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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

(Signature)

Registration No. T.A. 1109/87(T)
(Writ Petition No. 192/83)

Suresh Chandra Srivastava

..Petitioner

verses

Union of India & others

..Respondents.

Hon. Mr. Justice K. Nath, V.C.
Hon. Mr. K. Obayya, A.M.

(Hon. Mr. Justice K. Nath, V.C.)

Writ Petition No. 192/83 "S.C. Srivastava vs.
Union of India & others" of the High Court of Judicature
Allahabad, Lucknow Bench, Lucknow is before this Tribunal
under section 29 of the Administrative Tribunals Act,
1985 for quashing the order dated 30.10.82 (Annexure -1)
whereby the applicant was put off duty with effect from
that date.

2. There was a Branch Post office at Behta Pakauri
District Sitapur where the petitioner Suresh Chandra
Srivastava was appointed on 11.1.1971 as Extra Departmental
Branch Post Master. He claimed to have continued to work
till 30.10.1982 when he was put off duty by the impugned
order.

3. The grievance of the applicant is that the impugned
order is invalid because no departmental enquiry was
pending against him which is a condition precedent to
the passing of a put off order under Rule 9 of Extra

Departmental Agents (Conducts and Service) Rules, 1964
(for short 'the Rules').

4. The case of the respondents is that while the petitioner was working as E.D.B.P.M., the Branch post office was upgraded on 22.2.80 to be sub post office, whose working hours were from 11 A.M. to 4 PM. It was said that the petitioner was not only working as E.D.S.P.M. but was also working as a primary school teacher in the same area, with the result that the duty hours of teacher conflicted with the duty hours of post office. It was alleged that a complaint had been lodged against the petitioner's failure to perform duty regularly in respect of which a preliminary enquiry was conducted and it was found that the work of the post office, especially, the telephone remained unattended as the post office and the primary school were functioning at two different places. It was next said that the applicant was asked to resign from one of the posts but he did not even reply. It is under these circumstances that the petitioner was put off duty by the impugned order.

5. The aforesaid facts, as stated in the counter are not denied. ~~but there~~, In para 4 of the rejoinder the statement in para 3 of the counter is admitted that the working hours of the upgraded sub post office were from 11 AM to 4 PM, and in para 5 of the rejoinder there was no specific denial of the statement in para 4 of the counter that ~~while~~ working hours of the post office and the school where the petitioner was the teacher clashed with each other on account of which the work of the post office remained unattended. Of course, it was stated in a general way that the contents of para 4 were denied. Similarly, there was no denial of

the statement in para 5 of the counter that the petitioner was asked to resign from one of the posts by letter dated 2.3.80 but he did not reply. The statement in para 5 of the rejoinder is that the respondents have no legal sanction to require the applicant ^{to} resign.

6. It was also urged by the learned counsel for the respondents that the petitioner did not avail of the remedy of appeal provided under rule 10 of the Rules and therefore, the petition was premature. This Writ Petition was filed in the High Court on 21.1.1983.

7. We have heard the learned counsel for the parties and we notice that on the face of it, the impugned order of putting off the applicant was not in accordance with the provisions of rule 9(1) of the Rules which runs as follows:

"Pending an enquiry into any complaint or allegation of misconduct against an employee, the appointing authority or an authority to which the appointing authority is subordinate may put him off duty;"

8. It is clear enough that the power to put off duty of an EDBPM could be exercised only when an enquiry was pending. The learned counsel for the respondents admitted that the enquiry in which it was found that the applicant/petitioner was not attending to the post office because he was holding two jobs at the same time, was only a preliminary enquiry, and that no charge sheet was ever framed or served upon the applicant. The impugned order, therefore, is invalid and cannot be sustained.

9. Nevertheless, the question is whether having regard to the particular facts and circumstances of the case, the petitioner should be given any relief. In the first place, it is clear that Rule 10 provided for an appeal against an

putting off order for which Rule 11 prescribed a limitation of three months. Perhaps the petitioner could have had his remedy from the competent appellate authority if he had filed the appeal departmentally instead of filing the Writ Petition. The learned counsel for the petitioner says that the mere availability of an alternative remedy is no bar to filing of the writ petition. He has referred to the case of Anoop Kumar vs. Meerut Development Authority (1985, Allahabad Law Journal 1107). There can be no quarrel with that proposition. At the same time, there can be no doubt that it is not a matter of right to the petitioner to file writ petition without availing of alternative remedy. Between 1982 and 1990, 8 years have elapsed and it would indeed be harsh to relegate the applicant to the alternative remedy of appeal; that is the factor which must be borne in mind by this Tribunal while considering what relief may be given. The recognised principle is that a person cannot get benefit of his own laches.

10. It is also true that if the department wanted to act upon the complaint and preliminary enquiry report, they should have given an opportunity to the applicant to show cause in a properly constituted disciplinary enquiry, but in the midst of these legal situations the admitted fact is that the applicant was not in a position to discharge his duties as a E.D.S.P.M. because his working also as a primary school teacher. It is not stated by the applicant in his petition or in rejoinder that he did actually discharge the duties of EDSPM in addition to his working as a Primary School teacher. Once it is admitted that the working hours of the school and the post office were concurrent, it was just not possible for the petitioner to discharge his

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duties with the post office. Indeed in para 10 of the rejoinder the petitioner said that he never absented himself from duty and instead proceeded on leave and made arrangements of his substitute under paragraph 572 A (B) of P&T Manual, Volume IV. In para II it was stated that the work of the post office was being regularly done by Smt. SurajKumari to the knowledge of the respondents and that the lady had been recognised as such by implication by the opposite parties. In para 10 of the counter, it was specifically stated that the petitioner had absented himself from duty with effect from 22.11.82; that no leave was ever sanctioned by the appointing authority, nor any substitute was approved by the competent authority. It was further stated that Smt. Suraj Kumari is the own wife of the petitioner and her engagement was absolutely improper and illegal. The fact of Smt. Suraj Kumari being the petitioner's wife, is not disputed.

11. On careful consideration of the features and circumstances of the case we are of the opinion that while the impugned order of putting off the applicant may be quashed as ultra vires, the petitioner should not get any consequential relief. Indeed the petitioner has not set out any specific consequential relief in the petition.

12. In the result, the impugned put off duty order (Annexure -1) dated 30.10.82 is quashed, but no further relief in any respect is awarded by this Tribunal to the petitioner. The parties shall bear their own costs.

Subba
ADM. MEMBER.

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VICE CHAIRMAN.

Dated the 8th May, 1990.