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CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

O.A. No. 836/89

Date of Decision:

T.A. No.:

K. Venkata Rao

Petitioner.

Mr. M.P. Chandramouli

Advocate for
the Petitioner(s)

Versus

The Chief Post Master General A.P.Circle

Hyderabad and 2 others.

Respondent.

Mr. N.V. Ramana

Advocate for
the Respondent
(s)

CORAM:

THE HON'BLE MR. A.B. GORTHI, MEMBER (ADMN.)

THE HON'BLE MR. T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not ?
3. whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on Columns 1, 2, 4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

(HABG)
M(A)

T - C - M
(HTCSR)
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.836/89

Date: 23.10.1992

BETWEEN:

K.Venkata Rao

.. Applicant.

A N D

1. The Chief Post Master General,
Andhra Pradesh Circle,
Hyderabad.
2. The Superintendent of Post Offices,
Anakapalli Division, Anakapalli.
3. The Sub Divisional Inspector (Postal),
Yallamanchili, Visakhapatnam Dt.

.. Respondent.

Counsel for the Applicant

.. Mr.MP.Chandramouli

Counsel for the Respondents

.. Mr.N.V.Ramana

CORAM:

HON'BLE SHRI A.B.GORTHI, MEMBER (ADMN.)

HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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Judgement of the Division Bench delivered by
Hon'ble Shri A.B.Gorthi, Member (Admn.).

The applicant ... while working as Branch Post Master (B.P.M.) T.Suchikonda, Yellamanchili Taluk was put off duty w.e.f. 7.3.1986 and was subjected to departmental disciplinary proceedings which concluded on 28.6.1989 with the imposition of the penalty of removal. In this application the applicant's prayer is for payment of full wages from 7.3.1986 to 31.1.1987, subsistence allowance from 1.2.1987 to 30.4.1987 and for full wages from 1.5.1987 to 28.6.1989.

2. On a complaint made by one P.G.Naidu, the applicant was put off duty on 7.3.1986. As the allegation against the applicant was that he mis-appropriated a sum of Rs.2,734/- from the S.B. account and R.D. account of P.G.Naidu, the applicant refunded the said amount on the specific assurance given to him that no further action would be taken against him. Even then the put off order was ratified, a charge memo was served upon him and after an enquiry he was removed from service on 28.6.1989. Although the applicant alleged certain irregularities in the conduct of the enquiry, he did not choose to challenge, in this application, the order of his removal. He restricted the challenge to the validity of the order putting him off duty and the consequential denial of wages/subsistence allowance to him.

3. The respondents stated in their counter affidavit that on a complaint received from Sri P.S.Naidu, the Sub-Divisional Inspector Yelamanchali was directed to inquire into the case. On his enquiry on 7.3.1986 it was found that the applicant withdrew various sums totaling Rs.2,734/- from the S.B. account and the R.D. account of Sri P.G.Naidu, without the latter's knowledge. The statement of Sri P.G.Naidu ~~he~~ was recorded on 7.3.1986 and 8.3.1986. More over the applicant himself agreed to refund the sum of Rs.2,734/- on 8.3.1986. The respondents

contention is that a prima facie case was established on 7.3.1986 itself and as the alleged offence involved moral turpitude the order putting him off duty was not only proper but was in the interest of service.

4. Learned counsel for the applicant elaborately contended before us that the respondents were not justified in ordering the applicant to be put off duty w.e.f. 7.3.1986, where as a chargememo was served upon him only on 31.1.1987. Further, the respondents were not justified in putting off the applicant from duty for a period exceeding 120 days. Last ~~last~~ but not the ~~last~~, the issue agitated vehemently by the learned counsel for the applicant was that Rule 9 (3) of the ED.A. Conduct and Service Rules 1964 (the Rules for short) having been declared ultra vires by the Bangalore Bench of the Tribunal, the applicant would be entitled to subsistence allowance.

5. On the question as to when an employee can be put off duty, Rule 9(1) of the Rules provides as under:

"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."

The afore-said rule position was sufficiently clarified in the D.G. P&T letters dated 23.3.1978 and 16.1.1979. It is clearly indicated that an E.D. Agent may be put off duty only during the pendency of the enquiry and not when any enquiry is merely contemplated. A further clarification was ~~contended~~ contained therein that an E.D. Agent can be put off duty even before the initiation of the disciplinary proceedings provided there is a ~~Prima~~ facie case against him and the nature of the offence is such that

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dismissal will be the probable penalty. However, it is not the intention of the instructions that an ED Agent be put off duty merely on the ground of ~~suspicion~~. The facts of the ~~incident~~ ^{instant} ~~case~~ would show that as on 7.3.1986 an immediate preliminary enquiry was conducted by recording the deposition of the ~~compliance~~ ^{amount}. The applicant also seems to have accepted his guilt and agreed to refund the amount allegedly misappropriated by him. Notwithstanding that he subsequently ~~retracted~~ ~~contracted~~ his position, it cannot be said that the order putting him off duty was made on mere ~~suspicion and~~ ~~suspension order~~ without due enquiry. In these circumstances we are of the view that the applicant was put off duty in accordance with rule 9(1) of the Rules and that the action of the respondents is not in violation of the relevant instructions issued by the DG P&T.

6. Admittedly the applicant remained put off duty for more than 120 days. There can be no doubt that the relevant instructions issued by the DG P&T ~~exorted~~ all concerned that an ED Agent may not remain put off duty for a period exceeding 120 days. The instructions issued by the DG P&T ^{are directory} ~~order directly~~ in nature and cannot be held to be mandatory. Deviation from the said instructions would not render the order of put off illegal on the ground that the period for which the applicant was put off duty ^{exceeded 120 days. It} ~~should~~ be said to be ~~deplorable~~ but in the circumstances of the case where the applicant stood accused of a very serious charge, the fact that the period for which he remained put off exceeded 120 days would not make it illegal.

7. Even if the order of put off was in order, the applicant would nevertheless be entitled to subsistence allowance, so contended the learned-counsel for the applicant. In support, he placed reliance on a Judgement of the Bangalore Bench of this Tribunal in the case of Peter J. D'SA V. Union of India (1989) 9 ATC 225. In that case the Tribunal held as ~~ultra vires~~ ^{under} Rule 9 (3) of the Rules which lays down that an ED Agent shall not be entitled to any allowance for the period for which he is put off duty. ^{It was further held}

2 ~~that~~ held that Rule 9(3) would become NON EST and could not therefore be enforced. The question of payment of subsistence allowance if any was left to the Govt. to be resolved with due regard to the ~~unique~~ ^{we} nature of the EDA service. It is not the case of the applicant counsel that any new rule has since been introduced allowing payment of subsistence allowance. ~~Accordingly~~ ^{Therefore} we cannot assume the Executive function of determining ~~of~~ ^{the} subsistence allowance, if any should be granted to an ~~A~~ ED Agent like the applicant who is put off duty. The Tribunal does not legislate ~~but~~ but may interpret ~~and~~ and may even enforce the legislated laws. Accordingly the applicant will not be entitled to an order from us directing the respondents to pay any subsistence allowance to him for the period or a part of the period for which he was put off. His prayer for granting full wages for the period he ~~assume~~ remained put off duty also ~~deserves~~ ^{deserves} to be rejected for the reasons already stated.

8. In the result the application is dismissed without  any order as to costs.

(A. B. GORTHI)
Member (Admn.)

T. Chandrasekhara Reddy
(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 23 October, 1992

Deputy Registrar (Judl.)

Copy to:-

1. The Chief Post Master General, Andhra Pradesh Circle, Hyderabad.
2. The Superintendent of Post Offices, Anakapalli Division, Ankapal
3. The Sub Divisional Inspector (Postal), Yallamanchili, Visakha-
patnam.
- 4d One copy to Sri. M.P.Chandramouli, advocate, 1-7-139/1, S.R.K.Na
gar, Golconda X roads, Hyd.
5. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
6. One spare copy.

RSM/-

O.A.836/89

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. A. B. GOSWAMI, A.M.
AND

THE HON'BLE MR. R. BALASUBRAMANIAN, M(A)
AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER(JUDL)

Dated: 23/10/1992

ORDER/JUDGMENT:

R.A. / C.A. / M.A. No. —

O.A. No.

836/89

T.A. No.

(wp. No. —)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No order's as to costs.

pvm

