

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 2347/89  
T.A. No.

199

DATE OF DECISION 2.6.1994

<u>Mangal Singh</u>	Petitioner
<u>Shri Sant Lal</u>	Advocate for the Petitioner(s)
Versus	
<u>The Senior Supdt, Air Mail</u>	Respondents
<u>Sorting Division, N.Delhi &amp; Anr.</u>	
<u>Shri Vijay Mehta</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice V.S. Malimath, Chairman.

The Hon'ble Mr. P.T. Thiruvengadam, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?



(V.S. MALIMATH)  
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2347/89

New Delhi this the 2nd June of 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Mangal Singh  
S/o Shri Sohan Lal,  
Mailman,  
Air Mail Sorting Division,  
New Delhi.

... Petitioner.

By Advocate Shri Sant Lal.

Versus

1. The Senior Superintendent,  
Air Mail Sorting Division,  
New Delhi-21.
2. The Superintendent (Sorting),  
Safdarjung Sorting Office,  
New Delhi.

... Respondents.

By Advocate Shri Vijay Mehta.

ORDER (ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri Mangal Singh, was a Mailman. He was taken into police custody on 19.3.1976. As he was in custody for more than 48 hours, he was deemed to be under suspension as provided in Rule 10(2)(a) of the CCS(CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). The disciplinary authority, however, passed an order regarding deemed suspension from 19.3.1976 at a later date. It appears that the petitioner was released on bail, the dates and particulars of which/are not made available to us. There is, however, material to show that the order of suspension was revoked on 17.11.1977 in pursuance of which the petitioner resumed duties on 5.12.1977. It appears that a criminal case was launched against the petitioner which was / background in which the

petitioner was taken into custody on 19.3.1976. It appears that there were actually two criminal cases, first ended in acquittal on 22.5.1986 and the second on 24.1.1987. Thereafter, the petitioner made representations to regularise the period of suspension and to grant him full emoluments for the period of suspension. As a result of the steps taken by the petitioner, a show cause notice was issued to him and on consideration of the cause shown by him, an order was made as per Annexure A-1 dated 22.9.1988. The order purports to have been made under FR 54 (5) and says that the period of suspension from 19.3.1976 to 2.12.1977 was fully justified and that, therefore, the said period shall be treated as not spent on duty for all purposes except for pensionary benefits. It was further stated that the pay and allowances for the said period shall be restricted to the subsistence allowance already paid to him. Appeal against the said order was dismissed on 20.9.1989 as per Annexure A-2 and hence this application.

2. Shri Sant Lal, learned counsel for the petitioner, contended that the petitioner having been suspended in the context of his having been taken into custody for more than 48 hours, the said taking of custody being in connection with the criminal cases launched against the petitioner, the said cases having ended in acquittal, the only reasonable inference to be drawn is that the suspension of the petitioner with effect from 19.3.1976 was wholly unjustified. If the suspension of the petitioner was wholly unjustified, he, further, maintains that the period of suspension has to be treated as on duty and he be paid all the emoluments for the said period as if he was on duty.

3. We shall first examine the relevant statutory provisions bearing on the question. The order of suspension though not produced by either of the parties was placed for our perusal by Shri Vijay Mehta during the course of the arguments. The said order in express terms invokes Rule 10(2) of the Rules and says that the petitioner shall be deemed to have been suspended with effect from the date of his detention, i.e. 19.3.1976. The preamble portion of the order states that the case in respect of a criminal offence is under investigation. The order further says that the deemed suspension shall remain until further orders. Rule 10(2) of the Rules which is relevant for our purpose reads as follows:

"A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for period exceeding forty -eight hours;....."

A Full Bench of the Tribunal had occasion to interpret Rule 10(2) in O.A. No.317/90 of the Calcutta Bench of the Tribunal. It is enough if we extract paragraph 5 of the said judgement which reads as follows:

"Whereas sub-rule (1) of Rule 10 of the Rules requires an order to be made for keeping a Government servant under suspension, sub-rule (2) does not contemplate an order being passed to keep a Government servant under suspension. The opening words of sub-rule (2) of Rule 10 of the Rules say "A Government servant shall be deemed to have been placed under suspension by an order of appointing authority" make this position clear. Sub-rule (2) creates a fiction that a Government servant though not placed under suspension by an order of the competent authority, is in law regarded as having been placed under suspension

by an order of the competent authority. The suspension which is brought about by the deeming provision contained in sub-rule (2) of Rule 10 of the Rules may at any time be modified or revoked by the Competent Authority."

Thus, it is clear though a formal order appears to have been made in this case regarding deemed suspension of the petitioner with effect from 19.3.1976, in law, suspension became operative automatically on the detention of the petitioner for ~~more than~~ 48 hours. An order can, however, be passed depending upon the circumstances at a subsequent stage for revoking the deemed suspension. The statutory provision, namely, Rule 10(2)(a), ~~xxxxxxx~~, does not confer any discretion on the competent authority to place the Government servant under suspension or not. Law brings suspension into operation by the deeming provision the moment the condition prescribed in Rule 10(2)(a), namely, of detention in custody for more than 48 hours is satisfied. We have, therefore, no hesitation in holding that the suspension which was brought about in this case under Rule 10(2)(a) was not attributable to any discretion exercised by the competent authority in the matter of placing the petitioner under suspension.

4. It is obvious having regard to the scheme of Rule 10(2) that when a Government servant is taken into custody, he is rendered in-capable of serving the administration. His volition to serve the administration stands denuded by his being taken into custody. That is the reason why a deeming provision is made for keeping such a Government servant who has been taken into custody under suspension. But when a Government servant ceases to be in custody either by his release on bail or as a result of his acquittal, the situation gets altered and the

discretion of the competent authority whether to continue him under suspension or not comes into operation. As the administration would not know as to when the Government servant was released from custody, it is reasonable to say that the discretion becomes operative only when the fact of release from custody is brought to the notice of the competent authority either by the Government servant or by other appropriate authority. Once it is brought to the notice of the authority that the Government servant who was under deemed suspension has since been released from custody, it has to exercise its discretion and decide as to whether he is to be continued under suspension or as to whether the order of suspension should be revoked. But until such an eventuality takes place there being no discretion whatsoever in the competent authority to revoke the order of suspension as long as the Government servant continues in custody, the deemed suspension would continue as long as the Government servant is in custody and the fact of his release is brought to the notice of the competent authority. In that view of the matter, when in law there <sup>is</sup> no discretion but a deemed suspension is brought about when the condition specified in Rule 10(2)(a) is satisfied, the question of deciding as to whether the suspension during that period was justified or not <sup>does not arise.</sup> The question of considering as to whether the suspension should be continued or not would arise only after the Government servant is released from the custody and that fact is brought to the notice of the appropriate authority. It is, therefore, not possible to hold that the suspension of the petitioner was wholly unjustified during the period of deemed suspension and until the fact was brought to the notice of the competent authority. Unfortunately, there is no material placed by either of the parties to show the date on which the petitioner was released from custody either by grant of bail or otherwise and the date on which that fact was brought to

the notice of the competent authority.

5. We shall now examine the relevant statutory provisions which bear on the question of making an order by the competent authority as to how the period of suspension should be treated. The impugned order invokes FR 54(5). The correct statutory provision which stands attracted to a case like this as rightly pointed out by Shri Sant Lal, learned counsel for the petitioner is FR 54-B (3) to (5). We shall for the sake of convenience extract these sub-rules:

"(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule(8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

Provided that where such authority is of the opinion of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation (within sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

- (4) In case falling under sub-rule(3) the period of suspension shall be treated as a period spent on duty for all purposes.
- (5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving

notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice".

It is clear from sub-rule (3) of FR 54-B that where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule(8) be paid the full pay and allowances to which he would have been entitled to had he not been suspended. Sub-rule (4) makes it clear that in a case falling under sub-rule(3) the period of suspension shall be treated as a period spent on duty for all purposes. Sub-rule (5) comes into operation if the case does not fall under sub-rules (2) and (3). In this case, sub-rule (5) would be attracted only if the case of the petitioner does not fall under sub-rule (3). We have already recorded a finding to the fact that it is not possible to hold that the deemed suspension of the petitioner under Rule 10(2)(a) of the Rules was wholly unjustified principally on the ground that it is a deemed suspension and not suspension brought about by the exercise of the discretion of the competent authority. As the case of the petitioner is attracted by sub-rule (3), it is obvious that the period during which the petitioner was under custody and the period from the date of release to the date of bringing that fact to the notice of the competent authority cannot be regarded as period of suspension wholly unjustified. As already stated, after the petitioner brought to the notice of the competent authority the fact of his release from custody, the competent authority had the discretion from that point onwards of continuing or not continuing the order of suspension. That



period would not be covered by sub-rule (3) of FR 54-B and, therefore, the provision of sub-rule (5) would be attracted. But no attempt has been made by the authorities to examine as to whether the period of suspension can be regarded as wholly unjustified after the petitioner was released from custody and that fact was brought to the notice. In this background, it has become necessary for us to remit the case with appropriate directions in the interest of justice.

6. For the reasons stated above, this application is disposed of with the following directions:

- (1) The period of suspension from 19.3.1976 until his release from custody was brought to the notice of the competent authority shall not be treated as a period of suspension wholly unjustified. For the said period, the petitioner shall not be entitled to any emoluments other than the subsistence allowance already paid. The said period of suspension shall<sup>not</sup> be treated as on duty except for the purposes of pensionary benefits.
- (2) The competent authority after giving the petitioner an opportunity of showing cause determine as to whether the period of suspension from the date the petitioner's release from custody was brought to the notice of the competent authority until his reinstatement on 5.12.1977, was wholly unjustified or not. The competent authority shall apply its mind to all relevant aspects of the matter, examine

the case of the petitioner under-sub-rule(5) of FR 54-8 and pass appropriate orders consistent with its finding.

- (3) The aforesaid directions shall be carried out within a period of three months from the date of receipt of a copy of the judgement. No costs.

*P. T. Thiruvengadam*

(P.T. THIRUVENGADAM)  
MEMBER(A)

*V. S. Malimath*

(V.S. MALIMATH)  
CHAIRMAN

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