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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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ORIGINAL APPLICATION No. 344/1990

DECIDED ON 15TH MARCH, 1991

Trilochan Sarangi ... Applicant

Versus

Union of India and Another ... Respondent

For the Applicant: ... M/s. P.V. Ramdas,
B.K. Panda and
D.N. Mohapatra

For the Respondents ... M/s. Aswini Kumar Mishra

C O R A M:

THE HONOURABLE SHRI K.J. RAMAN, ADMINISTRATIVE MEMBER

and

THE HONOURABLE SHRI N. SENGUPTA, JUDICIAL MEMBER

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

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LRR

J U _D _G _M _E _N _T

K.J. RAMAN, MEMBER (A), The applicant is an Extra Departmental Branch Postmaster (EDBPM) at Raigurupur. He was put off duty under Rule 9(1) of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (EDA (CS) Rules) on 17-2-1987. In the departmental proceeding that ensued under Rule 8 of the EDA (CS) Rules, the Disciplinary Authority passed an order dated 11-2-1989 (Annexure-3) directing the reinstatement of the applicant in service and administered on him a severe warning. Accordingly, the applicant was reinstated in service. The applicant thereafter represented to the respondent No.2 (Senior Superintendent of Post Offices, Puri) for payment of allowances under the rules for the put-off period. Since nothing was heard from the Respondent No.2, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to be issued to the respondent No. 2 for payment of the prescribed allowances for the period of put-off of the applicant.

2. A reply has been filed on behalf of the respondents.

3. The case has been heard when the learned counsel for the applicant and the learned counsel for the

respondents submitted their arguments.

4. The learned counsel for the applicant referred to the final decision in the departmental proceeding and stated that the applicant was not found to be ^{serious} guilty of any/misconduct. The learned counsel relied on the decision dated 22nd August, 1989 of this Bench in O.A. 64/1986 and he submitted that the present case is similar to the case referred to above, and on the same basis, the applicant was entitled for payment of the prescribed allowances for the put-off period.

5. The learned counsel for the respondents did not agree with the learned counsel of the opposite side in regard to the nature of the misconduct alleged to have been committed by the applicant. He submitted that even though the misconduct was established, the Disciplinary Authority took a lenient view, taking into account the suffering of the applicant being ~~put~~ off duty for a long period. That is why he let off the applicant with a severe warning. The learned counsel submitted that under the rules applicable to ED Agents, they are not entitled to any allowance for the period of put-off.

WJR

6. The only issue to be decided in this case is whether the applicant is entitled to the payment of the prescribed scale of allowances for the period of his put-off. Rule 9 of the EDA (CS) Rules is as follows:-

"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."

7. The learned counsel for the respondents relied on sub-rule (3) of the above Rule, according to which no such allowance is payable during the period of put-off.

8. In OA 64/86, the Single Member Bench in question considered the matter in the light of certain other decisions. The decision in the case of P.M.

Rusamma V. Inspector of Post Offices, Muvattupuzha and Others, (1988) 7 A.T.C. - 833 and also the decision of the Orissa High Court in the case of Ramachandra Panigrahi v. Superintendent of Post Offices, Balasore Division and Others, 1985 (1) SLR 81 were followed and it was held that operation of sub-rule (3) of Rule 9 of the EDA (CS) Rules is only during the period an employee is actually under put-off, and only for the limited purpose of defeating his claim for payment during that period, and that it cannot defeat or control the effect of the subsequent order of reinstatement. With respect, we agree with the conclusion arrived at in OA 64/86, which was a case of exoneration of the EDA after being put off.

9. A reading of Rule 9 of the EDA (CS) Rules reproduced above, will clearly show that the action of put-off resembles the act of suspension under Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (CCS (CCA) Rules). In the case of suspension, there is a provision for payment of a subsistence allowance during the period of suspension. After the disciplinary proceeding is over, or when the suspension is revoked, the question of payment of normal wages during the period of suspension followed by such reinstatement, has to be decided in accordance with the rules. In the case of

put-off under the EDA (CS) Rules, however, there is no provision of payment of any subsistence allowance. This is perhaps due to a different system of compensation provided for in respect of the ED Agents, who get only some prescribed allowances and not pay. For ^{some} appointees under the ED (CS) Rules, there is also a pre-condition that they must have adequate means of livelihood, other than the allowances that they are likely to get as EDAs. In any case, the analogy between suspension and put-off is very evident.

10. Under the CCS (CCA) Rules, it now and then happens that a Government servant under suspension is awarded only a minor penalty. Sometimes ~~even~~ a disciplinary proceeding may ^{even} end up ~~over~~ with a warning. It is now settled that when, under the CCS (CCA) Rules, a Government servant under suspension is awarded only a minor penalty, he is to be paid full pay and allowances for the suspension period, on the basis that the suspension should be considered as unjustified. This is because a Government servant can be suspended only in those cases where a major penalty is likely to be imposed. The above position has been recognised by the Government itself, who have accordingly issued instructions dated 3-12-1985 to the above effect vide para (7) on page 213 of the Swamy's Compilation of C.C.S. (CCA) Rules, Eighteenth Edition. The instruc-

tions are reproduced below:-

"(7) Period of suspension to be treated as duty if minor penalty only is imposed. — The undersigned is directed to invite attention to this Department O.M. No. 43/56/64-AVD, dated 22-10-1964, containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the C.C.S. (C.C.A.) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R. 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of

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suspension by passing a suitable order under F.R. 54-B.

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened.

(G.I. Dept. of Per. & Trg. O.M. No. 11012/15/85-Est. (A) dated the 3rd December, 1985.)"

11. The only penalties provided for under Rule 7 of EDA (CS) Rules are:

- (i) recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- (ii) removal from service which shall not be a disqualification for future employment;
- (iii) dismissal from service which shall ordinarily be a disqualification for future employment.

12. According to the guidelines prescribed for putting off duty vide DGP's instruction (3) on page 41 of the 'Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department, 1987 (Third Edition), the resort to put off can be made only if the misconduct is of such a serious nature that dismissal or removal from service would be the probable ultimate punishment. It is made clear that petty breaches of discipline and minor departmental offences would not justify a put-off from duty.

13. It is thus seen that a case of put-off is very much comparable with suspension in vital details. We are of the opinion that the criteria for paying full wages after reinstatement from suspension, should be applicable for payment of EDA allowances for the period of put-off after reinstatement. If only a minor penalty is imposed under the CCS(CCA) Rules, the employee is entitled for full wages as stated above. If an employee is let off with the warning, after a proceeding under the CCS(CCA) Rules, obviously he is to be paid full wages. We are clearly of the opinion that the same position should apply in the case of ED Agents also. In the present case, there is no punishment under any statutory rule imposed on the applicant. Only a warning has been administered on the applicant, which cannot be taken as a major penalty at all. In this view of the matter, we have to hold that put-off of the applicant was unjustified. That being so, it follows that the applicant is entitled for being paid the full allowances during the period of put-off.

14. In the result, we allow this application and direct the respondents to pay the applicant the appropriate allowances prescribed for ED Agents, for the period of put-off. There will be no order as to costs.

(N. SENGUPTA)
MEMBER (J)

(K.J. RAMAN)
MEMBER (A)

