

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

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O.A No.466/94

Wednesday this the 20th day of April, 1994.

CORAM:

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
THE HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.Velayudhan Pillai,
Velayudha Mandiram,
Manthanam P.O.
Kunnamthanam,
Thiruvalla.

.. Applicant

(By Advocate Mr.S.Subhash Chand)

vs.

1. The Chief Postmaster General,
Kerala Circle,Thiruvananthapuram.
2. The Senior Superintendent,
R.M.S.'TV' Division,
Railway Mail Service,
Thiruvananthapuram.
3. The Sub Record Officer,
RMS 'TV' Division,
Railway Mail Service,
Thiruvalla -689 101.
4. Union of India represented by
Secretary to Department of
Communications, Central Secretariat,
New Delhi. .. Respondents

(By Advocate Mr.S.Krishnamoorthy, ACGSC)
Advocate Mr.M.R.Rajendran Nair(Amicus Curiae)

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicant challenges Annexures A2 and A6 orders. By the former, he was 'put off duty' with effect from 26.5.93 and by the latter he was told that:

"It is not always necessary to disclose all reasons for cases of allegations of misconduct till the inquiry is completed."

Annexure A6, was in answer to the request of applicant for the reasons for 'put off.'

2. Applicant submits that Rule 9 of the Extra Departmental Agents (Conduct & Service) Rules, called the rule, hereinafter, does not make it

obligatory to 'put off' an official in all cases of disciplinary proceedings. It is for the authority to exercise its discretion, informed by the facts of each case. It is also submitted that an official can be 'put off' only on a limited ground. Rule 9 reads:

"Pending an inquiry 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" (emphasis supplied)

In similar rules, whether it be the Central Civil Services (Classification, Control & Appeal) Rules or different State Rules, an employee can be placed under suspension :

"pending inquiry, or trial, or investigation, or where a disciplinary proceeding is contemplated, or is pending".

The Central Civil Services (Classification, Control & Appeals) Rules 10 reads:

"(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending; or

xx xx

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:"

(emphasis supplied)

3. Except under the Extra Departmental Agents Rules, there is a power available to the authority to suspend an employee, pending inquiry, investigation or trial and when disciplinary proceedings are contemplated. The Extra Departmental Agents Rules restricts 'put off' (suspension) only to cases where an inquiry is pending. We cannot

lose sight of this restriction or limitation in a context, where expressions like pending inquiry, investigation or trial or contemplation of inquiry have acquired definite connotations. The expression 'pending inquiry' cannot therefore be extended to a situation, pending investigation or in contemplation of investigation.

4. There was no inquiry pending against the applicant at the time of Annexure A2. We are told that a First Information Report was registered against applicant only on 31.12.93. We are not unaware that this Tribunal should not interfere with an order of 'put off duty'(suspension) when that by itself is not a punishment. We are also aware, that we should not exercise our discretion in a manner to lower the morale of public administration. At once, we cannot turn the 'Nelson's eye' to arbitrariness in the exercise of powers by public authorities. We remind ourselves of the observations of the Supreme Court in Jaisinghani vs. Union of India (AIR 1967 SC 1427). The Court observed:

".... In a system governed by rule of law , discretion, when conferred upon executive authorities must be confined within clearly defined limits.... If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law... Law has reached its finest moments.... When it has freed man from the unlimited discretion of some ruler"

(emphasis supplied)

In the instant case, respondents have acted outside the rule of law, as they acted outside rule 9, acted without any guidelines and acted capriciously, by refusing to disclose the reason for 'put off' even long after the registration of the FIR and even after the applicant made a request for the reason. Even if applicant is charged with a grave charge, safeguards that law gives, cannot be denied, nor can arbitrary action be countenanced in the face of Article 14, even de hors, the rules.

5. Again it is not as if suspension is inevitable. 'Put off' had been misused many times and the Director General of Posts & Telegraphs himself expressed his unhappiness at this. He issued the following:

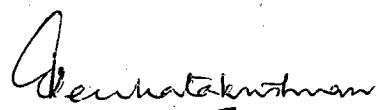
"(5) Guidelines for putting off duty - The Director General has noted with concern the serious problem arising out of enormous increase in the number of put off duty cases of Extra Departmental employees. He has noted that settlement of such cases get delayed due to one reason or another. In most cases the reasons for delay are unacceptable. This unsatisfactory state of affairs appears to have arisen out of a failure to carry out prompt and periodic review of such cases. The image of the Department is tarnished if a large number of Extra Departmental Agents remain under put off duty for long period of time. Whenever even a few cases are taken up for review by the competent authority, several instances of lack of attention and lack of sense of urgency are noticed."

It is our experience in cases that have come before us that Extra Departmental Agents against whom disciplinary proceedings are initiated or contemplated are placed under suspension as a matter of course and for long durations, depriving them of their livelihood without even paying subsistence allowance. If an official is 'put off' after considering the facts of the case, or if 'put off' is not for a long period, or if subsistence allowance is paid, the position will not be as Draconian, as it is now. Power of 'put off' is exercised without guidelines, by an official who is very much lower in the hierarchy. There may be cases where an official is 'put off' for a long period, enabling the authority ordering 'put off' to make a provisional appointment for a long time, conferring patronage on the person so appointed. Such a situation may not be conducive to purity of public administration. It is for the Government to consider whether rule 9 should be suitably amended to incorporate guidelines and safeguards against abuse.

6. We see no reason to extend the meaning of 'pending inquiry' to cases of inquiry contemplated or investigations. On the clear terms of Rule 9 and the reasons hereinbefore mentioned, Annexures A2 and A6 smack of arbitrariness.

7. We quash Annexures A2 and A6 and declare that applicant will be entitled to benefits which he would have enjoyed, but for Annexure A2. We also make it clear, that if there are serious charges and if the rules permit, this order will not stand in the way of respondents from exercising powers under Rule 9 in accordance with law. Original Application is allowed. No costs.

Dated the 20th April, 1994.



P.V.VENKATAKRISHNAN CHETTUR SANKARAN NAIR(J)
ADMINISTRATIVE MEMBER VICE CHAIRMAN