

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 15th DAY OF Dec., 2011)

PRESENT:

**HON'BLE MR. JUSTICE B.N. SHUKLA, MEMBER-J
HON'BLE MR. D. C. LAKHA, MEMBER-A**

ORIGINAL APPLICATION NO. 1226 OF 2007
(U/s, 19 Administrative Tribunal Act.1985)

Har Charan S/o Shri Halloo, Extra Departmental Delivery Agent (E.D.D.A.), R/o P.O. Baroda Dang, District: Lalitpur, Under S.D.I. (Postal), South Sub-Division, Jhansi Permanent resident of; Village & Post: Baroda Dang, District: Lalitpur.

.....Applicant

By Advocate: Shri Satish Mandhyan.

Versus

1. Union of India, through Secretary (Post), Government of India, New Delhi.
2. Post Master General, Agra Division, Agra.
3. Sub-Divisional Inspector (Postal), South Sub-Division, Jhansi.
4. Sub Post Master, Bar District: Lalitpur- 284 123.

..... Respondents

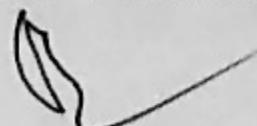
By Advocate: Shri Himanshu Singh.

ORDER

(DELIVERED BY:- HON'BLE MR. D.C. LAKHA, MEMBER-A)

This O.A. has been preferred to seek the following relief No. 1, 2 and 3:-

- "(i) to issue a writ, order or direction in the nature of certiorari quashing the orders dated 30.03.2007 and 02.08.2007 passed by respondent no. 3 (Annexure-1);
- (ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect the orders dated 30.03.2007 and 02.08.2007 passed by respondent no. 3 (Annexure-1);
- (iii) to issue such other and further order or direction which this Hon'ble Tribunal may



deem fit and proper in the nature and circumstances of the present case."

2. The facts in brief as put in the O.A. may stated as under:-

The petitioner was given the appointment on regular basis vide order dated 26.02.2003 passed by the Respondent No. 3 appointing the applicant as EDDA in Post Office Baroda District-Lalitpur (copy of appointment letter Annexure A-4). He has been discharging his duties sincerely and with hard work but the Respondent No. 3 issued "put off duty" letter against the applicant in the wake of contemplated disciplinary proceedings. The order of putting off duty is annexed as Annexure A-1 in the counter reply. It has been pointed out that the date of this order is mistakenly put as 30.03.2007 and actually the date is 30.07.2007. The applicant was relieved vide order dated 02.08.2011. Both these orders are under challenge. The applicant had never been given any opportunity to explain his case. No inquiry including the preliminary inquiry has been undertaken by the respondents. The applicant has never been given charge sheet. He has been serving on the post with all sincerity and hard work. By a letter dated 30.10.2010 Respondent No. 4 required the applicant to appear in the Sub Post Office Barh at 10.00 A.M. on 16.10.2007 to explain about the fraud allegedly committed by him. No detail of the alleged fraud is given. Putting off duty amounts to termination of the service by the respondents. This order of putting off duty is illegal and cannot be justified on any legal ground. Being a regular employee the case of the applicant is protected under the Postal Service Regulations as well as under Article 311 of the constitution because he cannot be terminated

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without holding any proper inquiry. The impugned orders involve serious civil consequences as such opportunity was a must and in absence of the same the impugned orders are liable to be set aside.

The case is contested by the respondents on notice. In preliminary submission the fact of the applicant being in service on regular basis is accepted the applicant was also ordered to work on the post of GDS BPM in addition to his own duties w.e.f. April, 2005. Some public complaints were received from the villagers of Baroda Dang regarding embezzlement of Government money from their accounts. The enquiries made into complaints revealed that while working on the post of Gramin Dak Sevak Branch Post Master, w.e.f. April 2005 to July 2007, the applicant embezzled the Government money for Rs. 29.050/- from the following accounts:-

Sl. No.	Account No.	Amount embezzled (in rupees)
1.	1124549	13250=00
2.	1124226	8,000=00
3.	1125985	4,400=00
4.	1124510	3,400=00
	Total	29050=00

3. As the applicant was involved in the case of embezzlement of Government money and hence F.I.R. was lodged against the applicant at Police Station Barh under I.P.C. Section 409, 420, 467 and 468 on 09.12.2007. The applicant was also been charge



sheeted under Rule 10 of GDS (Conduct & Employment) Rules 2001 by the Sub Divisional Inspector, South Sub Division, Jhansi vide order dated 26.12.2007 (CA-2).

4. The applicant did not prefer any representation/appeal to the Higher Authorities against the impugned order dated 30.07.2007 regarding "putting off duty" and rather has filed the present O.A. hence in the absence of Departmental remedies not having been exhausted, the OA is not maintainable under Section 20 of Administrative Tribunals Act, 1985, because the same is premature. In parawise reply the respondents, in the CA, have denied the allegations of the applicant. It is added that on the basis of certain complaints the inquiry was conducted and it was prima facie found that the applicant was involved in the embezzlement of Government money that the order dated 30.07.2007 was passed by which the applicant has been kept under "put off duty" and as a result of which he was later on was relieved on 02.08.2007. The applicant was informed vide order dated 13.10.2007 (Annexure CA-3) by Respondent No. 3. to attend in Sub Post Office, Barh at 10.00 A.M. on 16.10.2007 but the applicant did not intentionally attend the office to explain. The Mail overseer South Sub Division, Jhansi visited in Baroda Dang Branch Post office on 05.12.2007. He asked the applicant to give his written statement in this regard. But the applicant refused to give his written statement and told that he would give the statement later on. The Mail Overseer South Sub Division, Jhansi also visited Baroda Dang Branch Post Office on 29.08.2007

and 28.11.2007. But the applicant was not available at his home and it was informed by his family member that he was out of station. In this connection the photo copies of the letter dated 29.08.2007 and 28.11.2007 are annexed as CA-4. The applicant has been charge sheeted under Rule 10 of GDS (Conduct & Employment) Rules 2001 by the Respondent No. 3 being the appointing authority. It is also added in the counter affidavit that the order about "put off duty" is not termination of employment. The applicant gave a statement before the Sub Divisional Inspector (Postal), South, Jhansi saying that he would deposit the misappropriated amount within 15 days and he also requested to grant only 15 days time to deposit the said amount for the same accordingly. The copy of the statement is annexed as CA-5. Since the charge sheet has been issued vide memo dated 26.12.2007 under Rule 10 of GDS (Conduct & Employment) Rules 2001 reasonable opportunity will be given to the applicant accordingly. Thus, the action has been taken by the respondents is in conformity with various rules and instructions issued in this record. The applicant has utterly failed with any cogent ground with support of the OA.

5. In the rejoinder affidavit filed by the applicant it has been stated that in support of the charge sheet dated 26.12.2007 no relied upon documents has been given by the respondents to the applicant inspite of repeated requests. It is also added in the rejoinder affidavit that no question of filing any representation or appeal arises at this stage as there is no provision to do so against the order "putting off

duty". It is also alleged in the rejoinder affidavit that during the tenure as BPM Baroda Dang Post Office, the S.D.I. was in the habit of taking away pass books and seal with a view to tamper according to his whims. The applicant initially reported that certain pass books had been taken away by S.D.I. with seal and he had demanded illegal gratification which applicant was not in a position to give. Hence it was reported vide letter dated 29.11.2006 to the Superintendent Post Offices Jhansi, Division Jhansi. Another complaint was made on 30.05.2007 (Annexure RA-6) the Sub Divisional Inspector did not come on 16.10.2007 and no date as 26.10.2007 was ever fixed to take the statement of the applicant. So far as the acceptance of the guilt part is concerned, no such statement was ever given by the applicant. It is only that they have used the signature of the applicant obtained on a blank paper by taking it to be acceptance of the guilt with an assurance that he will deposit the amount so embezzled. There is no question of the applicant committing any fraud to the tune as alleged because he was given the duty as BPM only in July, 2005 and the alleged embezzlement is of period prior to that. That is why he was granted bail in the criminal case because the Sessions Judge was satisfied on *prima facie* facts that no criminal charge was made out at the initial stage.

6. We have heard both the counsels. The learned counsel for the applicant has, in support of the averments made in the O.A., laid emphasis on the point that before issuing of the impugned order of

putting the applicant off duty no opportunity of hearing was given. All the points put in on behalf of the applicant in the O.A./R.A. are reiterated. It is argued that the applicant was appointed on regular basis and no disciplinary action can be taken against the applicant without any preliminary inquiry and the opportunity to the applicant for being heard. As referred in Para 22 of the rejoinder affidavit the learned counsel for the applicant has also taken a plea that the applicant was placed as BPM in July, 2005 and the alleged embezzlement pertains to the period prior to that. The learned counsel for the applicant goes on to add that even if there has been a charge of embezzlement against the applicant he was not in a position to tamper with any evidence or to influence witnesses against him even without the impugned order of putting him off duty. Hence the order was illegal and uncalled for. On behalf of the applicant reliance has been placed on the following Judgments of Hon'ble High Court:- *Awadhesh Singh Vs. Chief Development Officer and others reported in [(1994)3 UPLBEC 1851]*, *Ravindra Rai Vs. State of U.P. (H.C.) reported in [2003 (53) ALR 185]* and *Lal Bahadur Singh Vs. Engineer-In-Chief (Mechanical), Irrigation Department reported in [(2000) 1 UPLBEC 515]*.

7. We have seen the Judgments (Supra), the copies of which have been submitted by the learned counsel for the applicant. We find that no benefit is available ^{to} ~~of~~ the applicant from these Judgments. The facts and circumstances of the cases involved in these Judgments are different from those of the present case.

Learned counsel for the respondents has, in addition to the oral arguments, submitted the written arguments. He has reiterated that as required under Section 20 of the Administrative Tribunals Act, 1985, the applicant, before filing this O.A. did not avail of all the remedies available to him under the relevant service rules. In this connection he has referred to Rule 13 of GDS (Conduct & Employment) Rules 2001 stating "A Sevak may appeal against an order putting him off duty to the authority to which the authority passing the order regarding putting him off duty is immediately subordinate". So it is clear that there is a provision of the appeal against the order of put off duty passed against any employee governed under these rules. The learned counsel for the respondents has also referred to Rule 12 in which the provision of passing order to "Put off duty" against any Sevak is provided for. It is also submitted on behalf of the respondents that the applicant was engaged as Extra Departmental Delivery Agent (EDDA) in Baroda Dang Branch Post Office, Distt. Jhansi vide order dated 26.06.2003. He was directed to discharge the duty of GDS BPM, in addition to his own duties w.e.f. April, 2005 on account of transfer of Sri Murli Mohan. Some complaints for received regarding embezzlement of government money regarding made against the applicant was found proved and it was found that while working as GDS BPM w.e.f. April 2005 to July, 2007, the applicant embezzled the government money to the tune of Rs. 29,050/- but in order to undergo the disciplinary proceedings the decision was taken to pass the impugned order of put off duty against the applicant. It is also argued by the learned

counsel for the respondents that the order of put off duty is not punishment order it is in other wards the suspension order. Later on only when the case was ready and made out on the basis of preliminary inquiry that the F.I.R. was lodged under the relevant Sections of I.P.C. Thereafter, the applicant was charge sheeted under Rule 10 was GDS (Conduct & Employment) Rule 10 on 26.12.2007. No reply to the charge sheet has been given by the applicant. He is not co-operating in the disposal of this case of disciplinary proceedings.

8. In view of the preliminary inquiry which is based on record of the Post Office and also on the complaints of some people the disciplinary proceedings were contemplated against the applicant resulting into issuing of the charge sheet against him. Obviously, when the reply of the applicant in response to the charge sheet is coming forth and even before that, if required, every reasonable opportunity will be given to the applicant to defend himself.

9. We have given thoughtful consideration to the pleadings and the arguments both the parties. We have seen that in the impugned order dated 30.03.2007 (corrected as 30.07.2007 in the counter reply of the respondents) the order against the applicant to put him off duty has been passed on the basis of the disciplinary proceedings having been contemplated against the applicant. There is provision under Rule 13 to go in the appeal in this situation but no appeal was preferred by the applicant. Both the counsels have tried

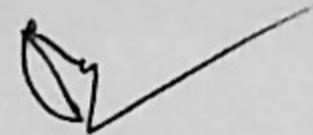
to mix-up the order of "put off duty" with the issuing of charge sheet against the applicant. Although much has been said about the charge sheet also yet since charge sheet against the applicant is not impugned and not challenged in this OA we would not like to comment about the point/issue of the charge sheet. It is also the settled position of law that after the charge sheet is issued against any Government Servant the disciplinary proceedings must be completed and the final order passed within stipulated period. Since charge sheet is not challenged in this O.A. we would not like to adjudicate on this point. The impugned orders Annexure A-1 and A-2 passed respectively on 30.03.2007 (corrected as 03.07.2007) and 02.08.2007 against the applicant to put him off duty and of relieving. It seems (at Annexure A-2) the letter dated 02.08.2007 is the relieving charge notionally as is a consequence of impugned order A-1. We have also observed during the course of the arguments that after issuing of the charge sheet on 26.12.2007 no material progress has taken place for want of the reply of the applicant on the charges. It is also seen that the applicant could not give the reply for want of the copies of relied upon documents in the charge sheet. It seems that the seriousness on this matter of disciplinary proceedings has been lacking on both sides.

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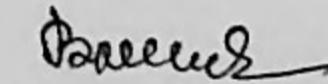
10. On the basis of foregone facts and discussions, we observe that there is no valid and legal ground to interfere in this matter by quashing the impugned orders. So the O.A. is liable to be dismissed. Hence, the O.A. is dismissed. However it is observed

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that this matter of disciplinary proceedings must be disposed of within a time bound manner. So the applicant is directed to co-operate in the completion of the proceedings by giving the reply to the charge sheet within a month after the relied upon documents (copies) are given to him. The respondents shall provide the certified copies of the relied upon documents to the applicant within 15 days from the date of the certified copy is made available to them. The respondents are also directed to complete the disciplinary proceedings started after the impugned "put off duty" order dated 30.07.2007 and the charge sheet dated 26.12.2007 after adopting the legal process as per rules expeditiously, preferably within a period of three months from the date of receipt of certified copy of this order. This period shall be inclusive of the time given for providing the relied upon documents and also for the reply of the applicant. No order as to costs.



Member (A)


Member (J)

/s.v./