(1996) 10 SC CK 0212

In the Supreme Court Of India

Case No : Civil Appeals No. 3974 Of 1995 With No. 3998 Of 1995

Union of India (UOI) and Others APPELLANT

Vs

Kameshwar Prasad RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Citation : (1997) 11 SCC 619 : (1998) SCC(L&S) 321

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The only question that falls for consideration in these appeals is whether an Extra Departmental Agent in the Posts and Telegraphs Department of the government of India who was "Put-off Duty" on account of pendency of departmental proceedings against him is entitled to the allowances for the period of "Put-off Duty" on his being exonerated in the departmental proceedings.

2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose.

3. The Extra Departmental Agents are government servants holding a civil post and are entitled to the protection of Article 311(2 of the Constitution (See: Supdt. of Post Offices v. P.K. Rajamma. They are governed by separate set of rules, viz., the Posts and Telegraphs Extra Departmental Agents (Conduct and

Service) Rules, 1964 (hereinafter referred to as "the Rules"). The Central Civil Services (Classification, Control and Appeal) Rules are not applicable to this category of employees in view of the notification dated 28/2/1957 issued by the government of India under Rule 3(3 of the said Rules.

4. In Rule 4 of the Rules it is provided that the employees shall not be entitled to any pension. Rule 5 relates to leave. Rule 6 deals with the termination of services. Rule 7 prescribes nature of penalties that can be imposed* Rule 8 prescribes the procedure for imposing a penalty. Rule 8-A specifies the cases in which the provisions of Rule 8 would not be applicable. Rule 9 which is the rule relevant for the purpose of these appeals reads as under:

"9. Put-off duty.-(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.

(2 An order made by the Inspector of Post Offices under sub-rule (1 shall cease to be effective on the expiry of fifteen days from the date thereof unless earlier confirmed or cancelled by the appointing authority or an authority to which the appointing authority is subordinate.

(3 An employee shall not be entitled to any allowance for the period for which he is kept off duty under this rule."

5. Rule 10 makes provisions for filing of appeal against an order putting an employee off duty. Rules 11 to 15 govern the exercise of the right of appeal. Rule 16 confers the power of review. There are other provisions in the Rules which are not relevant for the present case.

6. Kameshwar Prasad, the respondent in Civil No. 3974 of 1995, was employed as Extra Departmental Branch Postmaster. Disciplinary proceedings were initiated against him and a charge-sheet was served on him under Rule 8 of the Rules. During the pendency of the said proceedings he was put off duty by order 4/8/1986 from 8/8/1986. In the departmental proceedings he was exonerated of the charges and by order dated 30/9/1989 he was ordered to be reinstated. He joined duty on 26/10/1989. He moved the central Administrative tribunal, Patna bench (hereinafter referred to as "the tribunal") by filing OA No. 177 of 1991 wherein he claimed wages for the period 8/8/1986 to 25/10/1989 when he was put off duty. The said application was opposed by the appellants on the ground that in view of sub- rule (3 of Rule 9 of the Rules the respondent was not entitled to any allowance for the period during which he was put off duty. The said application of the respondent has been allowed by the tribunal by the impugned judgment dated 11/5/1992. The Tribunal has held that the period during which

the respondent was put off duty has to be treated as period of suspension and on exoneration he is entitled to the allowances for the period he was put off duty. Similarly, in Civil No. 3998 of 1995 the respondent, Rajendra Ratan Kadam, was employed as Extra Departmental Branch Postmaster and was put off duty on 22/8/1987 in view of the departmental proceedings that were initiated against him. The said departmental proceedings were quashed by the Enquiry Officer on the view that his being put off duty for the period of three years was sufficient to meet the ends of justice. He was reinstated on 25/10/1990. OA No. 1212 of 1992 filed by him before the tribunal has been allowed by the judgment dated 10/12/1993 wherein it has been held that he is entitled to allowances for the period from 22/8/1987 to 25/10/1990.

7. The learned counsel for the appellants has urged that in view of the express provision contained in Rule 9(3 of the Rules, the tribunal was in error in directing payment of wages to the respondents for the period during which they were put off duty. We find considerable substance in the aforesaid submission of the learned counsel. In view of the express provision contained in Rule 9(3 of the Rules which prescribes that "an employee shall not be entitled to any allowance for the period for which he is kept off duty", we are unable to appreciate on what principle the tribunal could direct the payment of allowances to the respondents for the period they were kept off duty. The Rules lay down a complete code governing the service and conduct of Extra Departmental Agents including proceedings for taking disciplinary action against them for misconduct. The provision in Rule 9 enabling an employee being put off duty may be akin to the power of suspension in the sense that during the period he is put off duty no work is assigned to the employee. But it does not mean that dehors the provisions contained in the Rules an employee who is kept off duty would be entitled to allowances for the period he was kept off duty. Even in a case where a government servant is placed under suspension during the pendency of departmental proceedings initiated against him the payment of salary and allowances for the period of suspension after the termination of the departmental proceedings is governed by the relevant rules. Here the matter is governed by Rule 9(3 of the Rules which prescribes in express terms that an employee shall not be entitled to any allowance for the period for which he is kept off duty. The said provision does not envisage an exception in the matter of payment of allowances for the period the employee was kept off duty if the employee is exonerated in the departmental proceedings. The directions given by the tribunal in the impugned orders for payment of allowances for the period the respondents were kept off duty cannot, therefore, be upheld and have to be set aside.

8. It has, however, been pointed out that the government of India has issued orders dated 24/4/1994 and 27/7/1994 regarding payment of ex gratia compensation up to a limit of Rs. 500.00 to an Extra Departmental Agent who has been placed under put off duty pending finalisation of disciplinary proceedings and who has been completely exonerated in those proceedings, provided the period during which he was kept off duty exceeds 45 days. If it is so

the cases of the respondents for payment of such ex gratia compensation may be given due consideration by the authorities in the light of the aforementioned orders if applicable to them.

9. The appeals are accordingly allowed, the impugned judgments of the tribunal are set aside and the OAs filed by the respondents are dismissed. No order as to costs.

