

X3

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No. 198/2012
Jodhpur this the 3rd day of October, 2013.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Naresh Kumar Ramawat, S/o Shri Punamchand Ramawat, aged about 28 years, R/o Q.No. 5-D-1, Duplex Colony, Bikaner. (Office Address:- Worked as EDMC at Bikaner HO under put off duty).

.....Applicant

(Through Advocate Mr S.P. Singh)

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. Post Master General, Western Region, Jodhpur.
3. Superintendent of Post Offices, Bikaner Division, Bikaner.
4. Assistant Superintendent of Post Offices, South Sub Division, Bikaner.

(Through Adv. Ms K. Parveen)

..... Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant has challenged the legality of the order Annex. A/2 and A/1 by which the applicant was put off duty under rule 2 of rule 12 of GDS (Conduct & Employment) Rules, 2001 and the representation submitted by the applicant was dismissed by the respondent-department respectively.

2. The short facts of the case are that the applicant was working GDS MC (Gramin Dak Sewak Mail Career) at Rajasthan Krishi Viswavidyalaya Bikaner Sub Post Office under Bikaner, Head Office and a fraud was committed by K. C. Chawanaria, Sub Postmaster to the tune of Rs 20,65,739/- . The fraud was detected on 03.06.2009 and Shri Chawanaria committed suicide. A FIR was lodged against him and about Rs 4-5 lacs were recovered from his retiral benefits. The respondent-department imposed minor punishments on other official and the applicant was put off duty under rule 12 (2) of GDS (Conduct & Employment) Rules, 2001 vide Annex. A/2 and that order was neither confirmed nor cancelled under the said Rules. The applicant filed representation/appeal to the competent authority that dismissed the same vide order Annex. A/1. Therefore, the applicant by way of this OA has challenged the legality of both orders on the ground that neither appointing authority has confirmed nor cancelled the order of put off duty (Annex. A/2).

3. By way of reply the respondents averred that the applicant was put off duty by the appointing authority himself, therefore, the provisions of sub rule 2 of rule 12 of the GDS (C&A) Rules, 2001 are not applicable in case of the applicant because the confirmation or cancellation is required in case the order is passed by the authority subordinate to the appointing authority, therefore, order Annex. A/2 is legal and does not require any interference.

4. By way of rejoinder, the applicant while reiterating the same facts contended that the applicant is entitled to get the relief as claimed in the OA.

5. Counsel for the applicant contended that sub rule 2 of Rule 12 of GDS (C&A) Rules, 2001 has not been complied by the respondent-department, therefore, order of put off duty passed vide Annex. A/2 by the respondent-department is illegal per se. He contended that on the analogy of the judgment of the Hon'ble Supreme Court passed in UOI & Ors vs Depak Mali (2010) 2 SCC 222, the applicant is entitled to get all the benefits on completion of 15 days from the date of order of put off duty i.e. Annex. A/2 to the order of this Tribunal. He further contended that the same analogy is applicable to this case because in case of review after 90 days of suspension, the application of mind of appellate authority is required and in this case also for confirming or cancelling the put off duty order, application of mind of the appellate authority is also required.

6. Per contra counsel for the respondents contended that as appointing authority himself has passed the order of put off duty, therefore, there was no necessity to confirm the order.

✓ 6

7. We have considered the rival contentions of both the parties and also perused the record. Sub rule 2 of Rule 12 of GDS (Conduct and Employment) Rules, 2001 is reproduced as under :

"12. Put-off duty

(1) The Appointing Authority or any authority to which the Appointment Authority is subordinate or any other authority empowered in that behalf by the Government, by general or special order, may put a Sevak off duty :

- (a) where a disciplinary proceeding against him is contemplated or is pending; or***
- (b) where a case against him in respect of any criminal offence is under investigation, enquiry or trial:***

Provided that in cases involving fraud or embezzlement, the Sevak holding any post specified in the Schedule to these rules may be put-off duty by the Inspector of Post Offices or the Assistant Superintendent of Post Offices of the Sub-Division, as the case may be, under immediate intimation to the Appointing Authority.

(2) An order made by the Inspector or Post Offices or the Assistant Superintendent of Post Offices as the case may be, of the Sub-Division under sub-rule (1) shall cease to be effective on the expiry of fifteen days from the date of such order unless earlier confirmed or cancelled by the Appointing Authority or the authority to which the Appointing Authority is subordinate."

8. Accordingly to the sub rule 2 of rule 12 of GDS (C&E) Rules, 2001 before expiry of 15 days from the date of Put-off duty order, this order is required to be confirmed or cancelled by the competent authority but admittedly such order has not been passed

in this case by the appointing authority or the authority to which appointing authority is subordinate. Therefore, we are of the considered view that the order Annex. A/1 is illegal and against the provisions of GDS (C&E) Rules, 2001 and is required to be quashed as no review has been made by the competent authority.

9. Accordingly, OA is allowed and order Annex. A/1 is quashed. The respondents are directed to treat applicant on duty for all purposes, from the period after expiry of 15 days from the date of put-off duty to the date of this order, with all consequential benefits as per law. There shall be no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

ss