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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.372 of 1989

Date of decision : March 8 , 1991.

Hrushikesh Chaini ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. Devasish Panda,
G.C. Mohapatra,
Miss. D.R. Mohanty, Advocates.

For the respondents ... Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT)

C O R A M :

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N. SENGUPTA, MEMBER (J) The point for consideration in this application is a short one. The applicant is the Extra-Departmental Branch Post Master of Sidhal Branch Post Office. On 11.9.1989 the Assistant Superintendent of Post Offices of Jagatsinghpur Sub-Division passed orders for putting the applicant off duty with immediate effect vide Annexure-1. The case of the applicant is that by the date of the order vide Annexure-1 no memo of charge was served on him.

Mr. Sengupta
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Therefore, the order at Annexure-1 is illegal inasmuch as no enquiry was pending against him. The applicant has also challenged the authority of the Assistant Superintendent of Post Offices to put him off duty.

2. The case of the respondents is that the applicant made fraudulent withdrawals on different occasions, on each occasion Rs.500/-, the pecuniary limit of sanction of withdrawal by him.

For adequate proof of the applicant being the author of the forged withdrawal, opinion of the handwriting expert was necessary and that, in ordinary course, took some time. In order to prevent further misappropriation and not to afford the applicant an opportunity to further misappropriate or commit fraud, he had to be put off duty.

3. We have heard Mr. Devashis Panda, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents. Mr. Panda has very strenuously urged that an enquiry can be said to be pending only from the date the memo of charges is served on the concerned officer and not before. Mr. Panda has referred us to the instructions of the Director General, Posts to be found at page 43 of Swamy's compilation of Service Rules for ED Staff (4th Edition). The Director General instructed that an ED agent may be put off duty only during the enquiry and not ~~only~~ when the enquiry is contemplated. Some Officers inquired about the actual meaning of the instruction and in clarifying the same the Director General stated that ED agents could

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be put off duty even before the initiation of the disciplinary proceeding. However, it was not the intention that an E D agent would be put off duty merely on the ground of suspicion without making any enquiry whatsoever.

Mr. Misra, learned Senior Standing Counsel (CAT) for the respondents has urged that infact after Purna Chandra Swain filed a petition of complaint on 28.3.1989 and his statement was recorded on 2.9.1989, the applicant was put off duty i.e. after some enquiry about the fraudulent nature of withdrawals were made. Therefore, it is not a case where the applicant was put off duty merely on the ground of suspicion without any enquiry whatsoever and as such the instructions of the Director General, Posts were adequately complied with. On the other hand, Mr. Panda has urged that the ~~recording~~ ^{recording} of the statement of a person behind the applicant cannot constitute an enquiry. Learned counsel for the applicant has drawn our attention to the Full Bench decision of this Tribunal in the case of K. Ch. Venkat Reddy and others vrs. Union of India and others reported in 1987(2) S.L.J 117(CAT) and has contended that no enquiry could be said to pend so long as memorandum of charges is not served on the officer concerned. The observations in that case were made in a different context i.e. whether an enquiry can be said to be pending so as to debar a person from being considered to be promoted or to cross the efficiency bar. The order of suspension or putting a person off duty is only a preliminary and not an order of any finality though an appeal may be provided against such an order of suspension or putting off duty. It would

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be pertinent to refer to the proviso to rule 9(1) of the E D Agents (Conduct & Service) Rules, which reads as follows:

" 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."

On reading this proviso it can easily be inferred that in certain cases immediate action may be called for where the allegations against the officer or employee relate to fraud or embezzlement, even an authority lower in rank to the appointing authority i.e. the Inspector of Post Offices can put ~~xxx~~ an Extra-Departmental Agent off duty under intimation to the appointing authority. The rationale behind this provisions is not far to seek. A person who is alleged to have embezzled public funds or to have committed fraud, should not be allowed to further embezzled or do something to cover up the fraud, framing of charges is bound to take some time. What the clarification made by the Director General, Posts and Telegraphs means is that only on suspicion without any materials in support of such a suspicion, an Extra-Departmental Agent cannot be put off duty. Before a charge is framed against an E D agent, the Department should make some enquiry, not an enquiry envisaged under the Rules but the one to satisfy itself that there are *prima facie* materials for the framing of a charge. In the instant case it has been alleged, not much disputed, that the departmental authorities recorded some statements

*Ans. Selpu
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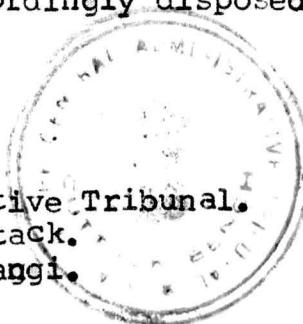
of some persons and went through the documents concerning the complaint made by Purma Chandra Swain. It is ofcourse true that the statements recorded and the materials collected by the Department were behind the back of the applicant and they could not be used against the applicant to find him guilty without giving him an opportunity to have his say in the matter. But at the stage of suspension or put off duty it is not necessary that the applicant should have been given an opportunity of being heard. Therefore, the contention of Mr.Panda that the order putting the applicant off duty is in contravention of instructions of D.G, Posts & Telegraphs, cannot be accepted.

4. The applicant has taken a second ground of attack that the orders putting him off duty were passed by a person not empowered to do so. The Officer in charge of a Division is competent to appoint an Extra-Departmental Branch Post Master and the order putting the applicant off duty was passed by the Assistant Superintendent of Post Offices, I/C, Jagatsinghpur Sub-Division who is in charge of a Postal Division. Therefore, on that ground the order cannot be challenged.

5. For the reasons stated above, we find no infirmity in the order putting the applicant off duty and the application is accordingly disposed of. No costs.

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.....
vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 8, 1991/Sarangi.



No costs.
Member (Judicial) 8/3/91.