

# CENTRAL ADMINISTRATIVE TRIBUNAL

## AHMEDABAD BENCH

**O.A. NO./177/90**  
**T.A. NO.**

DATE OF DECISION 16.1.1998

Shri B.R. Dave

Petitioner

Mr. P.H. Pathak

Advocate for the Petitioner [s]

Versus

Union of India & ors.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent [s]

### CORAM

The Hon'ble Mr. V. Ramakrishnan

Vice Chairman

The Hon'ble Mr. T.N. Bhat

Member (J)

### JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *no*
- 2, To be referred to the Reporter or not ? *yes*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ? *X*
- 4, Whether it needs to be circulated to other benches of the Tribunal ? *yes*

Shri B.R.Dave,  
Branch Post Master,  
Bhutadi B.O.

APPLICANT

Advocate Mr.P.H.Pathak

versus

1. Union of India, Through :  
The Post Master General,  
Navrangpura,  
Ahmedabad.
2. Director of Postal Services,  
Rajkot Division,  
Rajkot.
3. Sr.Supt. of Post Offices,  
Jamnagar.

RESPONDENTS

Advocate Mr.Akil Kureshi

J U D G M E N T

in

O.A.177/90

Date: 16.1.1998

Per Hon'ble Mr.T.N.Bhat

: Member (J)

The applicant in this O.A., while  
working as Extra Departmental Branch Post Master  
( EDBPM ) was put off duty under Rule 9 of the

contd...3

*16.1.98*

P & T, Extra Departmental Agent, (Conduct & Service) Rules 1964, by the memo dated 18.2.1986 issued by the Superintendent of Post Office, Junagadh ( hereinafter referred to as S.P.O. ). Soon thereafter, by the memo dated 4.8.1986, issued by the S.P.O., a charge-sheet was issued to the applicant with the allegation that during the period from 10.9.84 to 22.7.85, while working as EDBPM, Bhutadi, the applicant had failed to maintain absolute integrity and devotion to duty and had also failed to act according to rules. The precise charge against the applicant was that on 10.9.1984, one Shri N.M.Hapani, the father and guardian of minor account holder, namely, Shri Kishore had tendered the saving bank pass-book of SB Account No.1202042 alongwith the SB-7 form duly filled in to the applicant for closing the account and the ~~ax~~ applicant had issued receipt No.10 in form SB-28 in token of receipt of the pass-book of the said account. When the said depositor, namely, Shri Hapani attended the post office on 21.9.1984, the applicant obtained the thumb Impression in token of receiving

contd ...4

the payment, but the payment was not actually made to the depositor, as he did not have the SB-28 receipt with him and the depositor accordingly went home to collect the same. The applicant did not make payment of the amount to the depositor although in the account books, he had shown the payment having been made on the closure of the Account on 21.9.1984.

2. The Disciplinary Authority, namely, S.P.O., Junagadh, appointed the Enquiry Officer to conduct the enquiry who submitted his report sometime in the year 1988 and a copy of the report was sent to the applicant for his reply. The applicant gave his reply by the letter dated 15.10.88, as at Annexure A-10 to the O.A. The Senior Superintendent of Post Office, Junagadh Division, Junagadh, who had been empowered by the order of the Post Master General, Gujarat Circle, to function as the Disciplinary Authority in this case, by his order dated 28.2.1989, as at Annexure A-11, after considering the report of the Enquiry Officer and the reply submitted by the applicant, imposed upon the applicant the punishment of removal from service with immediate effect.

contd...5



3. Against the aforesaid punishment order, the applicant filed an appeal which was dismissed by the order dated 29.9.1989 passed by the Director (Postal Services, Rajkot. ( Annexure A-13 )

4. Aggrieved by the aforesaid punishment order and the appellate order, the applicant has filed this O.A. seeking the following reliefs:-

" (A) The Hon'ble Tribunal be pleased to declare the action of the respondents exercising powers to place the applicant under put off duty, without payment of subsistence allowance for about 3 years, is arbitrary, illegal, unconstitutional and violative of Article 14 of the Consitution of India and be pleased to quash and set-aside the enquiry proceedings and the findings depend upon it and the punishment imposed by the disciplinary authority.

(B) Be pleased to declare the Enquiry proceedings, its finding and the punishment imposed by the disciplinary authority and rejection of the appeal of the applicant, as illegal invalid and inoperative in law and is without application of mind and in violation of principle of natural

justice and further direct the respondents to reinstate the petitioner with all consequential benefits.

“(C) Be pleased to declare the punishment of removal from services as arbitrary and without jurisdiction because there is no whisper of evidence to prove the charges against the applicant and in case of violation of the particular rules for maintainance of the record, only the minor penalty can be imposed.

“(D) Any other relief to which this Hon'ble Tribunal deems fit and proper in interest of justice together with cost.”

5. Apart from assailing the impugned orders on merits, the applicant has taken the plea that the applicant was not paid any subsistence allowance and that Rule 9 (3) of the E.D.A. ( Conduct & Service ) Rules 1964 being violative of Article 14 of the Constitution, the enquiry held against the applicant without paying him any subsistence allowance was vitiated and was, therefore, liable to be quashed.

6. As regards the merits of the case, and the evidence on which the impugned orders are based, it will suffice to say that in view of the order

which we propose to make, these grounds can more appropriately be agitated before the Enquiry Officer or the Disciplinary Authority, as the case may be, when the case goes back to them for further enquiry. We are convinced that the enquiry held against the applicant is vitiated on the ground that after being put off duty, the applicant was not paid any subsistence allowance. The reasons are not far to seek :

7. It is now well-settled that in the case of a regular government employee, non-grant of subsistence allowance during the period of suspension vitiates the disciplinary enquiry. This view is taken by the Apex Court in a number of cases. In this regard, we may refer to just one judgment reported as AIR 1983 SC 803. In that case, it was held that a civil servant who is placed under suspension cannot be denied subsistence allowance during the pendency of his appeal against his conviction in a criminal case. It is further held that such a civil servant shall be entitled to normal subsistence allowance even after his conviction by the

*[Handwritten signature]*

~~by the~~ Trial Court pending consideration of his appeal filed against the conviction until the appeal is disposed of finally one way or the other.

8. A Bench of the Apex Court consisting of five judges ~~in~~ in the case of Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, ( Judgment reported as AIR 1973 SC 1183 ) had earlier held that where the delinquent had communicated his inability to attend the disciplinary enquiry proceedings due to paucity of funds resulting from non-payment of subsistence allowances, the enquiry was vitiated for his non-participation. The Apex Court had also held in R.K.Rajamma's case (1977) 3 SCC 94 that the jural relationship of master and servant continues during the period of suspension of a government employee.

9. A Division Bench of the Tribunal has also struck down rule 9(3) of the EDA ( Conduct and Service ) Rules, 1964, holding that the same is violative of Article 14 of the Constitution.

Striking down the aforesaid sub rule of Rule 9, the Bangalore Bench in the case of Peter J.D'sa and Another Vs. Supdt. of Post Offices, Udupi and Ors., and a bunch of other cases, directed the Government of India to re-examine the matter in its entirety and frame a new set of rules providing for payment of subsistence allowance to E.D.Agents when they are put off duty. A further direction was given to the respondents in those cases to afford the applicants in those cases reasonable opportunity to substantiate their defence in the disciplinary proceedings in progress against them.

10. It may be mentioned here that in the cases before the Bangalore Bench, the disciplinary proceedings were pending and had not been concluded, while in the instant case the disciplinary proceedings have concluded, the punishment has been awarded to the applicant and the appeal against the punishment order has also been rejected. Be that as it may, the fact remains, that no subsistence allowance had been paid to the applicant and denial of such allowance would in our view amount <sup>to</sup> denial of fair opportunity to the applicant resulting in contravention of principles of natural justice.

11. The judgment of the Bangalore Bench (Supra )

was assailed by the Union of India before the Hon'ble Supreme Court and the Apex Court has ~~be~~ up-held that judgment. A copy of the Apex Court's judgment is made available to us by the learned counsel for the applicant. The same has been delivered on 10.7.1995. The Apex Court has while disposing of the SLP, given the following directions:-

"

- (1) We declare Rule 9 (3) of the Rules as violative of Article 14 of the Constitution of India.
- (2) We leave it open to the Government of India to re-examine the matter and if it so chooses frame a new set of Rules substituting Rule 9(3).
- (3) It would be open to the Union of India to examine such case to reach the conclusion as to whether the individual is entitled to the salary for the period when he was kept off duty under Rule 9(1) of the Rules. In the event of any of the respondents being exonerated, in the disciplinary proceedings the salary for the off-duty period can only be denied to him after affording him an opportunity and by giving cogent reasons.
- (4) We direct the appellants concerned

to afford reasonable opportunity to the respondents in the disciplinary proceedings which are pending or in progress against any of the them. This may be done as directed by the Tribunal in J.D. 'Souza's case."

12. During the course of arguments, the learned counsel for the respondents took the same pleas as had been taken by the Central Government counsel before the Bangalore Bench in Peter D'sa's case referred to above. The main plea taken is that E D Agents cannot be treated at par with other government employees as they are permitted to have alternate source of income even during their service as E D Agents. The same plea taken before the Bangalore Bench was rejected, and, as already mentioned, the judgment of the Bangalore Bench has been up-held by the Apex Court.

13. In this view of the matter, the impugned order imposing punishment on the applicant and the appellate order cannot be sustained. The matter has to go back to the disciplinary authority for appointing a fresh enquiry officer and to direct him to proceed

contd....12



with the enquiry from the stage the charge-sheet was served on the applicant and also to pay to the applicant the subsistence allowances during the enquiry <sup>proceedings</sup> according to the rules that have already been framed by the Department of Posts. In this regard, we may state that a copy of letter dated 31.1.1997 from the office of the Director General ( Telegraph ) Ministry of Communications, Department of Posts, addressed to all Chief Post Masters General/ Post Masters General and other units has been furnished to us in which mention has been made of the Supreme Court judgment dated 10.7.95 (Supra) and rule 9 has been recast so as to make provision for " compensation as ex-gratia payment " in case of those E.D.As ~~xxx~~ who are put off duty.

14. In these circumstances, there should be no difficulty in allowing the applicant to draw the subsistence allowance in the form of compensation as ex-gratia payment in accordance with the aforesaid rule 9 ~~as~~ so modified and recast.

15. The only question that remains to be decided



is as to whether the applicant would be entitled to any salary or even compensation as ex-gratia payment from a back date. While on the one hand, the applicant's counsel claims full back-wages from the date the applicant was put off duty or at least the subsistence allowance from that date, the respondents' counsel, on the other hand, contends that the subsistence allowance (compensation as ex-gratia payment) would, if at all allowed, be payable from a prospective date. He also relies upon the judgment of the Apex Court in State of Punjab Vs. Harbajan Singh (1996 (2) Supreme Court Service Law Judgments 138 ) In that case, the High Court had found the departmental enquiry ~~to~~ to be faulty resulting in removal of the delinquent officer from service and the matter was remitted to the disciplinary authority to follow the prescribed procedure from the stage at which the fault was pointed out <sup>and</sup> ~~and~~ to take action according to law. Not only that, but it was further directed by the High Court that the delinquent should be reengaged with consequential benefits. The Apex Court ~~has~~ x

Court held that the High Court was perhaps justified in setting aside the enquiry on the ground that it was faulty, but that it was not proper for the High Court to direct reinstatement and the consequential benefits. The Apex Court also held that pending enquiry, the delinquent must be deemed to be under suspension and the consequential benefits would depend upon the result of the enquiry and orders passed therein. It was further held on the facts of that case that as the delinquent had already retired from service, no reasonable purpose would be served in directing to conduct the enquiry afresh. But at the same time, the Apex Court held that the delinquent was not entitled to the back-wages.

Taking into consideration the above facts and circumstances, we are of the view that allowing a lump-sum amount to the applicant for the period he remained under put off duty would meet the end of justice in this case. We assess the same at Rs.3000/- with the further direction that from the date of passing of this order, the applicant shall be regularly paid compensation as ex-gratia payment under the new

instructions issued by the Government at a rate not exceeding 50% of the wages he would otherwise get had he continued in service.

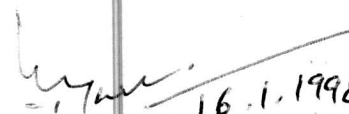
16. In view of all that has been held and discussed above, we allow this O.A and dispose it of with the following directions:-

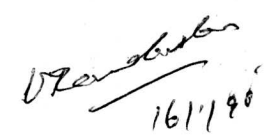
- (a) The impugned punishment order and the appellate order shall stand quashed and the disciplinary authority shall get a fresh inquiry held in the matter from the stage the charge-sheet was served on the applicant.
- (b) The applicant shall be paid lumpsum amount of Rs.3000/- representing ex-gratia payment (Subsistence allowance) for the past period till today and shall continue to get the said allowance during the enquiry at a rate not exceeding 50% of the wages which he would have received had he

not been udder put off duty till the enquiry is completed and final orders are passed by the Disciplinary Authority. The latter allowance shall be payable from the date of passing of this order.

- (c) The applicant's claim for back-wages and reinstatement from the date he was put off duty shall depend upon the result of the disciplinary enquiry and it shall be the duty of the disciplinary authority to take a decision in this regard on the completion of the disciplinary proceedings and to communicate the same to the applicant.

17. The parties are left to bear their own costs.

  
( T.N.BHAT )  
Member (J)

  
( V.RAMAKRISHNAN )  
Vice Chairman

Sr.No. HC/7/98

Dated: 10-7-01

Submitted: Hon'ble Vice Chairman &

~~Hon'ble Mr. V. Radhakrishnan, Member (A)~~

~~Hon'ble Mr. P.C. Kannan, Member (J)~~

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 17.4.01 in CA/  
Spl.C.A. No. 3297/98 of 58 passed by the  
Supreme Court/ High Court against the Judgment/ Oral Order  
passed by this Tribunal in OA/177/90 is placed for perusal  
please.

10/7

S.O. (J)

on leave  
D.R. (J)

Dated:

Hon'ble Vice Chairman

Submitted: Hon'ble Vice Chairman

~~Hon'ble Mr. V. Radhakrishnan, Member (A)~~

~~Hon'ble Mr. P.C. Kannan, Member (J)~~

Hon'ble Mr. A.S. Sanghvi, Member (J)

Hon'ble Mr. G.C. Srivastava, Member (J)

Spl.C.A. No.

Supreme Court/ High Court against the Judgment/ Oral Order

passed by this Tribunal in OA/177/90 is placed for perusal

please.

Sr.No.

S.O. (J)

D.R. (J)

Dated:

Hon'ble Vice Chairman

Submitted: Hon'ble Vice Chairman

~~Hon'ble Mr. V. Radhakrishnan, Member (A)~~

~~Hon'ble Mr. P.C. Kannan, Member (J)~~

Hon'ble Mr. A.S. Sanghvi, Member (J)

Have we received this detailed  
order of the High Court dt 17/4/2001  
S.C.A. 3297/98?

10/7/2001  
Sd/- S.A. 3297/98 received  
in 1972-01.

For perusal pl.

10/7 Hon'ble Registrar

Hon'ble VC

Hon'ble A.S. Sanghvi  
m.l.s.

Hon'ble G.C. Srivastava  
m.l.s.

24/7

(1) ... CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD.

B.D. Patel House,  
Nr. Sardar Patel Colony,  
Post Navjivan,  
Naranpura,  
AHMEDABAD - 380 014.

Office Phone : 495217.

Date :

To,

SUB. : Deduction of G.E.G.I.S. ( ) in  
respect of

( On deputation to Central Administrative  
Tribunal, Ahmedabad Bench, for the  
month of  
----- )

Sir,

I am directed to enclose a D.D./Cheque No.: \_\_\_\_\_  
dated \_\_\_\_\_ drawn on State Bank of India/Reserve Bank  
of India for Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_  
\_\_\_\_\_ in respect of \_\_\_\_\_  
\_\_\_\_\_ on deputation to this office.

Yours faithfully,

Encl.: D.D./Cheque No.:

Date :

URGENT

Decree Despatch No. 13727  
Date 11/6/01

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 13493 of 2000  
(Under Article(s) 14,16,226,227 of the Constitution of India)

1. BR DAVE

Vs

1. UNION OF INDIA, THROUGH

POST MASTER GENERAL & ORS. Respondents

To

1. UNION OF INDIA, THROUGH  
POST MASTER GENERAL  
NAVRANGPURA,  
AHMEDABAD

2. DIRECTOR OF POSTAL SERVICES

RAJKOT DIVISION  
RAJKOT

3. SR. SUPDT OF POST OFFICES,  
JAMNAGAR,  
JAMNAGAR.

4. CENTRAL ADMINISTRATIVE  
TRIBUNAL

AHMEDABAD BENCH.

(REF. O.A 177/90 dt. 16/1/98)

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 27/12/2000 praying to grant the prayers and etc....

And whereas upon the Court ordered 'Rule' to issue on 04/04/2001

And Whereas Upon hearing  
MR PH PATHAK for the Petitioner no. 1  
MR ASIM J PANDYA for the Respondent no. 2-3

Court passed the following order :-

CORAM::J.N.BHATT & A.M.KAPADIA JJ  
DATE:: 17/4/2001

Common Order in SCA 3297/1998 with SCA 13493/2000 and MCA 688/1999 in SCA 3297/1998

Both these petitions raise common questions between the.....is also rejected.

[copy of order is attached herewith] SCA 3297/98)



Witness DEVDATTA MADHAV DHARMADHIKARI, Esquire Chief Justice at Ahmedabad  
aforesaid this 17th day of Apr, 2001.

36

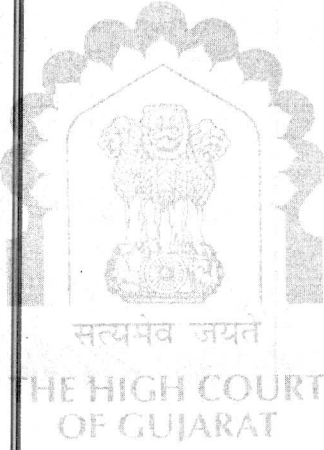
By the Court

For Deputy Registrar  
This day of May 2001

13493/00

Note : This writ should be returned  
duly certified within 2 weeks.  
( 426) 250520

NATIONAL INFORMATICS CENTRE



GUJARAT HIGH COURT



URGENT

Decree Despatch No. 13723  
Date 17/6

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 3297 of 1998  
(Under Article(s) 14,16,226 of the Constitution of India)



1. UNION OF INDIA & ORS.

Petitioners

Vs

1. BR DAVE

Respondent

To

1. UNION OF INDIA

2. DIRECTOR OF POSTAL SERVICES

THRO' POST MASTER GENERAL  
NAVRANGPURA, AHMEDABAD.

RAJKOT DIVISION  
RAJKOT.

3. SR SUPDT OF POST OFFICE  
AT  
JAMNAGAR.

✓ 5. CENTRAL ADMINISTRATIVE  
TRIBUNAL, AHMEDABAD BENCH  
[REF::O.A.NO.177/90 DT.16/1/98]

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 22/04/1998 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 15/06/1998

And Whereas Upon hearing  
MR YN RAVANI for the Petitioner no. 1-3  
MR ASIM J PANDYA for the Petitioner no. 1  
MR PH PATHAK for the Respondent no. 1

167 Court passed the following order :-

SC(5)  
Action as discussed  
D-11  
17/2-1

CORAM::J.N.BHATT & A.M.KAPADIA JJ  
DATE:: 17/4/2001

Common Order in SCA 3297/1998 with SCA 13493/2000  
and MCA 688/1999 in SCA 3297/1998

Both these petitions raise common questions between  
the..... is also rejected.

Contd.....2

[copy of order is attached herewith]

38

Witness **DEVDATTA MADHAV DHARMADHIKARI**, Esquire Chief Justice at Ahmedabad  
aforesaid this 17th day of Apr, 2001.

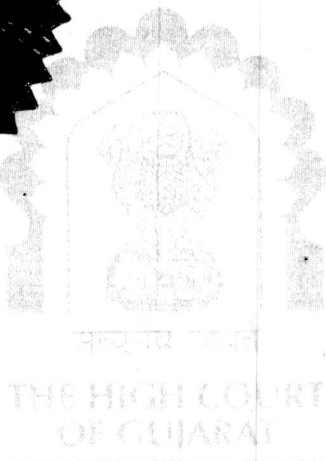
By the Court

For Deputy Registrar

This day of May 2001

Note : This writ should be returned  
duly certified within 2 weeks.  
( 426) 240520

SCA 3295/98



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3297 of 1998

with

Special Civil Application No. 13493 of 2000

and

Misc. Civil Application No. 688 of 1999

in

Special Civil Application No. 3297 of 1998

For Approval and Signature:

Hon'ble MR. JUSTICE J.N. BHATT

and

Hon'ble MR. JUSTICE A.M. KAPADIA

1. Whether Reporters of Local Papers may be allowed to see the judgements? : 75 /

2. To be referred to the Reporter or not? : - 75 /

3. Whether Their Lordships wish to see the fair copy of the judgement? : no /

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : no /

5. Whether it is to be circulated to the Civil Judge? : no /

UNION OF INDIA  
Versus  
BR DAVE

Appearance:

Special Civil Application No. 3297 of 1998.

MR ASIM PANDYA for Petitioners

MR PH PATHAK for Respondent No. 1

Special Civil Application No. 13493 of 2000.

MR PH PATHAK for petitioner

MR ASIM PANDYA for respondents.

CORAM : MR. JUSTICE J.N. BHATT

and

MR. JUSTICE A.M. KAPADIA

Date of decision: 17/04/2001

ORAL JUDGEMENT

(Per : MR JUSTICE J.N. BHATT)

(40)

1. Both these petitions raise common questions between the common parties and arising out of common judgment of the Central Administrative Tribunal, in O.A. No. 177 of 1990, and also upon common request, they are being disposed of by this common judgment.

2. Whether, non-payment of subsistence allowance during the pendency of the departmental inquiry against the employee by the employer, would vitiate the inquiry and, if yes, what should be the amount of payment or compensation during that period? are the main issues in focus in these two petitions.

3. Special Civil Application No. 3297 of 1998 is at the instance of the employer (First Petition), whereas, Special Civil Application No. 13493 of 2000 is at the instance of the employee (Second Petition), arising out of one and same judgment, dated 16.1.1998, rendered by the Central Administrative Tribunal, Ahmedabad Bench ('CAT-A'), in O.A.No. 177 of 1990, whereby, the impugned punishment of termination of service passed against the employee, as a result of domestic inquiry, on the ground of misconduct, misappropriation and lack of devotion to duty, came to be quashed, with a further direction to the disciplinary authority to get a fresh inquiry held from the stage of charge-sheet and to pay lump-sum amount of Rs.3,000/- representing ex-gratia payment (subsistence allowance) for the past period till the impugned order and to continue to pay subsistence allowance during the period of inquiry at the rate not exceeding 50% of the wages which the employee would be entitled to receive had

(41)

he not been under put off duty, till the inquiry would be completed and final order would be passed by the disciplinary authority and also with a further direction that the claim for backwages and reinstatement from the date he was put off duty shall depend upon the result of the disciplinary inquiry and it shall be the duty of the disciplinary authority to take decision in this regard on the completion of the disciplinary proceedings and to communicate the same to the employee, without any order as to costs.

4. The petitioner in the second petition is an employee of the petitioners in the first petition, who was appointed as an Extra-Departmental Branch Post Master (EDBPM) on 28.8.1978. The employer held departmental inquiry against the employee on the ground of misappropriation of an amount of Rs.123.30 Ps. from the Savings Bank Account and lack of devotion to duty, in which, the employee was found delinquent. Upon the charges being proved, the disciplinary authority directed removal of the employee from service against which departmental appeal was filed, unsuccessfully, by the employee which was further carried to the CAT-A. The CAT-A accepted the plea of the employee that the entire departmental inquiry stood vitiated since the employee was not paid subsistence allowance during the pendency of the departmental inquiry. Subsistence allowance of Rs.3,000/- is directed to be paid. Fresh inquiry is also directed to be held. The employer has challenged the order of the CAT-A by way of Special Civil Application No. 3297 of 1998 as the order of punishment was quashed

on the ground of non-payment of subsistence allowance, whereas, Special Civil Application No. 13493 of 2000 is filed by the employee for full backwages and subsistence allowance during the period he remained under put off duty.

5. In so far as the merits of the first petition of the employer is concerned, we find no substance in view of the settled legal proposition that non-payment of subsistence allowance to the employee, during the period of suspension or put off duty, would vitiate the departmental inquiry. Non-payment of subsistence allowance to a Government employee or servant under suspension, would vitiate the entire inquiry, since the relationship of employer and employee subsists during the period of suspension or put off duty. This proposition is very well established by catena of judicial pronouncements. However, we would like to refer to the latest decision of the Hon'ble Apex Court rendered in Cap. M. Paul Anthony v. Bharat Gold Mines Limited and another. (1999) 3 SCC 679.

6. There is no dispute about the fact that the subsistence allowance was not paid to the employee. The relationship of employer and employee in the present case is governed by Posts & Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 ('the Rules' for short). The status of an Extra Departmental Agent is that of a Government servant holding of civil post and is entitled to the protection under Article 311 (2) of the Constitution of India. Rule 9 (3) of the Rules provides

that an employee shall not be entitled to any allowance for the period of "put off duty". It is, therefore, clear that an employee shall not be entitled to any allowance for the period for which he was kept off duty under this rule. The learned advocate for the employee has, however, submitted that the petitioner in the second petition (employee) is entitled to full backwages as the departmental inquiry proceedings are held vitiated by the CAT-A. He has also criticized that the direction of the CAT-A for payment of lump-sum amount of Rs.3,000/towards subsistence allowance representing ex-gratia payment for the past period. It may be noted that the questions of award of backwages and reinstatement from the date the employee was put off duty have been directed to be decided depending upon the result of the departmental inquiry as a de-novo inquiry has been directed by the CAT-A. Since the question of backwages and reinstatement are kept open by the CAT-A, we are not inclined to interfere with such directions of the CAT-A in the impugned order at this stage. Again, in view of the peculiar facts and special circumstances obtainable in the present case and also with regard to the type and the nature of the job of the employee and also the directions contained in the impugned order, we deem it expedient that the disciplinary authority shall have to take appropriate decision in this regard on completion of the disciplinary proceedings, in the event of exoneration of the employee from the charges against him. We, therefore, find no substance, at this stage, even in the second petition at the instance of the employee. In our opinion, therefore, both the petitions deserve the same



(44)

fate. So common fate will be rejection of both the petitions. Accordingly, both the petitions are rejected. Interim relief granted in Special Civil Application No. 3297 of 1998 stands vacated. Rule issued in both the petitions is discharged with no order as to costs.

7. As Special Civil Application No. 3297 of 1998 is rejected and interim relief granted in the petition is vacated, Miscellaneous Civil Application No. 688 of 1999 preferred for vacating the interim relief, does not survive. Hence, Misc. Civil Application No. 688 of 1999 is also rejected.

(J.N. Bhatt, J.)

(A.M. Kapadia, J.)

17.4.2001.

(karan)

TRUE COPY

Private Secretary,  
The Hon'ble Judge,  
High Court of Madras,  
Chennai.

BY ORDER OF THE COURT

DEPUTY REGISTRAR

TRUE COPY

ASSISTANT REGISTRAR  
THIS  
OF

12/4/2001

15/5/01

15/5/01