

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.No.2448/1996

New Delhi, this 19th day of September, 1997.

Hon'ble Shri S.P. Biswas, Member(A)

Shri D.P. Srivastava
s/o Shri A.L. Srivastava
5-LF, Safdar Hashmi Marg
New Delhi ... Applicant
(By Advocate Shri J.K. Bali)

versus

Union of India, through
Secretary
Department of Telecommunications
Sanchar Bhavan, Ashoka Road
New Delhi ... Respondent
(By Advocate Shri K.C.D. Gangwani)

ORDER

This is the second round of litigation resorted to by the applicant on the issue of revocation of suspension order and subsequent actions required to be taken by the respondent-department.

2. The OA No.1583/91 filed in the first round was disposed of by this Tribunal by its order dated 13.9.95. Pursuant to that, respondent issued the following order dated 11.12.95 vide Annexure A-1:

"5. Now, therefore, the President has carefully considered the judgement and the criminal case pending against Shri D.P. Srivastava and on an objective assessment of the case, has directed that:-

(a) The period of suspension from 1.8.88 to 26.6.90 should not be treated as duty for any purpose till the final decision of the criminal case pending against Shri D.P. Srivastava in RC No.11(A)/88-LKO

(b) That the pay and allowances for the period of suspension from 1.8.88 to 26.6.90 be restricted to the subsistence allowance already paid to the officer."

(13)

3. It is the aforesaid order that the applicant seeks to challenge in the second round of litigation through the present OA on the ground that the respondents were not justified in passing the aforesaid adverse order against the applicant under sub-rule 1 of FR 54-B. This order is illegal and deserves to be quashed, the applicant contends. The specific ground taken by the applicant is that Annexure A-1 order has been passed on 11.12.95, after a delay of about five and half years from 26.6.90 when the applicant's suspension was revoked. That after the inordinate delay of five years, powers under sub-rule of FR 54-B could not have been exercised against the applicant in terms of the ratio of the judgement of Mumbai Bench of the Tribunal in the case of Basant Ram Jaiswal V. Area Manager (North), MTNL, Mumbai (1993) 24 ATC 641 decided on 25.2.93. In other words, the order at this stage had to be in favour of the applicant and that the said order could be reviewed, if necessary, after conclusion of the proceedings under FR 54-B(6) and CCS(CCA) Rules, 1965.

4. It is necessary to extract sub-rule(1) and (6) of FR 54-B:

(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order---

(a) regarding the pay and allowances to be paid to the government servant for the period of suspension ending with

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reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty

(6) Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be."

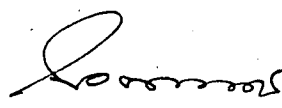
5. Apparently in sub rule (1) of Rule 54-B no period of limitation within which the order has to be passed is prescribed. However, the need for the exercise of power is clearly mentioned. Reinstatement of the government servant under suspension is the starting point. Such reinstatement cannot come into force without an order. An order of suspension shall continue to remain in force until it is modified or revoked by the competent authority under Rule 10(5)(a) of CCS(CCA) Rules, 1965. In the case of Jaiswal (supra), the Tribunal held that power under Rule 10(5)(a) revoking the order of suspension cannot be exercised in isolation of the power contained in sub-rule (1) of FR 54-B. The authority passing the order of revocation is not expected to become inactive after doing so. It is expected to act soon thereafter and exercise its jurisdiction under sub-rule (1) of FR 54-B. In other words, Tribunal felt that decision to revoke an order of suspension necessarily involves the decision to pass a specific order either under clause (a) or clause (b) of sub-rule 1 of Rule 54-B. The two acts are not separable so far as mental process is

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concerned. The two acts, therefore, form part of the same transaction. Since exercise of power under the aforesaid two provisions may not be simultaneous, the time lag between the two acts must not be unreasonable. In the aforesaid case, the time gap was three years and on that consideration, Tribunal felt that the power under sub-rule (1) of Rule 54-B could not be passed against the applicant. The adverse order in that case was accordingly quashed.

6. While dealing with this applicant's case in CA 1583/91, this Tribunal found that no order was passed by the respondents under sub-rule (1) of FR 54-B and hence directed to do so within a period of three months. I find that the suspension order here was revoked almost after about two years without any follow-up order under sub-rule (1) of FR 54-B. That was the action respondents were required to take simultaneously or at least within reasonable delays as per the ratio arrived at in the case of Jaiswal (supra). In the present case, time lag is two years if not five and half years. Under these circumstances, the decision arrived at in the case of Jaiswal's case would be squarely applicable in the facts and circumstances of the present case.

7. The application, therefore, succeeds and is allowed. The order dated 11.12.1995 shall stand quashed. No costs.


(S.P. Biswas)
Member (A)

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