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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 282 of 1990

Date of Order: 22-6-1990

Between:-

Y.Srinivasa Rao

.. Applicant

and

1. Senior Superintendent of
Post Offices, Vijayawada
Division, Vijayawada.

2. Sub-Divisional Inspector(Postal),
Tiruvuru Sub-Division,
Tiruvuru (Krishna District)..

Respondents

Appearance:-

For the Applicant : Shri S.Siva Prasad, Advocate.

For the Respondents : Shri Naram Bhaskar Rao, Additional
Central Govt.Standing Counsel

CORAM

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER(JUDICIAL))

1. The applicant herein was working as Extra Departmental Branch Postmaster, Tunikipadu under Tiruvuru Sub Division in Krishna District, A.P.. He has filed this application questioning the order No.PF/BPM/Tunikipadu, dated 2-12-1989 issued by the Sub-Divisional Inspector (Postal), Tiruvuru Sub-Division i.e. 2nd respondent herein.

2. The applicant states that he was provisionally appointed as Extra Departmental Branch Postmaster on 17-1-1989 w.e.f. 19-10-1988. On 23-10-1989 his wife committed suicide. On a complaint made by his father-in-law, he was arrested and later released on bail. Thereafter the 2nd respondent issued the

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impugned order dated 2-12-1989 bearing No.PF/BPM/Tunikipadu, putting him off duty with immediate effect which was modified by issuing another Memo dated 11-12-1989 by the 2nd respondent making the applicant's put off duty with retrospective effect i.e. from 24-10-1989. It is contended that the said orders are illegal and that there is no power vested in the 2nd respondent to put the applicant off duty. It is also contended that putting him off duty retrospectively is illegal.

3. On behalf of the respondents a counter has been filed stating that the 2nd respondent put the applicant off duty after making enquiries and ascertaining that he was arrested S.H.O., Gampalagudem Police Station by the ~~at~~ ^{from} at 16-30 hrs. on 24-10-1989 and was sent to the Judicial First Class Magistrate, Tiruvuru, for remand on 25-10-1989. As the applicant was arrested under crime No.51/89 under section 498(A) and 304(B) of IPC, he was put off from duty ~~on~~ ^{from} 24-10-1989 i.e. the date on which he was arrested. It is contended that the applicant had a right of appeal under rule 10(1) of the EDAs(Conduct & Service) Rules, which he has not exhausted. For these reasons the respondents contend that the application is liable to be dismissed.

4. We have heard the learned Counsel for the applicant, Shri S.Siva Prasad, and the learned Additional Central Govt. Standing Counsel for the Department, Shri Naram Bhaskar Rao.

5. Shri Siva Prasad contends that Rule 9(1) EDA (Conduct & Service) Rules, 1964 does not permit the 2nd respondent to put the applicant off duty. Rule 9(1) reads as follows:-

" 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.

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To:

1. The Senior Superintendent of post offices, Vijayawada Division, Vijayawada.
2. The Sub-Divisional Inspector (postal) Tiruvuru sub-division Tiruvuru (krishna district)
3. One copy to Mr.S.Siva Prasad, Advocate, 2-1-567/6, Nallakunta, Hyderabad.
4. One copy to Mr.N.Bhaskara Rao, Addl.CGSC,CAT,Hyderabad.
5. One spare copy.

. . .

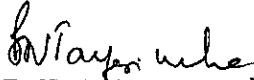
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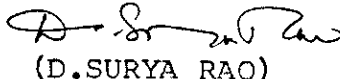
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It is further contended that the rule does not permit for retrospective suspension. He, ~~therefore~~ ^{a reading of Rule 9(1) it would be} urges that the impugned order is illegal. From ~~this it is~~ clear that the ~~alleged~~ impugned order should not have been passed by the 2nd respondent in the instant case, since this is not a case involving fraud or embezzlement ^{order} under proviso to Rule 9(1) of the EDA (Conduct & Service) Rules. It is also clear that the orders putting off the applicant from duty with retrospective effect is also contrary to the instructions. ~~However~~, Shri Naram Bhaskar Rao, learned counsel for the respondents, contends that the applicant has not exhausted alternative remedy under Rule 10(1) of the E.D.A. (Conduct and Service) Rules. It is clear that rule 10(1) provides a right of Appeal to an employee against the impugned order putting him off duty to the superior authority. The applicant admittedly has not availed this opportunity. ~~At the time of admission of this O.A., we ordered issue of notices to respondents before admission.~~ However, having heard the facts of the case and on the basis of the main ground urged by the counsel for the applicant that the action of the respondent No.2 was in excess of the powers conferred upon him, we do not think that this case should be dismissed on the ground of non-exhausting of alternative remedy.

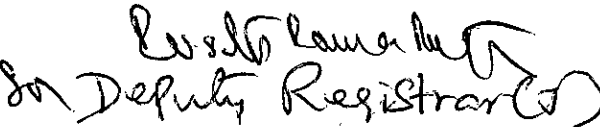
6. In the result, the impugned orders bearing Memo No.PF/BPM/ issued by the 2nd respondent Tunikipadu, dated 2-12-1989 ^{back} which was subsequently modified by issuing another Memo dated 11-12-1989 are set aside and the respondents are directed to put the applicant ^{back} to duty. This order, however, does not bar the competent authority to take any action in accordance with the rules. No order as to costs.

(Dictated in Open Court)


(B.N. JAYASIMHA)
VICE-CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDICIAL)

Date: 22-6-1990


Deputy Registrar

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CHECKED BY

APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C. *202*
AND
THE HON'BLE MR. D. SURYA RAO: MEMBER (JUDL.)
AND
THE HON'BLE MR. J. NARASIMHAMURTHY: M(J)
AND
THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATE : 22-6-90

ORDER / JUDGMENT

O.A./R.A./C.A./No.

in

T.A.No.

W.P.No.

O.A.No. 282/90

~~Admitted and Interim directions Issued.~~

Allowed. *no costs*

~~Dismissed for default.~~

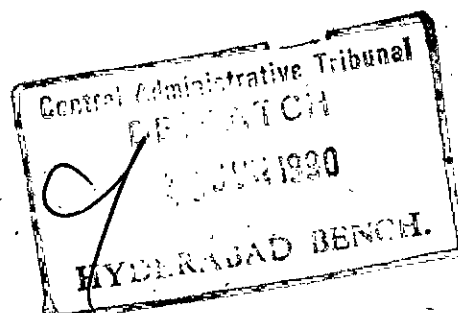
~~Dismissed as withdrawn.~~

~~Dismissed.~~

~~Disposed of with direction.~~

~~M.A. ordered/Rejected.~~

~~No order as to costs.~~



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