 before this Tribunal, and the same was dismissed vide order dated 16.03.2011. The said order was challenged by the applicant in DBCWP No.6950/2011 but the same was also dismissed by the Hon'ble High Court vide its order dated 27.11.2012. The Hon'ble High Court had given liberty to the applicant to make appropriate representation pertaining to the claim under Medical Attendance Rules, if so advised, and respondents were also directed to consider such representation strictly in accordance with law. Thereafter the applicant submitted his representation, which was rejected by the respondents vide order dated 31.03.2015 (Annexure-A/1). It is the further submission of the respondents that the instant OA is barred by principle of res judicate, as the applicant in earlier round of litigation in OA no.276/2009 had prayed the same relief, which is as under:

“(a) That the respondents may kindly be directed to consider the intervening (period from passing of punishment order to modifying of punishment order) from 01.09.1987 to 17.02.1990 as spent on duty for all purposes and all consequential benefits may kindly be granted.

(b) That any other direction or order may be passed in favour of the applicant which may be deemed just, proper under the facts and circumstances of the case in the interest of justice.

(c) That the cost of application may be awarded to the applicant.”

From bare perusal of the relief claimed in the present OA makes it clear that the applicant is only trying to reopen the issue which had already been decided in earlier round of litigation. Therefore, respondents prayed that the OA is liable to be dismissed on the principles of res judicata. It is the submission of the respondents that pertaining to treating the intervening period from 01.09.1987 to 17.02.1990 was already decided by the respondents in the order dated 27.10.1994 by way of deciding his last representation of the applicant, and further the same was also rejected in the year 2009 vide order dated 10.11.2009. It is submitted that the present OA is now filed for the same relief after 22 years and therefore the present OA is hopelessly time barred and the same deserves to be dismissed with heavy costs.

4. Heard learned counsel for the applicant as well as learned counsel for the respondents and perused the pleadings available on record.

5. Learned counsel for the applicant argued his case as per the pleadings made in the OA and stated that admittedly for the period from 01.09.1987 to 17.02.1990, the applicant has not worked on the post of Postman, as he did not want to work on the reverted post, which was lower than the initial post. The submission of the learned counsel for the applicant is that as per the directions of the Hon'ble High Court, the respondents ought to have taken into consideration the grounds as to why he has not performed his duties as the applicant was punished with the reduction of rank to the lower post, which he was not expected to

work on the said lower post. Therefore, no fault lies on the part of the applicant. It is the further submission of the learned counsel for the applicant that non-payment of salary for the period 01.09.1987 to 17.02.1990 is a serious matter and as per the judgment of Hon'ble Supreme Court passed in Dev Dutt's case, it is clear that the words are not important, important is the effect of the matter. It is the further submission of the applicant that when the Hon'ble High Court of Rajasthan had given liberty to the applicant to file fresh representation before the respondent authority, then there is no question of limitation or res judicata in the matter and the matter is therefore alive and can therefore be further considered on merits. He further stated that the principle of no work no pay is not applicable in the case of the applicant as he was made to work on lower post and therefore he is entitled for the salary of the intervening period i.e from 01.09.1987 to 17.02.1990.

6. The respondents on the other hand, while reiterating the submission made in the reply, stated that since the relief sought for in the present OA was already prayed by the applicant in the earlier round of litigation in OA No.276/2009 and which was also decided by the Hon'ble High Court, the applicant cannot again ask for the same reliefs by way of filing the present OA, as he is barred for doing so on the principles of res judicata. Pertaining to the issue of limitation, the learned counsel for the respondents state that as the representation of the applicant was already decided way back on 10.11.2009 and therefore again praying for similar relief is barred by limitation on the ground of delay and laches as the applicant filed the present OA on

05.05.2015. Pertaining to the ground of principle of 'no work no pay', it is clear that the applicant has not worked on any post for the period from 01.09.1987 to 17.02.1990 and therefore he was not entitled for the salary for that period. Also, from bare perusal of the representation dated 05.10.2013 submitted by the applicant makes it clear that the same is not filed in accordance with the liberty granted to the applicant by the Hon'ble High Court, therefore the competent authority has after considering all the grounds has rightly rejected the representation of the applicant. The respondents therefore prayed that the OA deserves to be dismissed.

7. Considered the rival contentions of both the parties and perused the pleadings available on record.

8. Admittedly, in the present case the relief prayed for by the applicant is pertaining to treating the intervening period from 01.09.1987 to 17.02.1990 as period spent on duty and that he may be paid full allowance with interest on the same, which relief was also sought in the earlier round of litigation i.e. in OA No.276/2009. The said OA was dismissed vide order dated 16.03.2011. Against, which the applicant has filed DB Civil Writ Petition No.6950/2011 before the Hon'ble High Court Rajasthan, which was also dismissed by the Hon'ble High Court vide its judgment dated 27.11.2012. However, the liberty was given to the applicant to make a representation and the same to be decided strictly in accordance with law by the respondents. In pursuance of that direction, the applicant filed a representation dated 05.10.2013. From perusal of the representation, it is noted that on the

one hand the applicant states that he did not work on the reverted post as he could not work on the lower post, and on the other hand he states that the intervening period be regularized by granting special disability leave as the punishment order of reversion is set aside by the reviewing authority solely on the ground of non compliance of Article 311 (2) of the Constitution of India. It is very clear that the Hon'ble High Court had not passed any such direction, but the directions were only to decide his representation in accordance with law. The respondents have passed the impugned order dated 31.03.2015 in pursuance of the directions of the Hon'ble High Court of Rajasthan and rejected the claim of the applicant on the ground that the intervening period i.e. from 01.09.1987 to 17.02.1990 cannot be counted as duty for all purpose as the applicant has not performed his duty at any post during the aforesaid period. On the ground of limitation, it is clear that this is a stale ground though Hon'ble High Court only granted him liberty, but in the present OA the applicant is seeking relief that the intervening period 01.09.1987 to 17.02.1990 be counted as period spent on duty for all purposes, whereas the same has already been decided by the respondents vide order dated 27.10.1994 and thereafter by way of deciding the representation of the applicant in the year 2009. Thus, it is clear that this OA is suffers heavily on the ground of delay and laches as per Section 21 of the Limitation Act. Also, on the ground of res judicata, it is noted that the applicant had prayed the same reliefs in the earlier round of litigation in OA No.276/2009 and now by way of present OA

he has sought the same relief again. Therefore, the matter is also hit on the principles of res judicata.

9. We have also considered the judgments relied upon by the learned counsel for the applicant and the same is not applicable in the present case as the facts and circumstances of those cases are different from the facts and circumstances of the present case.

10. In view of the above factual matrix and the discussions made in the above paras, it is clear that the respondents have rightly passed the impugned order dated 31.03.2015 as per directions of the Hon'ble High Court of Rajasthan, and we find no illegality and arbitrariness in the order impugned to interfere. Accordingly, the OA is dismissed with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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