

(2019) 02 CAT CK 0104

In the Central Administrative Tribunal

Case No : Original Application No. 4630 Of 2014

Sh. Surendra Pal Singh S/o Sh. Bhanwar Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Central Administrative Tribunal Act, 1985 — Section 19
Gramin Dak Sevaks (Conduct & Engagement) Rules, 2001 — Rule 10, 12, 12(3)
GDS (Conduct & Engagement) Rules, 2011 — Rule 3A(v), 3A(vi), 9(iii)

Citation : (2019) 02 CAT CK 0104

Hon'ble Judges : Nita Chowdhury, J; S.N. Terdal, J

Bench : Division Bench

Advocate : Deepak Verma, Dr. Ch. Shamsuddin Khan

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

"(i) Quash & set aside the penalty awarded under rule 9 (iii) of the Dept. of Posts, Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011.

(ii) Quash & set aside the orders passed by the Appellate Authority dated 21.5.2014, Disciplinary authority order dated 2.5.2013 (Annexure-A1) & direct the respondents to pay applicant salary & other consequential benefits for the period 19.11.2007 to 27.4.2013 with interest.

(iii) direct the respondents to consider him for promotion at par with his junior.

(iv) any other or further order the Hon"ble Tribunal may deem fit in the interest of justice along with costs."

2. Brief facts of the case as stated in the OA are that the applicant was appointed as ED runner Bijraul-Basnnouli on 9. 8.1977 and was deployed as E.D. Packer

cum EDMP Bijrol and w.e.f. 22.2.2006, he was working as GDS (Gramin Dak Sevak) Bijrol.

2. 1 Vide order dated 19.11.2007, the applicant was ordered to be put off duty (suspension) w.e.f. 19.11.2007. Thereafter the applicant was served with a major penalty chargesheet under Rule 10 of GDS (Conduct & Employment) Rules, 2001.

2. 2 The Inquiry Officer submitted his report dated 23. 3.2009 holding charges no.1 and 3 as proved whereas charge no.2 held as not proved. The applicant submitted his representation to the said report of the IO on 30.3.2009. Thereafter the disciplinary authority issued the order dated 20.4.2009 imposing the penalty of removal from service upon the applicant.

2.3 The applicant submitted his appeal against the said order of the disciplinary authority to the appellate authority on 30.4.2009 and the same was rejected by the appellate authority vide order dated 17.3.2010. Thereafter, the applicant preferred his revision petition, which was rejected by the revisionary authority vide order dated 28.3.2011.

2.4 Aggrieved by the said orders, the applicant preferred OA 692/2012 before this Tribunal, which was partly allowed by this Tribunal vide Order dated 30.10.2012, relevant portion of which reads as under:-

"8. In view of the above facts and circumstances of the case while we are not inclined to interfere with the findings of the inquiry report, we cannot allow the disciplinary authority's order, appellate order and the revisionary authority's order to be sustained. We, therefore, partly allow this OA and quash and set aside the impugned orders passed by the disciplinary, appellate and revisionary authorities dated 20.4.2009 (Annexure A-1), 17.3.2010 (Annexure A-2) and 28.3.2011 (Annexure A-3) respectively. Consequently, the disciplinary authority shall reinstate the applicant in service immediately but in any case within a period of two months from the date of receipt of a copy of this order, under instructions to him. It shall also decide as to how the period from the date of removal of the applicant to the date of his reinstatement shall be dealt with and pass appropriate orders in that regard also, within the aforesaid period. In case the respondents fail to reinstate the applicant within the aforesaid period of two months, the applicant will be entitled for all the salary and other benefits from the expiry of that date. We also remit the case back to the disciplinary authority to consider the case of the applicant afresh on the basis of inquiry officer's report that only 2 articles of charge have been proved and one charge has not been fully proved so that he may impose any punishment order upon the applicant which should be less than the extreme punishment of Removal from service. We also record here that learned counsel for the applicant, on instructions, submitted that the applicant will accept whatever punishment other than Removal from service so as to give a quietus to the litigation in the matter which is pending for quite sometime."

2.5 However, the respondents did not reinstate him by 30.12.2012 and instead in February, 2013 filed a Writ Petition (C) No.1063/2013 before the Hon"ble Delhi High Court, which was dismissed in limine upholding the judgment of this Tribunal dated 30.10.2012 vide judgment dated 19.2.2013, relevant portions of the said judgment read as under:-

6. As per the report of the Inquiry Officer, it stood established that when a surprise visit was made on November 19, 2007 it was noted that the Sub-Post Office was opened at 11:00 hrs. Pertaining to the second charge the Inquiry Officer noted that all bills were entered in a register but 525 could not be delivered because Bijrol was a big village with several person having same name. The bills did not have complete addresses. The Inquiry Officer noted that the respondent was new to the village and was not familiar with the villagers. Pertaining to the third charge, the Inquiry Officer noted that as per Ex.D-1 there were liabilities in sum of `35,145/- in Sub-Post Office on February 23, 2007. Thus retention of cash till said date was proper but since liabilities got reduced to `1200/-retention of cash beyond said amount was opined to be excessive beyond February 23, 2007. Thus, it was concluded that only the first and the third charge stood established and that as regards the second it stood established partially.

7. Taking a view that all charged were proved the disciplinary authority proceeded to levy punishment of removal from service against which departmental appeal was rejected.

8. Respondent has been granted partial relief by the Tribunal which has noted that without a note of disagreement being recorded and much less sent to the respondent and upon the presumption that all charges stood proved, the penalty levied was liable to be set aside requiring the disciplinary authority to levy a penalty afresh but not of a kind where the respondent would lose employment.

9. The Tribunal has given a good reason to set aside the penalty i.e. the disciplinary authority taking a view that all the charges were proved. But at first blush the Tribunal would not be justified in controlling the discretion of the disciplinary authority to levy a fresh penalty. However on a deeper look we find no reason to interfere with the impugned order.

10. The working of a Gramin Dak Sevak has to be understood in the rural setting and the fact that the employment is not on full time basis. A premises from where Postal facilities are made available in a village is not strictly a Post Office warranting the same to open at 10:00 A.M. The Rule may so stipulate. Thus, opening a Postal Service Centre in a village at 11.00 A.M. would be a minor infraction. This takes care of the gravamen of the first charge. As regards the second, the Inquiry Officer has found good reason for the respondent not to deliver 525 electricity bills on account of incomplete address and there being many villagers in the village by the same name and the responding being new to the village. Article-III of the charge was of retaining cash in excess of the

permissible limit and we find that for a major period, the finding arrived at is that in view of Ex.D-1 the respondent was entitled to retain cash upto `35,145/- keeping in view the liabilities of the Post Office. The fault found is to retain cash beyond `1200/-when the liabilities fell. We highlight that no misappropriation has been found. We have already highlighted that as a Gramin Dak Sevak the respondent was not expected to be a banker or an accountant. It was his common sense which was guiding him. The liabilities of the Post Office would be fluctuating; sometimes more sometimes less. Thus, if for some periods the respondent retained cash in hand a little above the prescribed limit, but did not misappropriate the same, the wrong would be of a kind which would not merit penalty of removal from service. The two proved wrongs i.e. of opening the premises wherefrom Postal facilities were made available to the villagers one hour late and retaining a little excess cash but without misappropriation thereof, would not warrant a penalty of removal from service to be inflicted. Thus, the ultimate destination arrived at by the Tribunal to remand the matter to the disciplinary authority to levy a penalty but not of a kind where respondent lose his service is a correct destination.

11. These are our reasons to dismiss the writ petition in limine but without any order as to costs."

2.6 Despite the above, the applicant was not reinstated immediately and was reinstated only on 27.4.2013. According to him, he became entitled to salary and other benefits till 27.4.2013 as per Tribunal's judgment which has been denied to him.

2.7 Thereafter the disciplinary authority passed the order dated 2.5.2013 imposing the punishment of debarment from promotion to MTS & Group-C on seniority-cum-fitness for a period of three years and also decided the put off duty period as "No work No Pay".

2.8 Against the aforesaid order, the applicant preferred his appeal dated 31.10.2013 before the appellate authority and the appellate authority after considering his appeal vide order dated 21.5.2014 rejected the same.

2.9 Being aggrieved by the aforesaid order of the disciplinary authority dated 2.5.2013, 27.4.2013 and also of appellate authority dated 21.5.2014, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they besides reiterating the facts as mentioned above, have stated that in compliance of this Tribunal's Order dated 30.10.2012, the applicant was put back on duty by SSPOs Meerut vide order dated 27.4.2013 and the disciplinary case of the applicant was decided vide order dated 2.5.2013 by SSPs Meerut awarding him punishment of debarment from promotion on seniority cum fitness basis to the post of MTS and Group "C"for three years.

The put off duty period i.e. 19.11.2007 to 29.04.2013, was also decided on the

basis of "No work No Pay". Applicant preferred a petition dated 31.10.2013 to the PMG Bareilly against the said orders and the said petition was rejected by PMG Bareilly vide order dated 21.5.2014.

4. Applicant has filed his rejoinder reiterating the averments made in the OA and denying the contents of the reply filed by the respondents.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Counsel for the applicant submitted that this Hon"ble Tribunal vide Order dated 30.10.2012 quashed the penalty of removal from service and directed that applicant should be reinstated immediately but not later than two months and in case he is reinstated beyond that period, he shall be entitled to full salary & allowance from the said date. The applicant was reinstated on 27.4.2013 and thus entitled to full salary till 27.4.2013.

6.1 Counsel for the applicant further submitted that no show cause notice was given to the applicant before resorting to new punishment under Rules of 2011 debarring him from recruitment to MTS Group-C post for three years, which amounts to violation of principles of natural justice.

6.2 Counsel further submitted that impugned orders of the disciplinary and appellate authorities are perfunctory as issues raised by the applicant have not been dealt with.

6.3 Counsel also submitted that no reason has been given by the respondents that why he should not get his salary and other benefits for "put off/suspension" period when rules provided for payment of Ex-gratia amount and such the action of the respondents amounts to depriving the applicant salary/ex-gratia for the period from 19.11.2007 till 27.4.2013 and the same also amounts to double jeopardy, which is impermissible under the law.

6.4 Counsel for the applicant by placing reliance on Rule 12 of GDS (C&E) Rules, 2001 contended that the said rule clearly provides that the period during which an EDA remained under "put-off-duty" on the ground of contemplated disciplinary/criminal proceedings but is taken back without the penalty of dismissal or removal, the period of put-off shall be treated as "actual duty".

6.5 Counsel also submitted that junior of applicant Shri Braham Pal Singh GDS Faizpur Ninana BO was promoted to postman cadre w.e.f. 17.12.2009 and the applicant has already suffered debarment for over three years from becoming MTS Group-C in accordance with seniority-cum-merit, which amounts to multiple & repeated penalties.

6.6 Counsel for the applicant during the course of hearing in support of his contentions placed reliance on the decisions of the Hon"ble Rajasthan High Court in the case of Kishan Singh vs. State of Rajasthan and others, 2007(4) SCT 341 and Life Insurance Corporation of India vs. Rampal Singh, 2006(3) SCT 443.

7. Counsel for the respondents submitted that respondents have acted in accordance with the directions given by the Hon"ble Court and no action has been taken beyond the departmental rules, hence, no violation has been made as the respondents have acted after giving careful consideration to all facts and circumstances of the case.

7.1 Counsel further submitted that in terms of provisions of Rule 3 A (v) & vi) of GDS (Conduct & Engagement) Rules, 2011, a Gramin Dak Sewak shall be outside the civil service of the Union and he shall not claim to be at par with the service of the Govt. employee.

7.2 Counsel also submitted that the applicant was not reinstated immediately since the Hon"ble Tribunal vide Order dated 30.10.2012 had granted two months time to consider reinstatement of the applicant after receipt of the orders and the said order was received by the respondent no.4 on 26.11.2012 through Govt. Counsel and after taking recourse of legal remedies available to the department, i.e., Writ Petition (Civil) No.1063/2013 was filed, which was dismissed on 19.2.2013 and however, the certified copy of the order dated 19.2.2013 was received only on 10.4.2013 and whereupon the decision was taken by the competent authority on 26.4.2013 and the applicant was put back on duty vide order dated 27.4.2013 and as such the contention of the applicant that he became entitled to salary and other benefits from 30.12.2012 to 27.3.2013 is not acceptable.

7.3 Counsel further submitted that a GDS is outside the civil service of the Union and no GDS can claim to be at par with Govt. servant. Merely because a penalty has been prescribed in Rule 9 (iii) of GDS (Conduct & Engagement) Rules 2011 to debar a GDS from promotion to MTS and Group "C" post, it does not mean that a GDS can assume himself to be a Group "D" employee.

7.4 Counsel further submitted that so far as contention of the applicant that no show cause notice was issued to him before resorting to new punishment under Rules of 2011 is concerned, the punishment aforesaid has been awarded in full compliance of the Order dated 30.10.2012 of this Tribunal as in the said Order, it was specifically directed that the disciplinary authority may impose any punishment order upon the applicant which should be less than the extreme punishment of removal from service and it was also recorded in the said order that the applicant will accept whatever punishment was imposed upon him other than removal from service. Counsel further submitted that there was no need to give an opportunity to represent because disciplinary proceedings against him had been completed and this Tribunal directed the respondents to consider the case of the applicant afresh on the basis of inquiry officer's report to impose any punishment order upon the applicant which should not be less than the extreme punishment of removal from service and the applicant would follow the order passed by the disciplinary authority.

7.5 Counsel for the respondents also submitted that at the time of promotion in

the year 2009, the disciplinary proceedings were under process against the applicant and therefore, he was not entitled for consideration for promotion. 7.6 Counsel also submitted that admittedly the applicant was on put off duty continuously from 19.11.2007 to 26.4.2013 and therefore, the disciplinary authority rightly treated the said period as "No Work No Pay" vide order dated 2.5.2013 which was confirmed by the appellate authority vide order dated 21.5.2014.

8. Having regard to the contentions of both the parties and also having regard to the Order of this Tribunal dated 30.10.2012 and the Hon"ble High Court's aforesaid Order, this Court of the view that contentions as raised by the respondents are acceptable as this Tribunal while deciding the earlier OA of the applicant vide Order dated 30.10.2012 categorically recorded while remitting the case back to the disciplinary authority that applicant's case should be considered afresh on the basis of inquiry officer's report that only 2 articles of charge have been proved and one charge has not been fully proved so that he may impose any punishment upon the applicant, which should be less than the extreme punishment of Removal from service and further recorded that learned counsel for the applicant, on instructions, submitted that the applicant will accept whatever punishment other than Removal from service so as to give a quietus to the litigation in the matter, which is pending for quite sometime. Therefore, in above circumstances, there is no need at all for issuance of show cause notice to the applicant before taking decision on quantum of punishment.

9. So far as the claim of the applicant that this Tribunal directed the respondents to take decision on his reinstatement not later than two months is concerned, we find that as stated by the respondents, the said order was received by them on 26.11.2012 through Govt. Counsel and after taking recourse of legal remedies available to them, i.e., Writ Petition (Civil) No.1063/2013 was filed, which was dismissed on 19.2.2013 and the certified copy of the said order dated 19.2.2013 was received by them on 10.4.2013 and thereafter the decision was taken by the competent authority on 26.4.2013 and accordingly, the applicant was put back on duty vide order dated 27.4.2013 and as such the contention of the applicant that he became entitled to salary and other benefits from 30.12.2012 to 27.3.2013 is not sustainable in the eyes of law in view of the above facts and circumstances of this case.

10. So far as reliance on Rule 12 of the Rules *ibid* is concerned, the relevant provisions relating to put off duty of a GDS are spelt out under the Rule 12(3) of the Rules, *ibid*, which 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 to 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 duty 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..."

From the above, it is seen, from Rule 12(3) Note-2 as extracted above, that in the event of the Sevak being exonerated, he shall be paid full allowance for the period under put off duty and in other cases payment of such allowances can only be denied after affording him an opportunity and by giving cogent reasons. Before denying a GDS full allowance, the authority needs to give an opportunity of being heard. From the aforesaid Order of this Tribunal dated 30.10.2012, it is clear that this Tribunal had not exonerated the applicant from the charges as proved by the inquiry officer in the departmental inquiry held against him but only directed that any punishment except that of removal from service should be imposed upon the applicant and the disciplinary authority after elaborately considering the facts of this case imposed the punishment of debarment for over three years from becoming MTS Group-C in accordance with seniority-cum-merit and also took the view that the period of put off be treated as "No Work No Pay", which cannot be said to be an unreasoned order.

11. So far as reliance placed on the decisions of the Hon"ble Rajasthan High

Court supra are concerned, the same are not applicable to the facts of this case, as in this case the Tribunal as well as Hon"ble Delhi High Court did not exonerate the applicant from the said disciplinary proceedings rather this Tribunal only held that instead of removal from service, some/any other punishment should be imposed upon the applicant and the said conclusion of this Tribunal was upheld by the Hon"ble Delhi High Court (supra). In pursuance thereof, the respondents have now passed final orders which are in compliance/keeping with the Orders of the Tribunal and the Hon"ble Delhi High Court. Hence, in the result, and for the foregoing reasons, the present OA being barred by merit is accordingly dismissed. There shall be no order as to costs.