

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

G.A.NO. 1077/92 199
TR.A.NO.

DATE OF DECISION 6-9-93

Durgadin Hanjji Borkar Applicant(s)

Versus

Union of India & Ors. Respondent(s)

1. Whether it be referred to the Reporter or not ? ^{no}
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ^{no}

MEMBER


VICE CHAIRMAN

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CIRCUIT SITTING AT NAGPUR

O.A.1077/92

Durgadin S/o.Hanuji Borkar,
E.D.Branch Post Master(put off duty)
Sarkartola(Amgaon S.O.) 441 902. .. Applicant

-versus-

1. Union of India
through
Secretary,
Department of Posts,
Ministry of Communications,
New Delhi - 110 001.
2. The Director
Postal Services(Nagpur
Region)
O/O Postmaster General,
(Maharashtra)
Nagpur - 440 010.
3. Sr.Suptd.of Post Offices,
Nagpur Mfl.Dn.Nagpur,
Nagpur - 440 012.
4. Shri J.D.Kulkarni, S.D.I.
Bhandara South Sub Dn.
and Enquiry Officer at and
Post Bhandara,
5. Shri M.S.Bhardwaj, S.D.I.
Gondia Sub Dn & Presenting
Officer, Gondia - 441 601. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande,
Vice-Chairman.

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

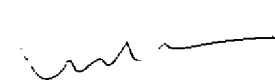
1. Mr.D.B.Walthare
Advocate for the
Applicant.
2. Mr.A.B.Choudhari,
Advocate for the
Respondents.

ORAL JUDGMENT: Date: 6-9-1993
Per M.S.Deshpande, Vice-Chairman

The applicant by this application
questions the order by which he has been put off
duty even before the chargesheet was filed.

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2. The applicant who was working as Extra Departmental Branch Postmaster at Amgaon was put off from duty under Rule 9(1) of the E.D.A. Conduct and Service Rules, 1964 by order dt. 19-9-91. The chargesheet was served on him on 3-1-92. Obviously the order putting him off duty was passed even before the chargesheet was served. Learned counsel for the respondents urged that what is contemplated by Rule 9(1) is an enquiry and not necessarily a departmental enquiry and therefore this could be done even in contemplation of an enquiry. A division bench of the Orissa High Court has taken the view in Sanatan Sahu v. The Inspector of Post Offices, Khurda Sub division and Ors, 1983 LAB I.C.1587, that "an employee may be put off duty under R.9 only during the pendency of the enquiry and not when any enquiry is contemplated. The question of putting such an employee off duty should arise only when there is a prima facie case against him and the nature of the offence is such that dismissal would be the appropriate penalty." Learned counsel for the respondents urged that the proviso to Rule 9(1) was not considered but it is apparent that the proviso bears only upon the authority who may pass the order and not the ~~xx~~ stage at which the order putting off an employee is passed and therefore in the present case proviso to Rule 9(1) will not apply. Our attention was also drawn to another judgment of The Managing Director, U.P. Warehousing Corporation and others v. Vijay Narayan Vajpayee, AIR 1980 SC 840, wherein it was held that "a regular departmental enquiry



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takes place only after the chargesheet is drawn up and served upon the delinquent and the latter's explanation is obtained."

3. Both these rulings were considered by this Tribunal in O.A.930-88, Bhauroo Chintaman Sonwane vs. Union of India & Ors decided on 18-1-1989 where the applicant had been put off duty on 15-9-87 as a departmental enquiry was contemplated against him and the chargesheet was served on the applicant therein on 4-1-88. The Tribunal held that this was contrary to Rule 9(1) of the E.D.A. Rules and therefore illegal. With respect we are bound by the decision rendered by a Bench of this Tribunal.

4. We, therefore hold that the order putting off the applicant from duty passed on 19-9-91 is bad and has to be struck down. It is so struck down. The respondents shall reinstate the applicant forthwith and grant all backwages to which he would have been entitled but for the order putting him off duty. This will not ^{however} prejudice the respondents from holding the enquiry.

5. The order should be implemented within two months from the date of receipt of a certified copy.


(USHA SAVARA)
Member(A)


(M.S. DESHPANDE)
Vice-Chairman