

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA NO. 530 of 1994

New Delhi this the 22nd November, 1994

HON'BLE SHRI J.P.SHARMA, MEMBER (J)
HON'BLE SHRI B.K.SINGH, MEMBER (A)

Shri Chander Prakash son of Shri Hari Ram
R/o Village & P.O. Patli Distt. Gurgaon.
(By advocate Shri Sant Lal)

Applicant

Versus

1. The Union Of India, through the Secretary,
Ministry of Communications, Deptt. of Posts,
Dak Bhawan, New Delhi - 110 001.
2. The Director Postal Services,
Haryana Circle, Ambala Cantt-133001.
3. The Senior Superintendent of Post Offices,
Gurgaon Division, Gurgaon - 122 001. Respondents
(By advocate Shri V.K.Mehta)

JUDGEMENT

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The applicant has been working on the post of Extra Departmental Branch Post Master (ED.BPM) Patly R.S.Post Office, Gurgaon since 3rd March, 1989. The services of the applicant are governed by Extra Departmental Agents (C&S) Rules, 1964. The services of the applicant were terminated under rule 6 of the said Rules w.e.f. 28.5.90 vide order dated 21.5.90 issued by the SSPO, Gurgaon. The applicant submitted an appeal against the aforesaid order of termination of services. The Director, Postal Service vide order dated December 3, 1990 allowed the appeal holding that the order of

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termination under rule 6 was not justified and remitted the case back to the disciplinary authority for taking action under rule 8 of the Rules after affording reasonable opportunity to the applicant. SSPO, Gurgaon vide order dated June 3, 1991 ordered that the applicant should be deemed to have been put off duty w.e.f. 28.5.90 i.e. the date from which he was terminated from services. The applicant was, however, re-instated in services on the said post of ED.BPM Patli, R.S., Gurgaon on February 17, 1992 vide Memo dated Feb.14, 1992 though the disciplinary proceedings against the applicant were in progress on the basis of the chargesheet dated 5.7.1991 under rule 8 of the Rules. Shri I.B.Meena, ASPO(Headquarters), Gurgaon who was appointed Enquiry Officer exonerated the applicant in his enquiry report holding that the charges are not proved against the applicant and disciplinary authority agreeing with the findings of the Enquiry Officer also exonerated the applicant by order dated 29.10.1992.

2. The grievance of the applicant is that since he has been finally exonerated in the disciplinary enquiry initiated under rule 8 of the Rules ^{he} is entitled to pay and allowances for the period of put off duty from 28.5.90 to 17.2.92 which have been illegally denied to him by the impugned order dated 20.4.93 though the said period has been treated as on duty except that for the payment of allowances for that period. The applicant also submitted an appeal against the aforesaid order dated 20.4.93 and the same was rejected by the order dated 24.3.94 after the filing of this application. This order was communicated to the applicant by SSPO, Gurgaon by the Memo dated 30.3.94.

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3. The applicant has prayed for the grant of reliefs that the impugned order dated 20.4.93 be quashed and direction be issued to the respondents to treat the period of put off duty as duty for all the purposes, the continuity of service and full pay and allowances from 28.5.90 to 17.2.92 alongwith 18% per annum interest and costs of the application.

4. The respondents contested the application and took preliminary objections that the applicant has not challenged the order passed in the appeal and as such the application was filed prematurely without exhausting department remedy and is defective. The case of Extra Department Agent put off from duty are reviewed monthly by SSPO, Gurgaon. There is no bar to issue an order of re-instatement pending the disciplinary proceedings under rule 8 of the Rules. The decision of the SSPO, Gurgaon regarding the period of put off duty has been duly considered by SSPO, Gurgaon which has been upheld by the Director, Postal Services, Haryana Circle, Ambala and this is in conformity with the provisions of Rule 9 (3) of the Rules. The applicant during this period of put off duties did not perform any duty because of his own acts and conduct. Merely because the applicant has been exonerated of the charges because of lack of evidence at the subsequent stage, does not mean that the impugned order dated 20.4.93 is bad. The EDA even on duty engaged him in other employment or business except for the period functioning in the post office. It is, therefore, stated that the applicant has no case.

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5. The applicant has also filed an amended original application in which he has also challenged the appellate order dated 24.3.94 upholding the order of disciplinary authority dated 20.4.93.

6. The applicant has also filed the rejoinder reasserting the facts already stated in the amended and unamended application.

7. We heard the learned counsel of the parties at length and perused the record. The learned counsel for the respondents has rightly argued that the case of the applicant is fully covered by the Full Bench decision of CAT, Calcutta Bench in the case of Surinder Nath Bera Vs. Union of India and others reported in 1994 (27 ATC) Page 456. The Full Bench has considered the validity of rule 9 (3) of the Rules as to whether the said rule is violative of Article 14 of the Constitution of India and considered the decision of Bangalore Bench in the case of Peter J.D.Sah vs. Superintendent of Post Office reported in 1989 (9 ATC) page 225. The Full Bench held that the decision given by the Bangalore Bench in the case of Peter J.D.Sah has been challenged by the Union of India before the Hon'ble Supreme Court of India and the operation of the decision of the Bangalore Bench of the Tribunal has been stayed pending disposal of the said appeal. The appellate bench has held the validity of the said Rules holding that the decision of the Bangalore Bench is not a good law. The Full Bench in para No. 3 & 4 of the reports on the interpretation of rule 9 (3) of the Rules observed as follows:-

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"PARA NO. 3: In support of the applicant's contention, he firstly relied upon the decision of the Madras Bench of the Tribunal in P.M. Rusamma V. Inspector of Post Offices, Muvattupuzhza. The view taken by the Madras Bench is that sub-rule (3) of Rule 9 of the rules operates only during the period an employee is actually under suspension and only for the limited purpose of defeating his claim for payment during that period and that it cannot defeat or control the effect of the subsequent declaration about the nullity of the termination. We find extremely difficult to agree with this reasoning. The language of sub-rule (3) of Rule 9 of the rules is clear and unambiguous. It says that an employee shall not be entitled to any allowance for the period for which he is kept off duty under this rule. There is nothing to indicate that payment of allowance for the period an employee is kept off duty would depend upon the outcome of the complaint or allegation of misconduct levelled against him. Sub rule (3) of Rule 9 is not analogous to Rule 10 of the CCS(CCA) Rules which provides for keeping a government servant under suspension. This is a special provision applicable to the employees governed by the special set of rules. Instead of providing for keeping an employee under suspension, Rule 9 of the rules provides for keeping the employee governed by the rules off duty. This is to convey that the same consequences that would follow when an employee is kept under suspension shall not allow when action is taken under Rule 9 of the rules. Subsistence allowance is granted under the CCS(CCA) Rules when the government servant is kept under suspension, to enable him to subsist during the period of suspension. A government servant kept under suspension is not entitled to accept any other

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employment. He is also subjected to certain restrictions and cannot ordinarily leave the place of posting without the permission of the competent authority. These are not the consequences that flow when an employee governed by the rules is kept off duty under Rule 9 of the rules. The Extra-Departmental Agents are part-time employees entitled to engage themselves in other employment during free hours. When such an employee is put off duty, he is entitled to take up any other full-time employment for the entire day. He is not subjected to the restrictions such as not to leave the place of posting without the permission of the competent authority. As the employee is kept off duty, he is rendered free to engage himself in other employment and to earn his livelihood. No provision has, therefore, been made for providing any allowance during the period he is kept off duty. A plain reading of sub-rule (3) of Rule 9 makes it clear that the employee who is kept off duty shall not be entitled to any allowance for the period during which he is kept off duty under this rule. There is no ambiguity in the rule. It is also not possible to take the view that the grammatical rule of construction leads to manifestly unreasonable or absurd results. We have, therefore, no hesitation in holding that an employee who is kept off duty under Rule 9 of the rules shall not be entitled to any allowance for the period during which he is kept off duty even if he is subsequently exonerated in the complaint or allegation of misconduct levelled against him.

PARA NO.4: The Ernakulam Bench of the Tribunal has in CR Raju V. Sub-Divisional Inspector of Post Offices, Muvattupuzha directed grant of emoluments to the employee on his reinstatement subject to his not being gainfully employed elsewhere during the period he was out of service. Apart from these directions in the operative portion of the

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decision, we do not find any discussion on the interpretation of sub-rule (3) of Rule 9. Hence, this decision is not of assistance. Another decision relied upon by the learned counsel for the applicant is in Ardhendu Sekhar Chowdhury V. Union of India. Only in the operative portion of the judgement it is stated that it is well settled that when the criminal case ends in acquittal the concerned employee is entitled to full salary for the period he was put off duty till the date of his reinstatement. The provisions of sub-rule (3) of Rule 9 of the rules have not been examined. Hence, this decision is also not of any assistance. As the directions for payment of allowances in these two cases are opposed to Rule 9(3), we hold that they do not lay down the law correctly"

8. The Full Bench, therefore, held that ED Agent on the interpretation of rule 9(3) of the Rules is not entitled to be paid any allowances during the period he was put off duty.

9. The contention of the learned counsel for the applicant is that the aforesaid decision does not apply to the case of the applicant has no basis. The emphasis has been laid by the learned counsel on the fact that in the present case the order of 3.6.91 (Annexure-III) ordered that the applicant be deemed to have been put off duty w.e.f. 28.5.90 the date from which the services of the applicant were terminated, in accordance with office order dated 21.5.90. The learned counsel has laid analogy from rule 10 of CCS(CCA) Rule, 1965. This rule 9(3) is not analogous to rule 10 of CCA Rules, which provides for keeping a government servant under

suspension. Rule 9 reads:-

"Pending an enquiry into any complaint or allegations of misconduct against an employee, the appointing authority or any authority to which the appointing authority is sub-ordinate may put him off duty".

19. The contention of the learned counsel is that on the date when the applicant was put on duty there was no enquiry pending and so the applicant could not have been put off duty and as such the decision of the Full Bench referred to above does not apply to his case. However, when we go through the relevant records, it is evident that the Director of Postal Services by the order dated 3.12.1990 observed that the termination of the services of the applicant under the provision of rule 6 is not justified and disciplinary authority should have taken recourse to Rule 8 of the ED Conduct Rules, 1964. He has, therefore, remitted the matter to SSPO, Gurgaon. After this order was passed on 3.6.91, the applicant was ordered to be deemed to have been put on duty w.e.f. 28.5.90 by this order his services were terminated under rule 6. Thus, in any case there was a misconduct against the applicant and the departmental enquiry against the applicant shall be deemed to have commenced from the date when he was terminated from service. Instead of rule 6, the proceedings are to be governed under rule 8 so the order of put off duty cannot be said in any way arbitrary or illegal and is, therefore, not covered by the decision referred to by the applicant of K.Velayudhan Pillai V. Chief Post Master General, Kerala Circle, reported in

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1994(2)ATJ Page 112. The other decisions referred to by the learned counsel for the applicant is the case of Mahender Singh vs. Union of India and another reported in 1991SCC (L&S) page 1170. In that case Hon'ble Supreme Court considered a matter where services of the employee terminated under rule 5(1) of CCS (TS) Rules, 1965. The rule 10(4) of the CCS (CCA) Rules^{is} not attracted and the such employee cannot^{be} deemed to have been placed under suspension from the date of original order. For subsequent enquiry suspension to operate prospectively and in that case the petitioner was allowed re-instatement and back wages for earlier period. We have considered this authority and is primarily confined to the order of termination relating back the suspension to retrospective period when there was no enquiry. In the present case as the record reveals that the services of the applicant were terminated under rule 6 but subsequently the appellate authority directed that the proceedings be drawn under rule 8 of the Rules. Thus, proceedings, therefore, shall be deemed to have commenced from the date when the services of the applicant have been terminated. It is not the case for holding subsequent enquiry because the misconduct alleged against the applicant was considered under rule 6 and since no enquiry was held it was ordered that the orders be passed after holding enquiry under rule 8 of the Rules. The learned counsel for the applicant also referred to other decision passed in OA No. 1910 of 1990 decided by the Principal Bench on 1.9.1994 in the case of Yogender Kumar Vs. Union of India and others. This judgement also does not help the applicant's case. In that the order of

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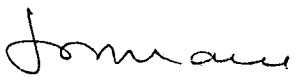
termination was set aside with the directions to complete the disciplinary proceedings and to decide the award of back wages and other attendant benefits after the disciplinary proceedings. In this case, the applicant has been exonerated and the orders have been passed by the disciplinary authority stating that the decision will be taken in this case later on for giving the pay and allowances for the period when the applicant was put off duty. The order dated 14.2.1992 of reinstating the applicant also stated that the period of put off duty shall be decided in due course and that he shall not be entitled to any pay and allowances to the put off period. However, by subsequent order dated 20.4.93 the respondents have decided that for determining the selection on a regular post the period of put off duty will be added to the actual duty period but applicant will not be entitled to any allowance for the period he was on put off duty. These orders have been passed by the respondents because the misconduct alleged against the applicant was of grave nature and for lack of evidence the charges could not be established. It is not the case of applicant where applicant was on put off duty without any reason.

11. Further the applicant has been deemed to have been put off duty by the order dated 3.6.91 w.e.f. 28.5.90, the applicant has not challenged that order which specifically states his put off duty by the date from his termination of services. Since, this order has not been challenged, the applicant cannot agitate that issue again after the period of put off duty has already considered

by the respondents. Even where a person is finally exonerated from the charges, the competent authority may withhold the payments of back wages for the period of such an employee of the suspension period by giving reasons. The matter has also been considered by the higher authorities in the right perspective.

12. We do not find there is any reason to interfere legally or factually with the impugned order both of the disciplinary authority as well as of appellate authority. The application is, therefore, dismissed as devoid of merits leaving the parties to bear their own costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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