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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 242 of 1989. 198  
T.A. No.

9.8.90.  
DATE OF DECISION

R.N. Mokharkar Petitioner

Mr D.B. Watthare, Advocate for the Petitioner(s)

Versus  
Ministry of Communications Respondent

Mr S.U. Gole, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. I.K. Rasgotra, ~~Member~~ Member (Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW BOMBAY BENCH  
NAGPUR.

O.A.242/89.

Shri R.N.Mokharkar .... Applicant.  
versus  
Ministry of Communication  
and others ... Respondents.

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Sri I.K.Rasgotra, Member(Admn).

For the applicant.- Mr D.B.Watthare, Advocate

For the respondents- Mr S.U.Gole, Advocate

Date of hearing- 7.8.90

Date of Order - 9.8.90.

JUDGMENT & ORDER :

G.SREEDHARAN NAIR, VICE CHAIRMAN.

The applicant while working as Extra-Departmental Branch Postmaster was put off duty by the order dated 14.6.1988 on the ground of pendency of disciplinary proceedings. Thereafter, his services were terminated by the order dated 2/4.1.1989. The applicant prays for quashing the aforesaid orders. It is urged that no disciplinary proceedings were initiated against the applicant and hence the order putting him off duty is illegal. The order of termination is assailed on the ground that it is violative of Article 311 of the Constitution of India since it was without the issue of a Memorandum of Charge that the termination was ordered.

2. The respondents have filed reply where it is stated that an enquiry was started against the applicant on 25.5.1988 when the statement of the applicant was recorded, in the course of which he ~~stated~~ <sup>stated</sup> ~~said~~ that he is ready to make good Rs.1,200/- being the amount of the Money Orders wrongly paid by him. The termination is

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sought to be supported as based on Rule 6 of the Extra-Departmental Agents( Conduct &Service)Rules, 1964, as the applicant has not rendered three years of continuous service.

3. Sub-rule (1) of Rule 9 of the Extra-Departmental Agents(Conduct & Service)Rules enables to put an employee off duty pending an enquiry into any complaint or allegation of misconduct against him. Evidently, the order dated 14.6.88 putting the applicant off-duty was passed in exercise of the powers conferred under the aforesaid provision. It is seen from the reply filed by the respondents that there was an enquiry into the complaint against the applicant that the amount as per certain Money Orders was not paid by him. However, no Memorandum of Charges was issued against the applicant. Rule 8 of the Rules lays down the procedure for the imposition of a penalty on an Extra-departmental Agent, wherein it is provided that the penalty of dismissal or removal from service shall not be imposed except after an enquiry in which the employee is informed of the charges against him and has been given a reasonable opportunity of being heard in respect of the same.

4. The order terminating the services of the applicant is seen to have been passed under Rule 6 of the aforesaid Rules. According to that Rule, the service of an employee who has not already rendered more than three years of continuous service, can be terminated at any time. This order is seen to have been passed immediately after the investigation into the complaint against the applicant. In the circumstances, it was pressed by the counsel of the applicant that though the order is ex facie innocuous, it is really punitive and as such, it has to be quashed.

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There is force in the submission. Evidently, it was pending enquiry into the complaint against the applicant, he was put off duty. It is seen that the imputation against the applicant is one of gross misconduct in not paying the amount as per certain Money Orders to the persons to whom it should have been paid. ~~As such,~~ it is clear that the aforesaid misconduct was the foundation for terminating the services of the applicant. It is settled that the Extra-Departmental Agents are also entitled to the protection of Article 311 of the Constitution of India. Hence, the order terminating the services of the applicant without affording him an opportunity of being heard cannot be sustained in law.

5. In the result, the order dated 2/4-1-1989 terminating the services of the applicant is hereby quashed.

6. The respondents are directed to reinstate the applicant in service forthwith. He shall be deemed as having been in continuous service, but he shall not be entitled to the wages during the period when he has not worked against the post.

7. The application is disposed of as above.

*S. P. Singh*  
(I.K. Rasgutra)  
Member(A)

*G. Sreedharan Nair*  
9-8-90  
(G. Sreedharan Nair)  
Vice Chairman.

S.P. Singh/  
8.9.90.

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