

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O. A. No. 2283/89

**O.A. No.**

199

**T.A. No.**

**DATE OF DECISION**

8.10.93

Shri Suresh Kumar Sharma

**Petitioner**

Shri Sant Lal

**Advocate for the Petitioner(s)**

**Versus**

Chief Post Master General

**Respondent**

and Others

Shri P.P. Khurana

**Advocate for the Respondent(s)**

## CORAM

The Hon'ble Mr. J.P. Sharma, Member (Judl.)

The Hon'ble Mr. B.K. Singh, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

## JUDGEMENT

(By Hon'ble Mr. J.P. Sharma, Member)

The applicant was working as Extra Departmental Branch Postmaster (EDBP), Khaleta Branch. The applicant was put off duty w.e.f. 17.1.1989 by Sub-Divisional Inspector (SDI) of Post Offices, Rewari. This was confirmed by Senior Superintendent of Post Offices (Sr. S.P.O.) by the order dated 23.1.1989. In the direction issued in the judgement of the Tribunal dated 24.1.1989 in OA-143/89, the applicant filed an

appeal against the aforesaid order of put off duty.

This appeal was rejected on 31.3.1989 by S.S.P.O.

A representation against the same was returned by the Postmaster General, Ambala, directing the applicant to prefer an appeal to the Director (Postal Services) (D.P.S.) which was submitted by the applicant and the same was rejected by D.P.S. on 14.9.1989. A disciplinary enquiry was also initiated against the applicant by S.S.P.O. under Rule 8 of P&T EDAS (C&S) Rules, 1964 and by the order dated 7.8.1989, the punishment of removal from service was imposed on the applicant. The appeal against the same was preferred to D.P.S., Ambala on 16.10.1989 and the same has not been disposed of.

2. The applicant in this application has assailed the orders dated 17.1.1989 issued by S.D.I. of putting off duty order dated 23.1.1989 and memo. dated 31.3.1989 issued by the SSPOs. Order dated 14.9.1989 from the Office of P.M.G., Ambala with SSPO's order dated 19.9.1989. The applicant has prayed for quashing the aforesaid orders and to declare the period of put off duty from 17.1.1989 till 7.8.1989 as the period spent on duty for all purposes with full pay and allowances. He has also prayed for the award of interest.

3. A notice was issued to the respondents to file their reply. It is stated that the Annexure A-1 filed

by the applicant with his application, is not the memo. under which he was put off duty. It was only of notice to him explaining the reasons under which he did not accept the proper memo. of put off duty and his refusal to hand over the charge. A provisional arrangement was made by respondent No. 2, SSPD, Gurgaon, vide his orders dated 28.7.1989 (Annexure R-1) by which the arrangement was made to run the post office in the meantime. The applicant was put off duty because there was a prima facie case of <sup>embezzlement</sup> ~~embezzlement~~/fraud and acceptance of illegal gratification from the payees of various old age pension money orders, etc. There was no revengeful action by S.D.I., Rewari. After 16.1.1989, the enquiry was conducted by Shri S.P. Sharma, Assistant Supdt. of Post Offices, Gurgaon. He was put off duty in another case which has no relevance with the case of the departmental enquiry initiated against the applicant under Rule 8. Since the applicant had already been removed by the order dated 7.8.1989, under these circumstances, the charge-sheet memo. was not issued to him as the same was not necessary. The Union of India has not been impleaded as a party and the application is, therefore, bad on account of non-rejoinder of necessary party.

4. Subsequently, in MP-251/90, the applicant has also impleaded the Union of India as a party as Respondent No.4, but no reply has been filed by the latter.

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

6. The learned counsel for the applicant argued that the order of put-off duty w.e.f. 17.1.1989 is illegal, arbitrary and discriminatory. The respondents have clearly taken the plea that there was a prima facie case of embezzlement/fraud and acceptance of illegal gratification from the payees of various old-age pension, money orders, etc. and in such a situation, Sub-Divisional Inspector was the competent authority to put the applicant off duty. These orders passed by SDI (Postal) were subsequently confirmed by the appointing authority of the applicant, Senior Supdt. of Post Offices, Gurgaon. The ratification of an earlier order gives sanctity to the earlier order passed by the subordinate authority. The contention of the learned counsel that no charge-sheet has been served on the applicant, is also explained by the respondents in the manner that the applicant was removed from service in another departmental enquiry by the order dated 7.8.1989 and in such a situation, the

(12)

issuing of a memo. of charge-sheet ~~off duty~~, was not necessary. The respondents have a right to proceed against the delinquent employee under the P&T ED Agents (Conduct and Service) Rules, 1964. This position of law is also not disputed. Merely because the suspension period or put off duty period had continued beyond the period mentioned in various administrative instructions, would not by itself make the order of put off duty illegal or unwarranted in the circumstances of the case. The applicant was free to assail that grievance within that period, or he should have made a proper representation and then sought a judicial review of the same. If there had been an irregularity on the part of the respondents in not serving the memo. of charge-sheet at the earliest, then that irregularity will not make the order of put off duty illegal or against the provisions of P&T ED Agents (Conduct and Service) Rules, 1964. The order of put off duty was duly confirmed within time by the appointing authority. The cases of embezzlement and fraud normally take sufficient time for gathering evidence and <sup>contacting</sup> ~~conducting~~ various persons who are often reluctant to depose the true facts under pressure. In such a situation, the serving of the charge-sheet for want of adequate available evidence at that stage is often delayed. But that should

not be taken to be a ground to defeat the specific provisions of P&T ED Agents (Conduct and Service) Rules, 1964, where no time limit is prescribed and it is only in the administrative instructions issued by DGP&T that certain guidelines have been laid down to be adhered to. The nature of those guidelines sometimes, can only be said to be directory.

7. The learned counsel for the applicant also argued that the applicant had been put off duty because of the fact that S.D.I., Rewari was biased and harboured grudge against him. In fact, the facts mentioned by the applicant do not at all go to show mala fide on the part of Shri S.C. Dewan, who was the SDI at that time to have harboured any grudge against the applicant. Though it is often difficult to establish the specific ingredients to establish mala fide, yet the antecedents and previous conduct in the proper context of the matter, can easily give an indication in that regard. However, this is not the case here. The applicant was already facing another enquiry under E.D. Agents (Conduct of Service) Rules, 1964. Thus, in such a situation, it cannot be said that the S.D.I. had passed orders of put off duty because of any animus or pre-conceived notions against the applicant.


8. The learned counsel has also referred to the authority of 1988 (2) ATLT 10 regarding the guidelines for putting off duty. The guidelines have no mandatory force and in a case where the applicant was already undergoing the disciplinary proceedings, the authority cannot be applied to the case of the applicant. Similarly, the authority of the Calcutta Bench, Narain Chand Behra Vs. Union of India & Ors., 1988 (1) SLJ 401, cannot be applied in the case of the applicant as the order of put off duty cannot be said to be illegal.

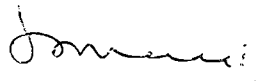
9. The learned counsel for the applicant also argued that in order to oblige Lalmani, Male Overseer, by appointing his nephew as EDBPM, the applicant has been put off duty. The respondents have denied this fact and with the counter, annexed an order of Senior Supdt. (Post Offices) Gurgaon dated 3.8.1989 by which Shri Moti Lal was provisionally appointed till the order of put off duty against Shri Suresh Chand Sharma was revoked. The applicant had been put off duty on 17.1.1989. Thus, it cannot be said that this order has been passed only to accommodate the nephew of Shri Lalmani.

10. The learned counsel for the applicant has also relied upon a decision of Hyderabad Bench of the Tribunal in OA-516/90 decided on 5.8.1990 - Sayanna Vs. U.O.I. & Ors.

That is a case ~~totally~~ on different facts. The petitioner of that case was put off duty on October 11, 1989. He was not served with a charge-sheet, though the period of 120 days had expired. In that case, the respondents took the plea that the Enquiry Officer had suffered with an accident and in those circumstances of the case, the petitioner of that case was ordered to be reinstated as EDBPM. It was further directed that the respondents can proceed against the petitioner of that case according to law. In the present case, the applicant had already been removed from service w.e.f. 7.8.1989 and the application has been filed after the order of removal in November, 1989. The respondents, in their reply, had clearly stated that the order of put off duty had nothing to do with the charge-sheet dated October 14, 1988 in which the removal order had been passed. Thus, the benefit of the judgement does not <sup>accrue</sup> ~~accrue~~ to the applicant ~~as~~ because of his removal from service, the memo. of charge for which the applicant was put off duty, could not be served upon him. Earlier, he was already facing a departmental enquiry.

11. In view of the above conspectus of facts and circumstances, we find no merit in the application and the same is dismissed, leaving the parties to bear their own costs.

  
(B.K. Singh)  
Member (A)

  
8/10/93  
(J.P. Sharma)  
Member (J)