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(OPEN COURT)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated 1st day of November, 1995

Original Application No.1571 of 1993

QUORUM :-

Hon'ble Mr. S.L.Das Gupta, A.M.

Hon'ble Mr.T.L. Verma, J.M.

Subedar Singh, son of Late Shri Lal Bahadur Singh, resident of Village and Post-Beohara, Tehsil Lalganj, District-Azamgarh.

(Sri V.K. Singh, Advocate)

. . . . . Applicant

Versus

1. Union of India, through Senior Superintendent of Post Offices, Azamgarh.
2. The Sub Divisional Inspector, Lalganj, Azamgarh.

(Km. Sadhna Srivastava, Advocate)

. . . . . Respondents

ORDER (ORAL)

By Hon'ble Mr. S. Das Gupta, A.M.

This O.A has been filed under Section 19 of the Administrative Tribunals Act 1995 challenging the order dated 30-4-1993 (Annexure-2) to the Application) by which the Applicant was put off duty. It has been prayed that the said order be quashed and the Respondent be restrained from making any appointment on the post of ~~the post~~ of EDBPM on which the Applicant was working.

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2. The Applicant has challenged the impugned order putting off duty on the ground that there is no complaint against the Applicant nor any enquiry is pending against him or contemplated and that he has not been served with a charge sheet so far. It is also his case that the impugned order has not been passed by the competent authority and no confirmation was obtained from the higher authorities as provided under the rules.

3. The Respondents have resisted the claim of the Applicant by filing counter affidavit in which it has been averred that certain complaints were received from senders of certain insured letters that the amount has been misappropriated and thereafter a <sup>preliminary</sup> ~~primary~~ enquiry was held by Respondent No.2. In the enquiry, the Applicant was found to have misappropriated the value of the insured letters. As a result of this, by the impugned order Respondent No.2 put the Applicant off duty. The Learned Counsel for the Respondents has referred to Rule 9 of the EDA (Service and Conduct) Rules, 1964. Rule 9 reads as follows :-

"9. (2) Pending an enquiry into any complaint or allegation of misconduct against an employees, the appointing authority or an authority to which the appointing authority is subordinate may put him off duty:

Provided that in case that in cases involving fraud or embezzlement an employee holding any of the posts specified in the Schedule to these rules may be put off duty by the Inspector of Post Offices, under immediate intimation to the appointing authority.

86



(2) An order made by the Inspector of Post offices under sub-rule (1) shall cease to be effective on the expiry of fifteen days from the date thereof unless earlier confirmed or cancelled by the appointing authority or an authority to which the appointing authority is subordinate.

(3) An employee shall not be entitled to any allowance for the period for which he is kept off duty under this rule.

4. We have also been referred to the Instruction No.3 below Rule 9 with regard to the nature of enquiry which may occasion an order putting an EDA off duty. This instruction reads as follows :-

"(3) Put off duty only during pendency of enquiry and not when one is contemplated.- The implication of the Supreme Court's judgement declaring ED Agents as holders of civil posts was clarified in Instruction above. One of the clarifications was that an ED Agent can be put off duty only during the pendency of the enquiry and not when any enquiry is contemplated. Enquiries have been made whether the enquiry refers to the fact-finding enquiry or the formal enquiry which is required to be held before imposing the penalty of removal or dismissal from service. It is clarified that ED Agents can be put off duty even before the initiation of the disciplinary proceedings. However, it is not the intention of the rule that an ED Agent ~~be put off duty~~ merely on the ground of suspicion, without making any enquiry whatsoever. The question of putting of an ED Agent from duty should arise only when there is a prima facie case against him and the nature of the offence is such that dismissal will be the possible penalty."

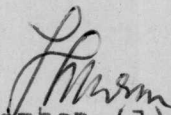
5. Rule 9(1) <sup>v. read with</sup> Instruction No.3 below the Rules makes it abundantly clear that even if a preliminary enquiry was held against an EDA, he may be put off duty even before the initiation of the disciplinary proceedings. The only <sup>Caution</sup> ~~occasion~~ is that such an EDA should not be put off duty merely on the basis of suspicion. In view of the specific averments made by the Respondents that the preliminary enquiries

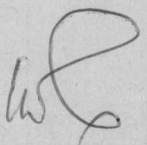
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have been carried out, establishing *prima facie* case of misappropriation, we find that the relevant provisions of the Rule have not been contravened by the impugned order putting the Applicant off duty.

6. As regards the plea that the Respondent No.2 was not competent to pass this order, the Rule itself is very clear that the Inspector of Post Offices can pass an order putting an EDA off duty but such order has to be confirmed within 15 days by the competent authority. The Respondents have specifically averred that the order passed by the SDI was confirmed within 15 days by the competent authority i.e. the Superintendent of Post Offices vide order dated 13-5-1993, a copy of which is Annexure-CA-2. The requirement of the Rule has been complied with.

7. As no other plea has been advanced, we find that this Application is devoid of merit and is dismissed accordingly. There shall be no order as to costs.

  
Member (J)

  
Member (A)

RBD/