

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 13/DAY OF May 1996

Original Application No. 1780 of 1992

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR. D.S.BAWEJA, MEMBER (A)

Shakal Narain alias bachchan Pandey
Son of Babunandan Pandey, resident
of village and post office
Gosaipur Mohaon, District Varanasi

Applicant

BY ADVOCATE SHRI R.N. SINGH

Versus

1. Senior Superintendent of Post Offices, Nati Emali, Varanasi
2. Assistant Superintendent of Post Offices, Town sub Division Varanasi.

Respondents

BY ADVOCATE SHRI N.B. SINGH

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A. the applicant has challenged 3 orders.

- (i) Order ~~of termination~~ dated 29.6.1992 passed by opposite party no.2 removing the applicant from service after a departmental inquiry.
- (ii) The order dated 12/11/92 passed by respondent no.1 rejecting the appeal preferred against the said order of punishment.
- (iii) Order dated 10.8.1991 passed by the opp. partt no.2 by which the applicant had been ordered to be put off duty.

2. The applicant was working as Extra Departmental Mail Carrier cum Extra Departmental Delivery Agent (E.D.M.C Cum E.D.D.A) posted at branch post office Gosainpur, Mohaon, District Varanasi.

3. The brief facts leading to the filing of the OA as stated by the applicant are that the opp. party no.2 by an order dated 26.2.91 directed the applicant to be put off duty with immediate effect. This order was subsequently recalled by order dated 19.4.91. Subsequently by an order dated 10.8.91 the applicant was again put off duty. In the said order it was provided that the applicant shall not be entitled for any allowances during the period he remains put off duty.

4. The applicant was served with a charge sheet by opp. party no.2 through his letter dated 24.7.91 copy of which is Annexure A-6 to the Compilation no.2. An Enquiry officer was appointed who submitted his report on 20.5.1992. The Enquiry officer held charge no.1 as proved and charge no.2 as partly proved and charges 3 and 4 as not proved. The applicant was furnished with the enquiry report and was called upon to submit his reply. On a consideration of the Enquiry Officer's report reply of the applicant the opp. party no.2 passed the order dated 29.6.92 imposing the punishment of removal from service of the applicant. The applicant filed an appeal against the order of removal from service which was also rejected by order dated 12.11.92.

5. The respondents have filed a detailed counter affidavit and the applicant has filed a rejoinder affidavit. The relevant pleadings in the O.A the counter affidavit and rejoinder affidavit shall be referred to an

and considered while dealing with the respective submissions made by the counsel for the parties. The learned counsel for the applicant submitted that the order of removal from service was passed without his being given an opportunity of hearing by the opp. party no.2. On a specific querry as to the relevant provisions in the Statutory Rules to support the submission the learned counsel for the applicant was unable to indicate any such provision. As noted hereinabove the applicant had been furnished with the copy of the Enquiry officer's report and was called upon to submit his reply, thereafter the order for removal from service had been passed. Thus the submission indicated hereinabove is wholly untenable and is therefore rejected.

6. The learned counsel for the applicant next submitted that the Enquiry officer wrongly disbelieved the statement of pradhan which was recorded on 6.1.92 and submitted that the reasons given in the Enquiry Officer's report are wholly erroneous and unfounded. The reasons given by the Enquiry Officer was not the final word. After giving an opportunity to the applicant he filed the reply to the Enquiry Officer's report. the Disciplinary Authority considered the same and passed the order for removal from service. In these circumstances the challenge to the Enquiry officers report before this Tribunal is misconceived and irrelevant.

7. The learned counsel for the applicant next submitted on the basis of various averments made in the OA that the findings with regard to the charges having been proved is erroneous. We have gone through the Enquiry officer's report as also the detailed order passed by the Disciplinary Authority. Good and sufficient reasons

have been indicated by the Disciplinary Authority to hold the charges to be proved. It is fairly well settled that the findings of facts and conclusions reached by the Disciplinary Authority as also the Appellate Authority will not open to a judicial review except the inquiry proceedings suffered from any illegality. No such illegality had been pointed out. It is not open to this Tribunal to sit as a court of appeal over the findings and conclusions arrived at by the Disciplinary Authority. Detailed reasons for the conclusions have been given, the findings cannot be termed as perverse or based on extraneous evidence. The Pradhan in his statement recorded on 26.2.91 and 4.7.91 had given out the date of death of Smt. Madhuri as 12.8.90 while during the inquiry he stated the said date to be 8.12.90. This contradiction in the statement was disbelieved on the ground that the statements during the inquiry had been made either because he had been won over or out of sympathy to the applicant. In short cogent reasons have been given by the Disciplinary Authority to support its conclusions and it cannot be interferred with on a reappraisal of the evidence which is not permitted and the Tribunal cannot reach its own conclusions on the questions of facts.

8. The learned counsel for the applicant next submitted that the provisions of Rule 9 of the E.D. Agents (Conduct and Service) Rules 1964 which provided for putting off an employee pending any inquiry to any complaint ~~amongst~~ of misconduct without payment of any allowance for the period for which he is kept off duty is "wholly illegal, arbitrary, and unreasonable and against the jurisprudence and in violation of Art. 14, 16 and 21 of the Constitution of India."

9. The learned counsel for the applicant cited a decision by a learned Single Judge of the Lucknow Bench of the High Court reported in (1994) 3 UPLBEC 1522 Sri Kant Pandey Vs. Managing Director, U.P. State Food and Essential Commodities Corporation and another. He had cited the said decision since in the said case it was held that: "mere suspicion cannot take the place of proof and there must be some admissible evidence or the evidence having nexus with the charge alleged before a finding of guilt could be recorded". No. factual basis for any such circumstance of denial of any documents or the findings being based on suspicion alone has been averred to in the O.A. A decision would ^{be} _n an authority only for the proposition raised and considered in the light [#] of the facts pleaded. The said decision referred to has no applicability.

10. The learned counsel further cited a decision of the learned Single Judge of the Allahabad High court reported in 1990 Alld. Civil Journal pg334 Union of India and Others Vs. Bansraj Singh. That decision also has no applicability since in the instant case the defence of the applicant in respect of charge no.1 that he had due to error made the payment to another person but after recovering the amount from him had paid to the real ^{i.e. addressee of} person ~~whom~~ the money order, has been disbelieved both by the Enquiry officer, the Disciplinary Authority and the Appellate Authority on the ground that the ^{allegedly} alleged person to whom the payment ^{had} initially been ^{produced} made, had not been ~~produced~~. Admittedly he was not produced by the applicant though in his appeal he has taken the plea that the said person had shifted to Bombay and his address is not known. The findings by the

Disciplinary Authority and the Enquiry Officer, as held hereinabove are ~~based~~ ^{based} on admissible evidence and circumstances proved in the case. We have already held that the scope of judicial review is ~~restricted~~ ^{restricted} to charges being based on no evidence. Re-appreciation of evidence by the Tribunal is also not permissible. (See Union of India Vs. Parmanand, 1989 SCC(L&S) 303). This decision has also ^{been} followed in several decisions. One of them is reported in 1995 SCC(L&S) 292 Govt. of Tamilnadu Vs. A. Raja Pandian.

11. The learned counsel for the applicant in this behalf submitted that as per Supreme Court decision reported in 1977 SC 1677 and EDA is a holder of civil post and order for his removal from service cannot be passed in violation of the provisions of Art. 311(2) of the Constitution of India. As far as this proposition goes there can be no dispute. The other limb of the argument of the learned counsel for the applicant was that the said provision in Rule 9 of the EDA(Conduct) Rules is violative of Art. 14 of the constitution of India since a government employee is entitled for subsistence allowance during suspension. In Rule 9 of the EDA Rules it has been provided that he will not get any allowance. His submission was that there is no basis for making such classification between the EDAs of postal department and other corresponding cadre staff of the postal department. Thus it was submitted that Rule 9 of the EDA Rule is violative of Art. 14 and 16 of the Constitution of India.

12. The learned counsel for the applicant also cited the following 2 decisions to indicate the ambit of Art. 14 of the Constitution of India.

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(i) A.I.R 1974 Supreme Court 555 E.P. Royappa Vs. State of Tamil Nadu and another.

~~He urged~~ The said provision was also violative of Art. 21 of the Constitution of India and cited the decision of AIR 1986 Supreme Court 180 Olga Tellis and Others Vs. Bombay Municipal Corporation and others. He cited the said decision to support the proposition that 'the right to life includes the right to livelihood and submitted the ~~prohibition~~ ^{denial} of right to livelihood established by law can be challenged as being violative of Art. 21. This submission does not require detail consideration at our hands. The learned counsel for the applicant perhaps was not aware that the validity of Rule 9 had been the subject matter ~~of~~ certain decisions already rendered.

13. The ~~Bombay~~ ^{Banglore} Bench of the Tribunal in a case reported in Peter J.D'sa Vs. Superintendent of Post offices 1988(3) SLJ(CAT) 407 has held that the said rule to be violative of Art 14 of the Constitution of India. The said decision has however, been challenged before the Hon'ble Supreme Court in civil appeal No. 4917 to 4927 of 1990 and the Hon'ble supreme court had stayed the operation of the decision of the ~~Banglore~~ Bench of the Tribunal pending disposal of the appeals.

14. In a few ~~other~~ other decisions by various Benches of the tribunal Rule 9(3) of the EDA Rules came to be interpreted. The Madras Bench of the Tribunal in P.M. Rusamma Vs. Inspector of Post Offices (1988) 7 ATC 833 had taken the view that sub rule(3) of Rule 9 of the Rules operate 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 ^{law}

the subsequent declaration about the nullity of the termination.

15. The Cuttack Bench of the Tribunal in the case between K. Venkata Swamy Vs. Union of India and Ors has held that the rules do not prescribe payment of backwages during the period when the employee is put off duty. *Because of* *viz* the divergent view points the matter was referred to a Full Bench, *by* a Division Bench of the Calcutta Bench of the Tribunal when an OA filed by Surendra Nath Bera Vs. Union of India and others came up before the ~~as~~ Bench. The decision of the Full Bench is reported in the IV volume of the Full Bench Judgments of the CAT 1991-1994 at pg 335. The following four questions were referred to the Full Bench.

- (i) Whether Rule 9(3) of the EDA(Conduct &Service) Rules, 1964 is violative of Article 14 of the Constitution of India as held by the Bangalore Bench in the case of peter J. D'sa and another Vs. Supdt. of Post Offices(Supra)
- (ii) If the above rule is held to be violative of Art.14 of the Constitution and is to be struck down, whether the applicant is entitled to get all arrears allowances during the period of his put off duty after he has been discharged from the criminal case on the ground of which he was placed under put off duty?
- (iii) If the Full Bench is of the opinion that Rule 9(3) cannot be struck down being violative of Art. 14 of the Constitution,

can the Tribunal still direct the concerned authority to pay back wages/allowances to an employee who was placed on put off duty because of a criminal case having been started against him and his put off duty has been revoked after he has been discharged from the said criminal case ? and
(iv) whether in such a case Rule 9(3) would not be a bar to the granting of such relief?

The Full Bench after making reference to the fact that the judgment of the Bangalore Bench in Peter J. D'sa(Supra) is still under consideration of the Hon'ble Supreme court and the interim order being granted proceeded to decide the other questions on the assumption that Rule 9(3) of the EDA Rules was valid. On the other questions the full Bench held that an employee ^{who} is put off duty under Rule 9 of the EDA Rules is not entitled to any allowance for the period for which he was kept off duty under the said rules.

16. The Full Bench on the basis of its interpretation of ~~the~~ Rule 9(3) held in that case "that the applicant is not entitled to be paid any allowance during the period he was put off duty. It was obvious that he would not be entitled to any relief even if the Supreme Court upholds the validity of rule 9(3)." We have gone through the Full Bench decision aforesaid.

17. The Full bench analysed the provisions of sub-rule(3) of Rule 9 of the EDA Rules and held that the language of the said sub-rule 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

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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. The Full Bench further proceeded to hold that 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. It held that it was a special provision applicable to the employees governed by the special set of rules and took the view that 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 follow when action is taken under Rule 9 of the rules. The Full Bench held:

"Subsistence allowance is granted under the C.C.S(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 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

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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. "

The said Full Bench settles the controversy except ~~for~~ ^{of course} subject to the decision of the Hon'ble supreme Court in civil appeals nos 44917 to 4927 of 1990. We are bound by the Full bench decision.

18. The learned counsel for the applicant perhaps on the assumption that Rule 9 can be held to be ultravires of Art. 14 made a further submission that in the absence of any allowance having been made the applicant should be held to have denied reasonable opportunity of hearing and in this behalf relied upon 2 Supreme Court decisions reported in 1973 Supreme Court 1183 and 1991 Supreme Court 328. Those cases have no parity with the present case. As for the present, it is difficult to hold that EDA put off duty under Rule 9 of the EDA Rules can be equated to an order of suspension of a government employee under rule 10 of the CCS(CCA) Rules. If bacause of the unambiguous language of Rule 9 of the EDA Rules no allowance is to be paid, non payment of allowance cannot be stressed to support an argument that it would amount to denial of reasonable opportunity within the meaning of Art 311 of the Constitution of India.

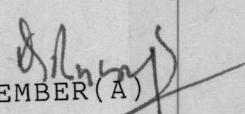
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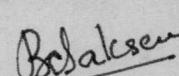
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19. Though we have dealt with the submission with regard to rule 9 of the EDA Rules being ultravires to Art. 14 of the Constitution of India, we are constrained to record that though a serious question of law had been raised on behalf of the applicant and the learned counsel for the applicant had taken pain to cite a number of decisions to support his submissions.

20. The learned counsel for the respondents failed to indicate any decision to meet the proposition of law raised by the learned counsel for the applicant. The decision on the said question it is needless to say would have far reaching effects. The least that we could expect from the learned counsel is reasonable assistance in the matter.

21. In view of the discussion hereinabove, the O.A. is devoid of merit and is accordingly dismissed. Cost easy.


MEMBER(A)


VICE CHAIRMAN

Dated: , 1996

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