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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.712/2001

New Delhi, this the 12th day of December, 2001

Shri M.S.Ahmed
s/o late Shri Mohd. Adil
r/o G-49, Morad Road
Batala House
Okhla
New Delhi - 110 025. ... Applicant

(By Advocate: Shri Vijay K. Mehta)

Vs.

Union of India
through the Secretary
Ministry of Communications
Deptt. of Telecommunications
20, Ashoka Road
Sanchar Bhawan
New Delhi - 110 001. ... Respondent

(By Advocates: Shri V.K.Rao with Ms. Anuradha Priyadarshini)

O R D E R

By Shanker Raju, Member (J):

The applicant, who has been working as Junior Telecom Officer (hereinafter called as 'JTO') on deputation to Mahanagar Telephone Nigam Ltd. (herein after called as 'MTNL'), has assailed an order passed on 16.5.1995 wherein he has been placed under deemed suspension as well as the order passed on 26.3.2000 whereby his subsistence allowances has been reduced by 50% and the order passed on 11.7.2000 whereby his request for review of the suspension order has been turned down and he is ordered to be remained under suspension until further orders.

2. Briefly stated, an FIR under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act read with Section 420 and 120-B of IPC along with Section 25 of the Indian Telegraph Act has

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been registered against the applicant for diversion of one Telephone No.6835959 with STD/ISD facility to a wrongful subscriber. The applicant was arrested on 28.3.1995 and detained in custody for period exceeding 48 hours. On 16.5.1995 he has been placed under deemed suspension w.e.f. 28.3.1995, i.e., the date of his arrest. The applicant was accorded subsistence allowances, under FR 53, on 10.7.1995 and thereafter increased by 50% on 9.11.1995. By an order dated 24.7.1995 issued by the DGM(Admn.), MTNL, the applicant was asked not to leave the Headquarters which is at New Delhi.

3. In pursuance of the post of JTO declared as Group 'B' (Gazetted) post from Group 'C' (None-Gazetted) post, the applicant became Group 'B' (Gazetted) employee. By an order dated 16.11.1999, the applicant has been instructed to attend the office and marked his present failing which the subsistence allowance would be stopped. The applicant during this period marked his presence and was accorded leave also. The applicant has filed OA No.2764/99, in view of the fact that he is being reported back on duty, to revoke the suspension order and for payment of pay and allowances to him. By an order dated 4.2.2000, the Tribunal has disposed of the OA with a direction to the respondents to treat the OA and MA as applicant's representation and to pass a reasoned order thereof in accordance with rules and instructions. On 25.2.2000, the applicant was asked to intimate the status of his criminal case to which he replied on 29.3.2000. By an order dated 26.3.2000, the subsistence allowance of the applicant has been reduced on account of

suppressing the information of his arrest. The applicant has made a representation against this. In pursuance of the order passed by the Tribunal supra the respondents rejected the request of the applicant for revocation of the suspension order against which another representation has been preferred. The applicant filed Contempt Petition No.178/2000 in OA No.2764/1999 and by an order dated 24.8.2000 he has been accorded with liberty to approach this Court through appropriate original proceedings in accordance with law.

4. The learned counsel for the applicant has stated that the order passed on 11.7.2000 is arbitrary and also on 16.11.1999 whereby the applicant has been asked to attend the office at New Delhi failing which his subsistence allowance would be stopped. In pursuance thereof he has marked his attendance upto 10.2.2000. This, according to him, has deemed to havew revoked the suspension order and was rightly done as investigations in respect of the criminal case had long been over and the statement, etc. of all having been recorded and as per the instructions of the Government of India, once the investigation in respect of a criminal case have been over and charge sheet has been filed it would be futile to continue the Government servant under suspension. In this back ground, it is stated that during this period when he has marked his attendance the applicant has been granted leave which is not permissible during the period of suspension as per the rules as such having treated on duty the applicant cannot be continued under suspension further.

5. The learned counsel for the applicant further stated that the stand of the respondents to reduce the subsistence allowance by reducing it to 50% is also not legally tenable as the same has been reduced on account of prolonged suspension which is attributable to the applicant due to dilated tactics. It is further stated, based on the ground, that the applicant has not suppressed the information of his arrest and the circumstances thereof. Whereas he was duty bound to intimate about his arrest as per OM dated 23.10.1951. In this back ground, it is stated that the applicant has informed the registration of the FIR himself by a letter dated 30.5.1995 highlighting the circumstances leading to his arrest. As such it is stated that the registration of the case of FIR was very much in the knowledge of the respondents. There is no cogent reason as to why the applicant has been continued on deemed suspension. According to him it was mandatory upon the respondents to review the suspension order by raising the subsistence allowance to 75% for which he has placed reliance on FR 53(1)(ii)(a)(i) wherein the subsistence allowance may be increased by a suitable amount, not exceeding 50% admissible,if the suspension has been prolonged due to the reasons to be recorded, in writing, not directly attributable to the Government servant. Further placing reliance on a decision of this Court in **Bani Singh** Vs. **Union of India & Others**, OA No.833/2000 dated 6.2.2001, it is contended that as the investigation is complete and criminal trial is in progress and there is no justification to continue the suspension and if there is no likely hood of tampering

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any witnesses or the official record during the criminal trial and in absence of any justified reasons the order passed by the respondents is mechanical without stating any reasons. Further it is stated that one Shri B.K.Sharma who was also involved in the same FIR has been meted out the differential treatment vis-a-vis the applicant, as in his case his suspension has been revoked on 18.8.2000 and further placing reliance to case of one Shri Balram Yadav who was also suspended on account of criminal case involving corruption charges, despite rejection of his case by the Court, his suspension has been revoked by the respondents suo motto as the applicant is also identical situated he should have been meted out the same treatment, failing which the same smacks of hostile discrimination and is contrary to Articles 14 and 16 of the Constitution of India. It is also stated that the applicant has been falsely implicated in the criminal case and no direct involvement as alleged by the respondents in shifting the Telephone No.6835959, as the applicant was JTO, Nehru Place he has no role to play in shifting the said telephone which is falling under the Jurisdiction of Okhla Exchange. According to an order dated 26.3.2000 is ipsi dixit of the authorities as the investigation is over and charge-sheet is filed, there is no justification to continue his suspension as the same is illegal and violative of Article 21 of the Constitution. According to him the respondents are legally bound to sou motto periodically review the suspension.

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6. The applicant has further raised the issue of the jurisdiction by contending that on upgradation of post of JTO was declared as a Group 'B' (Gazetted) in September, 1999, the competent authority has been changed from DGM to GM and as the order dated 26.3.2000 has been passed by DGM, who is incompetent, the order is not legally sustainable. It is further stated that no disciplinary proceedings have been resorted against the applicant. The applicant further stated that suspension did not survive as he has been attending office w.e.f. 16.11.1999 and he has never been communicated for non-attending the office. The applicant has further marked his attendance in the relevant register and according to him, the leave has been recommended to him and also granted. According to him, the subsistence allowances as well as the suspension order were reviewed by disciplinary authority whereas he was not competent to do the same and it is only the appointing authority, i.e., GM, who is competent to do the same.

7. On the other hand, strongly rebutting the contentions of the applicant, it is stated that the OA is barred by resjudicate as on the same cause of action and relief OA 2764/99 has been filed and disposed of, however, no liberty has been given to the applicant to file afresh OA. As the present OA is filed seeking the same relief it is barred by doctrine of resjudicate. It is also stated that in Contempt Petition No.178/2000, the applicant was given liberty to challenge the order dated 11.7.2000 but as no liberty has been given to the applicant while disposing of the OA herein, in view of Section 23 of

the CPC, the OA is not legally maintainable. It is further stated that placing reliance on a decision of this High Court in Surjit Singh Chowdhry Ex-Major Vs. Municipal Corporation Delhi & Others, 2001 (3) AISLJ Page 242 to contend that if criminal trial is pending in Court of law and same is taking time to conclude, in such cases also, it would depend on the facts and circumstances of each case as to whether the continuation of suspension should be treated as unjustified or not and it would be decided on various factors which should be taken into consideration would include the seriousness of charges levelled against the delinquent employee and where the charges are such that it would not be in the interest of department/institution to allow such an employee to remain in the seat i.e. where the Government servant is involved in criminal charges of corruption and the charges are being serious, cannot be interfered in continuing deemed suspension. The learned counsel for the respondents has further placed reliance on a decision of the Apex Court in Niranjan Singh Vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785 to contend that in serious charges, suspension has to be resorted to. As regards the discrimination, it is contended that Shri B.K.Sharma and the applicant are not identically situated. In case of Shri Sharm he was put in Column No.II of the charge sheet and he is yet to be made accused person. The disciplinary authority by an order dated 11.7.2000 continued the suspension order and by placing reliance of a decision of Patna High Court in N.Sundaram Vs. the State, 1977 (1) SLR 518 contended that Articles of 14 and 16 of the Constitution of India have no application in case of

suspension. It is also stated that the reduction of subsistence allowance is justified which has been taken by the disciplinary authority after due consideration as the applicant has remained under custody for 48 hours. The deemed suspension is in accordance with Rule 10 of the CCS (CCA) Rules, 1965 (herein after called as 'Rules') as it has been learnt that the applicant is engaged in some private business and had not preferred an appeal for revoking the suspension order and to ascertain his whereabouts the applicant has been asked to mark attendance but he has never been allowed to perform the duties after marking the attendance and has also not been allowed to work in the office. It is further stated that no leave had been accorded as alleged by the applicant. On his failure to mark attendance on a particular day, he himself shown in the attendance register as CL and has never asked for any explanation regarding absence on any particular day. It is denied that the attendance registers have been checked by the authorities. As the applicant has failed to disclose his circumstances leading to arrest, his suspension order was not revoked and in public interest, subsistence allowance has been reduced.

8. I have carefully considered the rival contentions of both the parties and perused the material on record. As regards the issue of reduction of subsistence allowance by an incompetent authority, who is not the appointing authority of the applicant and further resort of the applicant to contend that the DGM has no jurisdiction to review the orders as he ceased to the appointing authority of the applicant as

his post has been upgraded to Group 'B' (Gazetted) in September, 1999 and the DGM has passed the order on 26.3.2000, whereas the appointing authority of the applicant was GM, is not legally tenable. As per the provisions of Rule 10 of the CCS (CCA) Rules on account of arrest and detention, the appointing authority shall have the jurisdiction and authority to place a Government servant under suspension, if the detention of a Govt. servant exceeds 48 hours. Admittedly, the applicant had been placed under deemed suspension on account of his arrest and detention for the period exceeding 48 hours by the then appointing authority of the applicant, i.e., DGM. As per the provisions of FR 53(1)(ii(a)(i), if, in the opinion of the authority that the suspension exceeds three months who has issued the orders for deemed suspension is competent to enhance the amount in case the suspension is prolonged due to reasons to be recorded in writing directly attributable to the Government servant. There is no reference as to the appointing authority at the time when the order for reduction for subsistence allowance is issued by the competent authority having jurisdiction to reduce the amount. What has been referred to is that the authority who has been passed the order of deemed suspension shall be the competent authority. Applying this to the facts and circumstances of the present case, the applicant has been placed by the DGM under deemed suspension who was the appointing authority of the applicant and the orders passed on 26.3.2000 to reduce the amount has been issued by the same authority as there is no legal infirmity as to the jurisdiction of the DGM the contention of the applicant that this

exercise should have been made by GM, the appointing authority on his upgradation, holds no water. The appointing authority referred to is the appointing authority who issued the orders of deemed suspension but is not the appointing authority at the time when decision has been taken to reduce the subsistence allowance.

9. As regards the contention of the learned counsel for the applicant that the amount has been reduced arbitrarily as the applicant had already informed the respondents about his whereabouts and also explained the circumstances leading to his own arrest vide letter dated 30.5.1995 showing his innocence and as the registration of his case was within the knowledge of the respondents, the orders suffer from non-application of mind and at the ipsi dixit of the authorities. In my considered view, this plea of the applicant cannot be countenanced. On perusal of the orders passed by the competent authority to reduce the amount of his subsistence allowance, I find that the amount has been reduced on the ground that the applicant despite duty bound to intimate the circumstances leading to his arrest to his official superiors, has not intimated. As this has not been done no decision could have been taken regarding his suspension. The prolonged suspension has been due to the failure of the applicant to intimate about the circumstances pertaining to his arrest. As the applicant has adopted delayed tactics as per the provisions of FR 53(1)(ii)(a)(i) Rules ibid, the subsistence allowance has been reduced rightly. The reasons have been recorded in the order

which are justifiable. The contention of the applicant that he has informed the respondents about the facts and circumstances of his arrest vide his letter dated 30.5.1995, has been denied by the respondents. It is also apparent on the face of the letter dated 29.3.2000, in pursuance of a letter dated 25.2.2000 written to him to explain and to intimate the status of the case, the applicant nowhere has stated that he has already intimated the respondents on 30.5.1995 about the criminal case. Having failed to show any evidence that the letter dated 30.5.1995 has been served upon the respondents, an inference has to be drawn against the applicant that he has not informed the department about his arrest. His contention that the respondents are very much aware about the registration of the criminal case right from the year 1995 would not absolve the applicant of his duty to intimate the information regarding arrest as per the OM dated 23.10.1951. Due to this lapse, the respondents have failed to take any decision on his suspension regarding revocation of suspension the delay is squarely attributable to the applicant and it can be inferred that he has adopted the dilatory tactics. The resort to the applicant to an order passed by the respondents on 9.11.1995 where suspension has been shown not to have been attributable on the part of the applicant, cannot act as an estopple against the respondents. It is at the time of reducing the subsistence allowance to 50% the observation has been made by the competent authority but later on at the time of further revision as the applicant has failed to comply with the requisite criteria and has failed to inform the respondents the

respondents action cannot be found fault with and the reduction in subsistence allowance of the applicant is within the legal parameters and as per the extant rules.

10. As regards the contention of the applicant that as he has been directed by the respondents by a letter dated 16.11.1999, to attend the office and mark attendance failing which his subsistence allowances would be stopped and further accord of leave to the applicant, in my considered view would not amount to revocation of the deemed suspension impliedely. The contention of the respondents that the orders have been passed on 16.11.1999 was in the conspectus that for a long time the applicant was under suspension and an information was there with the respondents that he had been engaged in some private business outside Delhi. In order to ensure that the applicant should not indulge in such activities and despite being paid subsistence allowance he has been asked to mark his attendance. No official duty has been taken from him and he was not entrusted any work. The applicant used to go after marking attendance, the respondents have not accorded any leave to the applicant on the dates when he failed to mark his attendance, the applicant himself marked him on leave. The respondents have never insisted upon to extend his absence on a particular date and registers were also not checked for the purpose of remaining absent. The applicant has not been taken back on duty as he has not been entrusted any official work by the respondents. The aforesaid orders issued have been withdrawn on

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30.1.2000. As such even if it is inadvertently shown, having regard to the fact that there is no specific orders passed by the competent authority to revoke the suspension of the applicant, and the orders passed on 16.11.1999 by no stretch of imagination be treated as an order of revocation of deemed suspension of the applicant. As the applicant was involved in corruption charges serious in nature the competent authority has, for the purpose to ensure his whereabouts, resorted to his marking attendance would not constitute implied revocation of suspension. Apart from it, during the trial for charges involving embezzlement, corruption by a Government servant Apex Court in **Niranjan Singh's case** supra has already held that the same should not be revoked. The action of the respondents by making the applicant to mark attendance, in my considered view, would not amount to performance of duty for which it has to be treated as deemed revocation of suspension. As such the contention of the learned counsel for the applicant is rejected.

11. It is further stated that the applicant has been arbitrarily discriminated in the matter of review of suspension and his revocation. The resort of the applicant to the case of one Shri B.K.Sharma wherein despite being suspended he has ben reinstated back in service would not be legally tenable as no two unequals can be treated as equal. Shri B.K.Sharma, whose suspension has been revoked, has been placed only in Column No.II of the Charge-sheet which is meant for the accused, who have not been sent for the trial. As the applicant was the main accused and has

been sent for trial there cannot be any parity between him and Shri Sharma as such revocation of his suspension cannot be treated as hostile discrimination or involving any arbitrariness and cannot be held to be in violation of Articles 14 and 16 of the Constitution of India.

12. Lastly, by placing reliance on the case of one Shri Balram Yadav, who was involved in a corruption case this Court has, by an order dated 23.5.2000 in OA 931/2000, rejected the OA on account of serious allegations levelled against the applicant therein. Subsequently, the respondents themselves revoked the suspension order of the applicant by an order dated 18.8.2000. In this view of the matter, I find some justification for interference in this OA as it has been in similar circumstance the applicant has not been meted out a similar treatment and has been discriminated. However, on merits the applicant has no valid or justifiable claim to have any interference in the impugned orders.

13. Having regard to the reasons recorded above, I do not find any merit in the present application. However, in view of the decision taken by the respondents for revocation of suspension order vide letter dated 18.8.2000 in the case of Balram Yadav, the respondents are also directed to take a decision in the case of the present applicant, within one month from the date of receipt of a copy of this order. The OA is disposed of with the above observations. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/