

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 1134 of 2012

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

Laxmidhar Sahoo, aged 62 years, S/o Late Brajabandhu Sahoo, permanent resident of Vill-Moujabeg, Post-Balanga, Dist-Puri, presently residing at Baseli Sahi (Ioknath Road), Po/Dist-Puri-752001.

.....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. Sr. Superintendent of Post Offices, Puri Division, At/PO/Dist-Puri – 752001.

.....Respondents.

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

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 12.7.2019

Order on : 1.8.2019

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 pleased to quash Annexure A/2, A/4, A/11, A/13, A/21 & A/25 and direct the respondents to treat the applicant to be in service till his normal date of retirement and allow the Original Application with all consequential benefits.

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 while working as a postman since 1975, he had to face criminal proceeding and departmental proceeding for the same charges. The applicant was issued the charge-sheet vide order dated 30.6.1989 (A/2). He was convicted in the criminal proceeding vide the judgment dated 31.1.1998, which was challenged in the criminal appeal, which was allowed setting aside the conviction order. Prior to that the applicant was placed under suspension vide order dated 11.12.1991 (Annexure A/4). The applicant has averred that the suspension order is illegal since it was never reviewed by the

competent authority as per the rules. After conviction of the applicant by the criminal court, the respondents initiated action under the rule 19(1) of the CCS (CCA) Rules, 1965 and dismissed him from service vide order dated 31.12.1998 (Annexure- A/5). The applicant filed the appeal against the dismissal order. The appellate authority set aside the dismissal order and directed for de-novo inquiry. The disciplinary authority after fresh inquiry, against dismissed him from service vide order dated 27.8.2002 (Annexure-A/6).

3. After acquittal of the applicant by the criminal appellate court vide the order dated 29.7.2005, the applicant filed representation for reinstatement dated 11.2.2006 (A/7) followed by 2 other representations. When no decision was taken, the applicant represented to the respondent no. 2 who, vide order dated 8.6.2006 (A/11) decided to revive the disciplinary proceedings which was stayed by the Tribunal pending the criminal case against him. Then the respondent no. 3 passed the order dated 22.8.2006 (Annexure-A/13) to treat him to be under deemed to be under suspension since 27.8.2002 (the date of dismissal) under the rule 10(4) of the CCS (CCA) Rules, 1965. Vide order dated 4.10.2006 (A/16), the respondent no. 3 sanctioned the subsistence allowance to the applicant w.e.f. 27.8.2002. Thereafter, vide order dated 18.5.2007 (Annexure-A/17), the respondent no. 3 revoked the suspension order and he was allowed to join duty (A/18).

4. After conclusion of the inquiry, the report of the Inquiry Officer (in short IO) was sent to the applicant for his representation if any. Then after considering all relevant records, the respondent no. 3 imposed the punishment of compulsory retirement from service vide order dated 30.11.2009 (Annexure-A/21), treating the period of suspension as such

5. The applicant has also filed the MA No. 824/2012 for condoning the delay of about two months in filing the OA. Vide order dated 13.5.2019 of this Tribunal in this OA, it was observed that the MA will be heard alongwith the OA.

6. We heard learned counsel for the applicant and the respondents. The applicant's counsel submitted that he restricts his prayer for relief pertaining to the suspension period which was not treated as qualifying service for the purpose of pension. Learned counsel for the applicant submitted that as explained in the MA, there has been about delay of less than two months in filing the OA, which should have been filed by August, 2012 as the applicant had received the order dated 26.7.2011 (Annexure-A/25) passed by the respondent no. 2 on the revision petition of the applicant on the punishment of compulsory retirement in August, 2011. It was submitted that the applicant

was kept under suspension from 11.12.1991 (A/4) till the date of reinstatement in service vide order dated 18.5.2007 (A/17) without any justification and this period should have been counted as qualifying service for the purpose of pension of the applicant.

7. Learned counsel for the respondents, while reiterating the stand taken in the Counter, filed a copy of the letter received by him from the respondents stating that the period of suspension of the applicant from 12.12.1991 to 23.5.2007 has been treated as non-qualifying service. He further submitted that this decision was taken in view of the order dated 30.11.2009 (A/21) by which the respondent no. 3 imposed the punishment of compulsory retirement on the applicant.

8. Since the applicant's counsel is restricting his prayer only to the extent of treatment of the suspension period for counting as qualifying service which will affect the pension amount payable to the applicant, we find the reasons mentioned in the MA No. 824/12 for delay of about two months in filing the OA to be satisfactory. Hence, the above MA is allowed and delay in filing the OA is condoned.

9. It is averred in para 4.6 of the OA that the suspension order dated 11.12.1991 (A/4) has not been reviewed as per the rules. Such averment in the OA has not been contradicted by the respondents in their counter with some document to show that the suspension order dated 11.12.1991 was in fact reviewed as per the provisions of the rule 10 of the CCS (CCA) Rules, 1965 from time to time. After the applicant was issued with the deemed suspension order with effect from 27.8.2002 vide order dated 22.8.2006 (A/13), a review of suspension was conducted by the Committee as stated in para 4.6 of the Counter and it was decided to reinstate the applicant in service in a non-sensitive post and accordingly, the suspension order dated 22.8.2006 on the applicant was revoked vide order dated 18.5.2007 (Annexure-A/17). But there is nothing in the Counter to show that the suspension order dated 11.12.1991 (Annexure-A/4) had been reviewed by the Committee as mandated by the rules.

10. For the reasons discussed above, there is merit in the applicant's challenge of the suspension order dated 11.12.1991 (A/4) beyond a period of 90 days (i.e. from 12.3.1992) since there is nothing on record to show that the said suspension order was reviewed by the competent authority.

11. The rule 23 of the CCS (Pension) Rules, 1972 specifies as to how the period of suspension is to be treated for the purpose of counting the qualifying service. It states as under:-

"23. Counting of periods of suspension

Time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified ; in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the Competent Authority may declare."

Examining the facts of this case with reference to the rule 23 of the CCS (Pension) Rules, 1972 we are of the view that continuation of the suspension order dated 11.12.1991 on the applicant from 12.3.1992 till the applicant was dismissed from service vide order dated 31.12.1998 (A/5) was wholly unjustified. The dismissal order dated 31.12.1998 was set aside by the appellate authority after which the applicant was not reinstated and he was treated to be continued under suspension till another order of dismissal was issued on 27.8.2002 (A/6) under the rule 19 of the CCS (CCA) Rules, 1965. Thereafter, vide order dated 22.8.2006 (A/13) of the respondent no. 3, the applicant was placed under deemed suspension w.e.f. 27.8.2002 and till his reinstatement after review vide order dated 18.5.2007, the applicant continued under deemed suspension. Hence, the period from 31.12.1998 to 26.8.2002 which was treated as period of suspension, was wholly unjustified in terms of the rule 23 of the CCS (Pension) Rules, 1972. But the same cannot be said about the period from 27.8.2002 to 18.5.2007.

12. In the circumstances as above, the period of suspension/deemed suspension from 12.3.1992 till 26.8.2002 is considered to be wholly unjustified for the purpose of the rule 23 of the CCS (Pension) Rules, 1972 and this period should have been counted for the as qualifying service of the applicant for the purpose of pension.

13. Hence, the respondents are directed to re-count the qualifying service of the applicant taking the period from 12.3.1992 till 26.8.2002 as qualifying service and accordingly revise the pension and other retirement benefits admissible as per the rules and disburse the arrear differential benefits to the applicant within four months from the date of receipt of a copy of this order.

14. The OA is allowed to the extent as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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