

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/78/2019

Date of Reserve:01.08.2019

Date of Order:06.11.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Bijan Kumar Samal, aged about 65 years, S/o.late Govinda Chandra Samal, resident of Vill/At-Govindpur, PO-Govindpur Kutchery, Dist-Kendrapara, PIN-755 061, retired as GDS Packer, Govindpur Kutchery, Dist-Kendrapara.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani
P.K.Samal
D.P.Mohapatra

-VERSUS-

Union of India represented through:

1. The Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack-753 001.
4. Assistant Superintendent of Post Offices, Jajpur Sub-Division, Jajpur-755 001.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired G.D.S. official under the Department of Posts.

While working as GDS Packer, G.P.Kutchery, he was put under off duty vide Memo dated 16.01.2012 (A/1) in contemplation of disciplinary proceedings under Rule-10 of GDS (Conduct & Engagement) Rules, 2011. An inquiry into the allegation was conducted and the I.O. submitted his report on 26.11.2015, with the findings as follows:

"Being the Inquiry Authority, it is concluded that Sri Bijan Kumar Samal, GDSPKR, Govindpur Kutchery SO is not found guilty for Article-I as per the foregoing discussion and analysis basing on

the documentary evidence and oral evidence and the charge framed against him in Article-I stands "NOT PROVE".

2. The applicant was provided with the report of the I.O. vide letter dated 01.02.2016 (A/5) requiring him to submit his comments, if any, within a stipulated time frame. However, vide order dated 03.03.2016 (A/6), the Assistant Superintendent of Posts, Jajpur Sub Division in the capacity of Disciplinary Authority imposed punishment on the applicant as follows:

"I have carefully gone through the memo of charge, report of the I.O., defence representation of the charged official, relevant case records/documents and the case file in detail. In view of the discussions made above, although the charge levelled against the C.O. has not been proved but his involvement in the case cannot be completely ruled out taking into account the facts and findings of the case and in the instant case the benefit of doubt can be assigned to him. On the other hand as the CO has already rendered 33 years of service and is under off duty since 16.01.2012 and is going to retire from service within two years, therefore, keeping a lenient view, I Sri Suvrakash Nayak, Asst. Supdt Of Posts, Jajpur Sub Division, Jajpur do hereby award the punishment of "Debarring from being considered for recruitment to Multi-Tasking Staff Group 'C' on the basis of selection-cum-seniority for a period of two years to Shri Bijan Kumar Samal, GDS Packer, C.P.Kutchery SO to meet the ends of justice and order for his reinstatement to service. It is further ordered that the period of 'put off duty' will be treated as non-duty for all purpose and that shall be limited to the ex-gratia compensation as admissible already paid to him".

3. Thereafter, the applicant resumed his duty on 4.3.2016. The applicant submitted a representation to the Superintendent of Post Offices, Cuttack (North)Division (Res.No.3) with a request to treat the period of put off duty as duty for all purposes by giving him full TRCA and increment. Since his representation was not considered, the applicant had approached this Tribunal in O.A.No.260/377/2018 and this Tribunal disposed of the said O.A. vide order dated 19.07.2018 with direction to Respondent No.3 to consider

and dispose of the said representation within a stipulated time. Complying with the aforesaid direction, Respondent No.3 passed an order dated 13.08.2018 (A/10), the relevant Paragraphs of which are as follows:

- 2. Sri Bijan Kumar Samal, hereinafter called as appellant was punished vide the ASPOs, Jajpur Subdivision memo No.F/GP, Kutchery SO/Misc. Dated 03.03.2016 for his misconduct while working as GDS Packer of G.P.Kutchery SO.
- 3. Now, after elapse of more than 2(two) years, the appellant has preferred an appeal to the undersigned vide his representation dated 26.03.2018 which was received at the office of the undersigned on 10.04.2018.
- 4. In course of examination of the appeal, it is found that after being reinstated into service, the appellant joined his duty w.e.f. 04.03.2016 and retired from service on 06.07.2018, i.e., after doing his duty for more than two years. If he had any complaint regarding the punishment order dated 03.03.2016, he should have appealed to the Appellate Authority immediately, within 3(three) months after receipt of the said order as envisaged in Rule-14 of GDS (Conduct & Engagement) Rules, 2011 which reads as :

"No appeal shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time".

The undersigned being the Appellate Authority finds that the appellant has no sufficient reason for not submitting the appeal in due time. Hence, due to mandate delay in submission of appeal by the appellant, the representation/appeal of the appellant dated 26.03.2018 can't be entertained on the basis of the rules contained in Rule-15 of GDS(Conduct & Engagement) Rules, 2011 and accordingly the representation is disposed of".

- 4. Aggrieved with this, the applicant has approached this Tribunal in the present Original Application seeking for the following reliefs:

- i) Admit the Original Application, and
- ii) After hearing the counsels for the parties be further pleased to quash the order vide Memo No.F/C-Case-03/2018 dated 13.08.2018 at Annexure-A/10. And consequently, orders may be passed directing the Departmental Respondents to treat the put off duty period as duty for all purposes and allow all consequential benefits like full TRCA and increment within a time bound period.

And/or

- iii) Pass any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice considering the facts and circumstances of the case and allow this O.A. with costs.

5. Respondents have filed their counter opposing the prayer of the applicant. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

6. We have heard the learned counsels for both the sides and perused the records. Admittedly, on conclusion of disciplinary proceedings, the Disciplinary Authority imposed punishment on the applicant vide order dated 01.02.2016 (A/5). It is also an admitted position that the applicant did not prefer any appeal within the prescribed time-limit against the said order of punishment. However, he submitted a representation dated 26.03.2018 (A/8) requesting the Appellate Authority to treat the put off duty period as duty for all purpose with grant of consequential benefits, inter alia on the grounds as under:

- "2. That Sir, the allegation was disproved and I was not found as guilty vide I.O. report sent to me by the ASPOs (I/c), Jajpur in his letter No.F/G.P. Kutchery SO/Misc/2014-15 dated 01.02.2016. The copy of the I.O. report is enclosed.
- 3. That Sir, the Disciplinary Authority fully agreed with the findings of the I.O. vide Memo under reference. But in Para-7 of his order as supra mentioned that my involvement cannot be ruled out and awarded punishment of debarring

me from being considered for promotion to MTS in Gr.I. In this context, I beg to state as follows:

(i) The DA has fully agreed that I am not guilty. Despite that he awarded punishment basing on hypothetical views of surmises and conjecture. However I am general community and I am attending the age of 65 years on 06.07.2018. I am not eligible for any promotion after 50 years which I attained on 06.07.2003. Hence the punishment is inoperative and invalid. The punishment has been awarded for eye-wash of the law to deny the period as duty.

7. This representation having not been considered, the applicant approached this Tribunal in O.A.No.260/377/2018 and in compliance with the direction of this Tribunal, the Superintendent of Post Offices, Cuttack (N) Division rejected the representation of the applicant vide order dated 13.08.2018 (A/11), the relevant part of which has already been quoted above. The sole ground on which the Appellate Authority has rejected the representation is that the applicant did not file appeal within the time frame nor did he assign any such reason as to what prevented him from filing appeal against the orders of punishment within the stipulated time. In this connection, we have also perused the representation dated 26.03.2018. In fact, the applicant has not explained delay in submission of such an appeal/representation, except highlighting some points as quoted above.

8. At this juncture, we make it clear that disposal of representation by the Respondent No.3 vide order dated 13.08.2018 as a measure of compliance of direction of this Tribunal will not set at naught the period of limitation for filing appeal against the orders of punishment as prescribed under the relevant rules of GDS(Conduct & Engagement) Rules, 2011. However, there is no embargo in considering any such appeal, if filed, beyond the prescribed

period of limitation, provided that the appellant satisfies the Appellate Authority that he had sufficient cause for not submitting the appeal in time. Until and unless any such point is raised by the applicant for consideration of the competent authority, i.e., the Appellate Authority, it would not be appropriate to reject the appeal on the ground of delay, without considering the merit. In view of this, we restrain ourselves from expressing any opinion on the merit of the O.A. However, if so advised, the applicant may explain delay as to why he could not prefer appeal against the order of punishment within the stipulated time, by adducing such corroborative evidence in support of delay, in continuation of his appeal/representation dated 26.03.2018 (A/8) and in case any such application is received within two weeks from today, the Superintendent of Post Offices, Cuttack (North) Division (Respondent No.3) as the Appellate Authority shall consider the same in the light of the extant rules and instructions on the subject and pass a reasoned order within a period of thirty days from the date of receipt of such representation. In the circumstances, we quash and set aside the order dated 13.08.2018 (A/10) passed by the Respondent No.3, which is impugned and called in question in this O.A.

9. This O.A. is allowed with the above observations and directions, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)

