

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.260 of 1993

Monday, this the 13th day of February, 1995.

CORAM

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

N M Jacob,
Extra Departmental Delivery Agent,
Vilangu B.O.,
Edathala S.O.,
Aluva.

...Applicant

By Advocate Mr OV Radhakrishnan.

Vs

1. Asstt. Superintendent of Post Offices,
Alwaye Sub Division,
Alwaye-683 101.
2. Senior Superintendent of Post offices,
Alwaye Division, Alwaye.
3. The Secretary,
Department of Posts,
Ministry of Communications,
New Delhi.
4. Director General of Posts,
Department of Posts,
New Delhi.
5. Union of India rep. by
the Secretary,
Ministry of Communications,
New Delhi.

...Respondents

By Advocate Mr TPM Ibrahim Khan, Sr. CGSC.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, while working as an Extra Departmental Delivery Agent, Vilangu B.O. in account with Edathala Sub Office, was put off duty under Rule 9(1) of the P&T Extra Departmental Agents (Conduct and Service) Rules, 1964

...2/-

with effect from 28.4.92 (A2). According to applicant, no enquiry was pending against him when A2 was issued.

2. According to respondents, enquiries made by respondent No.1 revealed that the applicant has withheld payment of the MOs by showing fictitious remarks and temporarily misappropriated the money entrusted to him for MO payment. Because of a change in the incumbent of the post of ASP Sub Division, the enquiry was delayed and charge sheet was issued much later. Respondents also state that the validity of Rule 9(3) is under consideration of the Supreme Court and the contention of the applicant cannot be considered at this stage.

3. Applicant relies on K Velayudhan Pillai Vs Chief Post Master General and others (OA 466 of 1994)-(1994) 28 ATC-690. There the Tribunal considered whether Rule 9(1) applies when an enquiry is only contemplated and stated:

"3... The Extra Departmental Agents Rules restrict 'put off' (suspension) only to cases where an enquiry is pending ...The expression 'pending enquiry' cannot therefore be extended to a situation, pending investigation or in contemplation of investigation.

"6. We see no reason to extend the meaning of 'pending enquiry' to cases of enquiry contemplated or investigations ..."

4. In this case, it is seen that the impugned order A2 does not state that an enquiry is pending. In fact no reasons are stated for putting the applicant off duty. The charge sheet was issued according to applicant only much later on 15.2.93. Learned counsel for applicant also stated that the disciplinary action taken against the applicant was only minor and the applicant was restored to duty. Even according to the instructions of the department dated 16.1.79 (Exbt.A4), it is clearly stated that the question of putting off ED Agent from duty should arise only when there is a prima facie case against him and the nature of the offence is such that dismissal will be the probable penalty. Under these circumstances, we are unable to sustain the impugned order A2.

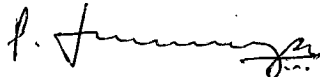
5. Accordingly, we quash A2 and following the decision cited we declare that the applicant will be entitled for the benefits which he would have enjoyed but for Annexure A2. We also make it clear that this

...4/-


order will not stand in the way of respondents from exercising their powers under Rule 9, in accordance with law.

6. The application is disposed of accordingly. No costs.

Dated the 13th February, 1995.



P SURYAPRAKASAM
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

P/132

List of Annexures

1. Annexure-A2: True copy of the Memo dated 28.4.1992
2. Annexure-A4: True copy of the letter dated 16.1.1979