

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 59/97

Wednesday, this the 27th day of October, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.G. Krishnan Achary,
S/o. Late Gopalan,
Extra Departmental Delivery Agent,
Anikad Post Office,
residing at: Vengalakkunnel,
Anikad, Kottayam.

...Applicant

By Advocate Mr. P. Ramakrishnan

Vs.

1. Union of India, represented by
The Director General,
Department of Posts,
New Delhi.
2. The Postmaster General,
Office of the Postmaster General,
Kochi - 682 016.

...Respondents

By Advocate Mr. P.R. Ramachandra Menon, ACGSC

The application having been heard on 27.10.99, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to set aside A-2 so far as it
denies him backwages for the period from 29.5.92 to 22.1.96 and
to declare that he is entitled to backwages for the said period
and also to appear for all departmental examinations according
to his eligibility with effect from 22.1.96.

2. The applicant while working as Extra Departmental
Delivery Agent (EDDA for short), Anikad Post Office was proceeded
against by the disciplinary authority. The disciplinary

authority awarded him the punishment of dismissal from service. Appeal filed against the order of dismissal was dismissed. Subsequently, a revision petition was filed and the revisional authority modified the order of the disciplinary authority confirmed by the appellate authority holding that the punishment of dismissal awarded was disproportionate to the charge proved and hence ordered that the applicant be reinstated in service without payment of any backwages and that he will have no claim to appear in any departmental examination for a period of two years from the date of the order. According to the applicant, he has been subjected to two punishments and that is bad in law.

3. Respondents resist the O.A. contending that in the impugned order, it is clearly stated that the applicant was not within his rights in not complying with the orders of the Superintendent of Post Offices who was the appellate authority while observing that dismissal from service was not proportionate to the gravity of the offence. In furtherance of the disciplinary proceedings initiated against the applicant, he was put off duty with effect from 13.2.91 for disobeying the orders of the superior authorities. The applicant is not entitled to the claim for backwages for the reason that he had not done any work.

4. The learned counsel appearing for the applicant submitted that the applicant is only confining the relief to the extent of denial of backwages.

5. As per A-2, the impugned order, backwages has been denied to the applicant on the ground that his services were not available to the department from 29.5.92.

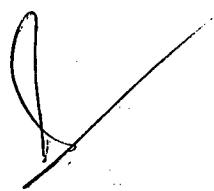
6. The learned counsel appearing for the applicant relying on Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved

Bhawan Limited and another (AIR 1984 SC 976) submitted that withholding of backwages is also a penalty. In the said ruling, it has been held that the High Court was right in taking the view that when payment of backwages either in full or in part is withheld, it amounts to a penalty. But it is to be remembered that it is in respect of an industrial dispute.

7. The learned counsel appearing for the applicant also drew our attention to Between Hindustan Tin Works Limited and its employees (1978 LLJ (11) 474). There also, it is a case falling within the purview of Industrial Disputes Act. Here, it is not a case of an industrial dispute.

8. As far as Extra Departmental Agents Conduct and Service Rules are concerned, withholding of backwages is not a punishment.

9. FR 54(1) says that when a Government Servant, who has been dismissed, removed or compulsorily retired is reinstated as a result of an appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the Government Servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be and whether or not the said period shall be treated as the period spent on duty. Sub Rule (6) or FR 54 says that the payment of allowances under Sub Rule(2) or Sub Rule (4) shall be subject to other conditions under which such allowances are admissible and 54(7) says that the amount determined under the proviso to Sub Rule (2) or Sub Rule (4) shall not be less than the subsistence allowance and other allowances

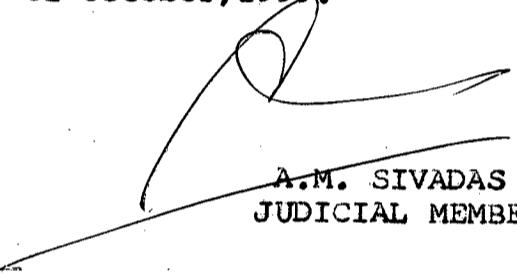


admissible under Rule 53. As far as subsistence allowance is concerned, it is only for those employees who were kept under suspension during the disciplinary enquiry. There was no suspension as far as the applicant is concerned. The applicant was on put off duty. During the period when he was on put off duty, there was no Rule which enabled the applicant to get any amount by way of allowance. Based on the analogy of FR 54, A-2 is not to be interfered with and the stand of the applicant cannot be accepted.

10. Accordingly, the O.A. is dismissed. No costs.

Dated this the 27th day of October, 1999.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THIS ORDER

Annexure A-2:

True copy of Order No. ST/8-15/95 dated 9.1.1996 issued by the 2nd respondent to the applicant.