

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 230/91

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DATE OF DECISION 14.11.91

ET Rajendran Nair Applicant (s)

Mr Johnson Manayani Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
Secretary to the Govt. of India,
Department of Posts, Central
Secretariat, New Delhi & others.
Mr P Sankarankutty Nair, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member.
and

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Mr NV Krishnan, A.M

The applicant is an Extra Departmental Branch Post Master (EDBPM, for short) of the Neeleswaram Post Office and is aggrieved by the impugned letter dated 16.1.1991 (Annexure-V) informing him that as a criminal case is pending against him, the orders putting him off duty cannot be revoked.

2 The grievance has arisen as follows.

2.1 The applicant was put off duty on 27.9.1989 by the 2nd respondent (Sub Divisional Inspector) under Rule 9 of the ED Agents (Conduct & Service) Rules, 1964 - Rules, for short) and this order was confirmed by the Senior Superintendent of Post

Offices, Calicut (Respondent-3). He had filed DA 624/89 before this Tribunal impugning the orders exhibited as Annexure A1 and A5 in the application. That ~~were~~ *was* ^{it} disposed of by the Annexure II judgment dated 1.8.1990 with the following directions.

- "(i) Annexure A1 and A5 orders are justified and cannot be assailed.
- (ii) The respondent-2 namely the Senior Superintendent of Post Office, Calicut Division is directed to ensure that whatever proceedings are intended to be initiated against the applicant in respect of the alleged defalcation of government money, should be initiated and completed within a period of three months from the date of receipt of this order.
- (iii) If the applicant submits within two weeks from the date of receipt of this order, an application for granting him subsistence allowance during the put off period on the grounds to be urged by him, the second respondent is directed to dispose of it according to the provisions of law within two months thereafter."

2.2 The respondents initiated disciplinary proceedings against the applicant in respect of the shortage of a sum of Rs 3110/- from this Post Office. It was alleged that while the applicant was on leave from 20.9.89 to 26.9.89 and Shri KC Koyakutty, his substitute was in-charge of that Post Office, the applicant took away from Shri Koyakutty on 20.9.89 Post Office cash of Rs 3110/-. Another charge related to his unauthorised ~~absence~~ ^u from 30.8.89 without making a formal application for leave.

2.3 The Assistant Postmaster General (Staff), the 4th Respondent, has passed final orders (Annexure-I) in the disciplinary proceedings on 24.12.1990. He has found that " both the articles of charges could not be

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held as sustained even applying the principle of preponderance of probability". He, therefore, found him "not guilty" and he dropped disciplinary proceedings.

2.4 Thereupon, the applicant sought his reinstatement and payment of backwages by the Annexure IV application. This has been rejected by the impugned Annexure-V letter dated 16.1.1991.

3 Therefore, this original application has been filed seeking the following reliefs:-

1. To set aside Annexure-V order dated 16.1.91.
2. To direct the respondents to reinstate the applicant to service and to pay him his pay and allowance due from 27.9.1989 till the date of his actual reinstatement, forthwith.
3. Issue a Writ of mandamus or any other appropriate writ, order or direction directing the respondents 2 to 5 to reinstate the applicant to service and to pay him his pay and allowance due from 27.9.1989, till the date of his actual reinstatement, forthwith.
4. Declare that Annexure-V is null, void and illegal and against the extra departmental rules and hence the applicant is entitled for reinstatement with retrospective effect.

4 Respondents have filed a reply resisting the prayers made by the applicant. Their only contention is that even though the disciplinary proceedings have been dropped, the applicant cannot claim reinstatement

because the original order dated 27.9.89 putting him off duty, (Annexure R3(b)) and confirmed by the competent authority on 6.10.89 (Annexure R3(c)), is operative. This contention is based on the provisions of Rule 9 which reads as follows:-

"9. (1) Pending an enquiry 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;

Provided that in cases involving fraud or embezzlement an employee holding any of the posts specified in the Schedule to these rules may be put off duty by the Inspector of Post Offices, under immediate intimation to the appointing authority.

(2) An order made by the Inspector of Post Offices under sub-rule (1) shall cease to be effective on the expiry of fifteen days from the date thereof unless earlier confirmed or cancelled by the appointing authority or an authority to which the appointing authority is subordinate.

(3) An employee shall not be entitled to any allowance for the period for which he is kept off duty under this rule."

The applicant has been put off duty on the ground of suspected fraud or embezzlement. Though this is not stated in Annexure R3(b), this inference has necessarily to be drawn because the Sub Divisional Inspector could have put off the applicant from duty only if there was suspected fraud/embezzlement, in which circumstance alone, he is authorized to pass such an order by the proviso to Rule-9(1). As such, the respondents contended that, though the disciplinary proceedings in respect of this charge have come to an end, an enquiry into that fraud/ embezzlement is still pending in the shape of criminal case No.683/90 under Section 408 of the IPC before the Court of Judicial

First Class Magistrate, Tamaracherry. They claim that those proceedings are based on the same facts on the basis of which the first charge was framed against the applicant in the disciplinary proceedings. Hence, it is contended that the Exbt.R3(b) order putting the applicant off duty and confirmed by Exbt. R3(c) is still in force. Therefore, the applicant has been rightly informed by the Annexure V letter that he cannot be reinstated on duty because of the pendency of the criminal proceedings and therefore, the respondents contend that the application has no merit and deserves to be dismissed.

5 We have perused the records of the case and heard the learned counsel for the parties.

6 The learned counsel for the applicant submits that Rule 9 does not authorise a competent authority to put the applicant off duty when criminal proceedings are initiated against him. He points out that Rule 9 does not contain a specific provision similar to Rule 10 of the CCA(CC&A) Rules 1965 which provide specifically for suspension when criminal proceedings are pending.

7 We are unable to agree with this submission. Rule 9 cannot be interpreted narrowly to mean that an ED Agent can be put off duty only if departmental disciplinary proceedings are contemplated. Considering the objective behind the provision - which is to relieve the suspected delinquent from the post held by him for

various reasons, such as to facilitate enquiry, prevent tampering of evidence, prevent further opportunity to commit ^{conduct} acts of mis- etc, - the delinquent can be put off duty even if only criminal proceedings are contemplated against him. This is made clear by the Annexure R3(A) guidelines issued by the Government of India, Ministry of Communications (P&T Board) in their letter No.104/11/77-DESE-II dated 24.2.1979. In para 2(e) of the guidelines it is stated as follows.

"An Agent against whom a criminal charge involving moral turpitude is pending may be put off duty during the period when he is not actually detained in custody or imprisoned (i.e., while he has been released on bail) if the charge made or proceedings taken up against him are connection with his duties or is likely to embarrass him in the discharge of his duty."

The P&T ED Agents (Conduct Rules) 1964 being executive instructions, these Rules have to be read along with such instructions. Hence, the respondents can put off an ED Agent from duty even if only criminal proceedings are contemplated or initiated.

8 The learned counsel for the applicant then submits that the order putting him off duty has come to an end when it got merged in the final order dated 24.12.90 in the disciplinary proceedings. That order will not have any independent existence thereafter. On the contrary, the respondents ^{contend} that the order continues because the criminal proceedings relating to embezzlement by the applicant are still pending and it should be

presumed that the order of putting off duty was passed pending both departmental proceedings and criminal proceedings against the applicant.

9 We have examined the rival contentions of the parties carefully. Admittedly, neither the Annexure R3(B) order nor the Annexure R3(c) order states that the applicant will remain put off duty till the disciplinary proceedings and the criminal proceedings contemplated against him come to an end. Further, the authority who ^{therein} passed the Annexure I order could very well have stated/ that though the applicant was being exonerated of the charges, he would continue to remain put off duty, as criminal proceedings were pending against him. No such direction was given in the Annexure-I order.

10 The Annexure R3(A) guidelines throws some light on this issue. They undoubtedly give the impression that putting off duty is primarily ~~only~~ resorted to for initiation of disciplinary proceedings. Both in para 1 and 2 of these guidelines, there are repeated references to disciplinary proceedings following putting of duty. Para-4 is ^{fully} devoted to this subject. In so far as putting off duty of ED Agents during the pendency of criminal proceedings is concerned, a reference has been made only in sub-clause (e) of para-2. Otherwise, the guidelines seem to be in regard to put off ^{duty} during pending disciplinary action.

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11 It would, therefore, be reasonable to conclude that generally an ED Agent is put off duty only to institute disciplinary proceedings. Unlike disciplinary proceedings, criminal proceedings are very rare. Hence, if an ED Agent is put off duty in order to initiate criminal proceedings against him this fact should be mentioned in the order issued under Rule-9. Otherwise, there is a presumption that the put off duty was in connection with the institution of disciplinary proceedings^{only.} /

12 We may consider a situation where criminal proceedings and disciplinary proceedings had been simultaneously initiated against an ED Agent, though the latter was kept pending till a decision was rendered in the criminal case. If the ED Agent was acquitted in the criminal case, the question arises whether an order under Rule-9 which ~~does~~ put off duty would continue to be in force. There can be no doubt that the order would continue because the disciplinary proceedings are still pending. This is due to the fact that the order under Rule-9 will continue till it is either rescinded by the competent authority or till the departmental authority - rather than any other authority like a criminal court - passes the final order in the disciplinary proceedings in the enquiry initiated against the ED Agent.

13 The situation in the present case is quite different. The disciplinary proceedings came to an end in the first instance and the applicant was not found guilty of the

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charges made against him and the proceedings were dropped. Therefore, in such circumstance, the Annexure V order gets merged in the order dated 24.12.90 of the Disciplinary Authority. Therefore, it has no life though thereafter ~~and~~ the criminal proceedings initiated earlier were still pending.

14 Admittedly, those proceedings were instituted on the same facts as those on the basis of which the charge relating to embezzlement of Rs 3110/- was made in the disciplinary proceedings. If the respondents felt it necessary that the applicant should continue to remain under put off duty even after the disciplinary proceedings were dropped, they should have passed a fresh order under Rule 9. Alternately, the Disciplinary Authority himself could have made a mention in the Annexure-I order that though the disciplinary proceedings were being dropped, the applicant would continue to remain put off duty, in view of the pendency of the criminal proceedings. In the absence of any such order the applicant cannot be considered to be put off duty.

15 We are of the view that being put off from duty is a serious matter and therefore, a proper order should be passed to put off duty. One cannot be held to be put off duty by drawing an indirect inference from certain earlier orders. This is how the respondents have tried to show that the applicant is still put off duty because they contended that the inquiry into the case of fraud

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embezzlement is still on in the criminal proceedings before the Judicial Magistrate First Class and therefore, the Annexure R3(B) order should be deemed to cover this situation also. We are unable to agree with this tortuous inference. The respondents have completed their own process of enquiry and have found the applicant not guilty of the charges. They ought to be guided by this finding only and nothing else. In any case, in this circumstance, being put off duty during the further pendency of the criminal proceedings cannot be presumed without a further specific order under Rule-9. As a matter of fact, when the applicant has been found to be not guilty, it is the duty of the respondents to inform the prosecuting agency about this result as to enable that agency to take such steps under the Code of Criminal Procedure as it deems fit in respect of the criminal proceedings pending before the Judicial First Class Magistrate. That apart, an order under Rule 9 putting off a person from duty can be made only after a proper application of mind. This is stressed by the Annexure R1(A) guidelines. Para 2(a) thereof states that put off duty is resorted to only if an enquiry made in the complaint or the inspection of an office had revealed a strong prima facie case against the delinquent. In the instant case, a disciplinary proceeding has been initiated and completed and after a detail^{ed} enquiry the

competent authority has exonerated the applicant of all the charges. Therefore, the respondents are totally unjustified in taking the plea that he cannot be reinstated because the criminal proceedings is pending and it will be treated as put off duty.

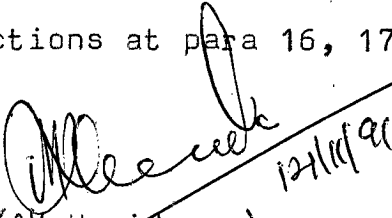
16 For the above reasons we allow this application and quash the Annexure-V order. The respondents are directed to reinstate the applicant immediately within one month from the date of receipt of the judgment. The applicant should, however, be deemed to have been reinstated from 24.12.90 i.e., the date of issue of the Annexure-I order and he will be entitled to the benefits of allowances from that date, which shall be paid to him within three months from the date of receipt of this order.

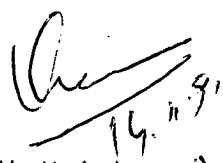
17 That leaves for consideration the period from the date from which the applicant was put off duty by the Annexure R3(B) order dated 27.9.89 till the date on which the disciplinary authority passed the Annexure-I order dated 24.12.90 dropping the disciplinary proceedings. In the earlier decision dated 1.8.90 (Annexure-II) it was held that the put off duty order at Annexure R3(B) and R3(C) are fully justified. That order was, however, passed at a very early stage considering only the prima facie evidence recorded till then. Now that the Disciplinary Authority himself has dropped the proceedings holding that the charges

cannot be established even if judged on the basis of the principle of preponderance of probability, we hold that the applicant is entitled to allowance for the period he was put off duty during the pendency of the disciplinary proceedings. We, therefore, direct the fourth respondent to pay him the dues on this account within the same period as laid down in para 16 for compliance of the direction therein.

18 We further direct that, in the circumstances of this case, the respondents shall not put off the applicant from duty on the ground that CC No.683/90 under Section 408 IPC is still pending against him in the Court of the Judicial Magistrate First Class, Tamaracherry.

19 The application is disposed of with the directions at para 16, 17 and 18 above.


(AV Haridasan)
Judicial Member


(NV Krishnan)
Administrative Member

14.11.91