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CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT AT NAGPUR

O. A. No. 679 of 1990

Present : Hon'ble Mr. A.P.Bhattacharya, Judicial Member
Hon'ble Mr. P.S.Chaudhuri, Administrative Member

M. ILYAS HUSSAIN

VS

UNION OF INDIA & ORS

For the applicant : Mr. A.S.Bhagat, counsel

For the respondents : Mr. Ramesh Darda, Govt. Counsel

Heard on : 18.3.91 : Order on : 21.3.91

O R D E R

A.P.Bhattacharya, J.M.:

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Md. Ilyas Hussain against the Union of India, represented by the Sr. Superintendent of Post Offices, City Division, Nagpur and two others.

2. On 1.12.81, the applicant was appointed as Extra-Departmental Stamp Vendor (EDSV) at Mominpura post office, Nagpur. By an order issued on 8.1.90, respondent No. 3, who, according to the applicant, was not his disciplinary authority, passed an order putting him under off duty. The applicant challenges the authority of respondent No. 3 in passing that order. Besides, it is his case that the said order was illegal, arbitrary and was passed without proper application of mind. In filing the application, he has prayed for setting aside the order passed on 8.1.90 and also the order passed by the appellate authority on 31.7.90.

3. The admission of the application has been opposed by the respondents.

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4. Admittedly, on 8.1.90, when the applicant was attached to Mominpura post-office within Nagpur City Division as an EDSV, an order was passed by respondent No. 3 putting him off duty with immediate effect. In this application, the applicant has challenged the authority of ~~the~~ respondent No. 3 in passing that order. It is also his case that the said order was illegal, mala fide and was passed without proper application of mind. Being aggrieved by that order he preferred an appeal to the Sr. Superintendent of Post Offices, Nagpur City Division, which was rejected by an order passed on 31.7.90. In his application, the applicant has prayed for setting aside both the orders.

5. It is true that the applicant has been placed under put off duty since 8.1.90. It is also true that under the law an E.D.Agent cannot be placed under put off duty for an indefinite period. But we must say that such rule is applicable where an E.D.Agent is placed under put off duty when a departmental enquiry/proceeding is contemplated or pending against him. The reason for which this applicant was placed under put off duty was entirely different. He is an accused in a criminal case started against him under sections 379/467/468 and 461, read with Sec. 34, IPC. Against him a criminal case was started being ^{which} numbered as 509 of 1989 ~~and~~ is still pending in the court of Ld. Judicial Magistrate, Headquarters, Court No. IV, at Nagpur. That being the position, the executive instructions issued from time to time cannot be availed of by the applicant. It is not a departmental proceeding the conclusion of which can be hastened by passing an order. The concerned department has no authority to ask for speedy disposal of the criminal case by the concerned Magistrate. Considering that, we must say that for the continuance of put off duty of the applicant for a long time, the respondents cannot be blamed.

6. As and when the sections of IPC in which the applicant is involved speak of moral turpitude, the Tribunal cannot direct the respondents to revoke the order ~~or~~ putting the applicant under off duty.

7. In his application, the applicant has challenged the authority of respondent No. 3 in passing the order putting him under off duty. It is the version of the appellate authority that as at the relevant time, the applicant's appointing authority was on leave and as respondent No. 3 holding an equivalent rank was in-charge of that post, he was within his right to pass such an order placing the applicant under put off duty. For the present we have no reason to discard the contention of the appellate authority. The applicant's challenge against the order passed by the appellate authority does not warrant any intervention by this Tribunal as it is a speaking order and by it the points raised by the applicant had been duly considered and rejected.

8. It is contended by the side of the applicant that as he has not been getting any subsistence allowance or any allowance whatsoever for his subsistence since the passing of the order placing him under put off duty, the order should be set aside at once. We are unable to accept this contention. Undisputedly, in the case of an E.D.Agent, the provisions of CCS(CCA) Rules, 1965 providing for granting of subsistence allowance during the period of suspension are not applicable. Under the provisions of Rule 9 of the Posts & Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964, which are applicable to all ED Agents, an employee shall not be entitled to any allowance for the period for which he is kept off duty. That being the position, the applicant cannot be granted any allowance whatsoever although the impugned order causes some sort of hardship to him.

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9. Considering the facts and circumstances of the case as discussed above, we are of opinion that this application is wholly misconceived and as such it is liable to fail. Accordingly, we dismiss this application summarily at the stage of admission itself.

P. S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER (A)
21.3.91

21/3/91

A. P. Bhattacharya
(A.P.BHATTACHARYA)
MEMBER (J)
21.3.91

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