

Central Administrative Tribunal, Allahabad.

Registration O.A.No.1295 of 1988

K.P.Saini

...

Applicant

Vs.

Union of India and others ...

Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

The applicant was provisionally appointed as E.D.Delivery Agent by the Sub Divisional Inspector of Post Offices Khalilabad- respondent no.2 on 24.3.1986 and his appointment was confirmed by the same authority on 12.1.1988. The applicant was thereafter put off duty by the respondent no.2 on 24.10.1988. Aggrieved by the said order the present petition has been filed u/s.19 of the Administrative Tribunals Act XIII of 1985 by the applicant on the ground that he was discharging his duties quite satisfactorily and without explaining any reason he has been put off duty with a malifide intention. It has also been stated that no inquiry or complaint is pending against him and the respondent no.2 did not seek permission or approval of the higher authority within 15 days of the passing of the order of putting off duty and as such the impugned order is illegal and arbitrary and is liable to be set aside. It was also alleged that no appeal lies against the impugned order.

2. At the time of hearing of this ^{petition} ~~appeal~~ for admission it was pointed out by us to the learned counsel for the applicant that his contention that the impugned order is not appealable is not correct and an appeal lies ^{under Rule 10 of E.D. (Service and Conduct) Rules} against every order putting an ED Agent off duty and his petition is accordingly barred by S.20 of the A.T.Act as he did not exhaust the departmental remedy. It is, thus, apparent that the present petition is not maintainable without exhausting ^{the} departmental remedy of appeal.

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(A2/2)

.2.

3. The learned counsel for the applicant further contended that the order of putting the applicant off duty was not confirmed by any superior officer and no inquiry or complaint is pending against the applicant and as such, the impugned order is illegal and without jurisdiction. Regarding the confirmation of the order, we are of the view that this ^{is the} allegation of the applicant and he has not disclosed any special source of his having acquired this knowledge, which could be had only after contacting the officer to whom the respondent no.2 is subordinate. ^{Further,} The contention of the applicant that as the order of putting off duty was passed by the Inspector of Post Offices, it required to be confirmed by a superior authority is also not correct. This is necessary only in the cases in which the Inspector of Post Offices himself is not the appointing authority. The record shows that the applicant was put off duty by the respondent no.2 who is his appointing authority and as such, there appears to be no lack of jurisdiction on the part of the respondent no.2 in passing this order. Regarding the pendency of the complaint or inquiry against the applicant we are of the view that the impugned order states that it was passed under rule 9 of Extra Departmental (Conduct and Service) Rules. This rule clearly provides that pending an inquiry into any complaint or allegation of misconduct against an employee the competent authority may put him off duty. The impugned order having been passed under rule 9 pre-supposes some inquiry or complaint or allegation of misconduct received by the competent authority against the applicant and the applicant might not have come to know of the same by now and he could know the same on making a representation or appeal, which he did not prefer.

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(A2/3)

.3.

In this way, we do not find it to be a fit case for adjudication also.

4. The petition is accordingly dismissed at the admission stage.

[Signature]
MEMBER(J)

[Signature]
MEMBER(A)

Dated: 17th Nov.1988
kkb