

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 27 of 1999

Friday, this the 8th day of June, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. T.M. Fathima, W/o N.P. Mustaffa,
Extra Departmental Branch Postmaster,
Koovapara Branch PO,
Kothamangalam - 686 691Applicant

[By Advocate Mr. M.V. Somarajan]

Versus

1. The Superintendent of Post Offices,
Idukki Division, Thodupuzha - 685 584
2. The Director of Postal Services,
Central Region, Cochin - 682 016
3. The Postmaster General,
Central Region, Cochin - 682 016
4. Union of India, represented by the
Secretary to Government of India,
Ministry of Communications,
Secretariat, New Delhi. Respondents

[By Advocate Mr. Govindh K. Bharathan, SCGSC (rep.)]

The application having been heard on 8-6-2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash that part of the order in A4, A5 and A6 stating that she will not be entitled for any allowance for the period from 6-11-90 to 9-8-94 and to order that she be paid full pay and allowances for the period from 6-11-90 to 9-8-94.

2. The applicant is an Extra Departmental Branch Postmaster. She was placed under put-off duty on 6-11-1990 pending enquiry under Rule 9 of P&T ED Agents (Conduct and Service) Rules, 1964. After enquiry, the penalty of removal

from service was awarded to her. She preferred an appeal and lost the same. She approached this Bench of the Tribunal by filing OA No. 1242/93. The penalty of removal from service was set aside by this Bench of the Tribunal and ordered her reinstatement within four weeks. She rejoined duty on 10-8-1994. She submitted a representation for payment of full salary and backwages for the period concerned. That was turned down. She prays for full salary for the period from 6-11-1990 (put-off duty date) to 9-8-1994 (reinstatement date is 10-8-1994) and for treating the period as on duty for all purposes.

3. Respondents resist the OA contending that the applicant is not eligible for allowances for the period during which she was kept out of service from 6-11-90 to 9-8-94 as this Bench of the Tribunal in the order dated 26-5-1994 did not quash the order placing the applicant under put-off duty and affirmed the guilt of the applicant. The OA is barred by "rejudication".

4. It appears that the respondents are saying that this OA is barred by res judicata. The ground on which this plea is raised is on the basis of the order in OA No. 1242/93. In order to arrive at a conclusion whether this OA is barred by res judicata or not, basically it is necessary to see what prayers were sought in the earlier OA, i.e. OA No. 1242/93. Respondents have stated that in the earlier OA, i.e. OA No. 1242/93, one of the reliefs sought was reinstatement of the applicant with all consequential benefits, namely treatment of the period from 6-11-90 to 30-9-91 and from 30-9-91 onwards as duty for all purposes including pay and allowances. A1 is the copy of the order in OA No. 1242/93. From A1 it is seen that while affirming the finding of guilt of the applicant, the punishment imposed was set aside, giving discretion to the disciplinary authority to impose any of the minor penalties.

The question of consequential benefits arise only after imposing any one of the minor penalties in terms of A1. Admittedly, respondents have not imposed any minor penalty in terms of A1 on the applicant. That being so, it cannot be said that this OA is barred by res judicata.

5. The applicant was under put-off duty from 6-11-1990 to 30-9-1991. As far as this period is concerned, the applicant says that she is entitled to allowances. During the relevant period, Rule 9(3) of Extra Departmental Agents (Conduct and Service) Rules was in force. As per Rule 9(3) of EDA (Conduct and Service) Rules, as it stood at the relevant point of time, an employee shall not be entitled to any allowance for the period for which he is kept off duty. That being the position, the applicant is not entitled to any allowance for the said period.

6. From 30-9-1991 onwards the applicant was removed from the post of Extra Departmental Branch Postmaster. As per A1 she was reinstated. That period cannot be termed as put-off duty. Respondents are proceeding on the basis that during the put-off duty period the applicant is not entitled to any allowance. But the distinction herein cannot be forgotten that from the date of removal from service till the date of reinstatement it was not a case of put-off duty. Since as per A1 the removal from service has been set aside and the applicant has been reinstated, it is only to be held that she is entitled to consequential benefits. That consequential benefit is that she is entitled to allowances for the said period, i.e. from 30-9-1991 to 9-8-1994.

7. A4, one of the impugned orders, says that as per rules an ED Agent shall not be entitled to any allowance for the period for which he is kept under put-off duty. A5, the

appellate order, says that the applicant was under put-off duty from 6-11-90 to 29-9-91 and thereafter removed from service and since the Tribunal has affirmed her guilt and since P&T ED Agents (Conduct and Service) Rules, 1964 as they stand now do not empower payment of allowances to an ED Agent for the period during which she remained out of service, the action of the disciplinary authority in rejecting the claim of the applicant is not against any rule. A6, the order in the review petition, says that the review petition is rejected. In A6 it is stated that applying the principle of 'no work, no pay' the applicant is not entitled for any allowance for the period from 6-11-90 to 9-8-94. The question of 'no work, no pay' cannot be strictly applied in this case in the light of the facts and circumstances.

8. Accordingly, A4, A5 and A6 are quashed to the extent of denying allowances to the applicant for the period from 30-9-1991 to 9-8-1994. Respondents are directed to pay the allowance due to the applicant for the period from 30-9-1991 to 9-8-1994 within a period of three months from the date of receipt of a copy of this order.

9. The Original Application is disposed of as above. No costs.

Friday, this the 8th day of June, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the final order dated 26-5-94 in OA No. 1242/93 of this Tribunal.
2. A4 True copy of the Memo No. B6/72 A dated 4-6-96 issued by the 1st respondent to the applicant.
3. A5 True copy of the Order No. ST/7-32/91 dated 17-1-97 issued by the 2nd respondent to the applicant.
4. A6 True copy of the Order No. ST/8-8/97 dated 18-11-97 issued by the 3rd respondent to the applicant.