

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.01.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and
The Honourable Mr. Justice V.PARTHIBAN

W.P.No.18580 of 2016 &
W.M.P.No.16285 of 2016

G.Arunachalam

Petitioner

versus

1. Union of India,
rep. by the Postmaster General,
Central Zone,
Tiruchirapalli-620 001.

2. Senior Superintendent of Post Offices,
Virudhachalam Division,
Virudhachalam,
Virudhachalam District.

3. Assistant Superintendent of Post Offices,
Kallakurichi West Sub Division,
Kallakurichi,
Virudhachalam District.

4. The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 4th respondent Tribunal pertaining to its order which is made in OA 1489 of 2011 and M.A.No.811 of 2011 dated 21.07.2014, quash the same and consequently direct the respondents 1 to 3 to pay arrears of difference of allowances for the period of put off duty i.e. 24.07.2003 to 5.1.2010 and also treat the said periods for grant of retirement service benefits and thereby further direct the respondents 1 to 3 to pay all other attendant service benefits.

For Petitioner : Mr. R.Malaichamy
For Respondents: V.Balasubramanian, SPC
for R1 to R3

ORDER

(Order of the Court was delivered by V.PARTHIBAN, J.)

The Writ Petition has been filed against the order passed by the 4th respondent/Central Administrative Tribunal, Madras Bench (in short, 'the Tribunal'), dated 31.04.2014 in O.A.No.1489 of 2011 and M.A.No.811 of 2011, dismissing the Original Application filed by the petitioner herein.

2. The petitioner herein approached the learned Tribunal, seeking the following prayer:

"To set aside the order of the 2nd respondent bearing Memo No.ADA/GA04 dated 05.01.2010 Kallakurichi insofar as treating the period from the date of put off duty to reinstatement in service of EX GDS will not count for any purpose as illegal, arbitrary and contrary to law and

ii) Consequently direct the respondents to pay the back wages for the period from the date of put off duty to reinstatement (24.7.2003 to 6.1.2010) and also grant all other incidental and attendant service benefits for the said period and to pass such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and to award costs."

2. The facts which gave rise to the filing of the Original Application and the present Writ Petition, are narrated herein below:

3. The petitioner, while working as Gramin Dak Sevak Mail Deliverer (GDSMD), was put off duty on 24.7.2003 as consequent to the disciplinary action initiated against him. Three charges were framed against him vide charge sheet dated 1.8.2005. After getting explanation from the petitioner, an inquiry was ordered and out of three charges, two charges were held to be proved. Thereafter, the Disciplinary Authority, vide proceedings dated 19.5.2006, imposed punishment of removal from service since the charges framed against the petitioner were very serious in nature. The punishment was also confirmed by the Appellate Authority on 31.01.2007. Aggrieved by the orders of both the

disciplinary authority and the appellate Authority, the petitioner filed O.A.869 of 2007 before the Tribunal. The learned Tribunal, after consideration of the rival submissions, allowed the said O.A. vide order dated 18.9.2009 and the punishment of removal from service was set aside and consequently, the matter was also remitted back to the disciplinary authority in respect of quantum of punishment to be imposed on him.

4. The learned Tribunal, while allowing the said O.A., had also given its finding in respect of one of the charges which was proved in inquiry, that the same was not supported by any evidence. Therefore, what remains for consideration by the disciplinary authority was only with regard to one charge which was proved and that charge being not very serious in nature.

5. Pursuant to the order passed by the learned Tribunal in the above said O.A., the petitioner was reinstated in service on 6.1.2010 vide order dated 5.1.2010. As regards the punishment was concerned, the petitioner was imposed with the penalty of censure with consequential direction that the period from the date of put off duty till the date of reinstatement will not count for any purpose and that it will not constitute any break in service. Against the treatment of the period of put of duty till the date of reinstatement, the petitioner preferred O.A.No.489 of 2011 with the delay of 329 days, for which, a separate miscellaneous application in M.A.No.811 of 2011 was filed, seeking to condone the same.

6. The claim of the petitioner that he was entitled to salary for the period in question as he was merely imposed with the penalty of censure and the main charges having not been proved. According to the petitioner, the impugned order dated 5.1.2010, treating the period from the date of put off duty till his reinstatement to his detriment, was illegal and contrary to law.

7. The claim of the petitioner was sought to be resisted by the Department that in any event, since the petitioner having been imposed with the penalty, he was not entitled for the wages for the period as per the Rules governing the situation. The learned Tribunal, after taking note of the submissions, had come to the conclusion that the explanation for the delay in filing the original application was not acceptable and held that the same deserves to be dismissed.

8. However, while dismissing the Miscellaneous Application No.811 of 2011 which was filed by the petitioner, seeking condonation of the delay of 329 days, the learned Tribunal also heard the Original Application on merits and concluded that the

disciplinary proceedings against the petitioner culminated in the award of penalty of censure and that he was not fully exonerated of the charges and as per Rule 12(3) of GDS (Conduct and Employment) Rules, 2001, he was not entitled for the wages for the period in question. In such view of the matter, the learned Tribunal dismissed the Original Application. Against the above order of the learned Tribunal, the present Writ Petition has been filed by the petitioner.

9. Mr.R.Malaichamy, learned counsel appearing for the petitioner, reiterated his contentions that were put forth before the learned Tribunal. However, the learned counsel was unable to produce any Rule in support of his contention that in view of imposition of minor penalty, non payment of wages for the period in question was against law. On the other hand, the learned Tribunal has accepted the contention of the Department that as per the relevant Rules, once the disciplinary action has ended in punishment, whatever may be the nature of punishment, an employee was not entitled to payment of wages for the period of put off duty. In the absence of any Rule in support of the contention of the learned counsel for the petitioner, the conclusion arrived at by the learned Tribunal against the petitioner cannot be faulted with.

In the above circumstances, we do not find any infirmity in the order passed by the learned Tribunal. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

1. The Postmaster General,
Union of India,
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Tiruchirapalli-620 001.

2. Senior Superintendent of Post Offices,
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Virudhachalam,
Virudhachalam District.

3. Assistant Superintendent of Post Offices,
Kallakurichi West Sub Division,
Kallakurichi,
Virudhachalam District.

4. The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

+lcc to Mr.R. Malaicja,u, Advocate, S.R.No.80
+lcc to Mr.V. Balasubramanian, Advocate, S.R.No.238

ks(CO)
md(06/02/2017)

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