

Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/00861/2016

Date of CAV : 03.12.2019

Date of Order :- 11.12. 2019

C O R A M

Hon'ble Mr. J. V. Bhairavia, Member [J]
Hon'ble Mr. Dinesh Sharma, Member [A]



Vijay Thakur, son of Shri Debashish Thakur, resident of Village & Post – Dindir, via – Haspura, District – Aurangabad & the GraminDakSevak MD/MC, Purhara EDBO in A/c with Haspura Sub Post Office, District – Aurangabad – 824120.

....Applicant

By Advocate :Shri N.N.Singh

Vs.

1. Union of India, through the Secretary & the Director General, Department of Posts, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna – 800001.
3. The Superintendent of Post Offices Aurangabad Dn., Aurangabad-824101.
4. Inspector, Posts, Daudnagar Sub Dn. Daudnagar, District – Aurangabad-824113.

..... Respondents.

By Advocate :Mr. Radhika Raman

O R D E R

Per J.V. Bhairavia, M [J] :- In the instant OA, the applicant has prayed for the following reliefs :-

"8[1] Your Lordships may graciously be pleased to quash and set aside the order No.A-1/Purharea/GDS MDMC/2014 dated 20.01.2011 [Annexure-A/1] issued by Inspector Posts, Daudnagar Sub. Dn. Respondent No.4 and confirmed by Superintendent of Post Offices, Aurangabad, Respondent No.3 vide its No.Estt/Misc./GDS/Ch-1-2013 dated 07.05.2014.

8[2] The respondent authorities may be directed to pay full TRCA for the period from 05.10.2010 to 25.12.2011 as per Provision

contained below Sub Rule 3 of Rule 12 of GDS [Conduct & Engagement] Rules, 2011 along with usual interest thereupon.

8[3] Further the respondent authority may be directed to pay the difference in place of minimum of amount of TRCA payable to the applicant, deducting the amount paid to the substitute/colie incurred who has performed duty in place of applicant from 03.08.2010 to 04.10.2010 as per DG's Post instruction at Serial No.3, below & Rule GDS [Conduct & Engagement] Rule, 2011.



8[4] The respondent may be directed to pay exgratia compensation @ 25% of TRCA for the period of put off duty i.e. from 05.10.2010 to 04.01.2011 plus further enhanced rate of TRCA @ 25% after 45 days with effect from 05.01.2010 to 26.12.2011.

8[5] The costs of litigation and damages for mental & physical harassment of the applicant.”

2. The learned counsel for the applicant mainly submitted as under : -

- [i] The applicant was appointed as GDS/MD-MC at Purhara EDBO in the year 1980.
- [ii] The applicant applied for leave before the Inspector, Post Daudnagar, respondent no.4 for grant of leave from 03.08.2010 and also requested him to approve the substitute on 03.08.2010, but neither the leave was granted nor rejected and kept silence till 04.10.2010.
- [iii] In the meanwhile, the applicant was implicated in a concocted criminal rape case in a village rivalry and an FIR was lodged against him.
- [iv] It is contended that the prayer for grant of leave remained undisposed of. However, a substitute as requested by him was paid wages at the rate of

unskilled coolie instead of TRCA applicable to the applicant or even the minimum time related continuity allowance applicable to new entrant on such GDS post, vide Annexure-A/3.



[v] The applicant came to know about lodging of FIR against him in Haspura Police Station. He surrendered on 05.10.2010 [Annexure-A/4] before the Court of Sub Divisional Judicial Magistrate, Daudnagar. He was sent in judicial custody on the same day and remained in jail till the grant of bail by the Hon'ble High Court of Patna, i.e. up to 2nd Dec., 2011.

[vi] Vide order dated 20.01.2011 [Annexure-A/5], the respondents have issued an order of put off duty against the applicant w.e.f. the date of his detention in jail, i.e. 05.10.2010 in terms of Rule 12 of GDS [Conduct & Engagement] Rules, 2011 and further he shall remain under suspension until further orders.

[vii] The applicant submitted that, vide judgement dated 28.04.2012 [Annexure-A/7], the Additional Sessions Judge [Fast Track Court No.IV], Aurangabad in Sessions Trial No. 76/2011/ - 44/2011 the applicant was acquitted by recording its findings that the prosecution has failed to substantiate the charge levelled against accused beyond all reasonable doubts. In the result, accused 1, Vijay Thakur is not found guilty for the charge u/s 376/511 IPC, and he is also entitled to get the benefit of doubts. In the result, accused Vijay

Thakur is acquitted thereof and set at liberty. Accused is also discharged from the liability of bail bound.

[viii] It is submitted that since the applicant was released from judicial custody as per bail granted to him, therefore, the respondents, vide their order dated 20.12.2011 [Annexure-A/6], revoked the order of put off duty of the applicant with immediate effect under Rule 12 of GDS [Conduct & Engagement] Rules. Thereafter, he approached the respondents for grant of benefit of TRCA etc. by way of filing his application dated 22.08.2013 [Annexure-A/9] and requested to release the TRCA for the period from 5.10.2010 to 26.12. 2011, however the same was not considered by the respondents.



[ix] It is submitted that in an identical case i.e. case of Shri Suresh Mahto, EDBPM, Dhan BO via-Ormanjhi SO, the Senior Superintendent of Post Offices, Ranchi vide its letter/memo no. A-388/CH.i dated 29.11.2004 has released full TRCA as per Rule 3[II] of Rule 12 of Gram Dak Sewak [Conduct & Employment] Rules, 2001 as also as per instructions laid down in DG Post letter dated 13.01.1997 [Annexure-A/10]. Therefore, it is submitted by the applicant that his case ought to have considered equally by the respondents and ought to have sanctioned for release of full allowance.

The applicant contended that, vide communication dated 06.11.2013, the respondent No.4 directed the applicant

to submit a copy of the judgment dated 28.04.2012 and the said direction was complied with by the applicant, vide his application dated 29.11.2013 [Annexure-A/12 series]. The applicant has also submitted his application before the Chief Postmaster General, Bihar Circle, Patna on 30.12.2013 [Annexure-A/11] followed by reminder dated 01.02.2014 for redressal of his grievance, but nothing has been done by the respondents.



- [x] It is submitted that the applicant was served with a show cause notice dated 16.01.2014 [Annexure-A/13] issued by the Respondent No.4 whereby the applicant was directed to submit his reply by 22.01.2014 with regard to proposed rejection of his application for release of full TRCA for the period of deemed put off duty.

After receipt of aforesaid said show cause dated 16.01.2014, the applicant submitted his explanation/reply on 28.01.2014 [Annexure-A/13 page 43 of OA] and requested to consider his clarification judiciously and to release full TRCA. However, the respondents have rejected his application for grant of TRCA, vide impugned letter dated 30.01.2014 [Annexure-A/1] ex parte without affording any opportunity to him mainly on the ground that the applicant was asked to show cause before 22.01.2014 but he failed to submit the same till 29.01.2014. Therefore, it is very much clear that the respondents

have not considered the reason and ground stated by the applicant in his explanation in the reply to show cause and thereby the applicant has been deprived a fair consideration of his claim. Even otherwise, the respondents have not stated any reason with respect to non applicability of provision of related to grant of TRCA under the statutory rules.



[xi] The respondents have also rejected the appeal filed by the applicant, vide impugned order dated 07.05.2014, hence this OA.

[xii] The Id. Counsel for the applicant mainly submitted that as per provision, vide note 2 Sub Rule 3 of Rule 12 of the GDS [Conduct & Engagement] Rules, 2011, that in the event of Sevak being exonerated, he shall be paid full admissible TRCA for the period of put off duty or deemed put off duty. The respondents including the appellate authority have not properly considered his application with regard to TRCA in terms of the aforesaid rules. It is also submitted that the respondents neither granted nor refused the leave applied for by the applicant but a substitute was allowed to perform duty. The denial of TRCA is contrary to the mandate of provision of Rule 2011 as also violation of Articles 14, 16 and 21 of the Constitution of India.

[xiii] The applicant placed reliance on the judgement rendered by Hon'ble Apex Court reported in AIR 1993 SC 803, wherein the Hon'ble Apex Court held that the

right of a life guaranteed to a person under Article 21 of the Constitution of India is to be read into service rules relating to payment of ex gratia compensation or subsistence allowance. In the case of the applicant, the respondents have erroneously denied the claim of the applicant for grant of TRCA.



3. The respondents have contested the case by way of filing their written statement. According to the respondents, payment of TRCA for the period from 05.10.2010 to 26.12.2011 to the applicant was not made since a criminal case was filed against him in Haspura PS duly registered under Haspura PS Case No.74/2010 dated 30.08.2010. On completion of investigation and inquiry, the Police submitted charge-sheet before the Additional Sessions Judge, Fast Track No.IV at Aurangabad in Trial Case. The applicant was acquitted vide judgment dated 28.04.2012 in TR Case No. 176/2011.

4. The respondents further submitted that the appointing authority, the SDI [P], Daudnagar Sub Division after careful consideration of the representation filed by the applicant on 28.05.2012, rejected his prayer for payment of TRCA.

The applicant remained absent from duty since 03.08.2010 till the date he surrendered i.e. on 05.10.2010. The applicant sent to jail and he remained there from 05.10.2010 to 02.12.2011 and during the aforesaid period, he was placed under deemed put off duty by the SDI [P], vide letter dated 20.12.2011, which was revoked vide order dated 20.12.2011.

5. The respondents further submitted that the applicant submitted his application before the DPS [HO], Patna on 22.08.2013. A detailed report was submitted to AD [P], vide letter dated 14.11.2013 in response to CO letter dated 29.10.2013. Being aggrieved, the applicant filed OA No.102/2015, which was disposed of as withdrawn with liberty to the applicant to file a fresh OA vide order dated 01.11.2016, therefore, the applicant has filed the present OA.



6. The respondents submitted that vide show cause notice dated 16.01.2014, the applicant was asked to submit his reply before 22.01.2014 with regard to proposal of the respondents to reject the application of the applicant for claim of release of full TRCA. The applicant was show caused that the Inspector of Posts, Daudnagar Sub Division has examined his application and being not satisfied for the reason that [i] the applicant knowingly misguided the administration by applying for leave on the basis of false reason w.e.f. 03.08.2010 as an FIR [No.74/2010 dated 03.08.2010] was lodged against him at Huspura PS, [ii] the applicant had submitted leave application on 03.08.2010 and proceeded on leave without the order which shows his pre-determined action, [iii] the submission of the applicant that he was not intimated about the fate of his leave application but the alternative arrangement in his place had been ordered which implied as grant of leave, therefore, he did not attend duty. The said stand/say of the applicant was forwarded on the very day on which leave was applied for since it was submitted only on 03.08.2010 and from the said date he remained absent. Further there was no alternative arrangement made till 01.09.2010, then

how did he interpret that leave was granted as applied for, [iv] the judgement dated 28.04.2012 passed by the Addl. Session Judge of Fast Track Court No.IV says that the applicant was entitled to get the benefit of doubts, i.e. the order of his acquittal is recorded on the ground of technical flaw in the prosecution, hence his acquittal cannot be regarded as honourable and he cannot be said to exonerated on merit.



7. The counsel for the respondents submitted that for the aforesaid reasons, the respondents have proposed to reject the application for grant of full TRCA and have given due opportunity to the applicant to defend his case however, he failed to avail the said opportunity and did not file his response/reply within the stipulated time, i.e. on or before 22.01.2014. The applicant has submitted his reply on 28.01.2014 but the said reply could not be taken into consideration since the same was not submitted within time limit. Therefore, the respondents had no option but to reject his application/representation dated 28.05.2012, vide impugned order at Annexure-A/1 dated 29.01.2014.

8. The appeal filed by the applicant against the said order also rejected by the Superintendent of Post Offices, vide order dated 07.05.2014.

9. The applicant filed a rejoinder to the written statement filed by the respondents and reiterated his submissions made in the OA. He further contended that he was placed under deemed put off duty with effect from 05.10.2010 under Sub Rule 1[b] of Rule 12 of GDS [Conduct & Engagement] Rules, 2011. This rule does not deny to

accord sanction of ex gratia under deemed put off duty. Rule 12[3][i] stipulates as under:-

"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 TRCA together with admissible D.A.

3[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 first 90 days too" to GDS."



That apart, the ex-gratia is similar to subsistence allowance paid to regular government servant, who is put under deemed suspension under Rule 10[1][b] of CCS[CCA] Rules, 1965.

10. The applicant relied upon a decision rendered by Hon'ble Patna High Court in case of Bameshwar Singh vs. Union of India &Ors, Civil Writ Jurisdiction No. 393 of 2018 wherein the petitioner was an accused in a criminal case under several Sections of IPC including Section 302. He was acquitted by the Trial Court. The petitioner was superannuated on 31.01.2004 while he was in jail. After his acquittal, the terminal benefits have been paid and the period from 16.05.2001 to 31.01.2004, the period under suspension was to be treated on leave. The Hon'ble High Court issued a direction to the respondent authorities to treat the period during which the petitioner was under suspension to be on duty and give him all the benefits for which he is entitled to by virtue of the said direction. It is submitted that in the case of the applicant, the learned trial court recorded its findings that none of the witnesses has supported the prosecution case therefore, it was held that the prosecution has been failed to substantiate the charge levelled against the accused beyond all reasonable doubts. In the result, the

accused Vijay Thakur is not found guilty for the charge and he is also entitled to get the benefit of doubts. The said findings of the Sessions Court impliedly made clear that the present applicant's acquittal was an honourable one and not a technical acquittal. The respondents failed to consider the findings in the aforesaid judgement in its true spirit.



11. It is submitted that the applicant had categorically stated in his reply dated 28.01.2014 to show cause that he had received the copy of show cause only on 20.01.2014 and it could not be complied with within the stipulated time as granted by the respondents, i.e. within 22.01.2014. He also stated that at least ten days time should have been granted for submission of his reply, since the case of the applicant was pending for decision at the respondents end since 28.05.2012 and he had further requested that by considering the said fact, his reply be considered before passing any order. Therefore, it is submitted that in spite of aforesaid fact, the respondents have acted arbitrarily and also in violation of principle of natural justice and rejected the legitimate claim of the applicant only on the ground that the applicant could not submit his reply on or before 22.01.2014.

12. The counsel for the applicant, therefore, submitted that the respondents have acted contrary to the provision of statutory rules as also the impugned decision is contrary to the law laid down by the Hon'ble Apex Court as well as the order passed by Hon'ble Patna High Court [supra].

13. Heard the parties and gone through the materials on record.



14. In the present case, undisputedly the respondents no. 4 vide its order dated 20.12.2011 revoked the put off duty order which was issued on 20.01.2011 by exercising its power under provision of Rule 10 of GDS [Conduct & Engagement] Rules, 2011. It is also not in dispute that the applicant who was working as GDS MD/MC remained under the put off duty w.e.f. 05.10.2010 to 26.12.2011. It is also not in dispute that the applicant was an accused in a criminal case. He remained in judicial custody for the aforesaid period. It is noticed that the learned Sessions Court, vide its judgement dated 28.04.2012 in Sessions Trial Case No. 76/2011 – 44/2011 recorded its findings and held that the prosecution has been failed to substantiate the charge levelled against the accused [i.e. the applicant herein] beyond all reasonable doubts. In the result, the accused Vijay Thakur was not found guilty for the charge under Section 376/511 of IPC. Accordingly, he was acquitted from all the charges and exonerated from all charges, the said acquittal cannot be said to be technical acquittal.

15. As noticed herein above, the respondents have revoked the put off duty of the applicant vide order dated 26.12.2011. The applicant remained under put off duty for the period from 05.10.2010 to 26.11.2012. The said period spent on put off duty became unjustified consequent upon the acquittal of the applicant on merit of the criminal case. In terms of note 2 below the Sub Rule 3 of Rule 12 of GDS [Conduct & Engagement] Rules, 2011 stipulates that in the event 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 reason. There is a statutory provision for payment of ex gratia payment for the put off duty as noted hereinabove. The claim of the applicant was denied by the respondents mainly on the ground he could not submit his reply to show cause dated 16.01.2014 within stipulated time i.e. on or before 22.01.2014. It is not in dispute that the said show cause served upon the applicant only on 20.01.2014 and thereafter, he submitted his reply on 28.01.2014. The respondents vide impugned order dated 29.01.2014 rejected the claim of the applicant which was lying in the department since 2012. It is seen that the respondents have rejected the representation dated 28.05.2012 mainly on the ground that the applicant failed to submit his reply to show cause within stipulated time. This demonstrate that the respondents have not considered the reply submitted by the applicant in support of his claim as also grounds stated to oppose the proposal of respondents for rejecting the application of the applicant. The appellate authority has also not assigned any reason on the appeal filed by the applicant and rejected the same vide order dated 07.05.2014. In our considered view, the applicant has been deprived of a fair and due opportunity.

16. It is also seen that in a similarly placed official namely Shri Suresh Mahto, the respondents had sanctioned release of full allowance of TRCA vide Annexure-A/10. There is no rebuttal to it. The reason stated by the respondents for denying the claim of the applicant, in our considered view, is not in consonance with the provisions of Rule 12 of GDS [Conduct & Engagement] Rules, 2011.



17. In view of the aforesaid factual matrix and our foregoing discussions, we are of the considered opinion that in the light of mandate of Rule 12 of GDS [Conduct & Engagement] Rules, 2011 which does not deny to accord sanction of ex gratia under deemed put off duty as also in the light of decision rendered by Hon'ble Patna High Court in case of Bameshwar Singh vs. Union of India & Ors, Civil Writ Jurisdiction No. 393 of 2018 [supra], the impugned orders does not stand to the test of judicial scrutiny. Accordingly the impugned orders dated 30.01.2014 and 07.05.2014 [Annexure-A/1 series] are quashed and set aside. Further, case of the applicant deserves to be re-considered in view of aforesaid discussions and in the light of order passed by Hon'ble High Court of Patna [supra] for grant of full TRCA for the period from 05.10.2010 to 25.12.2011. The respondents, particularly Respondent No.2, the Chief Postmaster General, Bihar Circle, Patna-1, is directed to pass reasoned and speaking orders in regard to payment of TRCA within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
[Dinesh Sharma]M[A]

Sd/-
[Jayesh V. Bhairavia]M[J]

mps