

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 493/91
~~XXXXXX~~ No.

DATE OF DECISION 30.6.92

V.Savithri _____ Applicant (s)

Mr.Abraham Kurian _____ Advocate for the Applicant (s)

Versus

The Sub Divisional Inspector of Post Offices,
Attingal Sub Division, Attingal-695101 and four others. Respondent (s)

Mr.C.Kochunni Nair,ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application the applicant who has been working as Extra Departmental Sub Post Master(EDSPM) under the Senior Superintendent of Post Offices, has prayed that the impugned orders at Annexure-1 dated 22.11.88 putting her off duty with effect from the same date, that dated 28.11.88 at Annexure-II confirming Annexure-I, that dated 31.1.90 at Annexure-III dismissing her from service, the appellate order dated 5.11.90 at Annexure-V remitting the case back to the original appointing authority for de novo enquiry and putting her off ^{duty} ~~nduty~~ with retrospective effect from the date of dismissal viz. 31.1.1990, the further order dated 23.11.90 putting her off duty with effect from 31.1.90 and denying her any allowances during that period (Annexure-VI), that dated 12.12.1990 at Annexure-VII appointing the Inquiry Authority, that dated 12.12.1990 giving her the notice for appearing before the Inquiry Authority, be set aside and the respondents directed to reinstate her in service and to treat the period from 22.11.88 onwards as duty for all purposes with consequential benefits. The brief facts of the case are as follows.

2. The applicant is more than 60 years old in age. She entered service as EDBPM on 20.2.1959 and while she was working as EDSPM she was placed

under put off duty from 22.11.1988 in connection with non-delivery of an insured letter to the addressee and thus not maintaining absolute integrity and devotion to duty and ^{violating} ~~violation~~ of relevant rules in the P&T Manual. After holding an enquiry, she was dismissed from service on 31.1.90. On appeal the appellate authority vide the order dated 5.11.90 at Annexure-V remitted the case back to the disciplinary authority by the following operative portion of the order:-

" 2. Thus, I find that the inquiry had been not in accordance with the prescribed procedure. A report of inquiry not done as prescribed could not and should not have been relied upon and as such, the order of the Disciplinary authority having base on the inquiry report cannot be accepted as one issued with due regard to the rules prescribed. In exercise of the powers conferred by sub-rule (c) (ii) of Rule 15 of the P&T E.D. Agents (Conduct and Service) Rules, 1964, I hereby remit the case back to the original Appointing Authority viz. the Sr. Supdt. of Post Offices, Trivandrum North Division for de-novo action right from the stage of holding an oral inquiry, with further direction that the said oral inquiry shall be held by a person other than the one which originally held the inquiry. Smt. V. Savithri, ED Sub Postmaster, Mudapuram shall be deemed to be 'under put off duty' from the date of dismissal viz. 31.1.1990 till the disciplinary proceedings are finalised in pursuance of these appellate directions."

In that order no reference was made about the setting aside of the original order of dismissal and the applicant, on the other hand, was placed with retrospective effect, under put off duty from 31.1.90. De-novo proceedings were initiated thereafter by appointing an Inquiry Officer and Presenting Officer and giving a notice to the applicant to appear before the Inquiry Authority. The applicant has challenged the impugned orders mainly on the ground that without setting aside the order of dismissal, the disciplinary proceedings could not be revived and she cannot be deemed to have been placed under put off duty with retrospective effect without the penalty of dismissal having been set aside. Since the appellate authority had found that the enquiry had not been in accordance with the prescribed procedure, the order of dismissal based on such enquiry cannot be valid. The order of put off duty at Annexure-I

dated 22.11.8 having merged with the order of dismissal, the put off duty order cannot revive when the dismissal is set aside. She has also argued that she had been kept under put off duty for two years three months and that Rule 9(3) having been struck down by the Bangalore Bench of this Tribunal in Peter J.D'Sa and another vs. Superintendent of Post Offices and others, 1988(3)SLJ 407, the applicant cannot be denied the allowances during the period of put off duty.

3. In the counter affidavit the respondents have justified the order putting her off duty with retrospective effect by stating that since she was not exonerated of the charges by the appellate authority, she had to be kept under put off duty during the de novo proceedings. They have, however, conceded that the penalty of dismissal was set aside but not on the ground of exoneration of the charges, but for a fair enquiry.

4. In the rejoinder the applicant has relied upon the judgment of the High Court of Kerala in Saradamma vs. Supdt. of Post Offices, reported in the Short Notes portion of Case No.54 of 1983 K.L.T. She has also referred to the D.G, P&T's letter dated 24.2.1979 enjoining that in disciplinary proceedings in respect of ED Agents, they should not remain on put off duty for a period exceeding 120 days.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. A similar situation was gone into by the Hon'ble High Court of Kerala in Saradamma vs. Supdt. of Post Offices reported in Short Notes Case No.54 at page 33 of the Short Notes portion in 1983 K.L.T. In that case the Hon'ble High Court distinguished between the rules applicable to ^{the} Extra Departmental staff and those applicable to regular staff and held ^{that} Rule 10 of the CCS (CCA) Rules applicable to regular staff or the principles underlying these rules cannot be applied to Extra Departmental Agents. It further held that the order of put off duty having merged with the order of punishment when the termination order is set aside, the order of put off did not get revived automatically. It also held that a dismissed employee cannot be put off duty with retrospective effect without any special rules

corresponding to Rule 10. of the CCS(CCA) Rules. The following extracts in Saradamma's case will be relevant:-

" There can be no dispute that an order of suspension merges in the succeeding order of termination of service or dismissal and when the termination or dismissal order is set aside or declared illegal by a competent court, the order of suspension does not automatically get revived. Of course, this general principle will not apply in cases where there are provisions to the contrary, as provided in Rule 10(4) and (5) of the 1965 Rules - the General Principles of law would apply to the action of put off also. The order of put off passed against the petitioner merged or ceased to exist in law when the termination order was passed and when the termination order was set aside by this court, the order of put off did not get revived automatically."

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" This is not to say that the respondent cannot pass a fresh order putting off the petitioner from duty. The respondent or the competent authority has jurisdiction to do so. But that has to be preceded by an act of reinstatement of the petitioner in service, since as in the case of suspension, it is not covered by the special provisions of 1965 Rules. To accept the argument that there can be retrospective put off action, would amount to accepting that all authorities would normally have a right to impose a retrospective suspension or put off. The General law does not sanction such a course. There may be Special laws or special rules (as in the case of rule 10 of the 1965 Rules) which provide for such an action. The rules do not provide for such an action at all; they do not invest the authorities with power of imposing put off with retrospective effect. As long as such a power is not traceable to a specific provision of law or rule, the authorities cannot propose to exercise such a power."

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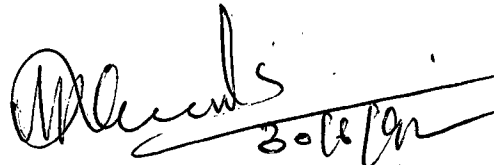
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" It cannot be said that the extra departmental employees are burdened with the possibility of being subjected to two types of action namely, suspension as well as put off action. They can be subjected only to put off action and not to the action of suspension; that is, just as the employees who are governed by the 1965 Rules can be subjected only to suspension and not to put off action. If this is the correct understanding of the application of the two sets of Rules, it cannot be that a particular provision in the 1965 Rules relating to suspension is applicable to extra departmental employees though a parallel provision

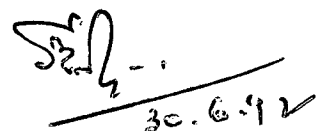
is not contained in the Rules. I do not think it is possible to accept the submission that clauses (4) and (5) of Rule 10 of the 1965 Rules or the Principles underlying these rules can be rendered applicable to the extra departmental employees. In this view, law does not sanction an action of deeming put off as found in Ext.P2."

6. We agree with the applicant that the original order of punishment based on an invalid enquiry proceedings cannot be sustained as per the finding of the appellate authority. If so, the de-novo proceedings started vide the impugned orders at Annexures-VII,VIII and IX cannot be sustained without an order of reinstatement and without first setting aside the order of dismissal.

7. In the conspectus of facts and circumstances we allow the application and set aside the impugned orders at Annexures I, II and III. We set aside the appellate order Annexure-V in so far as it directs that the applicant shall be deemed to be under put off duty from the date of dismissal till the disciplinary proceedings are finalised and so far as it directs de-novo action from the stage of holding oral enquiry. We also set aside the impugned orders at Annexures -VI,VII,VIII and IX. We direct that the applicant should be reinstated as ED Post Master, Mudapuram from the date of dismissal, viz. 31.1.90 with all consequential benefits including arrears of allowances from that date. The respondents are at liberty to place her under put off duty with prospective effect if they decide to institute disciplinary proceedings from the stage of holding an oral enquiry. In so far as payment of allowances during the period of put off duty prior to 31.1.90 is concerned, the respondents shall take a decision after the conclusion of the disciplinary proceedings if they are instituted within a period of one month from the date of communication of this order. In case the disciplinary proceedings are not revived, the applicant shall be entitled to full allowances even during the period of put off duty prior to 31.1.90. The application is disposed of on the above lines. There will be no order as to costs.



(A.V. Haridasan)
Judicial Member



(S.P. Mukerji)
Vice Chairman