

FINAL ORDER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT MADRAS

Dated the twenty second day of December, nineteen
hundred and eighty seven

PRESENT

Hon'ble Shri S.P.Mukerji - Administrative Member
&
Hon'ble Shri G.Sreedharan Nair - Judicial Member

ORIGINAL APPLICATION NO. 290/87

C.V. Kumaran - Applicant
Versus

The Sr. Superintendent of
Post Offices and another - Respondents

Mr. K.R.B. Kaimal - Counsel for applicant

Mr.K.Karthikeya Panicker
ACGSC - Counsel for Respondents

ORDER

(Pronounced by Shri S.P.Mukerji, Administrative Member)

The applicant who is a dismissed Extra Departmental Branch Post Master (EDBPM) has moved through the application dated 1.4.87 praying that he should be treated as on duty w.e.f. 7.7.82 with full pay and that the impugned order at Annexure A-2 dated 21st July, 1986 treating him to be continued ~~on~~ put off duty with effect from 17-6-1985 be set aside. The material facts of the case are as follows:

The applicant was working as EDBPM since 1979. A Chargesheet was issued to him on 27-8-83 under Rule 9 of the EDA (Conduct and Service) Rules 1964 (hereinafter referred to as Rules) on the allegation that he fraudulently on two occasions withdrew amounts

from Savings Bank Accounts of two depositors. He
was put off duty with effect from 7-7-82 which order was
confirmed on 14-7-82. On the conclusion of the enquiry
he was dismissed on 17-6-85. The appellate authority
allowed the appeal and directed de-novo proceedings.
in compliance of the appellate order
The disciplinary authority on 21.7.86 passed on the
deeming the applicant
order of the appointing authority deemed him to have
been under "continued put off duty" with effect from his the
date of dismissal i.e. 17-6-85. A fresh chargesheet
was served on 11-9-86. His representations against the
Chargesheet were rejected and after conclusion of the
second disciplinary proceedings he has since been dismissed.

In the instant application, he has not come
up against the order of dismissal but against the order
dated 21st July, 1986 challenging which on the ground
that with the setting aside of the order of dismissal
by the appellate authority on 14.4.86 the order of 7.7.82
putting him off duty which had merged with the order
of dismissal, automatically had come to end and therefore
by the appellate order he should have been automatically
reinstated with full pay and allowances with effect from
7-7-1982. He has also argued that he cannot be "deemed"
to have been put off duty with retrospective effect and
that too without any show cause notice.

We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The operative portion of the order of the appellate authority dated 14th April, 1986 reads as follows:-

"I feel that in the interest of justice de novo proceedings are needed in this case. I K.B.H Nayar, Director of Postal Services, Cochin therefore order that the impugned order of Senior Superintendent of Post Offices, Ernakulam dated 17-6-1985 be set aside and de novo proceedings initiated by Senior Superintendent of Post Offices, Ernakulam from the stage of issue of fresh charge sheet." (emphasis supplied) H

Based on the aforesaid order the disciplinary authority passed the impugned order which reads as follows:-

"Whereas Shri C.V.Kumaran, EDBPM Vadacode Kailas Colony was dismissed from service vice this office memo of even No. dated 17-6-85. And whereas the punishment of dismissal was set aside by the appellate orders of DPS Cochin Region in Memo No.ST/7-78/85 dated 14-4-1986 with directions to initiate de-novo proceedings, the undersigned hereby cancel the orders of dismissal.

Now, therefore, the said C.V.Kumaran, Ex- EDBPM Vadacode Kailas colony is deemed to have been under continued put off duty with effect from 17-6-85, the date of issue of the dismissal order, until further orders."

The argument of the learned counsel for the applicant is that once the order of dismissal has been

set aside the order of put off duty dated 7-7-82 which was merged with the order of dismissal cannot be automatically revived and for all intents and purposes is 'nonsensical'. He has also stated that the applicant should not have been put off duty with retrospective effect from 17-6-1985 by an order dated 21st July, 1986. In accordance with the learned counsel for ~~that~~ the respondents the appellate authority set aside the order of dismissal on a purely technical ground ~~in charge sheet~~ of wrongly quoting Rule 8 of the CCS(CCA) Rules instead of EDA Rules by typographical mistake. Thus the circumstances under which the applicant was put off duty were still in existence warranting de-novo enquiry. He has also argued ^{that} since the applicant had not been reinstated ^{the} the question of payment of salary during put off period does not arise. He has also argued that under Rule 9(3) EDA Rules, the applicant is not entitled to allowances during this period.

In support of his contentions the learned counsel for the applicant has referred us ^{to} a similar case of K.Sradamma Vs Superintendent of Post Offices, ILR 1982(2) Kerala, 299. In that case the petitioner as an EDBPM was removed from service from 31.1.77. The order of ~~dismissal~~ was set aside by the High Court.

This was reversed by the appellate judgement of the High Court. The Supreme Court set aside the appellate Judgment and remanded the appeal for fresh disposal. On remand the appeal was dismissed and the original Judgment setting aside the order of dismissal was confirmed. The respondents ordered a fresh enquiry deeming ~~her~~ to have been put off duty with effect from the date of earlier removal ie., 31.1.1977. The High Court of Kerala decided that the order deeming the petitioner to have been put off with effect from the date of earlier removal was void and quashed the same. They observed that it was open to the petitioner to put forward a claim regarding the arrears. It was also held that the authorities did not have power to put off with retrospective effect unless there ~~was~~ ^{is a} specific provision ~~for that~~. The High Court further observed "that the order of put off passed against the petitioner was merged or orders to ^{exist} ~~exist~~ in ⁱⁿ law when the termination order was passed and when the termination ^{order} was set aside by this Court, the order of put off ^{did} ~~not~~ got revived automatically".

The pivotal question to be decided in the instant

case before us is whether the appellate authority by setting aside the order of termination with which the order of put off duty had merged ^{could} ~~as~~ set aside the order of put off duty also. In accordance with the ruling of the High Court of Kerala ^{am} ~~and~~ ^{order} ~~simpliciter~~ quashing the order of dismissal would give the ~~quietus~~ to the order of put off duty also. In the instant case ^{however} the appellate authority while setting aside the order of dismissal and directing de-novo proceedings did not ^{stop at} ~~stop on~~ that. He went on to direct that the de-novo proceedings were to be initiated "from the stage of issue of fresh charge-sheet". Now in this case the order of put off duty was issued on 7.7.82, and confirmed on 14.7.82 while the charge-sheet was issued on 27.8.83. If the de-novo proceedings were to start from the stage of charge-sheet i.e., on 27.8.83 it goes without saying that the order of put off duty passed on 7.7.82 prior to the charge-sheet cannot be presumed to have ~~has not~~ been set aside by the appellate authority. Thus it can be reasonably presumed ^{that} the appellate authority who had the power of setting aside the order of dismissal exercised that power in a qualified manner by maintaining the order of put off duty passed on 7.7.82. Thus he revived consciously and deliberately the order of put off

duty which would not have otherwise ~~been~~ revived automatically.

In the facts and circumstances we see no merit in the application and rejected the same.
There will be no order as to costs.

l. S. Nair
22-12-1987
(G. Sreedharan Nair)
Judicial Member
22-12-1987

S. P. Mukerji
22-XII-87
(S. P. Mukerji)
Administrative Member
22-12-1987

Index: Yes/No

Su.