

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

Monday, the twenty third day of November, One thousand nine hundred and eighty seven.

PRESENT

The Hon'ble Justice Shri G.Ramanujam,
Vice Chairman

&

The Hon'ble Shri C.Venkataraman,
Administrative Member.

ORIGINAL APPLICATION NO. 35 OF 1986

Mrs. C. Lilly ... Applicant

vs

1. The Sub Divisional Inspector of Post offices, Nedumangad Sub division, Nedumangad.
2. The Superintendent of Post Offices, Trivandrum South Division, Trivandrum-3.
3. The Director of Postal Services (HQ), Office of the Postmaster General, Kerala, Trivandrum.
4. The Secretary, Ministry of Communications (Postal Department), Government of India, New Delhi.

Respondents

Shri G.P. Mohanachandran

Advocate for the applicant

Shri K. Karthikeya Panicker

Addl. Central Govt. Standing Counsel for the respondents.

O R D E R

This is an application from C.Lilly, ~~Leave~~
Reserve Postman attached to Koudiar post office,
Trivandrum. While she was functioning as an
Extra Departmental Branch Postmaster (EDBPM for
Chettachal
short)/she was put off duty by an order issued by
the Sub Divisional Inspector of Post Offices,
Nedumangad (1st respondent). A memo of charges
was issued to her by the Senior Superintendent of
Post Offices, Trivandrum (2nd respondent) under
Rule 8 of the EDAs (Conduct and Service) Rules. The
3rd respondent after getting the enquiry report,
issued an order on 31st October, 1980 to the appli-
cant. Therein he held that all the five articles of
charge framed against the applicant had not been
proved and accordingly he dropped further
proceedings. He also directed that the
applicant should be reinstated as EDBPM with
immediate effect. Thereupon, the applicant rejoined
duty on 16-11-1980. After so rejoining, she

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represented to the respondents 2 to 4 for counting the period when she was put off duty, as duty. She stated that she was not employed anywhere during that period and claimed payment of her allowances for that period. Even though the respondents counted the period of 'put off duty' for the purpose of reckoning the length of service for eligibility to take the departmental examination for appointment as postman, they refused to grant her the allowance for the said period viz., from 8-12-1976 to 16-11-1980. Her representations in this regard, including to the 4th respondent had not brought her any redress. Therefore, she has filed this application praying for an order directing the respondents to pay her a sum of Rs.7750/- towards allowances for the period of her "put off duty" from 8-12-1976 to 16-11-1980. // Shri G.P.Mohanachandran, the learned counsel for the applicant stated

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before us that even though five charges had been framed against the applicant, the Director of Postal Services (3rd respondent) on receipt of the enquiry report, had gone in detail into each one of the charges and had held that none of the charges was proved. Thereafter, he dropped further proceedings against the applicant and ordered her reinstatement in service. Later, the period when she was put off duty was also counted towards length of service for eligibility to appear in the departmental examination for appointment as postman. The applicant took that examination and ^{was} also promoted as postman. Yet the allowance was denied to her for the period when she was put off duty. He contended that as the applicant was completely exonerated of all the charges framed against her, after a due process of enquiry, the initial order putting her off duty has to be regarded as unjustified and the applicant should be allowed her claim for allowances for the said period. In

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this connection, he invited reference to 1987(3)SLJ (CAT)78 P.M.Rusamma v. The Inspector of Post Offices and others. He pointed out that it has been clearly held by the Central Administrative Tribunal, Madras Bench, that the applicant, ^{him who} ~~was~~ was also similarly placed, was entitled to treat his period of put off duty from 15-6-1979 to 6-3-1980 as period spent on duty and for consequential benefits. He stated that the said decision is squarely applicable to the facts of this case also.

The learned counsel for the respondents stated that the applicant was put off duty under Rule 9 of the EDA (Conduct and Service) pending enquiry into certain allegations of misconduct. Charges were framed against her subsequently. Under Rule 9(3) of the said rules clearly stipulates that an employee shall

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not be entitled to any allowance for the period for which he is kept off duty under that rule. The department had acted in terms of that rule and therefore even though she might have been exonerated from the charges framed against her, she could not be paid when she was not on duty. He further pointed out that extra departmental agents are paid only on the days on which they actually work. The rules governing service conditions of departmental employees are not applicable to these agents. Accordingly, he prayed for a dismissal of the application.

The question for consideration here is whether an extra-departmental employee who was put off duty pending an enquiry into alleged misconduct is entitled to be paid for the period when she was off duty, even if she is ultimately exonerated in the proceedings against her and is reinstated. This question has been specifically considered in P.M. Ramesamma v. The

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Inspector of Post Offices referred to by the learned counsel for the applicant. Therein it has been observed:

"A regular Government servant under suspension is entitled to subsistence allowance as provided for under FR 53(1). As regards remuneration to be paid to him during the period of suspension in a case where the Government servant who has been dismissed, removed or compulsorily retired is reinstated, it is provided for under FR 64, 54-A and 54-B. It may be because extra departmental employees cannot be equated with regular employees as they are only part-time employees that in sub-rule (3) of Rule 9 of the Rules, it is provided that such an employee shall not be entitled to any allowance for the period for which he was put off duty. 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 be the remuneration for the period he was put off duty? It is settled that when the penalty of removal from service is imposed, the order putting the employee off duty, merges with the order of removal, but that when the penalty of removal from service having been held to be

unsupportable and quashed on that ground, it is open to the employee to claim restitution of the benefits which he would have been entitled to had he continued in service. It follows that in such a case, it is open to the employee not only to claim the remuneration for the period he is kept out of service as a result of the order of removal, but also for the period during which he was put off duty. This view has been recognised by the High Court of Kerala in K. Saradamma v. The Senior Superintendent of Post Offices (1983(2) ILR Kerala 741). It was held therein 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. We are in respectful agreement with the pronouncement. "

with which we are in agreement,
In the light of the above, we hold that the applicant
is entitled for payment of the allowance which ^{she} was
receiving prior to her being put off duty on 8-12-976

till the date of her reinstatement in service
on 17-11-1980 F.N. ^{in Madras,} We had also under more or
less similar circumstances allowed Transferred
Application No.179 of 1987 - K. Nallathambi v.
Secretary, Ministry of Communication and others.
Therein, we had observed as follows:


"The limited question before us is what is the effect of the order of the Director of Postal Services setting aside the penalty order with liberty to the disciplinary authority to start disciplinary proceedings de novo and the latter's order communicating a decision to drop such de novo proceedings. When the penalty order is set aside and de novo proceedings are not initiated, the result is that the status quo ante is restored i.e., one has to proceed on the basis that the penalty order did not exist. With the decision to drop the de novo proceedings, the reason for putting off the employee from duty also falls. He was allowed to rejoin duty on 5-3-1983. The contention of the respondents is that since the applicant did not perform duty as EDBPM, he is not entitled to pay for the period from 2-8-1979 to 5-3-1983. According to him, the applicant was not a Government servant and this factor also would deprive him of the right to get paid for the said period. In this connection, it is now well known that Extra Departmental Branch Postmasters are also holders of civil posts and are eligible for Constitutional protections which are available to civil servants. The question that arises here is as to why the applicant did not perform

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duty. The obvious answer is that he was prevented from performing duty as a result of his having been put off duty pending enquiry and subsequently by the issue of the penalty order. With the decision setting aside the penalty order at the level of the Director of Postal Services and further decision dropping even de novo disciplinary proceedings, there is little justification for the earlier putting off duty to stand. We are accordingly of the view that from 2-8-1979 to the date of his reinstatement in service on 5-8-1983 the applicant is entitled to pay and allowances as EDBPM even though he did not perform duties as such because such non-performance of duty is a result of action by the respondents."

The respondents are therefore directed to make the payment of the allowances due to ^{the applicant} ~~her~~ for the said period within three months from the date of receipt of this order.

The application is allowed as above.


(C. VENKATARAMAN)
ADMV. MEMBER


(G. RAMANUJAM)
VICE CHAIRMAN

23-11-1987

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