

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT SITTING AT NAGPUR

NEW BOMBAY BENCH

O.A. No. 165/92

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DATE OF DECISION 14.9.92

W B Sawarkar

Petitioner

Mr. A.S. Bhagat

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. M G Bhangade

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. Justice S K Dhaon, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No


 V.C.

(B)

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

OA NO. 165/92

W B Sawarkar
Extra Departmental Branch
Post Master;
Branch Post Office;
Saur; Talq. Bhatkuli
Dist. Amaravati

..Applicant

V/s.

1. Senior Superintendent
of Post Offices
Amaravati Division
Amaravati Camp
2. The Director postal
services; Nagpur region;
Nagpur
3. Union of India
through Member Personnel
Postal Services Board
New Delhi

..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.
Hon. Shri M Y Priolkar, Member(A)

APPEARANCE:

Mr. A S Bhagat
Counsel
for the applicant

Mr. M G Bhangade
Counsel
for the respondents

ORAL JUDGMENT:
(PER: S K Dhaon, Vice Chairman)

DATED: 14-09-1992

Reply has been filed on behalf of the respondents. Counsel for the applicant states that he does not want to file any rejoinder.

The grievance of the applicant is that he has not been paid the wages during the period when he was put off from duty.

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Pending disciplinary proceedings the applicant was put off from duty. Proceedings were conducted under Rule 8 of E.D.B.A.'s (Conduct and Service) Rules, 1964. An order of removing him from service was passed on 16.5.1989. In appeal, the Director, Postal Services, Nagpur set aside the order of punishment by its order dated 17.8.1989. The applicant was reinstated in service with effect from 22-09-1989.

A reply has been filed on behalf of respondents. Counsel for the parties have been heard. Even though this application has not been formally admitted as yet, we are proceeding to dispose of the same finally.

Reliance has been placed on behalf of the respondents on Rule 9 of the E.D.B.A. (Conduct and Services) Rules. Sub-rule(1) of Rule-9 provides inter alia that pending an inquiry into any complaint, allegation, or misconduct, an employee may be put off from duty. Sub-rule(2) ^{that} provides an order under Sub-rule (1) shall cease to be effective on the expiry of 15 days from the date thereof unless earlier confirmed or cancelled by the appointing authority or any authority to which the appointing authority is subordinate. Sub-rule(3), upon which reliance has really been placed, lays down that an employee shall not be entitled to any allowance for the

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period for which he is kept off duty. [redacted]

[redacted]

The answer to the learned counsel's argument is to be found in sub-rule(2) itself. The order of putting off duty is subject to cancellation by the appointing authority or any authority to which the appointing authority is subordinate. In the instant case we have already found that the appellate authority set aside the order of punishment. It is trite law that the order of put off duty merged in the order of the disciplinary authority punishing the applicant, and that order merged in the order of the appellate authority by which the order of the punishing authority was set aside. Therefore, the final order of the appellate authority prevailed. In that order the order of (put) off duty also merged. The net result was that, in the eye of law, no order of put off duty came into existence. Therefore, the applicant is entitled to be paid the wages during the period he was put off from [redacted] duty.


A some what similar controversy came up before the Madras Bench of the Tribunal in OA No. 564 of 1990 decided on 18.3.1991. There, pending disciplinary proceedings a Government servant was put off duty. However, in the proceedings he was exonerated. A question arose as to whether he was entitled to backwages and the question was answered in affirmative by the Madras Bench. This case, in our opinion, is apposite.

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Learned counsel for respondents argues that the applicant is not entitled to any backwages as the principle of 'no work, no pay' should be applicable. It is not a correct proposition. The applicant did not voluntarily cease to work. He was put off from duty and thereafter removed from service. That order was found to be illegal by the appellate authority. Therefore, there can be no escape from the conclusion that the applicant was prevented from performing duty on the basis of an illegal order. The applicant, therefore, cannot be allowed to suffer for no fault of his.

The application succeeds and is allowed. The respondents are directed to pay to the applicant the backwages as permissible under law within a period of one month from to-day. There shall be no order as to costs.


(M. Y. Priolkar)
Member(A)


(S. K. Dhaon)
Vice Chairman