

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. O.A. 314/89 199
T. A. No.

DATE OF DECISION 23.5.90

O. Kunhikannan Applicant (s)

M/s M.K.Damodaran,
C.T.Ravikumar &
K.S.Saira Advocate for the Applicant (s)

Versus

Union of India & 3 others Respondent (s)

Mr.K.Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, 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? Y
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

(Shri S.P.Mukerji, Vice Chairman)

The applicant who has been working as an Extra Departmental Branch Postmaster, Mokeri under the Postmaster General, Kerala Circle, in this application dated 1.3.89, has prayed that the respondents be directed to treat the period of put off duty from 21.12.82 to 18.6.86 as period spent on duty with full remuneration. The brief facts of the case are as follows.

2. The applicant has been working as an Extra Departmental Branch Postmaster since 7.10.49. He was also working

as a part time teacher in a local school, as is permissible for Extra Departmental employees. On 28.9.82, in order to provide speedy and convenient postal service, the timing of the Post office was changed from 7.00 AM to 9.00 AM and 4.30 PM to 6.30 PM to 9.00 AM to 1.00 PM with effect from 1.10.82. Since it was felt that the applicant would not be able to attend to the postal duties with the changed timing while working as a school teacher, he was asked by the Sub Divisional Inspector (SDI) concerned on 12.11.82 to resign either from the post of Branch Postmaster or from the post of school teacher. The applicant was also informed that if he failed to comply with the above orders action would be taken to remove him from service. On 1.12.82 the applicant replied that the change in working hours did not conflict with his other duties. At that time he had taken leave from the post of school teacher. He also represented to ^{the} Director, Postal Services, Calicut on 22.11.82 and to the Postmaster General on 9.12.82. Under higher orders, ^{the} SDI on 21.12.82 put the applicant off duty under Rule 9 (1) of the P&T Extra Departmental Agents (Conduct and Service) Rules, 1964. This is equivalent to placing a regular government servant under suspension though under the aforesaid rule, no

22

subsistence allowance is paid to an ED staff during the period of put off duty . The order of put off duty was ratified by the Superintendent of Post Offices on 3.1.83. The applicant was chargesheeted on 13.6.83 for failing to comply with the orders of the SDI to resign from either of the two posts held by him and after holding an enquiry an order of removal from service was issued on 24.7.84. The applicant appealed against that order on 23.10.84 and the Appellate Authority, vide his order dated 30.11.84, set aside the order of removal and directed that de novo proceedings be initiated from the stage of charge sheet as he found the memo of charge to be defective. Accordingly de novo proceedings were ordered and fresh charge sheet was issued on 15.1.85. for non-compliance of the SDI's direction to resign from one of the posts. An Enquiry Officer was appointed and the Enquiry Officer found that the charge of disobedience on the part of the applicant was not proved, firstly because the applicant was observing the revised working hours and secondly because the SDI had not indicated any time limit within which the direction to resign was to be complied with. The Disciplinary Authority this time, agreeing with the findings of the Enquiry Officer,

22

passed orders on 13.6.86 reinstating him in service. Accordingly, the applicant took over his old post on 18.6.86. The applicant represented that on reinstatement he is entitled to get full remuneration for the period during which he was put off duty from 21.12.82 to 17.6.86. His representations having borne no fruit, he moved this application before the Tribunal.

3. The applicant has referred to the rulings of the High Court of Kerala and ^{of} this Tribunal in which under similar circumstances reinstated ED staff have been allowed full remuneration during the period of put off duty when they were facing disciplinary proceedings. The applicant's contention is that when the penalty of removal from service is imposed the order putting the employee off duty merges with the order of removal, but when the penalty of removal from service is set aside on appeal, the order putting the employee off duty does not automatically revive. According to him, the provisions of Rule 9(3) of the Extra Departmental Agents (Condition of Service) Rules by which no subsistence allowance is to be paid during the period of put off duty only govern the position while the applicant remains on put off duty but would not be relevant when the order of put off duty merged with the order of removal is set aside and he becomes entitled to full remuneration.

4. According to the respondents, the Enquiry Officer during the first enquiry had found the applicant guilty of the charge. The Appellate Authority, however, because of the defective charge-sheet, directed de novo proceedings. The Enquiry Officer during the second enquiry in the de novo proceedings found the charge not being proved on grounds of incompetence of the SDI to call upon the applicant to resign one of the posts and also because he had not stipulated any time limit for tendering the resignation. On that basis, the Disciplinary Authority ordered reinstatement of the applicant. On 11.9.86, acting on ^{the} ~~the~~ directions of the Director of Postal Services, Calicut, the Superintendent of Post Offices ordered that the put off period will not count as duty for any purpose, but that will not have the effect of forfeiture of his past service. When the applicant approached this Tribunal another representation of the applicant was already pending. The respondents have argued that the applicant was put off duty for good and sufficient reasons because he failed to comply with the orders to resign from one of the posts based on the DGP&T's letter of 17.4.79. They have further argued that reinstatement of the applicant was a result of the charge not being proved on technical points ^{and} ~~but~~ the fact remains that the applicant had not complied ^{with} ~~with~~ the directions of the DGP&T. It cannot, therefore,

2

be said that he was fully absolved of the charges.

Taking all these factors into account the Superintendent of Post Offices ordered that the put off period will not count as duty for any purpose.

5. In his rejoinder the applicant has referred to the ruling of the High Court of Kerala in K.Saradamma Vs. Senior Superintendent of Post Offices, 1983 Vol.II ILR (Kerala) 741 in which it was held that the operation of Sub Rule (3) of Rule 9 is only during the period an employee is actually under suspension and only for the limited purpose of defeating his claim for payment during that period and that it cannot defeat or control the effect of the subsequent declaration about the nullity of the termination. The applicant has also referred to another ruling of the Kerala High Court in Augustine Vs. Superintendent of Post Offices, 1984(1) SLJ 353 in which it was held that when an employee is put off duty as per an invalid order, consequent upon his reinstatement he should be deemed to be in service at all material times and he is thus entitled to whatever benefits, financially or otherwise, which he would have received. The applicant has also referred to the judgement of the Madras Bench of the Central Administrative Tribunal in TAK 79/87 (P.M.Rosamma Vs. Inspector of Post Offices) and quoted

23

from the judgement as follows:

"In a case where as a result of the enquiry, the employee is removed from service, but on appeal, the penalty is vacated and the employee is reinstated in service, can it be said that the employee is not entitled to the remuneration for the period he was put off from duty."

He has also argued that once the penalty of removal from service is passed, the order putting the employee off duty merges with the order of removal but when the penalty of removal is set aside on appeal, the order putting the employee off duty does not automatically revive. He has also challenged the arguments of the respondents that he was not completely exonerated by stating that once the charge is found to be not proved and he is directed to be reinstated, on the basis of the aforesaid rulings, he cannot be denied emoluments for the period during which he was put off duty.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are impressed by the aforesaid rulings cited by the applicant in support of his claim of full remuneration during the period he was put off duty once the order of removal is set aside. Rule 9(3) has the limited purpose of governing the emoluments of the Extra Departmental staff who is put off duty. Once the order of put off duty is revoked or set aside, that Rule ceases to apply. In the instant case before us, once the order of

82

removal dated 24.7.84 with which the order of put off duty dated 21.12.82 had merged was set aside by the Appellate Authority on 30.11.84, it cannot be said that after 30.11.84 the applicant still continued to be on put off duty, even though denovo proceedings had commenced. Since there was no further order putting the applicant off duty after 30.11.84 the applicant has to be considered to be on duty ever since 21.12.82. As a result of the second enquiry he was directed to be reinstated as the charges had ^{not} been ₆ proved. That should be enough so far as the disciplinary proceedings are concerned. Once the charge is not proved, he cannot be punished by depriving him of his emoluments between 27.11.82 and the date of his reinstatement. It has been stated that after the order of reinstatement was passed on 13.6.86, the Superintendent of Post Offices while reinstating the applicant, passed another order on 11.9.86 stating that the put off duty period will not count as duty for any purpose. There is nothing to show that before passing this adverse order against the applicant, no notice was served on the applicant to defend his rights. In Gopalkrishna Naidu Vs. State of M.P., AIR 1968 SC 240 and V.D.Gupta Vs. State of Haryana, 1972 SC 2472 in regard to the payment during the period of suspension

82

after the disciplinary proceedings are over, in the context of FR 54, the Supreme Court held that justice and fair play demand that the Government should give the employee concerned a reasonable opportunity to show cause why an order affecting his pay and emoluments to his prejudice should not be made. Subsequently, FR 54 was amended to provide for such a notice. Accordingly, the order of ^{the} Superintendent of Post Offices dated 11.9.86 depriving him of any emoluments during the put off duty period is vitiated on ^{the} grounds of ^{violation of the principle of} natural justice also.

7. Even if we accept the argument of the learned counsel for the respondents that the de novo proceedings was in continuation of the proceedings initiated by the suspension of the applicant with effect from 21.12.82, and the appellate order dated 30.11.84 setting aside the order of removal cannot be held to have revoked the order of suspension dated 21.12.82, even then, by the order of reinstatement dated 13.6.86 the order of put off duty is washed away in accordance with the rulings quoted by the applicant. In Dr. Jagdish Chhatwal Vs. State of Punjab, 1982 (1) SLR 880, the High Court of Punjab and Haryana ordered that "when allegations against the petitioner were not proved and she was reinstated in service, the period of suspension should be treated as duty with

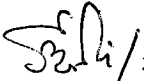
22

full pay and allowances". In Gurdeep Singh Vs. Union of India, AIR 1982 SC 1176, it was held that where disciplinary proceedings are dropped, full payment during the period of suspension is warranted.

8. In the conspectus of facts and circumstances, we allow this application, set aside the order dated 11th September, 1986 at Annexure-V in so far as it deals with the period of put off duty and direct that the applicant should be paid full emoluments between 21.12.82 and 18.6.86 as if the order of put off duty dated 21.12.82 has not been passed.

9. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member

 23.5.90
(S.P. Mukerji)
Vice Chairman