

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 612
Sammy

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DATE OF DECISION 24.9.92

K. J. George Applicant (s)

Mr. M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

The Sr. Supdt. of Post Offices Respondent (s)
Calicut Division, Calicut and others

Mr. P.Sankarankutty Nair Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? no
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

Mr. N. Dharmadan, Judicial Member

Applicant is aggrieved by Annexure A-1 order passed by the Sr. Supdt. of Post Offices, Calicut placing him under 'put off duty' pending enquiry against him.

2. According to the applicant, while he was working as EDSPM, Kythapoyil post office, first respondent invoked Rule 9(1) and passed the impugned order and an enquiry against the alleged misconduct committed by the applicant is in progress. Relying on the judgment of the Bangalore Bench of the Tribunal in Peter J D'Sa & another Vs. Supdt. of Post Offices, (1989) 9 ATC 225, applicant filed this application with the following reliefs:

- "i) To quash Annexure-I and direct the respondents to reinstate the applicant at the Kythapoyil Post Office with full backwages.
- ii) To declare that Rule 9(3) of EDA (Conduct and Service) Rules is illegal and direct the respondents to disburse full wages to the applicant for the period during which he was kept out of duty.

iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and

iv) Grant the cost of this O.A."

3. Respondents in the reply affidavit stated that the decision of the Bangalore Bench of the Tribunal is pending consideration in SLP before the Supreme Court and the judgment has been stayed by the Supreme Court. The learned counsel for respondents submitted that under these circumstances, the application is to be rejected because the applicant is not eligible for any allowance during his 'put off' under the existing Rules.

4. Applicant has also filed rejoinder denying the statements in the reply filed by the respondents. According to the applicant, E.D. Agent being a civil servant, is eligible for protection of Article 311(2) of the Constitution and denial of subsistence allowance is illegal.

5. It is an admitted fact that a SLP is filed by the Respondents against the judgment of the Bangalore Bench of the Tribunal and it is pending and the judgment has been stayed. But the Govt. as directed by the Bangalore Bench had not framed any fresh Rule in place of Rule 9(3) which had been struck down by the Bangalore Bench of the Tribunal. So much so, there is no statutory rule so as to enable respondents to consider the claim of the applicant for subsistence allowance even if we accept the statement that the stay applies only to the particular case.

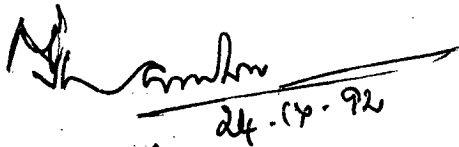
6. Learned counsel for ^{the} applicant submitted that even if the argument of the respondents is to be accepted that there is no law, the applicant is entitled to subsistence allowance or full allowance for the period during which he is placed under 'put off duty' treating him as a Govt. servant.

6. Since the validity of Rule 9(3) and the correctness of the decision of the Bangalore Bench is now pending consideration before the Supreme Court, we are of the view that it is not proper for us to consider the contentions of the applicant and the respondents at this stage. The applicant can await the judgment of the Supreme Court. However, xxxxxxxxxxxx 4

we make it clear that the applicant's right for subsistence allowance will depend upon the final outcome of the decision of the Supreme Court on the SLP referred to above. Under these circumstances, we close this application reserving the right of the applicant to raise ^{his} claims of subsistence allowance during the period of his 'put off' after the judgment of the Supreme Court in the SLP *based on his decision herein.*

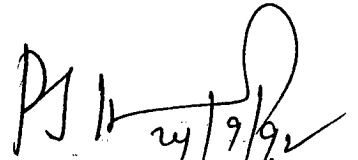
7. The application is accordingly closed.

8. There will be no order as to costs.



(N. Dharmadan)
Judicial Member

kmm



(P.S. Habeeb Mohamed)
Administrative Member