

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

LIBRARY

O.A. 578 of 2016



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Sri Subrata Gangopadhyay,
Son of Late Sambhunath Ganguly,
Working as Assistant Accounts Officer,
Office of Area Manager (TD),
Bidhannagar, Calcutta Telephones,
Residing at 22/A, Harishava Road, 2nd Lane,
P.O. Nona Chandan Pukur, Barrackpur,
Distt. North 24-Parganas,
Titagarh, Pin : 700122.

..... Applicant.

Versus

1. Union of India
through the Secretary,
Government of India,
Ministry of Communication and
Information Technology,
20, Ashoka Road,
New Delhi – 110 001.
2. The Director (HR & Finance) BSNL,
BSNL Corporate Office,
Bharat Sanchar Bhawan,
7th Floor Harish Chandra Mathur Lane, Janpath
New Delhi – 110001.
3. The Executive Director,
BSNL Bharat Sanchar Bhawan,
New Delhi – 110 001.
4. Chief General Manager,
Calcutta Telephones, BSNL,
Kolkata – 700 001.
5. General Manager (Finance),
Calcutta Telephones,
8, Hare Street,

Kolkata – 700001.

..... Respondents.



For the applicant : Mr. B.R. Das, Counsel

For the respondents : Ms. M. Bhattacharya, Counsel

Date of Order : 15. 1. 2020

ORDER

Per : Bidisha Banerjee, Judicial Member

The applicant has been preferred to seek the following reliefs:

"a) Treat the suspension order being Annexure-A2 dated 23.04.2005 as not valid and non-ext beyond 90 days, i.e. from 22.07.2005 and the petitioner as on duty for all intents and purpose from the said date till joining on 18.10.2015.

b) Amend, modify the order being Annexure-A1 so as to direct the payment of full pay and allowances beyond 90 days and all the other consequential benefits from 22.07.2005.

AND

c) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscientious justice may be done unto the applicant by way of grant of reliefs as prayed for in (a) & (b) above.

d) Any further order/orders and/or direction/directions as your Lordships any fit and proper.

e) Costs."

2. The facts urged by applicant to support his claim are as under:

That he was suspended under Rule 10(1)(b) by the competent departmental authority, (and not the CBI authorities) on the ground of a criminal offence being under investigation against him.

It is crystal clear that the suspension order being Annexure-R1 was not reviewed by a competent authority within 90 days effective from 23.04.2005 either under CCS(CCA) Rules or BSNL CDA Rules, 2006.

The suspension was finally revoked w.e.f. 16.10.2015 vide Rule 30 of BSNL CDA Rules, 2006.



It is a travesty of truth that the petitioner had ever approached this Tribunal or for that matter moved the Hon'ble High Court at Calcutta for any declaration that the suspension order dated 23.04.2005 should be declared as to have lost its force for non-review of continuation of suspension within 90 days as mandated under Rule 10 of CCS(CCA) Rules. The Respondent authorities cannot take the plea of non-review of continuation of suspension within the mandated period of 90 days only because the criminal offence was under investigation by the CBI, ignoring the fact that on completion of such investigation a charge-sheet was already submitted by the CBI before the designated court of law. Hon'ble Tribunal in OA No. 1152/2013 was not in seisin of the matter that the suspension order effective from 23.04.2005 already ceased to operate in the absence of non-review of the said suspension within the mandatory period of 90 days. The order dated 13.05.2013 in WPCT No.408/2012, in an identical case against the Respondents it was categorically decided that the suspension not having been reviewed within 90 days and continued against the petitioner is bad in law and void after 90 days, i.e., from 22.04.2005 and the petitioner stands to be treated on duty for all intents and purpose until he was allowed to join on 18.10.2015. There is no dispute that the first review by the competent committee was undertaken on 20.04.2006.

3. The respondents have failed to demonstrate that the suspension was reviewed within 90 days of its issuance.

4. The applicant has heavily relied upon **UOI-vs-Dipak Mali [(2010) 2 SCC 222]** in support of his claim that by operation of R. 10(6) suspension order would not survive after period of 90 days unless extended after review.

5. We note that the Hon'ble Apex Court in **Ajay Kumar Choudhary Vs. Union of India & Ors.** has observed as under:

"8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and



when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

The Hon'ble Court held that -

"14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

6. In view of the legal proposition ~~of~~ supra, we have no hesitation to direct the authorities to reconsider the matter. If it is revealed to them that the suspension issued on 23.04.2005 was not reviewed within 90 days or as prescribed by the rules within the specified period, to treat the suspension as revoked on the expiry of 90 days from its issue or such period as under rules in case it was reviewed after the first 90 days but not reviewed within prescribed time thereafter, and according to such revelation accord

consequential benefits of pay and allowances to applicant within 3 months, by issuing appropriate order in accordance with law.

7. The present O.A. accordingly stands disposed of. No costs.



(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh