

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00300/2016

Date of Order: This, the 06th day of March 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Smti Shampa Das
Junior Accountant (on deputation)
Office of the Director of Accounts (Postal)
Guwahati – 781003.

...Applicant

By Advocates: Mr. S. Nath & Mr. G.J. Sharma

-VERSUS-

1. The Union of India
Represented by the Secretary
To the Govt. of India
Ministry of Communications & IT
Department of Posts, New Delhi – 110001.
2. The Director General (PA-Admn)
Department of Posts
PA Wing, Dak-Bhawan, New Delhi – 110001.
3. The Chief Postmaster General
Assam Circle, Guwahati – 781001.
4. The Director of Accounts (Postal)
Guwahati – 781003.

... Respondents

By Advocates: None

O R D E R (ORAL)**NEKKHOMANG NEIHSIAL, MEMBER (A):**

By this O.A., applicant makes a prayer to set aside and quash the impugned letter No. Admn/4-4/2012/D-298 dated 05.07.2016 and to direct the respondent authorities to release the pay and allowances to her for the period from 09.02.2016 to 19.05.2016 immediately and to treat the period as on duty for all purposes.

2. The main ground for relief of the applicant is to set aside the release order dated 09.02.2016 which was on earlier occasion set aside by this Tribunal vide order dated 26.02.2016 in O.A. No. 040/00051/2016. According to the applicant, the respondent No. 4 illegally did not allow her to resume her duties as Junior Accountant from 29.02.2016 to 19.05.2016 after the order dated 09.02.2016 being set aside by this Tribunal. As such, she is entitled to full pay and allowance for the period she was wrongfully prevented from performing her duties.

3. The applicant submitted representations on 29.02.2016, 03.03.2016 and 09.03.2016 to allow her to join but the respondent No. 4 had wrongfully compelled her to remain

absent till 19.05.2016. As such, she is entitled to pay and allowance for the period from 09.02.2016 to 19.05.2016. The respondent No. 4 arbitrarily and illegally has rejected her prayer vide letter dated 05.07.2016 on the ground that she remained absent from duty whereas she was wrongfully prevented from performing her duties. Hence the impugned letter dated 05.07.2016 is arbitrary, illegal and liable to be set aside and quashed.

4. Applicant stated that it is settled position of law that where an employer wrongfully prevents an employee from performing his duties, the employee is entitled to pay and allowance for the period from 09.02.2016 to 19.05.2016. There was no legally justified reason to release the applicant on 09.02.2016 but due to arbitrary and illegal action of the respondent No. 4, she has been harassed, compelled to remain absent from duty. According to the applicant, her salary for the period from 09.02.2016 to 19.05.2016 has not been paid. As such, she has suffered mentally and monetarily for illegal action of the respondent No. 4 for no fault on the part of her. Therefore, she is entitled to pay and allowance for the period from 09.02.2016 to 19.05.2016.

5. Facts of the case are that the applicant was working as Junior Accountant in the office of the Director of Accounts (Postal), Guwahati on deputation basis for the period up to 24.06.2016. The applicant was on sanctioned Earned Leave from 09.02.2016 to 12.02.2016. However, while the applicant was on sanctioned leave, the respondent authorities issued the relieving order on 09.02.2016. Aggrieved with the said unjustified order of the respondent authorities, the applicant approached this Tribunal vide O.A. No. 040/00051/2016. This Tribunal vide order dated 26.02.2016 disposed of the said O.A. and set aside the transfer as well as relieving order dated 09.02.2016. Against the order of this Tribunal dated 26.02.2016, the respondent authorities approached before the Hon'ble Gauhati High Court vide WP (C) No. 2568/2016 and the Hon'ble Gauhati High Court vide order dated 29.04.2016 remanded the case to this Tribunal. Accordingly, this Tribunal after hearing both parties and in the attendance of the respondent i.e. Director Accounts (Postal), this Tribunal vide order dated 13.05.2016 again set aside the previous order dated 09.02.2016.

6. In this O.A., the applicant is aggrieved with non-payment of pay and allowances for the period from 09.02.2016 to 19.05.2016.

7. The learned counsel for the applicant has submitted that she has been wrongfully prevented from performing her duties during the period from 29.02.2016 to 19.05.2016. As such, she was not able to work due to the illegal action on the part of the respondent authorities. Hence she is fully entitled for pay and allowances for this period.

8. In the rejoinder submitted on 25.02.2017, the learned counsel for the applicant also cited the case of Hon'ble Supreme Court in **J.N. Srivastava V. UOI & Anr. [(1998) 9 SCC 559]** and also case of Central Administrative Tribunal, Principal Bench in **Sh. Shiv Raj Singh Vs. Commissioner of Police (O.A. NO. 719/2012)**.

9. The respondents are taking stand that since she was relieved from office on 09.02.2016 and have not worked up to 19.05.2016, she is not entitled for pay and allowances on the principle of '*no work no pay*'. They also highlighted that during

these periods, the case was subjudiced before the Hon'ble High Court of Guwahati.

10. We have carefully considered the above issue in the context of the relevant facts and circumstances. It is seen that the entire period was falling into the category of '*subjudiced*' either before this Tribunal or before the Hon'ble Gauhati High Court of Guwahati. This was essential due to unjustified action on the part of the respondent authorities. We found that the case does not attract the principle of '*no work no pay*' at all. Respondents are hereby directed to make full payment of pay and allowances as admissible to the applicant immediately for the period from 09.02.2016 to 19.05.2016.

11. With the above directions, O.A. stands disposed of accordingly.

12. There is no order as to the costs as of now.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)