

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.1057/1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member.

SUNIL CH. DEBNATH

VS.

UNION OF INDIA AND ORS.

For the applicant : Mr. T.K. Biswas, counsel

For the respondents : Mr. S.P. Kar, counsel

Heard on : 27.08.99

Order on 27.08.99

O R D E R

Heard ld. counsel for both sides.

2. In this case, the grievance of the applicant in short is that while he was working as Extra Departmental Agent in Chandrachura Extra Departmental Branch Post Office in Account with Pundibari S.O. under Coochbihar Head Office, he was placed under ~~put~~ off duty by the authorities vide order dated 23.3.96 and the order dated 26.3.96 marked as Annexure A-2 and A-3 to the application, on the ground that a disciplinary proceeding under Rule 8 of the EDAS (Conduct & Service) Rules, 1964 <sup>contemplated</sup> ~~is pending~~ against him. It is stated by the applicant that thereafter no action has been taken by the respondents in respect of disciplinary proceeding as contemplated by them and keeping the applicant in hanging position, they are ~~holding~~ <sup>for</sup> fresh selection to the post in question. Thereby the applicant approached this Tribunal for getting appropriate relief.

3. Respondents filed written reply denying the claim of the applicant <sup>and</sup> ~~stating~~, inter alia, that the applicant was involved in a case of mis-appropriation of public money to the extent of Rs.15000/-(Approx.) for which an FIR was lodged against him in the local police station and that matter is still under investigation. Therefore, the applicant was put

off from duty as per the provisions of Rule 8 and 9 of the EDAS(Conduct & Service) Rules, 1964. Moreover, a criminal case is pending against him. So, the application is devoid of any merit and is liable to be dismissed.

4. Ld. counsel Mr. T.K. Biswas appearing on behalf of the applicant submits that the respondents placed the applicant under put off from duty w.e.f. 23.3.96 but they did <sup>not</sup> start any disciplinary proceeding against him till date. It is also submitted by the ld. counsel Mr. Biswas that the applicant is in a hanging position and keeping him in the dark, the respondents are holding fresh selection <sup>& the said position</sup> violating the rules. So, respondents should be directed to complete the disciplinary proceeding against the applicant within a time bound period.

5. Ld. counsel, Mr. S.P. Kar appearing on behalf of the respondents submits that the applicant did not make representation to the authorities stating his grievances and without making any representation, he approached this Tribunal. So, the application is liable to be dismissed as it is a prematured application. He further submits that since a criminal case is ~~lying~~ pending against the applicant thereby the respondents could not take necessary action in this regard.


6. We have considered the submissions of the ld. counsel for both sides and have perused the records. We have also perused the judgment of the Hon'ble Apex Court reported in 1999 Supreme Court Cases(L&S)-810(Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another) wherein the Hon'ble Supreme Court held that :-

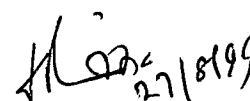
"Conclusions which are deducible from various decisions of the Supreme Court(referred to in paras 14 to 22 of the judgment) on this point, are as follows:  
(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately;  
(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case;  
(iii) Whether the nature of charge in a criminal

case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of the offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet; (iv) Factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay departmental proceedings. But due regard has to be given to the fact that departmental proceedings cannot be unduly delayed; (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and proceeded with, so as to conclude them at an early date. The purpose is that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

In the instant case, we find that the applicant is involved in a criminal case which is lying pending for decision before the appropriate authorities. At the same time, it is found that the applicant was placed under put off duty w.e.f. 23.3.96 but no disciplinary proceeding has been initiated by the department till date. So, we are of the view that the respondents should be directed to consider the case of the applicant in the light of the judgment of the Hon'ble Apex Court as mentioned above.

7. Accordingly, the respondents are directed to consider the case of the applicant in the matter of disciplinary proceeding and decide the case in accordance with the law treating this application as representation of the applicant, within 4 months from the date of communication of this order. With these observations, the O.A. is disposed of awarding no costs.

 27.8.99  
( G.S. MAINGI )  
MEMBER(A)

 27/8/99  
( D. PURKAYASTHA )  
MEMBER(J)

s.m.