

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 238/2014

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

Sri Rabindra Kumar Behera, aged about 61 years, S/o Late Chakradhar Behera, Vill/PO-similia, Dist-Balasore, presently working as GDSMD-MC of Simulia BO, in a/c with Soro MDG in Balasore Division.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda-751001.
3. Superintendent of Post Offices, Balasore Division, At/PO/Dist-Balasore, 756001.
4. Inspector of Posts, Soro Sub Division, At/PO-Soro, Dist-Balasore, 756045.

.....Respondents.

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

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 31.7.2019 Order on : 28.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

"In view of the facts stated above, it is humbly prayed that Hon'ble Tribunal may be graciously pleased to quash Annexure A/7 and direct the respondents to pay the back wages from 5.6.2008 to 19.12.2011 minus the ex gratia compensation and regularize the said service period with all consequential benefits and impose interest, cost and compensation.

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

2. The applicant, while working as Gramin Dak Sevak Mail Deliverer and Mail Carrier (in short GDSMD-MC), was placed on put off duty vide order dated 5.6.2008 (Annexure-A/1) by the respondent no. 4 under the rule 12 of the GDS (Conduct & Employment) Rules, 2001. Then vide order dated 4.8.2008 (Annexure-A/2), the respondent no. 4 issued a charge-memo against the

applicant and the order of punishment dated 13.9.2011 (Annexure-A/3) was passed by the respondent no. 4 removing the applicant from service.

3. The applicant challenged the punishment order in appeal before the respondent no. 3, who modified the punishment to censure vide the order dated 16.12.2011 (Annexure-A/4) and the applicant was reinstated and was taken back on duty. Thereafter, the applicant filed a representation dated 17.4.2012 (Annexure-A/6) to the respondent no. 3 for back wages and for regularization of the service period. When no decision was taken, the applicant filed the OA No. 1130/2012 which was disposed of with direction to the respondent no. 3 to dispose of the representation. Thereafter, the respondent no. 3 passed the order dated 18.3.2013 (Annexure-A/7) rejecting the representation on the ground that the applicant was not fully exonerated.

4. The grounds mentioned in support of the OA are as under:-

- "5.1 For that the order of put off duty was never reviewed as stipulated by D.G.Post (Res No.1) vide his letter No. 294/90-(E) 1 Trg., dated 26.7.1990 and letter No. 19-23/94-ED & Trg dated 14.9.1994.
- 5.2 For that since the rule 10 proceeding ended with a minor punishment of Censure, the applicant is entitled to be regularized for the period he remained out of job due such proceeding and also entitled to get the back wages.
- 5.3 For that in view of the settled principles of law in the case of K.V.Jankiraman, the applicant is entitled to be regularized in service and also entitled to get back wages."

5. The respondents filed Counter without disputing the facts of the case and stated that the period of put off duty till the date of reinstatement (from 5.6.2008 till 18.12.2011) was treated as non-duty for all purposes since the applicant was not fully exonerated from the charges.

6. No Rejoinder has been filed by the applicant. We heard learned counsels for both the sides and perused the pleadings on record. The rule 12 sub-rule 3 of the GDS (Conduct and Engagement) Rules, 2011 states as under:-

"(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 the period of put off duty exceeds 90 days, the Recruiting Authority or the authority to which the Recruiting Authority or any other authority empowered in this behalf, as the case may be, who made the order of put off duty shall be competent to vary the amount of compensation for any period subsequent of the period of first 90 days as follows:

(i) The amount of compensation as ex-gratia payment may be increased by a suitable amount, not exceeding 50% of such compensation admissible during the period of the first 90 days, if in the opinion of the said authority the period of put off duty has been prolonged for reasons to be recorded in writing not directly attributable to the Sevak.

(ii) The amount of compensation as ex-gratia payment may be reduced. By a suitable amount not exceeding 50% of such compensation admissible during the first 90 days, if in the opinion of the said authority, the period of put off duty has been prolonged due to reasons to be recorded in writing directly attributable to the Sevak.

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 period shall not be subject to furnishing of a certificate that the Sevak is not engaged in any other 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."

It is seen from the second proviso under the rule 3(ii), if the authority decided not to allow the back wages, then it can be done only after affording him an opportunity and after giving cogent reasons for such decision. No opportunity was allowed to the applicant by the respondent No. 3 before deciding that the period of put off duty will be treated as no duty. The reason recorded was simply that the applicant was not exonerated fully, without furnishing the cogent reasons as required under the rule 12.

7. In view of the above, the impugned order dated 18.3.2013 (Annexure-A/7) is not in accordance with the GDS (Conduct and Engagement) Rules, 2011. Taking into account the observations of the appellate authority in his order dated 16.12.2011 (Annexure A/4) in which the penalty was modified to 'Censure' without any adverse order as to how the period of absence would be treated, the impugned order dated 18.3.2013 (Annexure A/7) is set aside and the respondents are directed to regularize the period of the applicant's absence from duty with payment of back wages for the period in question to the applicant as per the rules minus the allowances already paid to him within a period of three months from the date of receipt of a copy of this order.

8. The OA is allowed as above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)