

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1011 of 1990.

~~Ex No.~~

199

DATE OF DECISION 13.11.90Shri R.K. Misra

Petitioner

Shri J.K. Bali

Advocate for the Petitioner(s)

Versus

Union of India & another

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M.M. MATHUR, Administrative Member.

The Hon'ble Mr. S.R. SAGAR, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

JUDGMENT

( JUDGMENT OF THE BENCH DELIVERED BY HON'BLE MR. S.R. SAGAR,  
JUDICIAL MEMBER ).

The Applicant herein Shri R.K. Misra while working as Divisional Engineer Grade Rs. 3000-4500 at Ghaziabad, was placed under suspension on 26.2.1988 by General Manager, Telecom., U.P. Telecom. Circle, Lucknow vide order dated 26.2.1988 (Annexure A/3). The suspension order was ultimately revoked by the President of India vide order dated 12.4.1989 (Annexure A/8). The Applicant resumed his duties thereafter and period of suspension remained inforce till 2.5.1989. This period of suspension has not been treated as period spent on duty. The Applicant has, therefore,

moved the Application under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- (i) to direct the Respondents to treat the period from 26.2.1988 to 2.5.1989 as spent on duty for all purposes;
- (ii) to also direct the Respondents to pay the Applicant the difference between full pay and allowances for the period from 26.2.1988 to 2.5.1989 due to him and the amount actually paid to him alongwith interest at market rate.

2. In short compass, omitting irrelevant, the Applicant's case is that the General Manager who placed the Applicant under suspension had not been empowered by the President to suspend Group-A officer. The suspension was, therefore, illegal. After revocation of suspension order, the period of suspension be treated as period spent on duty.

3. Besides the legal pleas that the Application is pre-mature as remedies available to the Applicant have not been exhausted by him and that this Bench has no territorial jurisdiction, the Respondents have contended that in respect of the Applicant's suspension order, the President who is the competent authority subsequently issued a Special Order dated 10.3.1988 (Annexure R/1) authorising the General Manager, aforesaid, under the provisions of sub rule (1) of Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short the 'Rules') to act as an authority competent to suspend the Applicant. Thus the order of suspension was valid. It has further been contended that C.B.I. have registered several regular cases, interalia, against the Applicant and since the cases are being investigated by the C.B.I., the final order regarding treating of period of suspension will be issued only after the outcome of the investigations and subsequent proceedings, if any, against the

Applicant. The Applicant cannot, therefore, be allowed full pay and allowances for suspension period. The Application is liable to be dismissed.

4. We have heard arguments of the learned counsel for the parties and have gone through the record. Though the learned counsel for the respondents has not raised the point of territorial jurisdiction before us, the same has been raised by the respondents in para 4 of their reply. We have given considerable thought to this contention of the respondents. In this connection Rule 6 of the Central Administrative Tribunal (Procedure and Rules) 1985 may be referred. According to this Rule an application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction the applicant is posted for the time being or the cause of action, wholly or in part has arisen. This application was filed on 22.5.90 on which date as it appears from the application and documents, the applicant was posted as Assistant Director General, Sanchar Bhawan, Ashoka Road, New Delhi. The place of posting of the applicant at that time was New Delhi. Therefore, the applicant had a right to file the application with the Registrar of the Principal Bench. The contention of the respondents does not hold good.

5. The respondents have next contended that the application is pre-mature as the applicant has not exhausted all the remedies available to him. We have heard on this point and have perused the record. The question as to how the period of the alleged suspension be treated is involved in this case. After the revocation of the suspension order the applicant submitted a representation dated 11.8.89 (Ann. A-2) claiming full pay and allowances w.e.f. the date of revocation of the suspension order. It appears from the representation

that he claimed full pay and allowances for the period during which there was no suspension order. The representation does not appear to have been x replied by the authority concerned. Besides the above the respondents have contended in Para 5(4) of their reply that CBI is conducting detailed investigations against the applicant and therefore, his entitlement for the period in question will be decided only after the cases are finalised. This shows that the applicant had already unsuccessfully represented for the relief and also that the respondents are not of the view to consider the question as to how the period of suspension should be treated until CBI cases are finalised. Therefore, there would have been no use of making any further representation with respect to the suspension period.

6. In view of the above we are of the opinion that the application can not be thrown out simply on this ground.

7. The respondents have also contended that the application is barred inter alia under section 21 of the Administrative Tribunals Act, 1985. Details have not, however, been furnished as to how the application is barred by time. The record shows that the suspension order was revoked on 12.4.89 (Annexure A-8) and it was specifically mentioned that separate order regarding treatment of suspension period would follow. This makes it clear that orders regarding treatment of suspension period were required to follow the order of revocation. It does not mean that such an order would be postponed indefinitely or would issue only after finalisation of the CBI cases. In normal course such an order would have been issued within a reasonable time. However, after the revocation order the applicant submitted a representation dated 11.6.89 (Annexure A-2) which has not been replied. The application has been filed after expiry of the period of six months of the said representation and a period of one year thereafter. The application is

not therefore barred by time. The contention of the respondents in this respect does not hold good.

8. Now we come on the main question regarding period of suspension. The applicant alleged that the GM Tele-com, U.P. Circle, was not competent to pass suspension order and therefore, suspension order in question was illegal. The applicant being a Group A Officer could be suspended only by the President who had not empowered the General Manager Telecom. to exercise these powers. The learned counsel for the applicant has argued that the suspension order being unauthorised was void ab initio, and it shall be deemed that there was no suspension order in the eye of law and the period of alleged suspension shall be deemed as period spent on duty for all purposes. In support of his arguments the learned counsel for the applicant has cited following decisions of the Hon'ble Supreme Court and various High Courts:-

1. All India Service Law Journal, 1973, A. Thankappan V/s District Collector, Kozhikode and Others (Kerala) 687.
2. 1982 (3) SLR, Inayathulla S. V/s Deputy Conservator of Forests ( Karnataka ) 225.
3. 1984 (1) SLR, S.L.Das V/s State of Bihar ( Patna ) 244.
4. 1988(2) SLR Doctor D.D. Vaidya V/s Board of Management South V.S. Hospital, Ahmedabad ( Gujrat ) 1975.
5. 1987 (4), ATC (SC) 196, Rajender Prasad V/s Kalthan Pathahala.
6. 1989(4), SLR, in Re .. V/s Dihraj Kumar Roy Choudhary ( Calcutta ) 720.
7. 1989 (3) SLR, Om Prakash V/s D.C. Bhivani (Punjab and Haryana ) 789.

9. We have gone through all these decisions which are relevant on the matter in issue. It has been laid down that the suspension

order passed by a person not competent to place the employee under suspension. is not valid and even ratification of the order of suspension by the competent authority subsequently does not make the order of suspension valid. It has, also, been laid down that suspension with retrospective effect cannot be sustained in law. Thus, a person passing the suspension order should have an authority to place the employee under suspension on the date of the suspension order.

10. During the course of their arguments it was admitted by the learned counsel for the parties that the GM Telecom., U.P. Telecom. Circle, Lucknow, who issued the suspension order in question on 26.2.89 was not competent on that date to issue suspension order. Clearly, therefore, the impugned suspension order was without authority. Hence in view of what has been discussed above and laid down in various decided cases referred to above the impugned order of suspension is illegal.

11. As an exception to the above the learned counsel for the respondents has drawn our attention to Chapter II of Swamy's Compilation of C.C.S. ( C.C.A.) Rules, 1965, 18th Edition. This Chapter relates to the general principles regarding suspension. Our attention has been specifically drawn to Rule 8 which is regarding empowering of Supervisory Officers to suspend their subordinates. The relevant portion is extracted below:-

"2. This recommendation has been accepted subject to the following modifications:-

Only supervisory officers in Office located away from headquarters need be specially empowered to suspend a subordinate officer in cases involving gross dereliction of duties. In order to prevent abuse of this power the suspending authority should be required to report the facts of each case immediately to next higher authority, and all such orders of suspension should become ab initio void unless confirmed by the reviewing authority within a period of one month from the date of orders.

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3. As the Ministry of Finance, etc. are aware under Rule 10 of the Central Civil Services ( Clarification, Control and Appeal) Rules, 1965, the following authorities are competent to place a Government servant under suspension:-

- (i) Appointing authority;
- (ii) Any authority to which the appointing authority is subordinate;
- (iii) Disciplinary authority; and
- (iv) Any other authority empowered in that behalf by the President by a general or special order.

4. Supervisory Officers in field offices located outside the headquarters may, wherever necessary, be empowered to place officers subordinate to them under suspension, subject to the conditions mentioned in paragraph 2 above, by issuing special orders in the name of the President in pursuance of Rule 10 of the C.C.S. ( C.C.A.) Rules, 1965."

12. The above rule will show that Supervisory Officers can be empowered to suspend a subordinate Officer. It follows from it that Supervisory Officers, who have not been so empowered would not be competent to suspend a subordinate officer.

13. Some authorities are, however, mentioned in Sub-rule 3 as extracted above, but the GM, Tele-com., U.P. Telecom. Circle, Lucknow is not one of the said authorities. He had also not been empowered by the President on the date of suspension order. Clearly, therefore, the said GM was not competent to place the applicant under suspension.

14. In the facts and circumstances of this case, it can also not be said that the said G.M. had an implied authority to suspend the applicant and a report regarding that was required to be submitted by him to the next higher authority for confirmation. However, the G.M., if acted in the implied authority, had not submitted any report to the reviewing authority for confirmation as required by ~~sub-rule~~ Rule '8' extracted above. From this point of view also, the G.M. had no authority to place the applicant under suspension on 26.2.1988. The impugned order dated 26.2.1988 ( Annexure-A-3) was unauthorised.

15. The decision as contained in AIR 1985, Supreme Court, 701

State of Orissa V/s Shiv Prasad Das cited on behalf of the respondents is not applicable in the facts and circumstances of this case. In that case a Forester who was originally appointed by the Conservator of Forests was at later stage placed under suspension by the District Forest Officer under whom he was working. It appears that after appointment of the Forester the District Forest Officer was constituted as appointing authority of Forester, hence became competent to place a Forester under suspension.

16. For further clarification of the position the impugned orders of suspension may be seen. The lines which appear to be relevant are extracted below:-

" Undersigned empowered by the President in that behalf".

17. The above words indicate that on the date of suspension the GM Telecom. was empowered by the President to place the applicant under suspension. This is factually wrong. Even respondents do not say that GM Telecom. had already been empowered by the President ~~xx~~ to place the applicant under suspension. ~~on the said date~~ It appears from the record that to obviate the legal difficulty with respect to the impugned order, an order was passed on 10.3.88 by the President whereby the said GM was authorised to place the applicant under suspension. The relevant words are extracted below:-

"The President, hereby orders that the GM Telecom, U.P. Circle, Lucknow, shall be competent authority to place Shri R.K.Mishra under suspension."

18. The word "shall" used in the said order of President indicates that the GM was empowered to place the applicant under suspension prospectively. This order dated 10.3.88 does not ratify at all the suspension order in question. However, the order of the President itself makes it clear that on the date in question the GM was not competent to place the applicant under suspension. The statement that the GM was empowered by the President on the

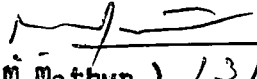



relevant date as contained in the impugned suspension order is false.

19. In view of the above it is hereby held that impugned order is void ab initio. That being so the period of the alleged suspension cannot be treated as period of suspension; and in the eye of the law it shall be treated as a period spent on duty for all purposes.

Consequently the applicant is entitled to full pay and allowances for 26.2.1988 to 2.5.1989.

20. At the request of the counsel for both the parties we have heard this application at the admission stage. The application is admitted and is disposed of accordingly with directions to the respondents to make payment of full pay and allowances for the period 26.2.1988 to 2.5.1989 after adjustment of the amount already paid to the applicant within a period of three months from the date of receipt of this order. There will be no order as to costs.

  
( M.M. Mathur ) 13/11/90  
Member ( Administrative )

  
( S. R. Sagar ) 13.11.90  
Member ( Judicial )