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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

C.A. 1116/91.

Dt.of Decision : 4-10-94.

M. Guruswamy

.. Applicant.

Vs

1. Union of India rep. by
The Secretary to Government,
Department of Posts,
New Delhi.
2. The Chief Postmaster General,
Hyderabad.
3. The Director of Postal Services,
A.P.NR, Hyderabad.
4. The Superintendent of Post Offices,
Nalgonda.
5. The Sub-Divisional Inspector, Postal,
Nalgonda South Sub-Divn. Nalgonda. .. Respondents

Counsel for the Applicant : Mr. K.S.R.Anjaneyulu

Counsel for the Respondents: Mr. N.V.Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)
THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

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O.A.NO.1116/91

Dt. of Judgement: 4-10 94

JUDGEMENT

[(As per Hon'ble Shri AV Haridasan, Member(J))]

The important point ~~for-a~~ that arises in this application is whether the applicant, who is an extra-departmental agent, and who has not completed three years of service can be removed from service under Rule 6 of the Extra-Departmental Agents (Conduct and Service) Rules, 1964, for ^{alleged} ~~specific~~ and enumerated acts of mis-conduct.'

2. Briefly stated, the facts are as follows: The applicant was appointed as Extra-Departmental Mail Carrier (EDMC for short) at Thanedarpally Branch office in account with Koppole Sub-Office under Nalgonda Head Office on 23.10.1984. While he was working as EDMC, he was served with a ~~copy~~ notice on 2.9.1987 (Annexure I to the OA) by the Sub-Divisional Inspector (Postal), Nalgonda, to show cause against the proposed termination of his services. It was alleged in this notice, that one Sri D. Maraiah, EDBPM, Gurrampode Branch Office, reported that the applicant assaulted him on 27.5.1987 at Gurrumpode Branch Office in the presence of one Sri N. Narasimha and also on 1.6.87 in the presence of Shri K. Venkataiah that, in the fact finding enquiry held through Mail Overseer, Nalgonda, it was revealed that the applicant had assaulted Sri Maraiah and that the applicant did not give any statement to the mail-
overseer when ~~he~~ was called upon and that, he had absent from duty ~~unauthorisedly~~ on 15.1.86, 11.8.86

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12.8.86, 12.11.86, 29.1.87, 29.3.87 and 20.5.87 resulting in disruption of mails of Thanedarpally and that the SDI (Postal) proposed to terminate the services of the applicant under Rule 6 of ED Agents (Conduct and Service) Rules, 1964. The applicant was given ten days time to submit his explanation for the above show-cause notice. Though the applicant submitted his explanation, without considering his explanation and without issuing an order of termination, the applicant was removed from services on 22.9.87, making him to handover charge to the mail-overseer. The applicant on 5.10.87 submitted a representation to the 4th respondent in which he had stated that he was not even given a proper opportunity to make a representation and the allegations made against him were not correct. The Superintendent of Postoffices, vide his Memo dated August, 1985 rejected his representation, without advertizing to the various grounds mentioned by the applicant in his representation. So, the applicant submitted another representation on 13.12.1988 to the Director of Postal Services (3rd respondent) at Hyderabad, who also turned down by a cryptic order No.RDH/ST/21-4/10/88 dated 19.9.88 (Annexure 6 to the OA). The applicant submitted a review petition to the Chief Postmaster General, Hyderabad under Rule 16(2) of the ED Agents conduct and service Rules on 30.7.1990 (Annexure 7 to the OA) in which he specifically contended that the termination of his services without following due process of law, was unjustified. This representation was also rejected by the Chief Postmaster General, by his memo No.STA/13-NR/90 dated 14.5.91 (Annexure 8), which also is a non-speaking and cryptic order. Under these circumstances

the applicant has filed this application praying that the impugned orders at Annexures 2,4,6 and 8 may be set aside and the respondents be directed to reinstate the applicant in service as EDMC, Thanedarpally with all consequential benefits. It is alleged in the application that the allegations that the applicant assaulted Sri Mariah was false, that it was really Shri Mariah, who had insulted the applicant on the basis of his caste and that, the absence of the applicant on certain dates were on account of illness and reasons beyond his control and that, in any event, his services were terminated without issuing any order of termination and without holding an enquiry as required under Rule 8 of the ED Agents (Conduct and Service) Rules, 1964. Since the action was taken for specific and enumerated acts of misconduct, the applicant claims that the orders are liable to be set aside as none of the authorities has applied its mind to the real facts of the case.

3. The respondents in their reply have contended that as the services of the applicant have been found to be unsatisfactory and as the allegation that he assaulted Shri D. Mariah and that he remained absent was found to be true on a fact finding enquiry held by the Mail-over-seer, the action of the respondents in terminating the services of the applicant was fully justified. The respondents admit that no enquiry as contemplated in Rule 8 of the ED Agents Conduct & Service Rules, was held before terminating the services of the applicant. Their contention is that as the ~~xxx~~ applicant had not completed three years of continuous service, his services could be terminated under Rule 6 and no enquiry under Rule 8 need be held. The respondents have als

contended that the orders of the appellate authority and revisional authority also cannot be assailed for non-application of mind, because, it was after perusal of the entire records of the case, that the order of removal was upheld by them. Therefore, according to the respondents, the applicant is not entitled to any relief.

4. We have carefully perused the pleadings and documents on record and have heard the arguments of Shri KSR Anjaneyulu, learned counsel for the applicant and Mr NV Ramana, learned Central Government Standing Counsel for the respondents.

5. Mr KSR Anjaneyulu, argued that as Rule 6 of ED Agents (Conduct and Services) Rules, 1964 gives powers to the appointing authority to terminate the services of the applicant who has not rendered three years of service, in case of unsatisfactory service or for administrative reasons unconnected with ~~the~~ ^{his} conduct, the action taken by the respondents in terminating the services of the applicant for specific and enumerated mis-conduct, resorting to this rule, amounts to colourable exercise of ~~the~~ power and negation of the principles of natural justice enshrined under Article 311 of the Constitution. According to the scheme of ED Agents Conduct and Services Rules, if any of the penalties mentioned in Rule 7 is to be imposed, it is mandatory that a regular ^{enquiry} ~~inquiry~~ is held as prescribed under Rule 8, and therefore, as this has not been done in this case, the impugned orders at Annexure A-II and appellate orders are illegal and unsustainable.

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6. Shri NV Ramana, on the other hand argued that, in the case of an ED Agent who has not completed three years of service, it is not even necessary to issue a notice and under Rule 6, it is open for the appointing authority to dispose with the services without notice. The actual order of termination of services of the applicant has not been produced by the applicant in this case. According to the applicant, no such order has been issued. And after show cause notice at Annexure I was issued, the applicant was forcibly made to relinquish the charge to the mail-overseer. Though the respondents have contended that ~~an~~ order was issued on 22.9.1987, the date on which the charge ~~was~~ was taken from the applicant, the respondents have not produced either the file or the copy of the order issued in this regard. However, the fact that action was initiated against the applicant by issuance of notice (Annexure 1) for specific and enumerated misconduct is not in dispute. The misconduct alleged to have been committed by the ~~was~~ ^{alleged} applicant are that, he had assaulted the BPM Sri D. Mariah in the presence of certain persons and that he ~~was~~ ^{from duty} absented himself unauthorisedly. The case of the applicant is that he never assaulted the EDBPM Sri D. Mariah, it was the EDBPM who abused him calling his caste and that the absence on certain dates were for unavoidable reasons and that he had not been given any opportunity to establish his innocence which he is legally entitled in the interests of justice and also, according to the provisions contained in Rule 8 of the ED Agents Conduct and Service rules. From the show cause notice and from the pleadings, it is abundantly clear that the services of the applicant were terminated not for any general unsatisfactory

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service or for any administrative reasons unconnected with his conduct, and that the termination was on the basis of ~~the~~ finding that the applicant had committed a misconduct. Audi-alteram-partem is a basic requirement of rule of law and to condemn a person without being heard, ~~is~~ is negation of principles of natural justice and ~~antithesis~~ rule of law. The question whether the service of an ED Agent who has not completed three years of service can be terminated under Rule 6 of the EDA Conduct and Service Rules for specific misconduct came up for consideration before the Calcutta Bench of the Central Administrative Tribunal, in Tapas Kumar Chowdhury versus Union of India and others (reported in 1987(3) ATC 487, ~~Identical contentions as~~ raised in this ~~case~~ were raised by the department. The Tribunal negatived the contentions and held that Rule 6 of the EDA Conduct and Service Rules, cannot be invoked for terminating the services of an ~~EDAA~~ ED Agent though he has not completed three years of service, if the cause for termination is ~~alleged~~ misconduct. We are in respectful agreement with this view taken by the Calcutta Bench.

7. Instructions have been issued by the Director General of Posts, in regard to the termination of the services of an ED Agent under Rule 6 of the ED Agent conduct and service Rules. DGP&T, in his letter No.151/2/78-Disc. II dated 19.4.79 has clarified as follows:

"Initiation of regular disciplinary proceedings is necessary, if specific irregularity comes to surface in view of the safeguard afforded to ED Agents under Article 311 of the Constitution."

Since the termination of the services of the applicant in this case was undoubtedly on the basis of alleged specific and enumerated mis-conducts the action of

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the Sub-Divisional Inspector in terminating the services of the applicant on the basis of the show-cause notice at Annexure I, without conducting an enquiry as required under Rule 8, to enable the applicant to ~~put~~ put forth his defence is not only against principles of natural justice enshrined under Art.311 of the Constitution, but also against the instructions contained in the DGP&T letter referred above. Therefore, we are of the considered view that the impugned action of the respondents in terminating the services of the applicant and consequent taking over of charge at Annexure II being illegal, are liable to be struck down.

8. The appeals submitted by the applicant to the Superintendent of Postoffices and to the Director of Postal Services and the review application to the Chief Postmaster General, Hyderabad, have been turned down with cryptic and non-speaking orders. None of these authorities has applied its mind to the case. The contention of the respondents that these orders were speaking orders because in all these orders, it was mentioned that the concerned authority had gone through the material papers is wholly untenable because a mere statement that the competent authority has ~~perused~~ perused the records, will not disclose application of mind, unless the orders contain the reasons for arriving at the conclusion. Annexure 4, 6 or 8, does not disclose the grounds on which the decision was arrived at and therefore they are cryptic and non-speaking orders and are also liable to be set aside.

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9. Having found that the impugned order of termination is liable to be struck down, the next question that arises is, as to what relief the applicant is entitled. Shri Anjaneyulu argues that as the services of the applicant have been illegally terminated, on the order being declared null and void, the respondents have to be directed to pay to the ~~xx~~ applicant full wages for which he was illegally kept out of service. Learned counsel for the respondents on the other hand argues that, an ED Agent ^{CD} who is facing an enquiry and who is ~~put off~~ duty is not entitled to any allowances. ~~.....~~ On the same analogy, the applicant, who has not performed duty after his services were terminated is not entitled to any backwages. The analogy of 'put off' duty and the provisions of Rule 9^½ of EDA conduct and Service Rules, 1964 do not apply to the facts of this case, as the applicant was not ~~put off~~ duty at all. Further, no enquiry has also been held to warrant ~~put off~~ duty. The question is whether the applicant who has been compelled to remain out of service, is entitled to backwages. We have found that the termination of the services of the applicant without holding an enquiry is illegal and unjustified. The natural and legal consequence is that the impugned order of termination of services of the applicant is nonexistent in the eyes of law; that means, it should be deemed that the applicant had continued in services. Viewed in that respect,

in the ordinary circumstances, the respondents should be directed to reinstate the applicant, and also to pay full back wages. But there are some special features in this case which will be discussed later.

10. The learned counsel for the respondents with considerable vehemence, argued that even if the termination of the services of the applicant is held to be invalid on the ground that an enquiry, as required under Rule 8 has not been held, it being only on a technical ground, and as the applicant has not been fully exonerated of the charges against him, there is no justification for a direction to pay back-wages. This argument is also not fully correct. There has not been a disciplinary proceeding initiated against the applicant with the issuance of a charge sheet. In his instructions under letter No.18/3/85/Disc. dated 24.5.1985, the DGP&T has clarified as follows:

"Rule 8 of the ED Agents (Conduct and Service) Rules, 1964, which lays down the procedure for initiating disciplinary proceedings against an ED Agent is similar to Rule 14 of CCS(CCA)Rules, 1965. Accordingly, the form prescribed for issue of charge sheet to a regular employee under the CCS(CCA)Rules may be adopted with necessary modification for issue of charge-sheet to an ED Agent."

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According to Rule 8, while issuing a charge sheet along with the statement of allegations, ~~and~~ list of evidence in support thereof, should be communicated to the applicant. No such charge sheet as contemplated under Rule 8 has been issued in this case. Annexure I is not a charge sheet. Annexure I only states that on the basis of a report, it was proposed to terminate his services for the misconduct committed by him, and he could make a representation in writing against the proposed penalty. Therefore, Annexure I contains a finding that the applicant committed misconduct and the opportunity was given to make a representation only in regard to the penalty proposed and not to refute the allegations and to defend himself. Therefore, we find, that no charge has been framed against the applicant to say that he has not been fully exonerated of the charge. Setting aside the order of termination in this case is not on technical grounds, ^{but} because the action itself was not permitted by the rules. The power given under Rule 6 of EDA Conduct and Service Rules is to terminate the service of the EDA Agent who has not completed three years of service for general unsatisfactory performance or for any administrative reasons. This power cannot be misused for terminating the services of an employee for a specific misconduct, short-circuiting the requirements of Rule 8. The action in this case amounts to colourable exercise of power as the power has been ~~mis~~-used, not for the purpose ~~of~~ for which it was conferred but for some other reason. Therefore, the contention of the respondents that if at all the impugned order is defective, it is only on technical grounds, has no merit.

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11. The impugned action had been assailed by the applicant before various authorities, namely, Superintendent of Post Offices, Director of Postal Services and Chief Postmaster General. In all his representations to these authorities, the applicant had consistently taken the stand that the action was against the rules. The authorities concerned, even, the Chief Postmaster General has not taken care to examine the contention of the applicant that the action of the appointing authority in removing him from services for a mis-conduct without holding an enquiry is invalid. Though, normally, under such circumstances, the respondents should be, not only directed to reinstate the applicant in service; but also, be directed to pay him full backwages straightforward. But, though a charge had not been framed against the applicant, there has been certain allegation of misconduct against the applicant for which the impugned action was taken. The impugned action is being held invalid as it was not done in accordance with the rules, and as the applicant has been denied a reasonable opportunity to ~~xxx~~ defend himself in a duly held enquiry after framing a charge. Therefore, while the applicant should be reinstated immediately, we are of the considered view that the respondents should be given an opportunity to proceed against the applicant in accordance with Rule 8 of the ED Agents (Conduct & Service) Rules, if they deem it necessary to do so, and that the question of payment of back wages, etc., should abide by the result of such enquiry if held.

12. In the result, the application is allowed in part. The impugned order of termination of services of the applicant at Annexures, 2, 4, 6 & 8 to the OA are set aside. The respondents are hereby directed to reinstate the applicant as EDMC, Thanedar-pally, the post which the applicant was holding forth-with and at any rate not later than fifteen days after receipt of a copy of this order. If the respondents after reinstating applicant, consider it necessary to take action against

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applicant, for the alleged misconduct, they are given liberty to proceed against him under Rule 8 of the ED Agents Conduct and Service Rules. But, the enquiry should be completed within three months from the date of receipt of a copy of this order. If such an enquiry as afore-said is held against the applicant for his alleged mis-conduct, the question of ~~xxxm~~ payment of backwages to the applicant for the period between the date of removal from service and the date of reinstatement will abide by the final order in the proceedings. If no such enquiry is held and completed within the aforesaid period of three months, the respondents shall pay to the applicant full back wages for the period for which he was kept out of service on removal and treat the period as 'duty'. There is no order as to costs.

(A.B.GORTHI)
Member (A)

(A.V. HARIDASAN)
Member (J)

Dated: 4-10

1994 Dy. Registrar (J)

Hyderabad 6-10-94

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Copy to:-

1. The Secretary to Government, Department of Posts, Union of India, New Delhi.
2. The Chief Postmaster General, Hyderabad.
3. The Director of Postal Services, A.P.M.R.Hyd.
4. The Superintendent of Post Offices, Nalgonda.
5. The Sub Divisional Inspector, Postal, Nalgonda South Sub-Divn. Nalgonda.
6. One copy to Sri. K.S.R.Anjaneyulu, advocate, CAT, Hyd.
7. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
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