

B

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~CTA. No.~~

385 OF 1991

DATE OF DECISION 04.05.1992.

Shri Bhavanbhai Somathi Patel **Petitioner**

Shri D.A.Thaker **Advocate for the Petitioner(s)**

Versus

Union of India and Ors. **Respondent**

Shri Jayant Patel **Advocate for the Respondent(s)**

le Mr. R.C.Bhatt : Member (J)

le Mr.

Whether Reporters of local papers may be allowed to see the Judgement?

To be referred to the Reporter or not?

Whether their Lordships wish to see the fair copy of the Judgement?

Whether it needs to be circulated to other Benches of the Tribunal?

Shri Bhavanbhai Somathai Patel,
Branch Post Master, (ED),
Residing at : At & Post : Sunvalya,
Ta. Viramgam, Dist. Ahmedabad.
Pin. 382145.

...Applicant.

(Advocate : Mr.D.A.Thaker)

Versus

1. Union of India,
(Notice to be served through :
The Director General,
Department of Posts,
Sansad Marg,
NEW DELHI - 1.
2. The Chief Post Master General, (P.M.G.),
Office of the Post Master General (PMG),
Gujarat Circle,
Nr. All India Radio,
Nr. Income Tax Office,
Navrangpura,
Ahmedabad - 9.
3. The Superintendent of Post Offices,
Gandhinagar Division,
Sector No. 30,
at Gandhinagar -382 030.
4. The Post Master,
Dholka - Head Office,
At & Post : Dholka,
Tal. Dholka,
Dist. Ahmedabad.

...Respondents.

(Advocate : Mr.Jayant Patel)

O R A L J U D G M E N T
O.A. NO. 385 OF 1991.

Date : 04.05.1992.

Per : Hon'ble Mr. R.C.Bhatt : Member (J)

The applicant has filed this application under Section-19 of the Administrative Tribunals Act, 1985, seeking the relief that the order of Superintendent dated 12th August, 1991, Annexure-A/2, passed by the respondent no.3, i.e., Superintendent of Post Offices, Gandhinagar Division, be quashed and the respondent

re/

no.3, be directed to permit the applicant to discharge the services as E.D.B.P.M. The respondents have filed reply and the applicant has filed rejoinder also. At the time of hearing of this application the learned advocate for the applicant submitted that though the applicant has made representation Annexure-A/1, p.13, on 30th September, 1991, to the Superintendent of Post Offices ~~that~~ the respondent no.3, the same are not disposed of and the applicant does not know what is the result of the said representation. At the time of hearing he has also produced ^{memo} a letter dated 13th March, 1992, from the Assistant Superintendent of Post Offices, i.e., Enquiry Officer, addressed to the applicant to remain present in connection with the inquiry started against him. He submitted that the inquiry also should be finalised within a stipulated period. He submitted that the representation Annexure-A/1, should be disposed of within three months.

So far his submission for disposal of the representation Annexure-A/1, by respondent no.3, within three months, ~~he~~ is concerned the direction shall be given but so far the inquiry against the applicant is concerned ~~his~~ stipulated period of few months as submitted by the learned advocate for the applicant ~~cannot~~ be given, because the letter of the Enquiry officer

Show

produced by him ~~so~~ that very recently the inquiry
is started against the applicant. However, the
can be
direction ~~is~~ given to complete it as early as
possible. Hence the following order :

ORDER

"The respondent no.3, is directed to dispose
of the representation of the applicant, annexure-
A/1, dated 30th September, 1991, within three mon-
ths from the receipt of this Judgment, *according*
to law. *The* enquiry which is started against the
applicant as per the letter dated 13th March, 1992
from Enquiry Officer be completed as early as
possible, *so* that the interest of the applicant
may not suffer for an indefinite time. The
application is disposed of accordingly. No order
as to costs."

Resul

(R.C.Bhatt)
Member(J)

AIT

JAYANT PATEL
ADVOCATE - HIGH COURT
ADD.CENTRAL GOVT.COUNSEL

OFFICE & RESIDENCE
"Krupa"
11, Swatantra Senani Nagar,
Nr.Nava Wadaj Octroi Naka,
A H M E D A B A D - 380 013.
TELEPHONE NO. 479868

To

The Registrar,
High Court of Gujarat, Central Administrative Tribunal.
Ahmedabad. 380 009.

Sir,

Subject :

Original Application No 385 g.i.
Shri Bhavanshah's Pet. vs Union of
India & Ors.

I have instructions to appear and file my
appearance on behalf of the Respondent No. 211
in the above matter. I am accordingly filing this
note and have to request you to direct the office
to register my appearance on behalf of the said
respondents in the above matter.

Thanking you,

Ahmedabad

Date : 20.12.91.

Yours faithfully,

(JAYANT PATEL)

Advocate for Respondent No.
Addl.Central Govt.Standing Counsel

1973
20/12/91

5/11

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition (s) For Special Leave To Appeal (Civil/Other) No. (s) 16517-24 of 19 90
 (From the Judgement and order dated 19.3.90 of the High Court of
 Ahmedabad Bench in O.A. Nos. 556, 557, 558, 559, 564, 565, 566 & 567/88
 Union of India & Ors. ...PETITIONER(S)

VERSUS

A. J. Khan & Ors.

...RESPONDENT(S)

(with appln. for ex-parte stay)

Date: 8.1.91 : This/These petition (s) was/were called on for hearing today

CORAM:

Hon'ble Mr. Justice N.D. OJHA
 Hon'ble Mr. Justice K.N. SAIKIA
 Hon'ble Mr. Justice

For the Petitioners: Mr. M. Chander Sekaran, ASG-I

M/s Hemant Sharma, B.K. Prasad, Advs.

For the Respondents: /Caveator: Mr. R. Venkataramani, Adv.

UPON hearing counsel the Court made the following
 ORDER

There is no merit in these special leave petitions
 which are accordingly dismissed.

S. K.
 (SUNIL KUMAR)
 COURT MASTER

Prem Lata Sharma
 (PREM LATA SHARMA)
 COURT MASTER

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Item No. 13

Court No. 9

Section IX

5/11

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition (s) For Special Leave To Appeal (Civil/Criminal) No. (s) 16517-24 of 19 90
(From the Judgement and order dated 19.3.90) of the High Court of C.A.T.,
Ahmedabad Bench in O.A. Nos. 556, 557, 558, 559, 564, 565, 566 & 567/88
Union of India & Ors. ...PETITIONER(S)

VERSUS

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ORDER

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which are accordingly dismissed.

Smt. 1
(SUNIL KUMAR)
COURT MASTER

Prem Lata Sharma
(PREM LATA SHARMA)
COURT MASTER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE GA 385/91 OF 19

NAMEs. OF THE

PARTIES Shri. B.S. Patel

VERSUS

U.O.J. & ORS.

PART A B & C

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE _____ OF 19

**NAMES OF THE
PARTIES** _____ **VERSUS** _____

PART A B & C

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

of 385 1991

Miscellaneous Petition No:

of

Shri Bhavanshri Somabhai Patel Petitioner(s)

Versus.

MOI & ORS

Respondent(s).

This application has been submitted to the Tribunal by Shri AD Thaker. Under Section 19 of the Administrative Tribunal Act, 1985. It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O. (J) :

D.R. (J) :

KNP/15391/****

13/11/91

13/11/91
13/11/91
13/11/91
13/11/91

15/3/91

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT(S)

Bhagwambhai Somabhai Patel

RESPONDENT(S)

UOT & or

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ?

Yes

2. (A) Is the application in the
prescribed form ?

Yes

(B) Is the application in
paper book form ?

Yes

(C) Have prescribed number
complete sets of the
application been filed ?

Yes

3. Is the application in time ?

Yes

If not, by how many days is
it beyond time ?

Yes

Has sufficient cause for not
making the application in
time stated ?

Yes

4. Has the document of authorisation/
Vakalat Nama been filed ?

Yes

5. Is the application accompanied by
D.D./I.P.C. for Rs.50/-? Number
of D.D./I.P.C. to be recorded.

D.P.O. No. 801 8255922

6. Has the copy/copies of the order(s)
against which the application is
made, been filed ?

Yes

7. (a) Have the copies of the documents
relied upon by the applicant and
mentioned in the application
been filed ?

Yes

(b) Have the documents referred to
in (a) above duly attested and
numbered accordingly ?

Yes

(c) Are the documents referred to in (a)
above neatly typed in double space ?

Yes

8. Has the index of documents has been
filled and has the paging been done
properly ?

Yes

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT
OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application? *Yes*
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal? *No*
11. Are the application/duplicate copy/spare copies signed.? *Yes*
12. Are extra copies of the application with annexures filed?
 - (a) Identical with the Original. *No*
 - (b) Defective. *No*
 - (c) Wanting in Annexures *No*
 - (d) Distinctly Typed ? *No*
13. Have full size envelopes bearing full address of the respondents been filed? *No*
14. Are the given addressed, the registered addressed ? *Yes*
15. Do the names of the parties stated in the copies, tally with Name(s) those indicated in the application? *Yes*
16. Are the transactions certified to be true or supported by an affidavit affirming that they are true? *Yes*
17. Are the facts for the cases mentioned under item No.6 of the application?
 - (a) Concise ? *Yes*
 - (b) Under Distinct heads ? *Yes*
 - (c) Numbered consecutively ? *Yes*
 - (d) Typed in double space on one side of the paper ? *Yes*
18. Have the particulars for interim order prayed for, stated with reasons.? *Yes*

checked
BB
13/11/91

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AT : AHMEDABAD.

ORIGINAL APPLICATION NO. 385 OF 1991.

Shri Bhavanbhai Somabhai Patel. ...Applicant.

Versus.

Union of India & Others. ...Respondents.

To,

The Registrar,
 Central Administrative Tribunal,
 Ahmedabad Bench,
Ahmedabad.

180. M
 801 875 922

The applicant submits as follows :

1. The applicant submits that, the applicant has challenged the suspension order dt. 12.8.'91 passed by the Resp. No. 3, by way of filing this present application.
2. The applicant submits that, the applicant put under suspension with effect from 12.8.'91 and that the applicant is without any allowance what so ever and therefore the said matter requires urgent attention so that certain directions with regard to allowance as well as directions regarding to take decision of one pending the representation of the applicant. etc. can be obtained from the Hon'ble Tribunal and economical hardships and that the agony can be removed.
3. It is therefore request that, the said matter is required to be placed urgently on the admission board on - 25.10.1991 before the Hon'ble Tribunal for appropriate orders/directions.

Yours faithfully,

Dipak A. Thaker
 (DIPAK A. THAKER.)
 Advocate for the applicant

Ahmedabad,
 Date : 24.10.1991.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AT : AHMEDABAD.

Original Application No. 383 of 1991.

Shri Bhavanbhai Somabhai Patel,

Applicant.
... Rakkit

Versus.

Union of India & Others..

... Respondents.

: I N D E X :

Sr.No.	Annexures	Particulars	Page No.
1.	-	Memo of application	1 to 11
2.	'A'	Copy of appointment order.	12
3.	A ₁	Copy of representation/ letter dt. 30.9.'91.	13-15
4.	A ₂	Copy of suspension order dt. 12.8.'91.	16

Ahmedabad,

Dated : 24.10.1991.

Dipak Thaker
(DIPAK A. THAKER)

ADVOCATE FOR THE APPLICANT.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AT : AHMEDABAD.

ORIGINAL APPLICATION NO. 385 OF 1991.

(U/s. 19 of the Administrative Tribunal Act, 1985).

Shri Bhavanbhai Somabhai Patel,
Branch Post Master, (ED),
Residing at : At & Post : Sunvala,
Ta. : Vinamgam, Dist. Ahmedabad.
Pin. 382145.

... Applicatt.

Versus.

(1) Union of India,

(Notice to be served through -
The Director General,
Department of Posts,
Sansad Marg,
New Delhi-1.

(2) The Chief Post Master General (P.M.G.),
Office of the Post Master General (PMG),
Gujrat Circle,
Nr. All ~~Ind~~ India Radio,
Nr. Income-tax Office,
Navrangpura,
Ahmedabad-9.

(3) The Superintendent of Post Offices,
Gandhinagar Division,
Sector No.30, at Gandhinagar-
Pin. 382030.

(4) The Post Master,
Dholka- Head Office,
At & Post : Dholka,
Tal. : Dholka,
Dist. Ahmedabad.

... Respondents.

The applicant most respectfully states as follows :-

DETAILS OF APPLICATION :

1. Particulars of the applicant :

(1) Name of the Applicant :)
(2) Name of father/husband :) As shown
(3) Designation and Office :) in the
in which employed.) title
(4) Office Address :) clause.
(5) Address for service of :)
all notices .

2. Particulars of the respondents :

(1) Name and/or designation of the respondents :) As shown
(2) Office Address of the respondents. :) in the title
(3) Address for services of all notices. :) clause.

3. Particulars of the Order against which an application is made:

The applicant by the present application challenging the order of suspension dtd. 12.8.91, being - "Memo No. B.II/201, Sunvala/91 dtd. at Gandhinagar, the 12.8.91". passed by the Respondent No.3, whereby the applicant has been put under suspension with immediate effect. By the said order it is also mentioned that the applicant will not be paid any allowance for the suspension period.

4. Jurisdiction of the Tribunal :

The applicant declare that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal .

5. Limitation :

The applicant further declares that the application is within the limitation , prescribed in Section 21 of the Administrative Tribunals Act, 1985 .

6. Facts of the Case :

(6.1) The applicant submits that , the applicant was appointed as an "Extra-Departmental , Branch Post Master " (For short E.D. - B.P.M.) with effect from 18.3.1983, at:Sunvala, Tal. : Viramgam , Under Dholka Head Office by the Respondent No.3 . The applicant submits that the applicant has been rendering the services as - E.D.- B.P.M. at Sunvala , since the year 1983 (From : 18.3.'83) Sincerely and honestly and that there is no complaint what so ever from any quarter , pertaining to the dischagrgae of the services of the applicant. In other words, it is submitted that, the service record of the applicant is clean and blemishless. Hereto annexed and Ann. 'A' marked as Annexure 'A' is a copy of the appointment order.

(6.2) The applicant submits that , by an order dt.12.8.'91 the applicant has been put under suspension - "put off " with immediate effect as E.D.-B.P.M. by exercising as contemplated by Rule 9 of Posts & Telegraphs Extra - Extra Departmental Agents (Conduct and service) Rules, 1964 by the Respondent No.3 . The said order also directs

that , the applicant would not be paid any allowance for the period of suspension.

(6.3) The applicants submits that , after the passing of the aforesaid order of suspension , the applicant has personally approached and orally requested the Respondent No.3 to cancell the order in question and that the applicant be permitted to continue as E.D.-B.P.M. at : Sunvala as before, but this visit and request fell on the deaf ears of the Respondent No.3. Therefore, the applicant ultimately ~~by~~ atlast, by way of a letter/representation dtd. 30.9.91 addressed to the Respondent No.3 , inter alia requested to pay the ~~substitution~~ subsistence allowance with effect from 12.8.'91 , that is the date of suspension-allowance . The applicant submits that , there is no response what so ever from the Respondent No.3 till today and as a result of which , the applicant is constrained to approach this Hon'ble Tribunal by way of filing the present application as contemplated by Section 19 of the Administrative Tribunals Act, 1985, hereto annexed and marked as

Annexure-A₁ is the copy of the letter/
representation dtd. 30.9.'91.

Ann.-A₁

(6.4) The applicant thus , challenging the

the suspension order dtd. 30.9.'91 passed by the Respondent No.3 and also the directions that the applicant would not be paid any allowances of the suspension period on the following amongst other grounds ; those may be urged at the time of hearing and which are set out without prejudice

Ann.A₂ to one another , hereto annexed and marked as Annexe-A₂

is a copy of suspension order .

: G R O U N D S :

(a) The impugned order of suspension and directions not to pay any allowance to the applicant is totally contrary to law , evidence on record and is un-warranted in the facts and circumstances of the case.

(b) The applicant submits that, the powers are conferred under Rule 9 of the Posts & Telegraphs Extra-Departmental (Conduct & Service) Rules, 1964 has been misused by the Respondent No.3 and that this a malafide exercise of powers by the Respondent No.3.

(c) The applicant submits that, if we peruse the order in question , no charge is inputted and that no reasons what so ever are also given and therefore it is clearly shows malafide and arbitrary action on the part of Resp. No.3 and hence on this count also

the impugned order dtd. 12.8.91 should be declared null and void.

(d) The applicant further submits that, he has not handed over the charge of the same post to any one and/or no one has ~~hands~~ taken over charge from the applicant till today.

(e) The applicant submits that, before the passing the impugned order, no show cause notice, no explanation is sought for from the applicant upto till now and that straight way without giving any opportunity of hearing, the impugned order is passed. Thus, the impugned order of suspension is violative of the principles of "Audi Alteram Partem."

(f) The applicant submits that, the directions to the effect that the applicant would not be paid any allowance for the period of suspension is and absolutely unknown to law. The applicant submits that, it is settled position of law, that when a person took under suspension, a person so suspended, is entitled for subsistence of allowance, so that, the body and soul can be maintained.

(g) The applicant submits that, the order of suspension is passed by way of penalty, because the said order directs not to pay any allowance when this is so, the applicant ought to have been heard before passing the impugned order.

(h) The applicant submits that, the powers have been for abused and misused/just to accommodate one Shri- Nagarsang Dolatsang Darbar of Rantai, Taluka: Viramgam as E.D.-B.P.M. (On the same post of the applicant) who is in good book of Resp. No.3 .

(i) The applicant submits that, so far, no charge-sheet is issued nor any departmental enquiry is initiated against the applicant upto now and therefore the effect of the impugned order is that - it is continued in perpetuity and therefore also this order is required to be quashed and set aside .

(j) The applicant submits that, even otherwise, the impugned order is bad ,illegal and requires to be quashed and set aside in the interest of natural justice.

(k) The applicant craves the leave to add, amend , alter or rescind any of the grounds at the time of hearing.

(1) The applicant submits that, in the instant case, there is a total non-application of mindé on the part of the respondents authorities, more particularly the Resp.No.3, in confirming the the suspension order.

7. Relief/s sought :

(A) Be pleased to allow/admit this application.

(B) Be pleased to quash and set aside the impugned order of suspension dtd. 12.8.'91, at Annexure- A2 to this application, passed by the Resp. No.3, that is Superintendent of Posts Offices, Gandhinagar Divisom, holding that the impugned order has been passed by way of penalty and also in violation of the principles of natural justice.

(C) Be pleased to direct the Resp. No.3 to permit the applicant to discharge the services as - E.D.-B.P.M. as former it was , at sunvala under Dholka Head Office.

(D) Be pleased to grant stay of operation and further implementation of the impugned order of suspension dtd. 12.8.'91 and further

(E) Be pleased to direct the Respondents not take over the charge of the said post from the applicant and/or from receiving the applicant as for the said post as he has not handed over the charge to any one at the same place-Sunvala.

(F) Be pleased to pass the such and further relief/s as this Hon'ble ~~¶~~ Tribunal deems fit and proper .

(G) Be pleased to provide for the costs of this application to the applicant .

8. Interim Order , if prayed for :

~~/decision~~
Pending final disposal of this application, the applicant seeks issue of the following interim relief:

(A) Be pleased to direct the respondents, their servants , agents , officers etc. by way of mandatory directions /orders directing the respondents to make the payment of substinance allowance with effect from 12.8.'91 and with further directions that the respondents should go on making the payment of substinance allowance to the applicant in accordance with the rules, every month without break in the suspension order is continued .

(B) Be pleased to grant mandatory order/s against the

/ 10 /

respondents from taking over the charge
of the said post from the applicant, and/or
from relieving the applicant as he has
not handed over the charge to any one
till today at the said place-Sunvala.

(C) Be pleased to direct the respondents, to
decide one pending representation/letter
dt. 12.8.'91 of the applicant within a
particular period of one month (30-days).

9. Details of remedies exhausted:

The applicant declares that, he has availed
of all the remedies available to him under relevant
service rules, etc.

10. The Matters are not pending ^{with} ~~with~~ any other
court etc.

The applicant further declares that, the
matters regarding which this application has been
made is not pending before any court of law or any
other authority or any other bench of the Tribunal.

11. Particulars of Bank Draft/Postal Order in
respect of application Fees :

(1) * Name of the Bank on which drawn :

(2) Demand Draft No. :

or

/11 /

(3) Number of Indian Postal Order (s) : 01 875922

(4) Name of the issuing post office : Guj. High Court Post Office.

(5) Date of issuing Postal Order(s) : 24.10.1991.

(6) Post Office at which payable :

12. Details of Index.:

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosers :

As per Index.

14. Verification :

I, Bhavanbhai Somabhai Patel, aged adult, working as E.D.-B.P.M., resident of : Sunvala, Tal.: Viramgam, Dist. Ahmedabad, do hereby verify that the contents of/from Para No. 1 to 13 are true to my personal knowledge, and belief, and I have not suppressed any material facts.

Ahmedabad,

Dated : 24.10.1991.

Through :

Bhavanbhai Somabhai Patel
(BHAVANBHAI SOMABHAI PATEL)

Applicant's Sign.

Dipak A. Thaker
(DIPAK A. THAKER)
Advocate for the applicant.

To,
The Registrar,
C.A.T., A'bad Bench,
Ahmedabad.

DIPAK A. Thaker
Filed by M.....
Learned Counsel for Practitioners
with copy of this document and copies
of process and documents served to
other side

25/10/91

in chambers
S. A.T. (J)
Bench

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

OFFICE OF THE SUPERINTENDENT OF POST OFFICES, GANDHINAGAR DIVISION
GANDHINAGAR-382030.Memo. No. B2/201/ Sunvala dated at Gandhinagar the

- 3 MAR 1984

LETTER OF APPOINTMENT :-

Shri/Kum./Smt. Bhavabhai S. Patelis hereby appointed as ED BPM/ED Sunvala in account with
Kaloan Rds. 0. under Dholka H.O. with effect from
18/3/84. He shall be paid such allowance as admissible from
time to time.2) Shri B. S. Patel should clearly understand
at his employment as ED BPM Sunvala shall be in the nature
of a contract liable to be terminated by him/her or the undersigned by
notifying the other in writing and that he/she also be governed by the
posts and Telegraphs Departmental Agents (Conduct and Services) Rules
1964 amended from time to time.3) If these conditions are acceptable to him, he should communicate
his/her acceptance in the proforma reproduced below.

Supdt. of Post Offices,
Gandhinagar Division,
Gandhinagar-382030.

Copy of this memo is issued for information and necessary action to:-

- 1) The Postmaster Dholka H.O.
- 2) The A.S.P.O/ S.D.I.(P) Viceroy Rd S/Dn.
w.r. to his No. _____ dt. _____ The acknowledgement
ment in the prescribed proforma from the BPM appointed should be submitted
to this office for record.
- 3) Shri/Kum./Smt. Bhavabhai S. Patel ED BPM Sunvala
He/She will please acknowledge the receipt of this memo to the A.S.P.O/ S.D.I.(P) Kaloan Rds S/Dn.
- 4) T.C.

True Copy
B. Patel
Date.

From:- Shri B.S.Patel, FD, BPM, &
Sunvala B.O.(U/s) Residing
at Sunvala under Viramgam
Taluka of Ahmedabad,District.

To

Superintendent of Post Offices,
Gandhinagar Division,
Gandhinagar Pin:-382030

Sub:-Subsistence allowance during the period of
Suspension....

Reads:- 1) Memo No.B/11/201/Sunvala/91 dt.Gandhinagar
12-8-91 suspending me from service....

2) Fundamental Rules,Definitions F.R.9/27.

3) F.Rs.53, Subsistence allowances.

4) Central Civil Services (Classification,
Control & Appeal) Rules 1965, rule 1/4/b.

5) AIR 1964 Supreme Court page 787; AIR 1968
SC page 800.

Respected Sir,

I, the undersigned most respectfully submit that
as vide reference No.1 above, I am ordered to be
suspended by your Honour without giving reasons.

Therefore it is ordered in this letter that I will
not be paid subsistence allowances during the period
of suspension.

2....Vide reference No.2 above, if your Honour turns
to rule 9/27 of Fundamental Rules, Your Honour will
be pleased to note that substance grant means a monthly
grant made to a government servant who is not in receipt
of pay or leave salary. Therefore it is clear that
while under suspension I will not be in receipt of
pay & allowances or leave salary. Therefore I am entitled

to subsistence allowance during the period of suspension.

3.... Vide reference No.3 above, if your Honour turns to rule 53/1 of Fundamental Rules, your Honour will be pleased to note that, " A Government servant under suspension shall be entitled to the following payments, namely,-

(ii)in the case of other Government Servants a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay & in addition dearness allowance ,if admissible on the basis of such leave salary.If the suspension period exceeds 12 months, the subsistence allowance is to be varied by your Honour. "

Thus vide this rule of the Central Government I am entitled to the subsistence allowances plus dearness allowances etc.etc.,This is a ~~xx~~ mandatory provision & therefore with full respects to your Honour the payments of the subsistence allowance cannot be refused.I therefore pray that the same may please be ordered to be paid with effect to immediately, i.e.w.e.f. 12-8-91 or atleast 13-8-1991.

4.... Vide ~~xx~~ reference No.4 above if your Honour turns to rule 10/4/b of the Central Civil Services (Classification,control & Appeal) Rules 1965, Your Honour will be pleased to note that, your Honour can suspend me because your Honour is my appointing

-3-

authority, but equally your Honour has to give reasonings for suspending me. Reasons are not given in the order of suspension referred at reference No.1 above dated 12-8-91. The subsistence allowance has got to be paid to me as submitted in para 3 above.

5....Vide reference No.5 above, Hon. Supreme Court of India in AIR 1964 S.C. page 787, ~~now~~ has ordered that an employee can be suspended but his remuneration cannot be withheld for the period of suspension. In AIR 1968 SC 800, Hon. Supreme Court has held that, if there is no provision to pay subsistence allowance for the suspension period, then the public servant will be entitled to his full emoluments during the period of suspension. I, therefore, pray either to pay me subsistence allowance during the period of suspension w.e.f.12-3-91. If this is not paid then full emoluments may please be paid during suspension as directed by Hon. Supreme Court in the aforesaid judgement.

6/- Be pleased, to record, appropriate orders.

7/- I, in duty bound, shall ever pray.

Dt.30/9/91.

Sunvala
Viramgam Ta.

I am,
Yours faithfully,

- 1) Copy w.cs. Katosan Road,
S.O. for information.
- 2) The SDI(P) Viramgam.
- 3) The Post Master Dholka.

*True Copy
Dated 10/10/91
D.S.*

DEPARTMENT OF POSTS : B.M.D.

OFFICE OF THE SUPERINTENDENT OF POST OFFICES
GANDHINAGAR DIVISION :: GANDHINAGAR - 382030

Memo. No.B.II/201/Sunvala/O.C. dt. at G.Nagar, the 12.8.91.

The undersigned, Sri. V.L. Patel, Suptd. of Post Offices, Gandhinagar D., Gandhinagar-382030 in exercise of powers conferred vide Rule No.9 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 order to put Sri. B.S. Patel, B.M., Sunvala B.O. in account with Katosen Road S.O. under Dholka HO off duty with immediate effect.

No allowance will be paid to Sri. B.S. Patel during the period of his 'Put Off Duty'.

(Signature)

(V.L. PATEL)

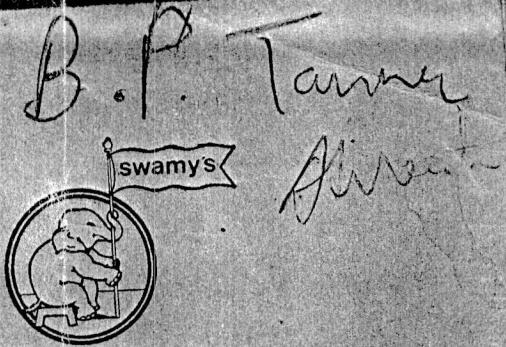
SUP DT. OF POST OFFICES
GANDHINAGAR DIVISION
GANDHINAGAR :: 382030

Copy to :-

1. The Postmaster Dholka HO with a spare copy.
2. The SDI(P) Virangam S/Dn. Virangam. He will please relieve Sri. B.S. Patel with immediate effect and hand over the charge of B.O. to suitable candidate on adhoc basis and submit necessary charge reports to this office.
3. Sri. B.S. Patel, FD B.M., Sunvala B.O. through SDI(P) Virangam S/Dn. Virangam.
4. The SM, Katosen Road S.O. for information.
5. Guard file.
6. O.A. 'F' Br. D.O. Gandhinagar.
7. O/C & Spare.

True Copy
D. Patel
Date

of/c



SWAMY'S COMPILATION
OF
SERVICE RULES
FOR
EXTRA-DEPARTMENTAL
STAFF
in Postal Department

p. muthuswamy

Tendered by *arizam*
advocate on 22.11.91
J
C2
92/11

DIRECTOR-GENERAL'S INSTRUCTIONS

(1) Orders made by lower authority should be got confirmed by Appointing Authority.—Of late it has been noticed that

the orders made by the Inspectors of Post Offices under Rule 9 (1) are not being confirmed or cancelled by the Appointing Authority or an authority to which the Appointing Authority is subordinate. Since the provisions of Rule (2) *ibid* in regard to confirmation of order made by an Inspector of Post Offices within fifteen days is mandatory, it is requested that the Divisional Superintendents may issue suitable instructions to their Inspectors to refer all such cases to them immediately after orders for put off duty are issued by the IPOs to ensure that timely action is taken in this regard.

[D.G., P. & T., Letter No. 43-115/73-Pen., dated the 26th July, 1974.]

(2) Placing ED Agents under suspension.—The question of

Placing ED Agents under suspension and paying them subsistence allowance, in place of the present practice of putting them off duty without any allowance has been examined in all its aspects in the light of the Supreme Court judgment, dated 22-4-1977, and in consultation with the Ministry of Law. The service conditions of the EDAs are regulated by the EDA (Conduct & Service) Rules, 1964. Rule 9 of these rules provides that pending an enquiry into any complaint or allegation of misconduct, an ED Agent may be put off duty and that during the period he is put off duty he shall not be entitled to any allowance. It has been held by the Ministry of Law that this rule has not been affected by the judgment of the Supreme Court. Rule 9 still remains and this being special law in respect of ED Agents it would prevail over the general provisions of Fundamental Rules. That being the legal position and having regard to the fact that EDAs being part-time employees, cannot be equated with regular employees of the Department in the matter of grant of service benefits, the Government have decided that the present practice of putting them off duty without allowance should continue. No allowance would, therefore, be payable to the ED Agents for the period any enquiry is pending against them and they remain put off duty. It may, however, please be noted that the ED Agents may be put off duty only during the pendency of the enquiry and not when any enquiry is contemplated.

[D.G., P. & T., Letter No. 1517/77-Disc. II, dated 23rd March, 1978.]

The implication of the Supreme Court's Judgment declaring ED Agents as holders of civil posts was clarified 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 off 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 probable penalty.

[D.G., P. & T., Letter No. 157-7/77-Disc. II, dated the 16th January, 1979.]

(3) Guidelines for putting off duty.—Putting an ED Agent off duty may cause a lasting damage to his reputation if he is ultimately exonerated or is awarded only a minor penalty. The competent authority is, therefore, expected to exercise his discretion with proper care and due caution. The following guidelines by way of precaution are, therefore, to be followed by the competent authority before passing orders placing an ED Agent off duty:—

(a) Enquiries made into a complaint or the process of inspection of that office should have revealed a strong *prima facie* case against the delinquent.

(b) The offence thus coming to notice should be of such a serious nature that dismissal or removal from service would be the probable ultimate punishment and it would be inadvisable that the offender should be allowed to continue to perform his duties pending finalisation of the disciplinary case against him.

(c) Petty breaches of discipline and minor departmental offences would not justify putting an ED Agent off duty.

(d) Wilful, obstinate or repetitive refusal to carry out an order, rendering his retention on duty a hurdle to proper conduct of enquiry would justify an ED Agent being put off duty.

(e) An agent against whom a criminal charge involving moral turpitude is pending, may be put off duty during the period when he is not actually detained in custody or imprisoned (i.e., while he has been released on bail), if the charge made or proceedings taken against him are connected with his duties or is likely to embarrass him in the discharge of his duty.

Whenever it is necessary to put an ED Agent off duty, the Sub-Divisional Inspector should inform the Divisional Superintendent within a period of seven days of the action taken by him. Prior approval of the Divisional Superintendent should be obtained in cases where the Sub-Divisional Officer is not the appointing authority. However, in case it is in the public interest to place such an ED Agent off duty immediately or in case it is considered that delay is likely to result in tampering by him with the evidence, the Inspector may order put off duty in anticipation of the approval of the Divisional Superintendent, but should obtain his ex-post facto approval within a week.

It is also necessary that disciplinary authority makes every effort to finalise the disciplinary proceedings and pass final orders so that an ED

27/4/92 F.A.
BEFORE THE GENERAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH AT AHMEDABAD

Original Appln. No 385 of 1991

Shri Bhavanbhai Somabhai Patel, Applicant

v/s.

Union of India and others Opponents

AFFIDAVIT IN REJOINDER

I, Shri Bhavanbhai Somabhai Patel, E.D.-B.P.M. the applicant hereinabove do hereby verify and state as follows:

*Recd Colt
S.G.D. 27/4/92
for Jayant Patel
(Adv. Standing
Counsel for
Central Govt.)*

1. I have gone through the copy of the reply filed by the respondent no.3 i.e. Superintendent of Post Offices, Gandhinagar Division, and in reply thereto it is inter alia submitted as follows:
2. All the averments and allegations made in the said reply are denied by me in toto unless the same are admitted by me specifically and categorily herein after.
3. At the outset I submit that by way of ~~preparing~~ preferring the present application, I have prayed amongst other things for quashing and setting aside the impugned order of putting me off on duty by an order dated 12.8.1991 at Annexure 'A/2' to the application and passed by the respondent no.3. I submit

that the impugned order of putting me off on duty is passed by respondent no.3 by exercising powers conferred on him by Rule 9 of Post and Telegraphs Extra Departmental Agents (Conduct and Service)

Rules 1964 . I submit that the said power is exercised arbitrarily and ~~in~~ with malafide intention . I further submit that the impugned order of suspension has been passed in utter violation of the Director General's Instructions which is mentioned in Swamy's Compilation of Service Rules for Extra Departmental Staff, wherein guidelines for putting ~~off~~ Duty are laid down. The said instructions say that E.D.Agent ~~off~~ can be put ~~up~~ duty only during the pendency of - enquiry and not when the enquiry is contemplated.

It further states that the question of putting off and E.D.Agent from duty should arise only when there is a prima facie ~~case~~ against him, and the nature of the offence is such that the dismissal will be - probable penalty. It further states that it is also necessary that disciplinary authority makes every efforts to finalise the disciplinary proceedings so and passed final orders ~~that~~ that an E.D.Agent may not remain put ~~up~~ off duty for a period exceeding 120 days.

Hereto annexed and marked as Annexure 'I' are the Annex.I instructions contained in Swami's Compilation of Service Rules, in E.D. A. Conduct and Service - Rules.

4. I submit that P.M.G, Madras Lx.No. STA/12-93/90-MS dated 2.10.1991 has given guidelines for finalisation of ~~EDAs~~ Put Off duty cases, in which it is observed that though there are no provisions ~~of further payment~~ for the payment of Subsistence Allowance for the period of put off duty in the case of EDAs, it may not be fair to allow the E.D.A. under off duty for a long time. It also further states that indiscriminate using of the powers for placing the E.D.A. under put off duty should be curbed. Hereto annexed and marked Annexure 'III' is the copy of the said letter dated 2.10.1991.

5. I submit that I have been put off duty by an order dated 22.8.1991 as E.D.-B.P.M and that, very recently I have been issued chargesheet alongwith certain other documents, and that the Enquiry-Officer has also been appointed to enquire into the charges alleged against me.. I submit that about 7-1/2 months have elapsed from passing of the impugned suspension order and that I have been ^{any} without ^{any} sort of allowances. I submit that the impugned order is on the face of it is in violation of the guidelines laid down for putting off duty as aforesaid and therefore on this ground the impugned order of putting me off duty should be set aside. I also submit that in the light of the guidelines as aforesaid, the respondents are also directed to finalise the enquired proceedings at the

Annex. II

earliest. I also submit that the facts and circumstances also warrant that the direction for completing the enquiry proceedings is also given to the respondents.

6. I submit that I adhere and stick to what I have stated in my application in question .

7. With reference to para 2 of the reply I deny that the present application is neither maintainable nor tenable on the facts of the case.

8. With reference to para 3 I submit that the label 'put off duty' and suspension does not make any difference and it comes to the same meaning namely I have been prevented from discharging my duties as E.D.B.P.M. by the impugned order dated 12.8.91 . I deny that this Tribunal has no jurisdiction to entertain the present application . I also deny that I have not exhausted all the departmental remedies available to me.

9.... With reference to para 4 , I deny that in one of the cases of alleged misappropriation of Govt. money , it is noticed at ~~Sacn~~ Sunwala Branch Office in which the applicant was found involved - solely responsible. I further deny that with a view to avoid possibility of tempering office records, the applicant was placed ~~under~~ put off duty in exercise

of the powers under R.9 of P. & E. E.D.A (Conduct and Service Rules) 1964 . I submit that the respondents do admit the receipt of the letter dated 30th Sept. 1991 but having disposed off the same on merits is not made known to me so far . I reiterate that the impugned order of suspension is in violation of the guidelines as aforesaid and therefore I am entitled to join the duties. Rest of the averments are denied hereby.

10. With reference to para 5 I deny the contents made therein . I submit that I adhere and stick in this regard what I have stated in grounds raised in 6.4 of application in question. I deny that before passing order prima facie the respondent no.3 was satisfied regarding the involvement of the applicant, into the fraud cases which is received from public at large for depositing in SB/RD Accounts etc.... Rest of the averments made in the said para are denied .

11.. With reference to para 6 I stick to what I have stated in grounds (f), (g), (h) of my application. I submit that what is stated in para 6 of reply is falsified by the instructions as aforesaid which is appended herewith. Rest of the averments made in the said para ~~are~~ denied.

12. The contents of para 7 are also denied . I

I Sb set

-6-

submit that the impugned order of putting me off duty is in violation of the instructions and guidelines as has mentioned aforesaid and also ~~violate~~ of the provisions of Art.14 and 21 of the Constitution of India .

In view of what is stated her-einabove and in view of the submissions those may be urged at the time of hearing as I am entitled ^{to} all the reliefs as prayed for in para 7 and 8 of my application by allowing the application in question in the interest of justice.

Solemnly verified at Ahmedabad on this 23rd day of ~~xx~~ March 1992.

Ahmedabad)
Dt. 23-3-1992)

X MANOHAR LIMBHJI VIT

B. S. PATEL

(signature of the Applicant)

Dipak A. Thaker
(DIPAK A. THAKER)

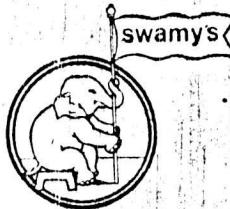
Advocate for the Applicant

Reply/Rejoinder written submissions
filed by Mr. ... DIPAK A. THAKER
learned advocate for petitioner /
Respondent with second copy
Copy served/not served & other side

DL 2643 A 2 Dy. Registrar & A.R. (I)
Ahmed Bench

Annexure - I

B. P. Turner



SWAMY'S COMPILATION
OF
SERVICE RULES
FOR
EXTRA-DEPARTMENTAL
STAFF

in Postal Department

p. muthuswamy

DIRECTOR-GENERAL'S INSTRUCTIONS

(1) Orders made by lower authority should be got confirmed by Appointing Authority.—Of late it has been noticed that the orders made by the Inspectors of Post Offices under Rule 9 (1) are not being confirmed or cancelled by the Appointing Authority or an authority to which the Appointing Authority is subordinate. Since the provisions of Rule (2) ibid in regard to confirmation of order made by an Inspector of Post Offices within fifteen days is mandatory, it is requested that the Divisional Superintendents may issue suitable instructions to their Inspectors to refer all such cases to them immediately after orders for put off duty are issued by the IPOs to ensure that timely action is taken in this regard.

[D.G., P. & T., Letter No. 43-115/73-Pen, dated the 26th July, 1974.]

(2) Placing ED Agents under suspension.—The question of Placing ED Agents under suspension and paying them subsistence allowance, in place of the present practice of putting them off duty without any allowance has been examined in all its aspects in the light of the Supreme Court judgment, dated 22-4-1977, and in consultation with the Ministry of Law. The service conditions of the EDAs are regulated by the EDA (Conduct & Service) Rules, 1964. Rule 9 of these rules provides that pending an enquiry into any complaint or allegation of misconduct, an ED Agent may be put off duty and that during the period he is put off duty he shall not be entitled to any allowance. It has been held by the Ministry of Law that this rule has not been affected by the judgment of the Supreme Court. Rule 9 still remains and this being special law in respect of ED Agents it would prevail over the general provisions of Fundamental Rules. That being the legal position and having regard to the fact that EDAs being part-time employees, cannot be equated with regular employees of the Department in the matter of grant of service benefits, the Government have decided that the present practice of putting them off duty without allowance should continue. No allowance would, therefore, be payable to the ED Agents for the period any enquiry is pending against them and they remain put off duty. It may, however, please be noted that the ED Agents may be put off duty only during the pendency of the enquiry and not when any enquiry is contemplated.

[D.G., P. & T., Letter No. 151/777-Disc. II, dated 23rd March, 1978.]

The implication of the Supreme Court's Judgment declaring ED Agents as holders of civil posts was clarified 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 off 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 probable penalty.

[D.G., P. & T., Letter No. 157/777-Disc. II, dated the 16th January, 1979.]

(3) Guidelines for putting off duty.—Putting an ED Agent off duty may cause a lasting damage to his reputation if he is immediately exonerated or is awarded only a minor penalty. The competent authority is, therefore, expected to exercise his discretion with proper care and due caution. The following guidelines by way of precaution are, therefore, to be followed by the competent authority before passing orders placing an ED Agent off duty:

- (a) Enquiries made into a complaint or the process of inspection of that office should have revealed a strong prima facie case against the delinquent.
- (b) The offence thus coming to notice should be of such a serious nature that dismissal or removal from service would be the probable ultimate punishment and it would be inadvisable that the offender should be allowed to continue to perform his duties pending finalisation of the disciplinary case against him.
- (c) Petty breaches of discipline and minor departmental offences would not justify putting an ED Agent off duty.
- (d) Wilful, obstinate or repetitive refusal to carry out an order, rendering his retention on duty a hurdle to proper conduct of enquiry would justify an ED Agent being put off duty.
- (e) An agent against whom a criminal charge involving moral turpitude is pending, may be put off duty during the period when he is not actually detained in custody or imprisoned (i.e., while he has been released on bail), if the charge made or proceedings taken against him are connected with his duties or is likely to embarrass him in the discharge of his duty.

Whenever it is necessary to put an ED Agent off duty, the Sub-Divisional Inspector should inform the Divisional Superintendent within a period of seven days of the action taken by him. Prior approval of the Divisional Superintendent should be obtained in cases where the Sub-Divisional Officer is not the appointing authority. However, in case it is in the public interest to place such an ED Agent off duty immediately or in case it is considered that delay is likely to result in tampering with him with the evidence, the Inspector may order put off duty in anticipation of the approval of the Divisional Superintendent, but should obtain his ex-post facto approval within a week.

It is also necessary that disciplinary authority makes every effort to finalise the disciplinary proceedings and pass final orders so that an ED

Agent may not remain put off duty for a period exceeding 120 days. Heads of Circles should draw up a time-table for ensuring finalisation of disciplinary cases within this period. In case, for any unavoidable reasons, it has not been possible to finalise a case within this period, the matter should be reported immediately to the next superior authority giving full justification why the ED Agent cannot be taken back to duty pending finalisation of the case. The superior authority should, on receipt of the report, immediately review the case and consider,

(i) whether there is justification to continue the ED Agent concerned off duty for a further period, and

(ii) what steps should be taken by the disciplinary authority to eliminate all avoidable delay in finalising the case.

The Heads of Circles are requested to bring these instructions to the notice of all concerned, for very strict compliance. It should be understood by the competent authorities that it would be their personal responsibility to adhere to the guidelines given in the previous paragraphs.

[D.G., P. & T., Letter No. 104-11/77-Disc. II, dated the 24th February, 1979.]

It has been brought to the notice of this office that the cases of put off duty of EDAs are being unnecessarily delayed despite of the instructions in this regard. Putting an EDAs off duty causes lasting damage to his reputation as well as undue hardship to him during the period that he is put off duty. It was, therefore, emphasised in the earlier instructions in this regard, that care should be taken not to put an EDAs off duty without sufficient grounds for doing so. If at all it was necessary to put them off duty, then their cases should be finalised at the earliest and not later than 4 months at the maximum.

It appears from the complaint received from various quarters including the Unions that these instructions are not being followed. It is, therefore, brought to the notice of the competent authorities that the guidelines mentioned above may be strictly followed. Statements of put off duty cases may be called for from all the divisions and scrutinised. Strict action should be taken against any instance where it is found that put off duty cases of EDAs have been unnecessarily delayed due to negligence.

[D.G., P. & T., ND, Letter No. 151/3/81-Vig. III, dated the 25th August, 1981.]

In spite of these instructions, instances have come to notice where disciplinary proceedings against EDAs who are put off duty for some reason or the other, are not completed for years, with the result such officials continue to be under put off duty for an indefinitely long period. This is contrary to the instructions issued. You are, therefore, requested to strictly follow the instructions issued in the Directorate Letter, dated 24-2-1973. The content of the letter may be brought to the notice of all concerned.

[D.G., P. & T., Letter No. 433/385-Pen., dated the 30th September 1985.]

(4) Reckoning of "put off" period for determining selection to regular posts.—It was clarified in this office letters of even number, dated 20-3-1979, and 27-1-1981, that the EDAs will be eligible for appointment on the basis of length of service after they have qualified in the prescribed test. It has been decided that the following periods may be added to the actual duty period for the purpose of reckoning determining their selection to regular posts on the basis of recruitment examination:

1. The period during which an EDAs remained "put off," duty for contemplated disciplinary or criminal proceedings provided he has been taken back to duty without the penalty of dismissal or removal from service imposed on him.

2. The period of unemployment in the case of an EDAs who had been dismissed or removed from service but is reinstated in service as a consequence of judgment of a court or appellate/revision order by the departmental authority.

[D.G., P. & T., ND, Letter No. 47/16/79-SPB I, dated the 22nd October, 1982.]

(5) Counting of "put off" period for eligibility for appearing in departmental examinations.—It has been decided that if an EDAs who is put off duty is reinstated and is completely exonerated of all the charges, he may be given credit for the period of put off duty up to a maximum of six months only for purpose of counting the period towards continuous service. In other words, such EDAs should have worked atleast for a period of two-and-a-half years before they become eligible for appearing in departmental examinations.

[D.G., P. & T., ND, Letter No. 47/16/79-SPB I, dated the 22nd December, 1979.]

10. Appeal:

(1) An employee 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.

(2) An employee may appeal against an order imposing on him any of the penalties specified in Rule 7 to the authority to which the authority imposing the penalty is immediately subordinate.

11. Period of limitation for appeals:

No appeal shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the

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PMG., Madras, Lr. No. STA/12-93/90-MS,
dated 2-10-1991

Guidelines for finalisation of ED Put Off duty cases

Recently one ED case has come to the notice of the Circle Office wherein the ED official was put off duty before the initiation of Disc. Action in August 1986 and the Disciplinary Authority has reviewed the case and ordered reinstatement of the EDA in June 1989. The Rule 8 inquiry initiated against the EDA ended and the EDA was completely exonerated fully as the charges levelled against him were not proved. Thereupon the EDA has filed a case in the CAT and got the judgment in his favour for the payment of wages during the period he was kept under off duty. This has resulted in payment of huge money to the EDA without being performing the actual duties.

2. Though there are no provisions for the payment of subsistence allowances for the period of put off duty in the case of EDAs, it may not be fair to allow the E.D.A., under off duty for a long time. The appointing authorities should not also be allowed to fail in their legitimate duty of exercising their powers indiscriminately without proper application of their mind in reviewing the cases regularly. Repeated instructions have been issued for the need for timely completion of disc. cases and periodical review of put off duty cases and suspension cases.

3. In this connection, detailed instructions have already been issued *vide* D.G.'s Letter No. 17-294/90-E.D. & Trg., dated 26-7-1990, communicated in D.O. Letter No. STC/5-18-38, dated 31-8-1990. In the above instructions, proper guidelines have been enumerated to be followed before putting the EDA under off duty. Indiscriminate using of the powers for placing the E.D.A. under put off duty should be curbed. While placing the EDA under off duty in respect of cases relating to unauthorised absence, Leave without allowances and complaints from the public, etc., the authorities competent to place the EDA, under off duty should adhere to the instructions in para. 2 of the D.G.'s letter referred to supra strictly. Further proper review should be made by the Divisional Superintendents every month to see whether there is justification to continue the

EDA off duty for a further period and also what steps can be taken by the Disc. Authority to eliminate all avoidable delay in finalising the cases quickly. Speedy steps to be taken at every stage in respect of E.D. put off duty cases to see that the cases are finalised within 45 days from the date the EDA was placed under off duty.

✓ 4. The Divisional Superintendents should see that no official be kept off duty indiscriminately and without *prima facie* case against him which justify for the removal from service and that the off duty should not be beyond 45 days, in future. In any case, where the off duty is beyond 45 days and the Rule 8 inquiry held likely to be concluded in favour of the charged official which result in going for filing a suit in the CAT for the wages for the off duty period, such cases should be reviewed immediately and prompt action taken for the reinstatement by using their discretionary powers immediately. On no account the enquiry cases which do not deserve for the imposition of penalty of removal or dismissal of the EDA from service and where the gravity of misconduct justifies for the imposition of the minor penalties introduced recently under Rule 7 (i) to 7 (ii) of EDA (C & S) Rules, 1964, should be placed off duty.

5. In view of the above, Divisional Superintendents should review all the E.D. put off duty cases in their Division immediately and take appropriate action.

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G.I., Dept. of Posts, Lr. No. 20-2/88-PEI,
dated 23-8-1991

Correction to letter regarding TBOP Scheme to SBCO staff*

- (i) Read "F.R. 22-1 (a) (i) substituted *vide* Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), No. 1-10/89-Estt. (Pay), dated 30-8-1989" (*vide* Sl. No. 237 of Swamy's Annual, 1989), in place of F.R. 22 (C), appearing in sub-para. (vi) of para. 1.
- (ii) The words "other than pensionary benefits" appearing in the last line of para. 6 may be deleted.

*Letter, dated 26-7-1991, was published in Swamysnews as Sl. No. 260 of September, 1991.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH AT AHMEDABAD.

Original Application No. 385 of 1991.

Bhavanbhai Somabhai Patel.

.....Applicant

Versus

Union of India

and others.

..... Opponents.

Written reply

I, Shri V. S Patel Desig.:

Superintendent of Post Offices, Gandhinagar Division,
Gandhinagar - respondent no.3 herein do hereby
submit written reply to the contents of the
application as under :-

1. I say and submit that I am well conversant
with the facts of the case. I am competent to
file this written reply on behalf of respondents.
I am submitting this written reply on the
basis of the information derived by me from
the record of the case.

2. I say and submit that the present
application is neither maintainable on law
nor tenable on facts of the case. I say and

Received C.M
D. P. Thackeray
Corporate A. Thackeray
Bhavabhai Patel
Applicant
22/1/92
2 P.M.

Filed in court
on 13-1-92 by Mr
Patel rd Adm
Respondents
J. V. Patel
1314

submit that all the averments made in the application are denied except specifically admitted or dealt with by me in this written reply hereafter.

3. As regards contents of Paras 1,2,3 and 4 of the application, it is submitted that the applicant was placed under 'put of duty' and not under 'suspension'. vide order dt. 12-8-1991 issued by respondent no.3. With due respect, it is submitted that as the applicant has not exhausted all the departmental remedies available to him before approaching to this Hon'ble Tribunal, the Hon'ble Tribunal has no jurisdiction to entertain the present application or in any case the application should not be entertainable on this count.

4. As regards contents of Paras 6(1), 6(2), 6(3) and 6(4) of the application, it is submitted that the appointment of the applicant was made as ED BPM Sunawala and his appointment was governed by the provisions of the Post & Telegraph EDA (Conduct & Service) Rules 1964. It is submitted that in one of the cases of alleged misappropriation, of government money, it is noticed at Sunwala Branch Office in which the applicant was found involved solely responsible. Therefore pending investigation into the case and

with a view to avoid possibilities of tampering office records, the applicant was ordered to be placed under 'put of duty' in exercise of the powers conferred vide Rule 9 of P & T EDA (Conduct & Service) Rules 1964. It may be stated that there is no provisions under the said Rules to grant any allowance during the period of 'put of duty'. It is denied that the applicant had personally seen to respondent no.3. However the letter dt. 30th September 1991 was received by the respondent no.3 but as the same was not within the frame work of rules of ED, the same was disposed of on its merits. The applicant should have approached to the Higher Authorities to the respondent no.3 against the orders and thereafter he should have approached to this Hon'ble Tribunal. However the applicant has straight-way preferred this application and therefore the application is not maintainable. It may be stated that the order is not of 'suspension' but that of 'putting of duty'. Further there is no requirement under the rules to state reasons in the order.

5. As regards grounds stated by the applicant after Para 6.4 of the application, it is submitted that no such ground arises

considering the facts and circumstances ~~of~~ in the ~~case~~ present case. It is denied that the order of ' put of duty ' and not to pay allowance to the applicant is in any manner contrary to the law or evidence on record or unwarranted as alleged. For ready reference of the Hon'ble Tribunal, Rule 9 under which the applicant has been ordered to be placed under ' put of duty ' is annexed herewith and marked Annexure R/1. It is ANNEX R/1. denied that the powers are exercised in any manner by the respondent no.3 or there is any mala fide exercise of the powers by the respondent no.3 as alleged. It is submitted that the charges are not required to be stated in the order. However the reasons for passing order have been narrated hereinabove and therefore I am not repeating the same in order not to burden record of this Hon'ble Court. I deny that order is in any manner null or void as alleged. It may be stated that before passing order, *prima facie*, respondent no.3 was satisfied regarding the involvement of the applicant into the fraud case i.e. misappropriation of government money. which is received from public at large for depositing in SB/RD Account etc. pending investigation including ^{100%} ~~10%~~ verification work of SB/RD/TD Accounts and monitory transaction handled by the applicant. With

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a view to avoid possibilities of tampering office records or evidence, the applicant has been placed under 'put of duty'. It is denied that applicant has not handed over charge. In any event the charge has already been transferred to Shri U.N.Patel of Sunwala on ad hoc basis and charge report to that effect is also on the record of the respondent no.3. I crave leave to refer to and rely upon the same at the time of hearing of this application. I deny that there is any question of violation of the principles of Audi Ateram Partm .

6. I deny that there is any settled legal position as canvassed by the applicant in Ground (F) of paying any subsistence allowance even if the rules do not permit. I deny that the order in question is in any manner by way of penalty as alleged. I deny that there is any abuse of power to accommodate one Shri Nagarsang Darbar as alleged. I say that on the contrary some other person is working vice the applicant and therefore there is no question of any accommodation. It is submitted that since the detailed investigation is under progress, the charge-sheet will be issued to the applicant in due course. I deny that there is any non-application

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mind on the part of respondent no.3 as alleged. It may be stated that charge has already been taken over from the applicant with effect from 16-8-1991 after-noon and therefore the contention raised in the ground that the applicant is still holding the charge is ill-founded.

7. I say and submit that consider the facts and circumstances of the case pointed out hereinabove, the Hon'ble Tribunal will be pleased to find that there is no substance in this application and the applicant is not entitled to any of the reliefs as prayed in Para 7 or Para 8 of the application. It is therefore, prayed that the Hon'ble Tribunal may be pleased to dismiss the application with costs and the applicant may be directed to pay the costs to the respondents for defending this application.

Date: -12-1991.

Place: Ahmedabad. -----
સરથિસાફ ડાકઘર ગાંધીનગર
Sectt. of Post Offices
GANDHINAGAR Dn. 382030

Verification

I, Shri V. S. Patel

Desig: Superintendent of Post Offices, Gandhi-nagar Division, Gandhinagar, respondent no.3 herein do hereby verify and state that what is stated hereinabove is true and I believe

the same to be true and correct as per my knowledge, belief and information gathered from the record of the case. I have not suppressed any material facts.

Verified today on
this th day of
December 1991 at
Ahmedabad.

સાધુદૂર સાફટ ગાંધીનગર
S. N. of Post Office
GANDHINAGAR, GUJARAT 382001

Identified by me.

(JAYANT PATEL)
ADDL. CENTRAL GOVT.
STANDING COUNSEL.

Address:-

Jayant Patel-Advocate
'Krupa' Bungalow No.11,
Swatantra Senaninagar,
Near Nawa Wadaj Octroi Naka,
Ahmedabad-380 013.

Phone No. 47 98 68.

Annexure

R/1. 18/2
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Copy of Rule 9 of Swamy's compilation of Service Rules for Extra Departmental Staff in Postal Department, Edition 1988.

Rule 9 (1)

Pending an enquiry into any complaint or allegation of misconduct against an employee, the appointing authority or an authority to which the appointing authority is subordinate may put him off duty;

Provided 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.

(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.

True copy Alkaed
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25/11/81
अधीक्षक डाकघर गांधीनगर मुंडर
SUPERINTENDENT OF PO'S GANDHINAGAR DN.
GANDHINAGAR (GUJ.) 382030

0/0 a.m. 30pt. of Post Office
Gandhinagar (South) Sub Ds
Gandhinagar-332919
09/03

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J. P. Joshi
J. P. JOSHI
AGER. Dep't. of Post Office
Gaudhinagar (South) Sub Dn
Gaudhinagar-382010

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