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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 725 OF 1995
Cuttack this the 21st day of May, 1999

Ajaya Kumar Mohanty

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? no

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.5.99

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(24)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.725 OF 1995
Cuttack this the 2nd day of May, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

Ajaya Kumar Mohanty,
aged about 39 years,
Son of Late Bhagirathi Mohanty,
Village & Post: Udayapur,
Via: Sujanpur
Dist: Jajpur - Branch Post Master
(put off duty) Udayapur Branch Office

...

Applicant

By the Advocates : M/s.Ganeswar Rath,
S.N.Mishra

-Versus-

1. Union of India represented by
Secretary, Department of Posts,
New Delhi
2. Chief Post Master General,
Orissa Circle, Bhubaneswar-751001
3. Superintendent of Post Offices,
Cuttack North Division,
Cuttack-753001
4. Sub-Divisional Inspector(Postal)
Dharmasala

...

Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, appointed as Extra Departmental Branch Post Master of Udayapur B.O. in January, 1991 and under put off duty since 20.10.1993, in this application filed on 28.7.1995 prays for quashing the put off duty orders dated 20.10.1993 vide Annexure-A/1 ^{passed} by the Sub-Divisional Inspector(Postal) Dharmasala(Res.4) during his inspection of the Branch Post Office ~~on that day~~ and served on him on that day and also order dated 8.11.1993 vide Annexure-A/3 passed by the Superintendent of Post Offices, Cuttack(North)Division(Res.3) with other consequential benefits. At this stage, it can be stated this much that ^{has} in the pleading the applicant/_alleged malice against Res.4 in passing that order in connivance with one Debabrata Dash, husband of Smt.Pusparani Mohanty, who aspired to be appointed as E.D.B.P.M. of that Branch Office alleging some facts. Since Respondent No.4 has not been impleaded by name, as has been held by the Hon'ble Apex Court in I.K.Mishra vs. Union of India reported in 1997(7) SCC 228, the facts constituting allegation of malice need not be dealt in this order. In other words, ^{whether} in order to consider/_the order putting the applicant off duty is to be quashed or not, the allegation of malice will not be taken note of.

After being served with order under Annexure-A/1, the applicant on the next day, i.e., on 21.10.1993, represented vide Annexure-A/2 before the Superintendent of Post Offices, Cuttack North Division(Res.3). On 8.11.1993, Respondent No.3 passed

order (Annexure-A/3) under Rule-9(i) of the E.D.A.(Conduct & Service) Rules, 1964 (in short Rules) putting the applicant off duty with immediate effect.

The applicant then through Annexure-A/4 dated 20.11.1993 and Annexure-A/5 dated 3.12.1993 preferred appeal before the Chief Post Master General, Orissa Circle (Res.2). By order dated 27.7.1994(Annexure-A/6) the appeal was dismissed. These facts are not in dispute.

The case of the applicant is that though more than one year nine months have since elapsed, no charge-sheet had been issued. Since order dated 20.10.1993 passed by Res.4 had to be confirmed within 15 days by the appointing authority under Rule-9(ii) of the Rules, this order, according to applicant ceased to be effective from 5.11.1993 onwards and its continuance thereafter is illegal and void. At any rate, as per the instructions of D.G.(P&T) in letters dated 24.2.1979, 25.8.1981 and 30.9.1985, E.D.Agents should not remain under put off duty for a period exceeding 120 days, even where a disciplinary proceeding has already been initiated.

2. Respondents-department in their counter filed on 1.2.1996 take the stand that in the meanwhile charge memo dated 26.12.1995 (Annexure-R/5) has already been issued and the delay in initiating disciplinary proceeding was on account of the fact that the relevant M.O. paid voucher and S.B.Pass-book and other documents were sent to Govt. Examiner of Questioned Documents, Calcutta and opinion was received on 7.10.1994(Annexure-R/4). Since it is a case of

misappropriation and forgery of signature, continuance of the applicant under put off duty is in no way illegal. In other words their stand is that the impugned orders under Annexures A/1 and A/3 are valid under law and do not deserve to be set aside.

3. In the rejoinder filed the applicant, while reiterating most of the facts mentioned in the Original Application, specifically pleaded that under Rule-9(ii) of the Rules, ratification by the Superintendent of Post Offices must be within 15 days.

4. We have heard Shri Ganeswar Rath, learned counsel for the applicant and Shri A.K. Bose, learned Senior Standing Counsel for the respondents and also perused the records.

After conclusion of the arguments, the learned counsel for the applicant filed written note of submission and the learned Senior Standing Counsel filed memo of citation of two cases, viz. (i) (1998) 7 A.T.C. and (ii) (1990) 13 A.T.C. 192 (as mentioned in the Memo). The ratio decidendi of these two cases as mentioned in the memo ~~is to the effect of dealing~~ with the principle that delay in disposal of disciplinary proceeding would not by itself vitiate the proceeding. In this application before us there is no challenge with regard to initiation or legal validity of the disciplinary proceeding, though the applicant in order to explain the background for placing him under put off duty, submitted that due to conspiracy a false case has been lodged against him. Since in this application the legal validity or continuance of the put off duty orders has to be

considered these two cases mentioned in the memo filed by the learned Senior Standing Counsel have no relevance at all.

S. For quashing the order of put off duty, the following points have been urged by the learned counsel for the applicant.

- (i) Respondent No.3 having not ratified or confirmed the order dated 20.10.1993 within 15 days as required under Rule-9(ii) of the Rules, the same is void under law.
- (ii) As per circular issued by D.G.(Posts) in letter No.294/90-(E)I Trg. dated 26.7.1990, the disciplinary proceeding shall be disposed of early in case of E.D.A. under put off duty, so that an E.D.A. does not remain under put off duty for a period exceeding 45 days and not 120 days as ordered previously.
- (iii) The respondents have been negligent and indifferent at every stage which would be evident from the fact that even after receiving the report of the Handwriting Expert on 7.10.1994, no attempt has been made to issue charge-sheet immediately thereafter and it is only after receiving notice in this Original Application filed on 28.7.1995, they came to senses and issued charge sheet on 26.12.1995.
- (iv) Even though his defence statement was filed on 8.1.1996 and Inquiring Officer appointed on 26.2.1996, the disciplinary proceeding had not been finalised till date(this was submitted during arguments and not denied by the respondents-department)
- (v) This inexplicable negligence and indifference attitude of the department display an attitude of vindictiveness on the part of the Department towards the applicant in making him to continue under put off duty.
- (vi) This Annexure-A/3 dated 8.11.1993 is also void under law.

Rule 9 of the Rules runs as follows :

9. Put-off duty

- (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. Admittedly order dated 20.10.1993 under Annexure-A/1 has neither been confirmed nor cancelled by the appointing authority ^{by} on the 15th day of its passing, i.e. by 5.11.1993. In D.G.(Posts) letter No.43-115/73-Pen dated 26.7.1974 as reported at page 51 of Swamy's Compilation of the F.D.Staff Rules(1995) Edition, it has been made clear that the period of 15 days mentioned under the Rules is mandatory. This being so, the order dated 20.10.1993 under Annexure-A/1 ceases to be in force from 5.11.1993 onwards. The rule does not ^{the} lay down that if by non-confirmation on/15th day of such order of put off duty, the same will be a nullity or void under law. The very fact that the rule used the expression ~~word~~ "shall cease to be effective" would necessarily mean that such order ~~would~~ be effective for 15 days only and not after 15 days, if not confirmed.

Hence it follows that applicant was not put under off duty from 5.11.1993 to 7.11.1993 and as such is entitled to his usual emoluments for those three days.

Order dated 8.11.1993 (Annexure-A/3) was passed by Respondent No.3 in exercise of powers conferred under Rule-9(i) of the Rules. In that order he was alive to the legal requirement that order dated 20.10.1993 passed by Res.4 though required to be ratified or confirmed at the least on/ 15th day of its passing, could not be so ratified or confirmed because of investigation pending on the complaint of the applicant against that order. Accordingly, Respondent No.3 placed the applicant through this order under put off duty with immediate effect. In other words, he was aware that order dated 20.10.1993 was legally effective till 4.11.1993.

Question for consideration is whether this order under Annexure-A/3 requires to be quashed. Before proceeding to discuss this point, it is necessary to know the departmental instructions ~~in regard to~~ dealing with cases of E.D.Agents under put off duty. An E.D.Agent can be placed under put off duty under Rule-9 pending enquiry into any complaint or allegation of misconduct. There was standing instructions that connected disciplinaryproceeding shall have to be finalized within a period of 120 days from the date the E.D.Agent is put under off duty. In letter dated 26.7.1990, this period of 120 days has been reduced to 45 days. However, letter dated 26.7.1990 finds place at page 53 of Swamy's Compilation for E.D.Staff Rules, wherein in para-3 of that letter it has been mentioned that Divisional

Superintendent shall draw up a time-table for ensuring finalisation of disciplinary cases within this period, i.e. within the period of 45 days from the put off duty order. If due to unavoidable reasons it is not possible to finalise a case, within this period, the matter should be reported immediately to the next higher authority giving full justification that the E.D.A. cannot be taken back to duty pending finalisation of the case. The superior authority, then immediately review the case and consider whether there is justification to continue the E.D.A. on put off duty for a further period and that steps should be taken by the disciplinary authority to eliminate unavoidable delay in finalising the case and thereafter will make an order accordingly. In para-4 of the letter it has been further directed that case of put off duty pending for 45 days or more should be brought to the personal notice of the C.P.M.G./P.M.G./Regional P.M.G., who should issue appropriate directions in this regard. In the concluding portion of paragraph-5, it is made clear that these instructions have to be strictly followed to dispose of the disciplinary cases. The instructions do not indicate that in case of delay of more than 45 days or 120 days, as the case may be, the order of put off duty would thereby become illegal or vitiated.

Shri Ganeswar Rath, learned counsel for the applicant brought to our notice the decision of C.A.T., Bombay Bench in O.A. 676/92 reported in Case Law Digest of Swamy's Compilation Vol.6 (Maninder Sing vs. Union of

India) reported at page 873 of Swamy's Compilation, This was a case of suspension under Rule-10 of CCS(CCA) Rules, 1965 pending initiation of disciplinary proceeding. Even though more than six months elapsed, the disciplinary proceeding or the charge sheet had not yet seen the light of the day. While taking analogy of the relevant rules under All India Service Rules that charge sheet had to be issued to the delinquent servant within a period of 45 days from the date of passing of the order of suspension and taking into consideration that the department had not explained inordinate delay in issuing the charge-sheet, the Bench held that the delay ^{by} itself would vitiate the order of suspension and accordingly quashed the order of suspension. At the same time ShriRath also relied on the decision of the Lucknow Bench of the C.A.T. in O.A.846/93 in Rabindranath Sribatcha vs. Union of India reported in 726 and 727 of Swamy's Case Law Digest Vol. 7, 1994/1. In this case a member of All India Services was placed under suspension in contemplation of departmental inquiry and was kept under suspension for more than a year without issue of charge-sheet. The Bench held that prolonged suspension of the petitioner for more than a year amounts to indefinitely placing him in the agony and disability of suspension and renders the order of suspension arbitrary and illegal to ^{be} revoked without holding the order placing him under suspension as illegal or ^{without} quashing the order of suspension. Direction was issued to revoke the order of suspension and allowed ~~ed~~ the petitioner to resume duties. Similarly in P.Satyam^{am} vs. Collector, Customs reported in (1998) 7 AT Cases 548 (also relied on by the learned counsel Shri Rath) prolonged order of

suspension was not held to be illegal or was not quashed, but was directed to be revoked. Similarly in D.Mangal Eswaran vs. Commissioner of Income Tax reported in (1987) 2 ATC 828 (also quoted by Shri Rath) ~~where~~ suspension in contemplation of disciplinary proceeding continued for long even without review by the disciplinary authority as per guidelines issued by the Central Excise was only held to be unsustainable and revoked.

We, therefore, do not agree with the learned counsel for the applicant that because of delay the order of put off duty on 8.11.1993 needs to be quashed.

As earlier discussed, the strict instruction of D.G.(Posts) in letter dated 26.7.1990 is that an E.D.Agent under put off duty shall not remain for a period exceeding 45 days and within that 45 days, the disciplinary proceeding has to be initiated and finally disposed of. The explanation offered in the counter in this regard is that as the dispute centred round the genuineness of the signatures in the relevant paid vouchers and documents, it necessitated the opinion of the Handwriting Expert whose report was received only on 7.10.1994. If that be so, the charge sheet could have been issued immediately thereafter and certainly not on 26.12.1995, i.e. more than one year two months thereafter and that too after receipt of the notice by the respondents in this application. ~~For this period~~ what the department have been doing from 7.10.1994 till 26.12.1995 in the matter of issuing charge sheet has not at all been explained by them. There is also no explanation that as per the guidelines issued by the D.G.Posts in letter

dated 26.7.1990, the disciplinary authority (Res.3) reported the matter to the next higher authority immediately after 45 days of passing of order under the Annexure-A/3 and that superior authority had taken action on such reference. Further the counter is completely silent that the case of the applicant was brought to the personal notice of the Chief Post Master General after 45 days of the order under Annexure-A/3 and that the C.P.M.G. had issued appropriate instructions in this regard as instructed in the said letter dated 26.7.1990.

Counter having been conspicuously silent in this regard, it can be presumed that the department had not followed the instructions in the Circular dated 26.7.1990 though such instructions, as instructed in that circular ought to have been strictly followed, because, as observed in Para-2 of that circular putting an E.D.Agent off duty may cause a lasting damage to his reputation if he is ultimately exonerated.

Thus though there appears to some justification in allowing the applicant under put off duty till 7.10.1994, the date on which the report of the Handwriting Expert was received, there was ~~been~~ no justification whatsoever in allowing the applicant to continue under put off duty from 8.10.1994 onwards. It is a fit case where the order of put off duty passed on 8.11.1993 under Annexure-A/3 has to be revoked immediately.

The order of put off duty cannot be revoked with retrospective effect. Yet, the fact remains that

it has been held that such order was not justified to continue at least from 8.10.1994 onwards in view of the strict instructions of the D.G.Posts in circular dated 26.7.1990 which instructions have been grossly violated by the Department. Prolonged suspension of an E.D.Agent prior to 1997 in contemplation of initiation of disciplinary proceedings and without issuing charge sheet not only considerably damages his reputation, but also puts him under considerable mental agony and financial hardship because of denial of any allowance and in a way affects his fundamental right to live, i.e. right to live with dignity. Interest of justice would be grossly disregarded if the applicant is not compensated by the Department for his continued put off duty from 8.10.1994 onwards, even if the proceeding is ultimately decided against him.

8. In the result, while we disallow the prayer for quashing the orders of put off duty dated 20.10.1993 and 8.11.1993 vide Annexure-A/1 and A/3 respectively, we hold that the applicant is deemed to be on regular duty on 5.11.1993, 6.11.1993 and 7.11.1993 and is entitled to usual pay and allowances for these three days and the same shall be paid, if not already paid to him. The respondents are further directed to revoke the orders of put off duty dated 8.11.1993 (Annexure-A/3) within 10 days from to-day and allow the applicant to resume duties. The respondents shall also pay an amount of Rs.5000/- (Rupees Five Thousand Only) towards compensation for needlessly allowing the applicant to continue under put off duty from 8.10.1994 onwards. This amount shall be paid over and

above the put off duty allowance the applicant is entitled to be paid under the Department Circular of January, 1997. This compensation amount and the pay and allowance for the three days as indicated above shall be paid to the applicant within sixty (60) days from to-day. The application is allowed in part, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *21.5.99*

B.K.SAHOO

21.5.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)