

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 366 of 2016

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

This writ petition is filed against the orders dated 03.02.2015 in O.A.No.297 of 2013 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad. The petitioners herein are the respondents and the 1st respondent herein is the applicant before the Tribunal. For the sake of convenience, the parties will be referred to as they were arrayed before the Tribunal.

2. Briefly stated, the case at hand is as follows:

The applicant is a Grameen Dak Sevak Branch Post Master (GDS BPM) in Ganigera Branch Office (along with Kanekal Sub-Office), under the 4th respondent. Alleging certain procedural lapses, disciplinary proceedings came to be initiated against the applicant, which culminated in his removal from service as the applicant himself admitted to the lapses by way of a letter of admission. However, aggrieved by the action of the authorities in removing him from service and contending that the punishment is unduly harsh, he approached the Central Administrative Tribunal by way of filing O.A.No.1 of 2007. The learned Tribunal, by its orders dated 15.02.2009, disposed of the O.A., setting aside the punishment of removal from service and remanding the matter back to the disciplinary authority with a direction to re-issue the same charge memo to the applicant and conduct enquiry afresh in accordance with the procedure prescribed within six months. Pursuant to the orders of the Tribunal, the 4th respondent conducted the enquiry

and found that the charges levelled against the applicant could not be proved and hence reinstated the applicant with immediate effect vide his memo dated 16.10.2010. Pursuant to his reinstatement, the applicant requested for regularisation of his “put off” period as “duty for all purposes” like backwages etc. The 4th respondent vide memo dated 26.07.2011, treated the period from 19.02.2004 to 10.03.2004 and 15.12.2009 to 23.12.2010 as “duty for all purposes, including Time Related Continuity Allowance (TRCA)”, but however, treated the period from 11.03.2004 to 14.12.2009 as “duty for all purposes, except for TRCA plus admissible allowances”. For arriving at such a distinction with regard to regularisation, the 4th respondent assigned the reason that the applicant is responsible for the delay that occasioned in disciplinary proceedings and that the applicant failed to take timely action by way of filing an appeal or petition against his removal from service, and further the applicant took much time even in approaching the Tribunal, and hence the entire onus for the delay is attributable to the applicant.

On receipt of the communication of the 4th respondent, dated 26.07.2011, the applicant appealed to the 3rd respondent stating that there is no delay on his part and when backwages were allowed for the period 11.03.2004 to 14.12.2009, there should be no impediment in allowing TRCA and other admissible allowances. The 3rd respondent, by his orders dated NIL, March, 2012, rejected the claim of the applicant holding that *“the disciplinary case was concluded as charges not proved due to non-availability of records to sustain charges does not mean that Sri V.Padmanabha is absolved of the charges levelled against him”*. Aggrieved by the rejection of his claim, the applicant approached the Tribunal by way of filing O.A.No.297 of 2013. The Tribunal, by its orders dated 03.02.2015, set aside the orders of the 3rd respondent, dated NIL, March, 2012 and directed the respondent

authorities to pay TRCA to the applicant for the period 11.03.2004 to 14.12.2009 within three months from the date of the order. Questioning the legality of the orders passed by the Tribunal, the State filed this writ petition.

3. Heard the learned Government Pleader for the petitioners.

4. The facts of the case are not in dispute. A perusal of the impugned orders would show that in an earlier round of litigation before the Tribunal in O.A.No.1 of 2007, the Tribunal by its orders dated 15.12.2009, disposed of the O.A. by remanding the matter back to the disciplinary authority with a direction to re-issue the same charge memo and conduct enquiry afresh after giving opportunity to the applicant for proving his innocence. It is to be noticed that pursuant to the orders of the Tribunal in O.A.No.1 of 2007, dated 15.12.2009, the disciplinary authority/4th respondent conducted enquiry and held that the charges levelled against the applicant could not be proved and hence the applicant came to be reinstated into service with immediate effect. The Tribunal has observed that when the respondent authorities have treated the period in which the applicant's case was being processed at their end as "duty for all purposes including TRCA", the respondents have not adopted the same criteria when it comes to the applicant. The Tribunal, while elaborating on the aspect of delay, observed that the applicant being a hapless village based worker and his knowledge and exposure being limited, it is of course a challenging task for him even to secure the details of appropriate forum before which he can assail the orders of removal passed by the 4th respondent. The Tribunal has also observed that the 4th respondent has not even indicated the details of the appellate authority and also the time frame within which the applicant can approach the appellate authority thereby the 4th respondent himself has not complied with Rule

13 of the GDS (Conduct & Employment) Rules, and by such non-mentioning of details of appropriate appellate authority, the respondents left the applicant to fend for himself. The Tribunal further observed that the factum of applicant assailing the orders of removal after a lapse of more than a year and also his approaching the Tribunal after a further period of one year, are no grounds to deny him TRCA, inasmuch as when once in the disciplinary enquiry charges could not be proved against the applicant, TRCA cannot be denied on the ground of delay, and the order of the appellate authority/3rd respondent rejecting the appeal of the applicant is against the established tenets of jurisprudence inasmuch as the guilt of a person charged has to be proved beyond reasonable doubt failing which he is deemed to be innocent.

5. The Tribunal has scrupulously discussed all the aspects of the case and passed a reasoned order, and the same does not warrant interference.

6. The writ petition is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

07th January, 2016

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