

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 31.8.2001

OA 32/2001

Surendra Kumar Sharma, EDEPM, Bhutera.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Sardar Patel Marg, Jaipur.
3. Supdt. of Post Offices, Jaipur (M) Dn., Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.MISHRA, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRAJ, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.Vikrant Gupta

For the -Respondents ... Mr.S.S.Hasan, proxy counsel for  
Mr.S.M.Khan

O R D E R

PER HON'BLE MR.A.K.MISHRA, JUDICIAL MEMBER

The applicant has challenged the order dated 9.1.2001, passed by the Superintendent of Post Offices, Jaipur (M) Dn., Jaipur, whereby the said respondent reviewed the order of putting off duty of Shri Manchar Kumar Sharma, and revoked the same. The applicant has further prayed that the respondents be directed to allow him to continue on the post of Extra Departmental Branch Post Master (EDEPM, for short), Bhutera.

2. Notice of the OA was given to the respondents, who have filed their reply. It was contended by the respondents that the applicant was appointed on provisional basis and, therefore, he has no right to further continue on the post and the respondents have revoked the put off duty order

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relating to Shri Manohar Kumar Sharma, who was regularly appointed EDEPM. The respondents prayed that the OA be dismissed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. From the pleadings of the parties it appears that Shri Manohar Kumar Sharma, who was a permanent incumbent, was put off duty w.e.f. 6.5.98 for his involvement in a criminal case. The applicant, Shri Surendra Kumar Sharma, was engaged to work as EDEPM, Bhutera, provisionally w.e.f. 24.8.98 to avoid dislocation of postal service in the rural area. Subsequently, after observing formalities, the applicant was approved provisionally for the post of EDEPM on 2.7.99. The appointment orders given to the applicant from time to time were conditional and it was mentioned therein that "if it is decided to take Shri Manohar Kumar Sharma back on duty, the provisional appointment of the applicant will be terminated without notice". The department reviewed the put off duty period of Shri Manohar Kumar Sharma and passed Ann.A/1, which is under challenge. Consequent to this order, Shri Manohar Kumar Sharma had taken charge of the post and the applicant stood relieved of the said post. Thus, the applicant has challenged the action of the respondents relieving him on the ground that he was a regularly appointed EDEPM, could not have been relieved dehors the rules. The applicant has also contended that the condition on which he was appointed never came to an end because Shri Manohar Kumar Sharma was neither acquitted of the criminal charge nor was exonerated by the department. The respondents did not observe the principles of natural justice by giving an opportunity to the applicant to defend his position and consequently the action of the respondents is liable to be set aside.

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5. Having considered the record and also the arguments advanced by the learned counsel for the parties, we are of the opinion that the department was fully empowered to review the put off <sup>duty</sup> period of Shri Manohar Kumar Sharma because it is the department who has to consider further continuance of suspension/put off duty of an employee. If for one reason or the other, further continuance of suspension or put off duty is not necessary then the said employee can be put back on duty by revoking the earlier order, pendency of a criminal case or departmental inquiry notwithstanding. Thus, if in the instant case, the respondents thought fit to review the put off duty of Shri Manohar Kumar Sharma then no fault can be found in it. As is common experience that criminal proceedings continues for years together and keeping an employee suspended during the pendency of a criminal case is sometimes not necessary. If we go by the allegation of the applicant in the instant case then Shri Manohar Kumar Sharma is facing criminal charge on account of unnatural death of his wife, said to be a dowry death. Though such crimes are serious in nature but departmental interest is not involved in such cases neither the same was in conflict due to this criminal case. Therefore, if the department thought that further continuance of put off duty of Shri Manohar Kumar Sharma was not necessary then review of such order and revocation of put off duty order cannot be said to be bad in law.

6. Considering the allegation of the applicant that he was regularly appointed candidate on the post of EDEPM, we conclude that it is factually incorrect. In every appointment order it is mentioned that the applicant has been provisionally appointed till Shri Manohar Kumar Sharma is put back on duty either on termination of criminal proceedings or <sup>or</sup> exoneration otherwise. This condition cannot

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be stretched to the extent that the applicant has a right to continue on the post of EDBPM till final termination of the criminal case <sup>against Shri Manchar Kumar Sharma</sup> i.e. right upto the end of every available remedy to him. In fact, law is more than settled and a provisional appointee has no claim on the post in comparison to a regularly appointed candidate who, in the present case, is Shri Manchar Kumar Sharma. Therefore, the arguments in this regard are rejected.

7. It was lastly argued by the learned counsel for the applicant that the department has not followed the provisions of Rule-6 in terminating the services of the applicant and no notice was given to the applicant, as mentioned in the rule. Therefore, removal of the applicant is illegal and he is entitled to be restored to his original position. We have considered this argument but we cannot agree to the preposition advanced by the learned counsel for the applicant for the simple reason that proviso to Rule-6 of the EDA (Conduct & Service) Rules provide that services of an employee, who has not served for more than three years, may be terminated forthwith and on such termination the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance + dearness allowance for the period of notice at the same rate at which he was drawing this immediately before the termination of services. The plain and simple reading of this proviso means that in any case the applicant can claim one month's allowance, as prescribed, if the requisite notice has not been given to him. Giving one month's clear notice is not a condition precedent for terminating the services of ED employees and, therefore, as argued by the learned counsel for the applicant, the termination of services of the applicant cannot be held to be illegal. All what the applicant can claim is one month's allowance + dearness allowance from the

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department, for which he can represent his case to the departmental authorities and hopefully the department would be good enough to agree to his representation and pay him the said allowance, if the same is held to be payable.

3. As discussed above, we are of the opinion that the present OA has no merit and the same deserves to be dismissed, and is hereby dismissed with no order as to costs.

*Amrit*  
(A.P.NAGRATH)

MEMBER (A)

*S.K.M.*  
31/8/2001  
(A.K.MISHRA)

MEMBER (J)