

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.362/1999.

Wednesday this the 4th day of July 2001.

CORAM:

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

(By Advocate Shri P.Ramakrishnan)

vs.

1. The Superintendent of Post Offices,
Changanacherry Division,
Changanacherry.
2. P.D.Sukumaran,
Sub Divisional Inspector of
Post Office, Kanjirappally Sub Division,
Kanjirappally.
3. The Sub Divisional Inspector of
Post Offices, Kanjirappally
Sub Division, Kanjirappally.

(By Advocate Shri R.Prasanthkumar, ACGSC)

The application having been heard on 4th July 2001 the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant an extra Departmental Delivery Agent (EDDA for short) Anikad P.O. has filed this application challenging the legality, propriety and correctness of the order dated 19.3.99 issued by the 2nd respondent putting him off duty purportedly under Rule-9(1) of the P&T ED Agents (Conduct & Service) Rules-1964. The applicant has alleged in

the application that the impugned order has been issued out of malafides of the 2nd respondent because the applicant refused to apply for leave from 9.7.1998 to 16.7.1998 as directed by the 2nd respondent because he had not participated in the strike. The main ground on which the applicant assails in the impugned order is that the put off duty of the applicant is not as per Rules since no enquiry for any mis-conduct or any allegation was pending or even contemplated at the time when the impugned order was issued.

2. The respondents though have filed a very lengthy reply statement, have not anywhere stated that an enquiry against the applicant for any mis-conduct or allegation was pending on the date on which the impugned order was issued nor is it stated that any such enquiry was even contemplated.

3. Shri Prasanthkumar, the learned counsel of the respondents conceded that on the date of the impugned order, no enquiry against the applicant was pending, but attempted to support the impugned order stating that after the filing of this Original Application, an enquiry was held against the applicant which resulted in issuance of an order imposing a penalty of dismissal from service. Learned counsel of the applicant stated that against the order of dismissal, the applicant has filed an appeal and argued that an enquiry held subsequent to filing of this Original Application impugning the order of suspension would not validate the impugned order, because on the date of the impugned order, there was no justification for suspending the applicant, as no enquiry was

pending admittedly. We find considerable force in the argument of the learned counsel. An ED Agent can be placed under suspension under Rule 9(1) of the ED Agents Conduct and Service Rules, only if an enquiry is pending against him for any misconduct or allegation. As no enquiry was pending against the applicant on 19.3.99, the impugned order A-6 is unsustainable and is liable to be set aside.

4. In the light of what is stated above, we allow this application and set aside the impugned order A-6 with all consequential benefits. No costs.

Dated the 4th July 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

rv

Annexure A-6: True copy of Memo No.DA/50-1 dated 19.3.1999
issued to the applicant by the 2nd respondent.