

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 26 JUL 1988

APPLICATION NOS.

553 to 556, 987 to 990/87(F)
& 185 to 187/88(F)

Applicants

Respondents

Shri Peter J D'Sa & 8 Ors

V/s The Supdt. of Post Offices, Udupi & 8 Ors

To

1. Shri Peter J D'Sa
Branch Post Master
Kalarkalabetta Post
Via Santhekatte
Udupi Taluk
 2. Shri B. Kusha Poojary
Extra Departmental Agent
Haradi Branch Post Office
Brahmavar, Udupi Taluk
 3. Shri Seshachala Murthy
Branch Post Master
Thogansi
Shimoga District
 4. Shri M.N. Kempalingaiah
ED Branch Post Master
Muthugadahalli
Mayasandra
Tumkur District
 5. Shri K.L. Loni
 6. Shri J.R. Rangaswamy
 7. Shri Shivekumar
 8. Shri M.Y. Rajashekerappa
- (S1 Nos. 5 to 8 -

C/o Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050)

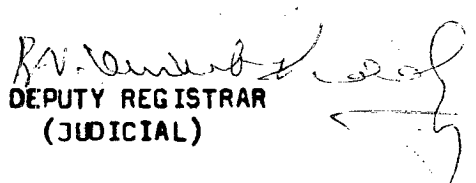
9. Shri H.A. Swamigowda
S/o Shri Annagowda
Hadrangi Village
Arkalgud Taluk
Hassan District
10. Shri B.G. Sridharan
Advocate
'Ram Dooth'
No. 24, Yamuna Bai Road
Kumara Cot Layout
High Grounds
Bangalore - 560 001
11. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
12. The Superintendent of Post Offices
Udupi Division
Udupi
Dakshina Kannada District
13. The Post Master General
Karnataka Circle
Bangalore - 560 001
14. The Secretary
Department of Communications
'Sanchar Bhavan'
New Delhi - 110 001
15. The Director General & Secretary
Post & Telegraph Department
New Delhi - 110 001

16. The Senior Superintendent of
Post Offices
Shimoga Division
Shimoga
17. The Superintendent of Post Offices
Tumkur Division
Tumkur - 572 102
18. The Superintendent of Post Offices
Bijapur Division
Bijapur
19. The Superintendent of Post Offices
Hassan Division
Hassan
20. The Superintendent of Post Offices
Mandya Division
Mandya
21. Shri M.S. Padmarajiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal in
the above said applications on 15-7-88.

Encl : As above


DEPUTY REGISTRAR
(JUDICIAL)

(87)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

Dated the 15th day of July, 1988.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY VICE CHAIRMAN

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

APPLICATIONS NOS. 553 to 556 OF 1987,
C/w 987 to 990 OF 1987
& 185 to 187 OF 1988.

In Applications 553 to 556/87:

1. Peter J D'Sa S/o Joseph D'Sa,
50 years, Branch Post Master,
Kalarkalabetta, P.O. via. Santhekatte,
Udupi Taluk.
2. E. Kusha Poojary S/o Late Raju-
Poojari, 26 years, Extra Depart-
mental Agent, Haradi Branch P.O.
Brahmavar, Udupi.

Applicants

(By Sri B.G. Sridharan, Adv. for the applicants)

-vs.-

1. Superintendent of Post Office,
Udupi.
2. Post Master General
Karnataka Circle
Bangalore
3. Union of India, Deptt. of Communica-
tion, by its Secretary,
'Sanchar Bhavan'
NEW DELHI.

Respondents.

(By Shri M.S. Padmarajaiah, Sr. Central Govt. Standing
Counsel for respondents.)



In Applications: 987 to 990/87:

1. Seshachala Murthy
S/o Hanumanth Nadig,
EPM, Thogansi,
Shimoga Dist.
2. M.N. Kempalingaiah
S/o Late Nanjegowda,
EDBPM, Major,
Authugadahalli, Mayasandra,
Tumkur Dist.
3. K.L. Loni S/o L. Loni,
EDBPM, Major, Bijapur Dist.
4. J.R. Rengaswamy S/o R. Ramanna,
EDBPM, Kunigal Tq. Tumkur Dist. Applicants
(By Shri M. Baghavendra Achar, Adv. for applicants)

-vs.-

1. Director General and Secretary
Post and Telegraph Department,
New Delhi
2. Sr. Superintendent of Post Offices
Shimoga Division, Shimoga.
3. Superintendent of Post Offices
Tumkur Division, Tumkur
4. Superintendent of Post Offices,
Bijapur Division, Bijapur. Respondents.

(Sri M.S. Padmarajaiah, Sr. Central Govt. Standing
Counsel, for Respondents).



In Applications: 185 to 187/88(F):

1. Sri H.A. Swamigowda
S/o Annegowda,
Madurangi village,
Arkalgud Tq. Hassan Dist.
2. Sri Shivakumar,
EDDA/MC., Valageranese EO,
a/w R.T. Pote SO-571426 Applicants

contd....

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3. Sri M.Y.Rajashekarappa
EDBPM(Put off),
Bellur B.O.
Ripponpete q/w .. Applicants.

(By Shri M.Raghavendra Achar, Adv.for applicants)

-vs.-

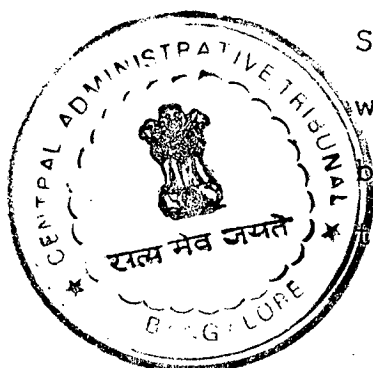
1. Union of India
Deptt. of Communications
represented by its Secretary,
New Delhi.
2. Post Master General
in Karnataka, Bangalore.
3. Superintendent of Post Offices
Hassan Division, Hassan.
4. Senior Superintendent of
Post Offices, Shimoga Division,
Shimoga.
5. Superintendent of Post Offices,
Mandya. .. Respondents.

(By Shri M.S.Padmarajaiah, Sr.Standing Counsel for
Central Govt., appearing for Respondents)

These applications coming on for hearing,
HON'BLE MR. L.H.A. REGO, MEMBER(A), made the
following:

O R D E R

These are in all 12 applications filed under
Section 19 of the Administrative Tribunals Act, 1985,
wherein the prayer, taking into account that amended
by I.A.No.II, dated 27-10-1987, in the case of Applica-
tions Nos.553 and 554 of 1987, ~~as~~ as follows:



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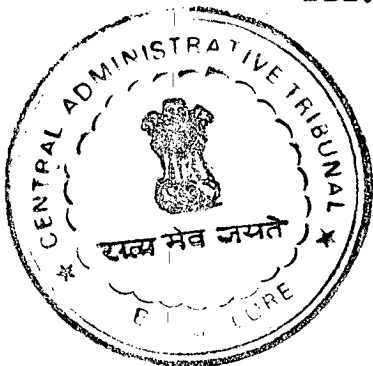
I. Applications Nos. 553 to 556
of 1987(F):

- (i) That Rule 9 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 ["1964 Rule", for short], be declared and struck down, as unconstitutional, null and void;
- (ii) That the respondents (R) be directed to pay to the applicants Subsistence Allowance ('SA' for short), as paid to the other employees of the respondent department, from the date they were "put off duty";
- (iii) That R1 be directed in the interest of justice, to permit the applicants, to avail of the help of one of their colleagues as Defence Assistants (DAs, for short) in the departmental enquiry (DE, for short) initiated against them.

II. Applications Nos. 987 to 990 of 1987(F):

and

III. Applications Nos. 185 to 187 of 1988(F):



That Rule 9(3) of the 1964 Rules, be struck down and the respondents be directed to pay salary and allowances (to the applicants) attached to their posts, from the date they were "put off duty", till the conclusion of the D.E.

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2. Since the facts in all these applications are analogous and the question of law to be determined is the same, we propose to dispose of these applications, by a common order.

3. Before we recount the salient facts, which gave rise to each of these three sets of applications, which for ease of reference, we would designate as Sets I, II and III respectively, in the order shown as above, it would be rewarding to go into the annals of evolution, of the Post and Telegraphs Department over the years, since its inception, as that would illumine and bring into focus, the vista and perspective, of each of these three sets of cases, in all their reality, to help determine the various questions urged therein.

4. The Extra Departmental Agent ('EDA', for short) system, is said to have taken inception in the Department of Posts and Telegraphs ('Department' for short), as long back as in 1854 i.e., nearly a century and three decades ago. The object underlying was, a judicious blend of economy and efficiency, in catering to postal needs of the rural communities dispersed in remote areas, these needs being restricted and infrequent. The Department therefore, hit upon the idea of availing of the services of school masters, shopkeepers, landlords and such other persons in a village, who had the faculty of a reasonable standard of literacy and adequate means of livelihood and who therefore, in

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their leisure hours, could assist the Department, by way of gainful avocation and social service, in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by that Department for the purpose. Persons in the above category, readily volunteered themselves to serve the Department in that manner, motivated more by the special status that such service conferred on them in the village, than the token financial incentive offered.

5. Thus, came into existence the EDA system, which gained vigour and impetus, with the advent of Independence and thereafter, when the postal needs in villages and smaller towns acquired momentum, apace with country's development, in the post-independence era. By and by, the activities under EDA system increased and covered a wide gamut of duties such as: receipt and despatch of mail, booking of money orders, registration of letters and parcels, delivery of unregistered letters, registered articles, inclusive of letters and parcels, payment of money orders, saving banks works (small savings), booking and delivery of telegrams, booking and receipt of telephone calls, ^{to which} came to be entrusted to the EDA Branch Post Offices. Small Savings Bank work alone, reflective of

economic



economic progress in rural areas, occupied a major part of the hours of duty, of the ED Branch Post Masters ('EDBPM', for short).

6. Since Independence, the Department, has in keeping with the above situation, vastly expanded the network of postal offices in the rural, backward, hilly and remote areas of the country. At present, there are as many as 1,45,000 post offices operating in the country, of which, 1,17,914 i.e., nearly 80%, function in rural areas. Since the Department did not consider it feasible, on grounds of economy and comparative lesser intensity of postal traffic, to man and operate the post offices in rural areas, with whole-time departmental employees, it took recourse to the alternative, of opening of what are known as ED Offices.

7. The ~~manual~~ working hours of an ED Office are on a maximum five. Wherever this norm exceeds, on account of higher intensity of postal traffic, the Department has issued orders to convert an ED Office, into a regular Departmental Post Office.

8. Of the total strength of 6 lakh employees in the Department, the ED Agents constitute as much as about 3 lakhs i.e., nearly 50%. The ED Agents, therefore, form the backbone of the rural postal service in the country. Depending upon the workload

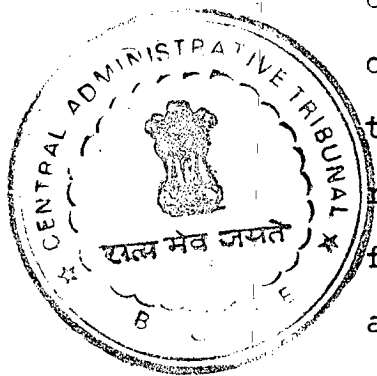
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and the nature of work required to be performed in various ED Offices in the country, the Department has categorised EDAs accordingly, fixing the minima and maxima, of the consolidated allowances admissible to them.

9. At the time the IIIrd Central Pay Commission was set up in 1970, to consider revision of emoluments of the Central Government employees, a One-Man Committee was appointed, to enquire into the wage-structure and service conditions of the EDAs. Similarly, as a sequel to the setting up of the IVth Central Pay Commission, a One-Man Committee known as the SAVOOR COMMITTEE was appointed, in November 1984 to examine the pay-structure of the ED employees and the procedure for periodical review of their allowances. This Committee is said to have submitted its report to the Government of India in August 1986 for its consideration making inter alia recommendations such as: abolition of ED Sub Post Offices; norms of minimum distance between ED Post Offices, and other norms inclusive of financial performance for these offices; abolition of the post of Mail Overseers; equa-
tion of various categories of ED employees with their regular departmental counterparts in terms of their functions and the pattern of emoluments and various allowances to be paid to them; payment of gratuity etc.



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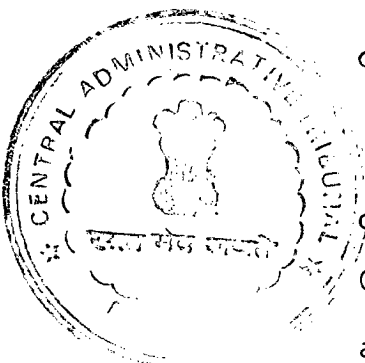
10. The SAVOOR COMMITTEE proposed the following equation, between ED employees and their regular counterparts in the Department:

S. No. E.D.		Category of posts	Pay scale of regular posts. Rs.
		Regular	
(i)	Branch Post Master.	Cash Overseer, Head Postman, Deptl. Branch Post Master.	950-20-1150-1400
(ii)	Delivery Agent.	Postman	825-15-900-20-1200
(iii)	Mail Carrier	Group-D post	750-15-900-20-1200
(iv)	Packer	-do-	-do-
(v)	Mail Man	-do-	-do-

The Committee had recommended, that the level of remuneration of the EDBPM and EDDA, be regularised at 75% and 35% respectively, of the median of the pay scale of their regular counterparts (as above), in the Department and that in the case of the rest, there need be no reduction in the hourly departmental rate.

11. According to the above Committee, 41,270 post offices have only one hour's working between 1 to 2.5 hours

12. The Postal Services Board ('Board' for short) duly examined the various recommendations of the above One-Man Committee and accepted some of them. It did not accept the recommendations relating to ED Sub-Post Offices



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and ED Sub Postmasters ('EDSPMs' for short). As against a total strength of 1,11,645 EDBPMs, that of EDSPMs is 3,500, after downgradation, with due regard to the minima of 4 hours' workload. The EDSPMs draw only marginally higher remuneration than the EDBPMs. The ED Sub Offices which are kept open for 5 hours, offer a wide spectrum of postal service.

13. The Board partly accepted the recommendation of the Committee regarding abolition of the cadre of Mail Overseers, in reducing its strength from 5,376 to 3,548.

14. The Board considered it fair to remunerate the EDAs, not only for the actual quantum of work performed, but also for "attendance time", taking into account the inevitable "idle time" between transactions. In order to provide minimum postal facilities in rural areas, it considered necessary to keep every ED Post Office open, for at least 3 hours a day.

15. As stated earlier, the EDAs which number about 2 lakhs, in the total strength of 6 lakh employees in the Department, are a potent ~~work~~⁴⁸-force, engaged in providing basic postal infra-structure in rural areas. The Board felt, that even though the EDAs may have an alternative source of income



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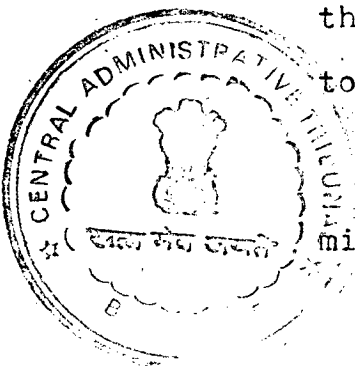
and are required to devote only a part of their time to postal work, their remuneration needs to be suitably enhanced, as an incentive to whole-hearted attention to postal work, in rural areas. The current trend is to employ educated rural youth, as EDBPMs in place of retired officials, rural school teachers and shop-keepers, who were preferred in the past. The Board further observes, that the genuine aspiration of as many as 3 lakh ED employees, who play a pivotal role in postal service, in rural areas, in none too favourable conditions, needs to be considered with realism, in enhancing their emoluments suitably, as to bear parity with those of the Central Government employees, pursuant to the recommendations of the IVth Central Pay Commission, taking duly into account, that their employment as part-time and that they are required to have an independent source of income.

16. Taking all the above factors into consideration, the Board is of the view, that the wage-structure of the EDAs should be such, so that the EDBPM who is the lynch-pin in the ED system, is given the minimum total remuneration of Rs.300/- per mensem.

17. The Board has recommended the following minima and maxima of wages, for each category of

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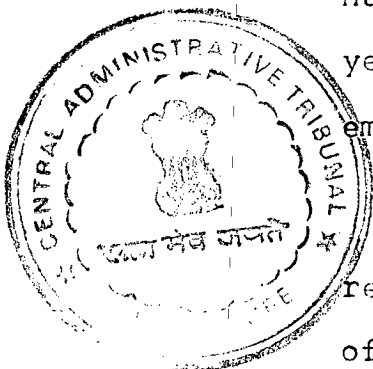


ED employees depending upon the workload:

S. No.	Category of post.	Existing wage per mensem.		Proposed wage per mensem.	
		Min. Rs.	Max. Rs.	Min. Rs.	Max. Rs.
(1)	(2)	(3)	(4)	(5)	(6)
(i)	EDBPMs ..	227	275	300	465
(ii)	EDSBPMs ..	320	383	420	645
(iii)	EDAs/ED Mail Carriers:				
	a) for less than 2 hrs. of work.		191		240
	b) for more than 2 hrs. of work	214	254	270	420

18. At present, the EDAs are eligible for ex gratia gratuity, on superannuation, at the rate of one month's allowance, for every 3 completed years of service, subject to a maximum of Rs.1000/-. This is raised to the maximum limit of Rs.3000/- with qualifying service reduced from 15 years to 10 years. Also, half-month's gratuity is allowed for every completed year of service, subject to a maximum of 6½ months' emoluments last drawn.

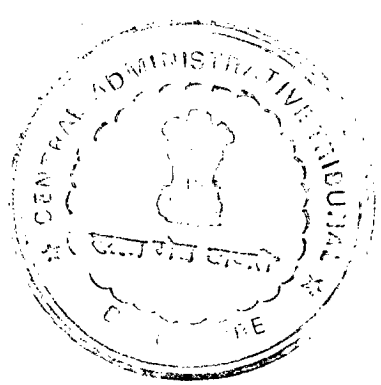
19. With the above prologue, let us now recapitulate the facts in each of the above 3 sets of applications, in so far as they are relevant to the questions to be determined therein.



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SET NO. I:

20. Applicant(A) 1 was working as EDBPM, Kalarkalabetta, Udupi Taluka in Dakshina Kannada district, since the last 19 years or so. He was "put off duty" on 7-2-1986, on account of his failure to credit to the recurring deposit account, the money received by him from a certain depositor. A memorandum of charges was therefore served on him on 22-10-1986, and an enquiry ordered thereon, on 13-11-1986. The enquiry was held on 16-1-1987, when the applicant had nominated Sri U.A. Ramarao, retired Sub Post Master, Dharmastala as DA. Thereafter, he nominated another person, viz., Shri N.K. Madival, Postal Attendant, Kodiyalbail Post Office, Mangalore as DA, in place of Sri Ramarao, who declined on account of illness. That was approved by the Senior Superintendent of Post Offices, Mangalore Division, by his letter dated 24-4-1977. The next date of the enquiry was fixed on 8-6-1987, but in the meanwhile, the Senior Superintendent of Post Offices, Mangalore, by his letter dated 5-5-1987 withdrew on administrative grounds, the permission granted by him to Sri Madival, to assist the applicant. This was intimated to the applicant, by the Inquiring Authority ('IA' for short) on 8-5-1987, when he was asked to nominate another person, in place of Sri Madival. Thereafter, the enquiry was held on 9-7-1987, but the applicant did not turn up. Instead, he sent an



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application on 8-7-1987, along with a medical certificate, stating that he was unwell and requested for postponement of the enquiry by 10 days. Acceding to his request, the IA adjourned the enquiry to 10-8-1987.

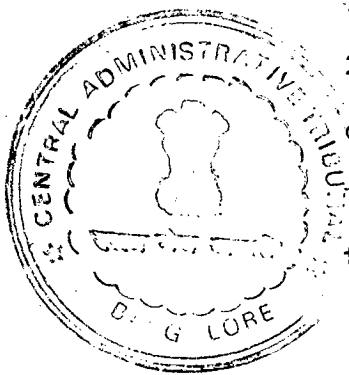
21. A-1 alleges, that the enquiry is being conducted against him, even before he could engage another person as his DA and that this is illegal.

22. A-2 is stated to be working as Extra Departmental Delivery Agent ('EDDA' for short), since long. The Department held him responsible for non-delivery of letters entrusted to him and for not transferring cash and money order forms received by him. He was, therefore, "put off duty" on 14-9-1985, by A-1 and a chargesheet was served on him, on 23-12-1985. He denied the charge on 27-1-1986. Some time is seen to have elapsed, in holding the enquiry, as the IA appointed initially, declined. Another IA was appointed in his place on 4-3-1986 and the enquiry was fixed on 26-3-1986. The applicant represented, that he could not secure anyone as DA, at his headquarters and therefore, requested for permission to nominate one Sri Aiyappan, Assistant Postmaster, Mangalore Head Office, to assist him in the proceedings. This however was not agreed to, by the Disciplinary Authority, who advised the applicant to


choose

choose anyone as his DA, who was working ^{at} nearby stations. Despite, adequate time granted for this purpose, the applicant failed to do so; hence the enquiry was fixed on 19-5-1986, when the applicant was present, but without his DA. He was therefore allowed further time of five days, to nominate his DA. The enquiry therefore was fixed on 5-6-1986, which was attended by the applicant, along with one Sri U.A.Ramarao as his DA.

23. In the meanwhile, on 14-6-1986, the applicant appealed against the order of "putting him off" duty, which was negatived on 19-8-1986. He represented thereon, to the Superintendent of Post Offices, Udupi Division, which too was rejected on 23-1-1987, with instructions to the IA, to continue the enquiry. The enquiry was accordingly continued on 11-3-1987 and 12-3-1987, but, neither the applicant nor his DA was present on 11-3-1987. The applicant however ~~was~~ ^{he} attended the enquiry on 12-3-1987, but without his DA. He therefore orally requested the IA, to defer the enquiry by about a month, which was granted and accordingly, the enquiry was postponed to 20-4-1987 and 21-4-1987. The applicant was present on both these dates but not his DA, who is said to have expired in the meanwhile. The applicant was therefore allowed to nominate another DA.



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24. The applicant nominated one Sri P.V.Bhat, Postal Assistant in Puttur Division, as his DA, but the Senior Superintendent of Post Offices, Puttur, did not accord approval, as his services could not be spared. The date^{of} the enquiry ~~was~~^{is} next fixed between 26-6-1987 to 29-6-1987, when the applicant was present but without his DA. The enquiry however was conducted, as scheduled. The applicant nominated on 22-6-1987, one Sri N.K.Madival, Postal Assistant, Kodiyalbail, Mangalore, as his DA, but the Sub - Postmaster, Kodiyalbail, who was both the appointing as well as the controlling authority, did not approve of this nomination, as the services of Sri Madival could not be spared. The applicant was therefore advised on 30-7-1987, to nominate another person as his DA. That is how the matter stood, until the filing of the present applications.

25. Both the applicants still continue, as "put off duty". The respondents state, that there is no provision under the 1964 Rules, to pay SA to EDAs, ~~who~~^{de} "put off duty".

26. Both the applicants in Set-I of the applications contend, that they are entitled to SA, during the pendency of the enquiry, as paid to the regular employees of the Department and elsewhere, and that denial of the same is violative of Article 14 of the Constitution, and the principles of natural justice. They have therefore approached



this Tribunal for redress, challenging the vires of Rule 9 of the 1964 Rules.

SET II:

27. The 4 applicants in these cases, who were EDBPMs, were "put off duty", by the appointing authority on 30-3-1984, 6-11-1987, 29-12-1986 and 11-10-1982, respectively. A-1 was proceeded against, for failure to pay the money order amount to the payees. The charge was held as proved and he was called upon to submit his defence statement, if any. As he pleaded for sympathy, considering all aspects, he was reinstated in service, on 29-8-1986.

28. A-2 was involved in SB/RD frauds, for which a chargesheet was served on him on 28-9-1987 and a regular enquiry is in progress against him.

29. A-3 was "put off duty" and chargesheeted on 30-6-1987, on account of misappropriation of Government money. Enquiry against him is in progress.

30. A-4 was already removed from service after being "put off duty" for certain misconduct, as a result of which, he filed Application No. 775/87 before this Tribunal, for redress, which however, was dismissed on 29-1-1988.

31. These applicants in Set II of the applications, have challenged the vires of Rule 9 of the 1964 Rules, and have approached this Tribunal, for

payment



payment of salary and allowances attached to the posts held by them, from the date they were "put off duty", till the conclusion of the enquiry.

SET III:

32. A-1 was appointed as EDBPM, Hadrangi village, Arkalgud Taluk, Hassan District, and was "put off duty", on 14-4-1981 and ultimately removed from service on 27-3-1984.

33. A-2 was holding charge of the post of EDDA, in Valageremenasa BO, and was "put off duty" on 28-3-1987. Pursuant to the order of this Tribunal in Application No.237 of 1987 filed by him, the respondent took a sympathetic view and reinstated him in service on 1-7-1987.

34. A-3, who was working as EDBPM, Bellur, was "put off duty" on 23-4-1985, on account of certain irregularities committed by him, in payment of old-age pension, maintenance of cash balance etc., for which an enquiry was held against him. After completion of the enquiry, he was dismissed from service on 9-7-1987. His appeal thereon was rejected by the appellate authority, on 16-12-1987.

35. All these three applicants in Set III of the applications, have come to this Tribunal with a prayer for payment of salary and allowance attached to the

posts

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posts held by them, from the date of their having been "put off duty", till the conclusion of the enquiry and have challenged the vires of Rule 9 of the 1964 Rules.

36. Shri B.G.Sridharan, learned Counsel, assisted by Shri P.Venkatesh, appeared for the applicants in Set I and Shri M.R.Achar, learned Counsel, for those in Sets II and III, while Shri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel, appeared for all the respondents in all the three sets of applications.

37. Challenging the vires of Rule 9 of the 1964 Rules, ^{de} ~~and~~ the quintessence of the contention of Counsel for all the applicants is, that it offends Article 14(1)(1)(f) of the Constitution and Fundamental Rule ('FR' for short) 53, regulating grant of SA; and is therefore liable to be struck down as unconstitutional and ultra vires of the power; ^{that} ~~and~~ as laid down by the Supreme Court, the "master" and "servant" jural relationship, is not severed during the pendency of the ^{de} ~~proceedings~~; that the expenditure incurred on payment of salary to the EDAs, is debited to salaries under the major Head of Account; 355 of Postal Services, as in the case of the regular employees in the Department; that according to FRs 2 and 3, the salary of the applicants is debited to Civil Estimates; that the Fundamental Rules apply to the case of the applicants

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in the absence of any specific rule to the contrary and consequently, the applicants are entitled to SA according to FR 53; that according to Section 2(4) of the CCS(CCA) Rules 1965, a Government servant is defined as a person, who is a member of the service or holds a civil post under the Union and that as the posts held by the applicants are declared as civil posts, they automatically become civil servants; that consequently, when they are placed under suspension or "put off duty", they are entitled to SA, as in the case of a regular civil servant and to protection under Article - 311(2) of the Constitution, as otherwise, Rule 9 of the 1964 Rules, would be violative of Articles 14 and 16 of the Constitution; that the directions issued by the Director General of Posts and Telegraphs, New Delhi, that in the case of EDAs, only the outlines of Chapter-VI of the CCS(CCA) Rules, 1965 be followed and not the other rules are liable to be quashed, being without jurisdiction, in the absence of any specific power or rules; that since Rules 8 and 9 of the 1964 Rules, have no statutory force the orders of suspension and enquiry issued under those rules and the entire proceedings of the enquiry that ensued are vitiated; that taking into account the legal position as above, their clients were entitled to SA, during the period of their suspension, as in the case of the regular employees in the Department.

38. In the case of Set I of the applications, Shri Sridharan alleged, that the enquiry was being conducted against them without permitting them the

facility

facility of a DA, which was illegal and violative of natural justice and therefore pleaded, that the respondents be directed to permit this facility.

39. Shri Achar sought to brace up his case, relying on the following catena of decisions of the Supreme Court and other Courts: To begin with, he referred to the decision of the Bangalore Bench of the Central Administrative Tribunal, in Application No. 205/1987 (T. RAMA BHATTA v. UNION OF INDIA & ANR.) wherein, he said, it was directed, that the applicant be paid SA for the period he remained "put off duty", for a period exceeding 120 days, for no fault of his, construing the aim and object from the guidelines issued by the Director General, Posts and Telegraphs, in his Letter dated 24-2-1979 (vide pages 24 and 25 of SWAMY'S COMPILATION OF SERVICE RULES FOR POSTS & TELEGRAPHS EXTRA - DEPARTMENTAL STAFF (1983 Edition)). He therefore urged, that the applicants in Sets II and III, were entitled to payment of SA, according to this ruling of the Tribunal at least for the period of "put off duty" exceeding 120 days, for no default on their part.

40. He next relied on the decision of the Supreme Court in 1977 SCC (L & S) 374 (THE SUPERINTENDENT OF POST OFFICES & ORS. -vs.- P.K. RAJAMMA & ORS.) and in particular, invited our attention to paras 3 to 5 thereof, the relevant portions of which are extracted below:

"3. This Court in State of Assam v. Kanak Chandra Dutta (AIR 1967 SC 884) has explained

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explained what a civil post is. In that case the respondent who was a Mauzadar in the Assam Valley was dismissed from service in disregard of the provisions of Article 311(2). It was held that "having regard to the existing system of his recruitment, employment and functions", he was "a servant and a holder of a civil post under the State", and therefore entitled to the protection of Article 311(2). This Court observed:

.....a civil post means a post not connected with defence and outside the regular civil services. A post is a service or employment..
..... There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration.

A post, it was explained, exists apart from the holder of the post. "A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post". Turning now to the rules by which the respondents were admittedly governed, it appears that they contain elaborate provisions controlling the appointment, leave, termination of services, nature of penalties, procedure for imposing penalties and other matters relating to the conduct and service of these extra departmental agents. There is a schedule annexed to the rules naming the appointing authorities in respect of each category of employees. Rule 5 states that the employees governed by these rules shall be entitled to such leave as may be determined by the Government from time to time and provides



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that if an employee fails to resume duty on the expiry of the maximum period of leave admissible and granted to him or if an employee who is granted leave is absent from duty for any period exceeding the limit upto which he could have been granted leave, he shall be removed from the service unless the Government decides otherwise in the exceptional circumstances of any particular case. The services of employees who had not put in more than three years' continuous service are liable to be terminated at any time under Rule 6 for unsatisfactory work or for any administrative reason. The rules also indicate the nature of penalties which may be imposed on an employee and the procedure for imposing them. A right of appeal is provided against an order imposing any of the penalties on the employee. Various other conditions of service are also provided in these rules.

4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra-Datta's case are clearly satisfied in the case of extra departmental agents.

5. For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and agent. The difference between the relations of master and servant and principal and agent was pointed out by this Court in Lakshminarayan Ram - Gopal and Son Ltd. v. Government of Hyderabad (AIR 1954 SC 364: (1955) 1 SCR 293). On page 401 of the report the following lines from Halsbury's Laws of England (Hailsham - Edition) Volume 1, at page 193, Article 345, were quoted with approval in explaining the difference:

An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts

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under the direct control and supervision of his master, and is bound to conform to all reasonable orders given to him in the course of his work; and independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant.

The rules make it clear that these extra departmental agents work under the direct control and supervision of the authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the relationship between the postal authorities and the extra departmental agents is one of master and servant."



41. Shri Achar, therefore, stressed, that an EDA was not a casual worker but held a post under the administrative control of the State and that even though that post was outside the regular services, it was doubtless a post under the State, with a distinct jural relationship of 'master' and 'servant' so as to entitle his clients, to protection under Article 311(2) of the Constitution, and

consequently

consequently, to payment of SA, for the period of "put off duty", which expression he said, was actually synonymous with "suspension" but was coined by the Department as a clever ruse, to deprive the applicants, the benefit of SA during that period. He then cited the ruling of the Supreme Court in AIR 1959 SC 1342 (HOTEL IMPERIAL & ORS. -v.- HOTEL WORKERS' UNION) with specific reference to its following ratio, said to be relevant to the case before us:

"10. The first question therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. It is well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that



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the matter would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.
....."

42. Shri Achar contended, that the power of suspension, is a creature of the statute and that in the case of his clients, the jural relationship between "master" and "servant" was not snapped when they were "put off duty" and therefore, they were entitled to SA, during that period. Nothing could be more outrageous, he said, than to deny not only SA, but even salary and allowance, to an EDA, even when he had fully vindicated his innocence in the enquiry and merited clean acquittal. This outrage, he pointed out, got compounded with procrastination on the part of the Department, in the completion of



the enquiry, within the maximum period of 120 days stipulated, as more often than not, for no fault of the EDA, this enquiry got prolonged almost interminably, to the detriment of the EDA. It was thus at once apparent he submitted, as to how arbitrary and despotic, the provisions of Rule 9 of the 1964 Rules were, so far as the EDA was concerned.

43. Denial of SA during the period of "put off duty", Shri Achar stated, was a financial strain on the person concerned, so as to cause him serious handicap, in meeting his expenses in the course of participation in the enquiry, particularly if the place of enquiry was distant and therefore denied him reasonable opportunity in defending himself. He drew sustenance from the decision in AISLJ 1973 SC 356 (GHANSHYAM DAS SRIVASTAVA v. STATE OF MADHYA PRADESH) to bring home this point. The ratio of this decision is as below:

"5.There is nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance which was made to him on March 20, 1965 after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry officer based on that evidence is infected with the same defect. Accordingly,

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the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Art.311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings."

He then dwelt on the provisions of FRs 2 and 3 and their nexus with FR 53 and sought to bring out, that since the salary of his clients was debited to Civil Estimates and as there was no specific rule, which precluded them, from the purview of the provisions of the FR, the logical inference was, that his clients were entitled to SA under FR 53, during their period of "put off duty", which he said was synonymous to "suspension".

44. The provisions of FRs 2, 3 and 53 are extracted below, to facilitate reference at a glance and their implication in the present case:



"FR.2. The Fundamental Rules apply, subject to the provisions of Rule 3 to all Government servants whose pay is debitable to Civil Estimates and to any other class of Government servants to which the President may, by general or special order, declare them to be applicable.

FR.3. Unless in any case it be otherwise distinctly provided by or under these rules, these rules do not apply to Government servants whose conditions
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of service are governed by Army or Marine Regulations.

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FR.53(1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:-

(i) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil - Employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;

(ii) in the case of any other Government servant--

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

Provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of



of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses(i) and (ii) above.

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

(2) No payment under sub-rule(1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under

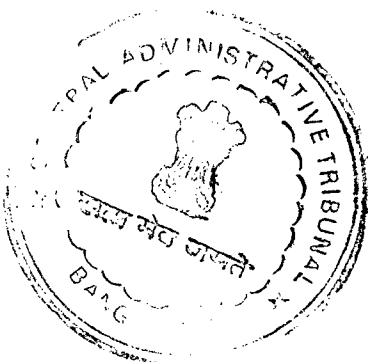
sub-rule (3) or sub-rule(4) of Rule 12 of the Central Civil Services(Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him."

The impugned Rule 9 of the 1964 Rules, is also extracted below for ease of reference:

"9(1) 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;

Provided that in cases involving fraud or embezzlement, an employee holding any of the posts specified in the Schedule to these rules may be put off duty by the Inspector of Post Offices, under immediate intimation to the appointing authority.

- (2) An order made by the Inspector of Post Offices under sub-rule(1) shall cease to be effective on the expiry of fifteen days from the date thereof unless earlier confirmed or cancelled by the appointing authority or an authority to which the appointing authority is subordinate.
- (3) An employee shall not be entitled to any allowance for the period for which he is kept off duty under this rule."



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Elaborating

Elaborating further on the premises aforesaid, Shri Achar contended, that the EDAs could not be treated as a class apart from the regular employees of the Department and discriminated against, by denying them SA, as this would be violative of Article 14 of the Constitution.

45. He then referred to the dicta of the Supreme Court in AISLJ 1983(2) SC 227 [STATE OF MAHARASHTRA v. CHANDRABHAN] to show that reduction of SA to Re.1/- per month (which was as good as denying SA as in the case of his clients) during the pendency of the appeal, after conviction, when the Government servant was on bail, was unreasonable and void and that he was entitled to normal SA. The following is the ratio of the decision relied upon by Shri Achar.

"18. Any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment, is violative of Article 311(2) of the Constitution as has been held by this Court in the above decision. Similarly, any criminal trial of a civil servant under suspension without payment of the normal subsistence allowance payable to him under the rule would be violative of that Article. Payment of subsistence allowance at the normal rate pending the appeal filed against the conviction of a civil servant under suspension is a step that makes the right of appeal



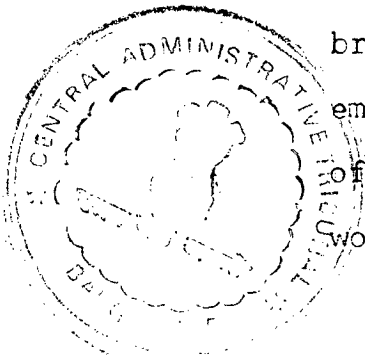
fruitful and it is therefore obligatory. Reduction of the normal subsistence - allowance to the nominal sum of Re.1 per month on conviction of a civil servant under suspension in a criminal case pending his appeal filed against that conviction, whether the civil servant is on bail or has been lodged in prison on conviction pending consideration of his appeal, is an action which stultifies the right of appeal and is consequently unfair and unconstitutional. Just as it would be impossible for a civil servant under suspension who has no other means of subsistence to defend himself effectively in the Trial Court without the normal subsistence allowance-- there is nothing on record in these cases to show that the civil servants concerned in these cases have any other means of subsistence-- it would be impossible for such civil servant under suspension to prosecute his appeal against his conviction fruitfully without payment of the normal subsistence allowance pending his appeal. Therefore, Baban's contention in the Writ Petition that the subsistence allowance is required to support the civil servant and his family not only during the trial of the criminal case started against him but also during the pendency of the appeal filed in the High Court or this Court against his conviction is correct. If any Provision in any rule framed under Article 309 of the Constitution is illusory or unreasonable, it is certainly open to the civil servant concerned to seek the aid of the Court for declaring that provision to be void. In these circumstances, I hold that the second proviso is unreasonable and void and



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and that a civil servant under suspension is entitled to the normal subsistence allowance even after his conviction by the Trial Court pending consideration of his appeal filed against his conviction until the appeal is disposed of finally one way or the other, whether he is on bail or lodged in prison on conviction by the Trial Court."

46. Shri Achar next sought to call in aid, the ratio of the decision of the Kerala High Court in 1980(3) SLR 726 /J.D.KATTAMPALLY v. UNION OF INDIA (KERALA)7 to the extent, it seemed beneficial to him. Referring in particular to para-3 of that decision, he said that the High Court had observed that the EDAs were part-time employees, as distinguished from regular or full-time employees in the Department and the degree of control over these two categories of employees was accordingly different. It was anomalous he argued, that while Rule 5(3) of the 1964 Rules, provided for payment of allowances normally payable to an EDA, to an approved substitute during leave, the EDA proceeding on leave was not paid any allowances. These aberrations in the rules he pleaded, could be suitably corrected, by bringing about a realistic correlation, with the regular employees of the Department, commensurate with the nature of duties performed and the workload shouldered. This would also apply to payment ^{of} SA he said.



47. In a later judgment, rendered by the same High Court in AISLJ 1982(2) Kerala, 156 (K.SARADANNA v. THE SUPERINTENDENT OF POST OFFICES), Shri Achar pointed

out that it had observed, that it was unable to agree to the submission made on behalf of the respondent, that the general principle of law governing suspension, should not be applied to the action of "put off duty". The relevant ratio of that decision is extracted below:

"It is difficult for the Court to accept that an order of put off must be treated differently from an order of suspension. The 1985 Rules do not contemplate a put - off action and the Rules do not contemplate an act of **suspension**. It is not because there is any material or legal distinction between the two courses of action that different phraseologies are used in the two sets of Rules. The reason for using the expression 'suspension' in one set of Rules and the expression "put off". In the other set of Rules is on account of the nature of the standing of the employees covered by the two sets of Rules. The 1965 Rules apply to regular Central Government employees and the rules apply to Extra Departmental staff. The extra departmental staff do not enjoy all the rights and privileges which the regular central Government employees enjoy. It must necessarily be on account of this differences in their legal status and standing that different names are suggested in the two sets of rules, for what is substantially a similar action. Whether an action is called suspension or put off, it has the effect of preventing the incumbent from attending his duties and drawing regular perquisites due to him. He is not out of service

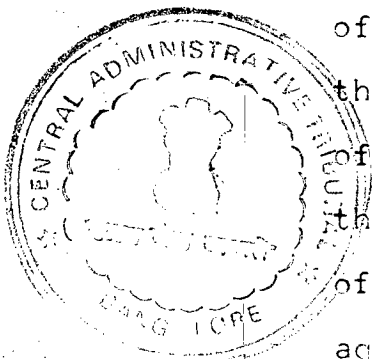


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service; in fact, he is very much in service. At the same time he is rendered inactive and he is deprived of certain privileges. These are the broad characteristics of the action of suspension and the action of put off. I am, therefore, unable to agree with the submission made on behalf of the respondent that the general principle of law governing suspension should not be applied to the action of put off."

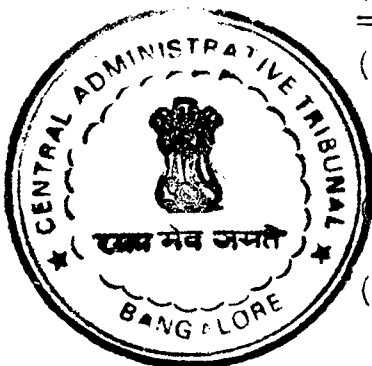
48. The Supreme Court he remarked, had viewed with sympathy, even the case of the casual labourers and had suggested a better deal for them, in regard to pay scales and service conditions as compared to the regular employees. The EDAs as compared to the casual labourers he pleaded, were ostensibly on a higher plane and deserved better treatment, in keeping with the principles enjoined by the Supreme Court on Government, as a model employer. Shri Achar referred to the observations of the Supreme Court in this regard in AIR 1987 SC 2342 (DAILY RATES CASUAL LABOUR, P & T DEPTT. v. UNION OF INDIA).

49. Shri Sridharan more or less told the line of argument of Shri Achar, in regard to challenge, to the vires of Rule 9(3) of the 1964 Rules, in respect of Set-I of the applications and in addition, pleaded that R-1 be directed to permit his clients, to avail of the facility of a DA in the inquiry in progress against them to defend themselves.



50. The respondents have filed their replies resisting each of these three sets of applications. Shri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government for all the respondents in the three sets of applications, countered^{ed} the challenge of the applicants to the vires of Rule 9(3) of the 1964 Rules, on the following grounds. He stated that unlike regular Government servants, who drew salary on well-defined pay scales and were governed by elaborate statutory rules, in respect of their terms and conditions of service, the EDAs were merely holders of civil posts, who were in receipt of a consolidated allowance at fixed rates, related to the work hours put in by them, as part-time employees (apart from their private avocation), and were governed by Non-Statutory 1964 Rules, and Government instructions issued from time to time. According to him, the following^{ed} were the chief distinguishing features, between the regular Government servants and the EDAs:

S. No.	Features	Regular Government servants.	EDAs
(1)	(2)	(3)	(4)
(i)	Age of entry in service:	24 to 26 years	No restriction, except minimum age of 18 years.
(ii)	Age of retirement:	58 years	65 years.
(iii)	Employment during suspension/"put off duty".	No other employment allowed during the period of suspension in order to be eligible for SA.	Allowed to continue main avocation, during "put off - duty", ED service being a supplementary source of income non-statutory.



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(1)	(2)	(3)	(4)

(iv)	Conduct Rules:	Statutory	Non-statutory.
(v)	Fundamental- Rules(FR):	(a)Applicable to whole-time Government servants. (b)FR 2 applies, as it relates to salary.	(a)Non-applicable, being part-time employees. (b)FR2 does not apply,as EDAs draw only consoli- dated allowance and not salary.
(vi)	CCS(CCA) Rules,1965:	Applicable.	Non-applicable, according to Rules 3 and 4 of the Manual of Appointments and Allowances of Offi- cers, of the Indian Posts and Telegraphs Department. Also <u>vide</u> G.O.I. MHA Notification in SRO 609 dated 28-2-1957.
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51. In view of the above heterogeneity, between the posts of regular Government servants and EDAs, Shri Padmarajaiah contended, that the various citations of the Supreme Court and other Courts, relied upon by both Counsel for the applicants, was of little avail to them. CHANDRA BHAN'S case in this context, was distinguishable, he said, as it related to a regular civil servant, who had no other means of subsistence and was entitled to ⁴²proper SA under the rules, while the applicants, he submitted, had adequate means of livelihood, from their avocation, apart from the EDA employment held by them.



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52. As regards KATTAMPALLY's case, Shri Padma-
rajaiah pointed out, that Shri Achar had conveniently
culled out, the portion of the judgment out of context,
artfully remaining silent on that portion of the
judgment, which was clearly adverse to him. He asserted
that the following observation of the High Court of
Kerala in that case, would set at rest, the contention
of Shri Achar:

"5. The question of application of the
provisions of Rule 53 of the Funda-
mental Rules or anything analogous to
that cannot arise in as much as per
sub-rules (2) and (3) of Rule 5 of the
rules, the extra departmental agent
is not entitled to any allowance during
the period when he is allowed leave. It
would even appear that the reference to
allowance in Rule 9 and Rule 9(3) of the
rules is not to subsistence allowance,
but to the consolidated allowance which
the extra departmental agent would have
been entitled to receive had he not been
put off duty. There is no order placing
the petitioner under suspension. Even
assuming that Ext.P-2 order, by which he
is put off duty, amounts to suspension,
in the sense that he is forbidden from
discharging his duties during the pendency
of an enquiry against him, as laid down
by the Supreme Court in V.P.Gindroniya v.
State of M.P. (A.I.R. 1970 SC 1494) (para-
graph 6 at page 1496), there is no justi-
fication for holding that a person placed
in the position of the petitioner is



126

entitled to subsistence allowance inasmuch as F.R.53 in terms could not apply to his case, and there is no other provision which enables him to claim subsistence allowance during the period he is put off duty pending enquiry initiated against him. The reference to allowance in rule 9 of the Rules, obviously not being to subsistence allowance, in any event, there is no justification for striking down that on any of the grounds urged by the petitioner in the writ petition and during the course of the argument by his - Counsel."

53. Referring to RAJAMMA's case, Shri Padma- stated, that the relationship of "master" and "servant" continued, during the period of "put off duty" of the EDAs and consequently, they were given the protection under Article 311(2) of the Constitution, in the course of the departmental enquiry, held against them, for their misdemeanour.

54. Shri Sricharan, learned Counsel for the applicants in Set I of the applications, alleged, that his clients were not afforded the above protection under the Constitution, as they were denied the facility of a DA, while conducting the enquiry against them, which was violative of the principles of natural justice. His clients were thus handicapped he said, in substantiating their defence and therefore pleaded that R-1 be directed to permit them the benefit of a DA.



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55. Shri Padmarajaiah, learned Counsel for the respondents, repudiated this allegation, stating, that the applicants in these cases had not cooperated in the smooth conduct of the enquiry, as was evident he said, from the details furnished in the reply to the applications. One of the applicants, he said, went on changing his DA now and again and yet the IA and the Disciplinary Authority were gracious enough to give him the necessary assistance.

56. We have heard these cases in extenso for three days, namely on 17-6-1988, 28-6-1988 and on 30-6-1988 and ⁴given our most anxious consideration, to the pleadings of both sides. We have also examined carefully, the relevant record and material placed before us, in their entirety, in the course of the hearing, not ignoring the historical context and background, which we have narrated at length, as a prologue to this judgment, on the basis of a note furnished by the Department.

57. It is seen from the above note of the Department, on the genesis of the EDA system, that over the years, the EDAs have formed the backbone of rural postal service in the country, in remote areas, not excluding inhospitable terrain and conditions and have over the years, rendered yeoman service to the Department. This system is said to have come into inception as long back as in 1854, before the regular

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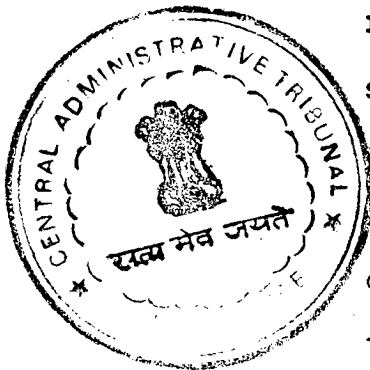


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post office system came into existence. The EDA system therefore, has noteworthy tradition and history of service behind it.

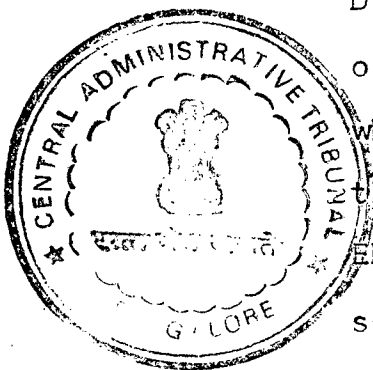
58. On attainment of country's Independence, the Department has admitted, that duties and responsibilities of the EDAs have increased manifold and the EDAs constitute nearly 50% of the total strength of the Department (3 lakh EDAs out of the total of 6 lakh employees in the P & T Department). Conscious of this background, the SAVOOR COMMITTEE felt the need of evolving an equation, between EDAs and corresponding categories of regular employees in the Department (vide para 10 supra) and of rationalising the wage-structure and allowances.

59. We noticed in the course of the hearing of these cases, that the jugglery of the two rather arcane expressions, namely, "putting off duty" and "consolidated allowances" artfully substituted by the Department, for the words "suspension" and "salary" respectively, in the 1964 Rules, which are not statutory but have been framed under the executive authority of the Government of India, has been largely instrumental, in labelling the category of EDAs in the Department as a hybrid one, making them neither fish nor fowl, with no little detriment to their service conditions. Some of these impediments which are flagrant, are: (i) denial of allowances to the EDAs outright, for the entire period



of "put off duty" (which not infrequently may exceed considerably beyond the maximum of 120 days stipulated for completion of the enquiry) even though they are honourably acquitted in the enquiry and (ii) denial of SA, even beyond the above maximum of 120 days, regardless of the fact, that the delinquent EDA has not in any manner been responsible, for that delay, which may sometimes be inordinate. To our judicial conscience, this discrimination as compared to the regular employees of the Department, seems palpably unjust and erroneous. We would even say, that Rule 9(3) of the 1964 Rules, is draconian in this context.

60. In RAJAMMA's case, the Supreme Court has tellingly brought out the jural relationship of 'master' and 'servant' in the case of EDA's and the protection to which they are entitled, under Art. 311(2) of the Constitution. If that be so, there is no reason as to why the EDA's should be flagrantly discriminated against, in regard to the two instances we have mentioned above. In fact, such discrimination is antithetical to the background of EDAs, as acknowledged by the Department as its backbone, with meritorious record of postal service in rural areas, under conditions which are none too congenial. The reasons advanced by the Department, for such invidious treatment to the EDAs, on the premise, that they have an alternative source of livelihood and freedom to continue their private avocation in their leisure hours, even after accepting



120

accepting employment as EDAs, to say the least, is disingenuous, particularly in the context of the prevalent policy of the Department, to make the avenues of employment under the EDA system, open to the educated rural youth, who necessarily may not be blessed with adequate means of livelihood.

61. In our view, an EDA unlike a casual labourer, who ekes out his existence, on employment opportunities, coming to him in fits and starts, without other sources of stable income, is in fact a hyphenated civil servant, with fair means of other income, who comes forward to assist the Department in postal service in rural and interior areas, in conditions not quite conducive, with liberty given to him, to pursue his private avocation in his leisure hours. His tenure is more stable than that of a casual worker, except that he may not have full-time duty as compared to his regular counterpart in the Department, though the nature of duties performed by him, cannot be said to ^{be} wholly unallied to that of the latter.

62. We do appreciate the concept and the rationale of the Department, to regulate the emoluments of the EDAs with due regard to the nature of duties performed by them and the workload and responsibility shouldered, as compared to their regular counterparts, in the interest of economy, without sacrificing work-efficiency. We discern this, in the report of the SAVDOR COMMITTEE, which seems a step forward,



in harmonising the service conditions of the EDAs, vis-a-vis those of their regular counterparts in the Department.

63. In this background, it is apposite to refer to AIR 1987 SC 2342 [DAILY RATED CASUAL LABOUR POSTAL & TELEGRAPHS DEPARTMENT v. U.O.I.] in which Honourable VENKATARAMAIAH, J., speaking for a Division Bench of the Supreme Court observed as under, in regard to the role of Government as a model employer, in bringing the casual labourers in Government employment on seasonal works, on par with regular Government employees, in respect of their service conditions subject to the pre-requisites stipulated:

"6. The allegation made in the petitions to the effect that the petitioners are being paid wages for less than a minimum pay payable under the payscales applicable to the regular employees belonging to corresponding cadres is more or less admitted by the respondents. The respondents, however, contend that since the petitioners belong to the category of casual labour and are not being regularly employed, they are not entitled to the same privileges which the regular employees are enjoying. It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the department and some of them have been engaged as casual labourers for nearly ten years. They are rendering same kind of service which is being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the



Constitution of India, which contains one of the Directive Principles of State Policy provides that "the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." Even though the above Directive Principle may not be enforceable as such by virtue of Article 37 of the Constitution India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum paying the pay-scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work as a casual labourer on starving wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that stage. The Government should be a model employer. We are of the view that on facts and in the circumstances of this case, the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding

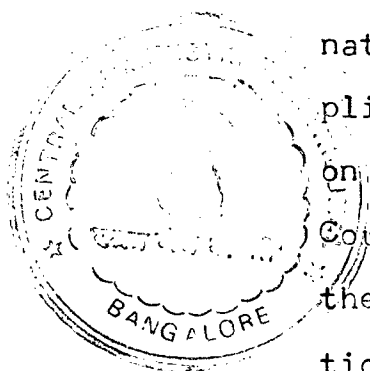


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regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable. The further classification of casual labourers into three categories namely (i) those who have not completed 720 days of service; (ii) those who have completed 720 days of service and not completed 1200 days of service; and (iii) those who have completed more than 1200 days of service for purpose of payment of different rates of wages is equally untenable. There is clearly no justification for doing so. Such a classification is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work. We feel that there is substance in the contention of the petitioners."

64. The EDAs, as mentioned earlier, are in fact on a higher plane, as compared to the casual labourers, from the point of view of their tenure of service, the nature of their duties and responsibility. If the plight of casual labourers, engaged intermittently on seasonal works, attracted the concern of the Supreme Court for amelioration of their service conditions, the case of an EDA a fortiori, merits greater consideration for the reasons aforementioned. ~~It~~ is a civil servant, with a clear jural relationship as "master" and "servant",



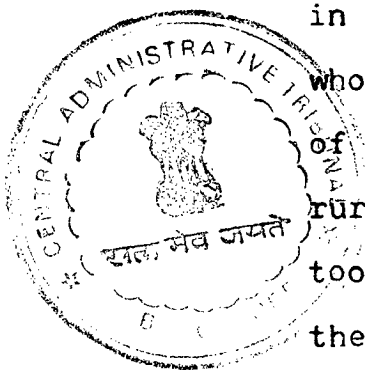
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134

as observed in RAJAMMA's case, but with a difference, in that his official duty as EDA, is hyphenated with his private avocation in his leisure hours, as expressly allowed under the 1964 Rules, as a measure both of expediency and economy, under special circumstances obtaining in rural areas, in regard to postal service without however, the EDA System becoming ^{dis}functional thereby. His emoluments as compared to his regular counterparts, in the Department, are fixed commensurate with his workload, in each category of post and with reference to his place of work and in course of time an equation is sought to be established with the regular posts in the Department, taking into account, the growing intensity of postal work in rural areas. If this be the case, there is no reason, as to why the EDAs should not be governed by the same principles, as in the case of the regular employees in the Department, in regard to grant of SA. The mere fact, that the EDAs have an alternate source of income does not seem to be a justifiable reason, to deprive an EDA of SA, at any rate in its entirety, during the period he is "put off duty", particularly, when the current trend in the Department, is to engage educated rural youth, who may not necessarily have an adequate alternate source of income. Besides, it is unrealistic to expect educated rural youth of sufficient means, to be content with none too remunerative a service as that of EDA. In this context the decision of the Supreme Court in CHANDRABHAN's case, relied upon by Counsel for the applicants, is in point, as it places an impediment on the EDA, in defending himself

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135

in an enquiry, if SA is denied to him, which results in financial hardship to him. It needs to be realised, that both the EDA and his regular counterpart in the Department, belong to the same *genus* ~~years~~, as a "civil servant", according to the decision of the Supreme Court in RAJAMMA's ^{case}, the only distinction being, that the EDA belongs to another species namely, that of an ⁴ "hyphenated civil servant", with freedom expressly provided to him, under the 1964 Rules, to pursue his personal avocation in his leisure hours, in conjunction with his official duty as EDA.

65. It cannot be gainsaid, that the applicants are paid their emoluments as EDAs from the Civil - Estimates, and that the consolidated allowance paid to them is in effect, in the nature of pay, correlated to their workload and duration of work disbursed to them monthly. It is difficult to conceive, that the monthly emoluments paid to the EDAs as above, have no element of pay in them whatsoever and bear the character of an exclusive allowance, specially when the Department as also the SAVOOR COMMITTEE categorise the remuneration so paid, as "wages", as is evident from the Note given to us by the Department.

66. For the reasons we have articulated above, we cannot but help respectfully differ from the judgment of the Hon'ble High Court of Kerala, which upholds the validity of Rule 9 of the 1964 Rules, in KATTAMPALLY's case. As against this, we are in agreement with the ratio of the

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decision



136

- 50 -

decision of that very High Court in SARADAMMA's case referred to in para-47 above, which is in accord with our ratiocination of the matter.

67. It is a well-known principle that there is a mean in all things - est modus in rebus. In a situation of the like, where an invidious distinction is made between the EDAs and the regular employees in the Department (though both of them belong to the same genus) which for the reasons we have endeavoured to dwell at length, in the foregoing, is unjustifiable, it is but meet and proper, that a golden mean is struck, in harmonising the conditions regarding payment of SA to an EDA, during the period he is "put off duty", which for all intents and purposes, in our view, is synonymous with "suspension".

68. The ratio of the decision of the Kerala High Court in K.SARADAMMA's case relied on by - Shri Achar (vide para 47 above), with which we are in respectful agreement, is in keeping with the above view taken by us.

69. In the light of what we have analysed and discussed above, we are convinced that Rule 9(3) of the Rules, is violative of Article 14 of the Constitution, and needs to be struck down.

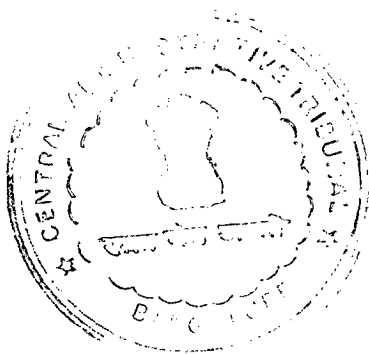
70. Rule 9(3) of the 1964 Rules, framed by the Government of India, in exercise of its executive powers, has been in force with effect from 10-9-1964.



The consequence of that Rule being struck down by us, is that it would become non est and therefore it cannot be enforced. We have earlier dwelt at length, bringing out the unique features of the EDA service, which are distinct from the regular civil services of the Union of India. In the very nature of things, bearing these distinguishing features in mind, the Government of India, would need to re-examine the matter in its entirety and frame a new rule in exercise of its executive powers, regulating the payment of Subsistence Allowance to the EDA employees, during the period they are "put off duty", which as we have remarked earlier, is synonymous to "suspension". The payment of Subsistence Allowance, must naturally take into consideration, the unique nature of EDA service and contingencies such as likely delay, attributable to the Department, in completing the disciplinary proceedings, as also delay occasioned by non-cooperation of the delinquent official in these proceedings and provide for regulation of payment of the Subsistence Allowance accordingly. As pointed out by us earlier, in the event of ^{the} official being honourably acquitted, the Rules, must provide for payment of the wage/allowance in full, which he would have otherwise drawn, as if he was in service. We need hardly say, that these are all matters, for the Government of India, to examine and frame appropriate rules.

71. As regards Set I of the applications, we notice that the applicants were not denied reasonable

opportunity



opportunity to engage a DA, to substantiate their defence in the enquiry held against them and that in certain cases, the applicant himself changed the DA now and then, for one reason or the other.

72. In the result, we make the following orders and directions:

(i) We strike down Rule 9(3) of the 1964 Rules, as violative of Article 14 of the Constitution of India. But, notwithstanding the same, the Government of India is directed to re-examine the matter in its entirety, and frame a new set of Rules, providing for payment of Subsistence Allowance, with due regard to the unique nature of the EDA service and all other relevant matters, and make payment thereof to the applicants in conformity with those Rules. We grant a period of 4 months to the Government of India, to frame ⁴³new set of Rules and 3 months thereafter to make payment to the applicants in conformity with those Rules.

(ii) We direct the respondents concerned, to ²⁷assure, that reasonable opportunity is afforded at the earliest, to the applicants in Set I of the applications, to engage a DA, to enable them to substantiate their defence, in the disciplinary proceedings, in progress against them.

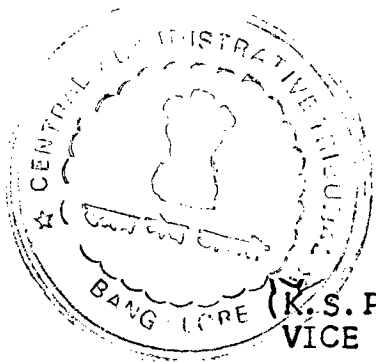
(iii) The applications are disposed of, in the above respective terms.

(iv)



139

- 53 -



(iv) No order as to costs.

sd/-

(K.S. PUTTASWAMY)
VICE CHAIRMAN.

sd/-

(L.H.A. REGO) 15.7.98
MEMBER(A).

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DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

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