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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI**

O.A. NO. 2696/2004

NEW DELHI THIS ^{24th}.....DAY OF FEBRUARY 2006

**HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI N.D. DAYAL, MEMBER (A)**

B. Chakrabarty,
B-121, Chitranjan Park, New Delhi – 110019
Director (Programme) Doordarshan,
Doordarshan Bhawan,
Copernicus Marg, New Delhi (Group A, Gazetted)

.....Applicant

(By Advocate: Shri S.Y. Khan)

VERSUS

1. Union of India thro'
The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan, "A" Wing, New Delhi
2. The C.E.O.
Prashar Bharati (Broadcasting Corp'n of India)
Directorate General Door Darshan
2nd Floor, PTI Building, Sansad Marg, New Delhi –110 001

.....Respondents

(By Advocate: Ms Satya Siddiqui)

ORDER

BY HON'BLE SHRI N.D. DAYAL, MEMBER (A) :

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The applicant is a Group "A" officer of the rank of Director (JAG) of the Indian Broadcasting (Prog) Services (IBPS) under the Ministry of I&B. In this OA the applicant has sought the following relief:

- a) To allow the OA directing the action on the part of the respondents resorting to sealed cover procedure in the case of the applicant illegal as no disciplinary proceedings were pending against the applicant as on the date of DPC for promotion to JAG of IBPS.
 - b) Direct the respondents to immediately treat the applicant promoted from that of his juniors with all consequential benefits.
 - c) Declare order dated 11.5.2004 issued by R-1 placing the applicant illegally and arbitrarily under suspension second-time without
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issuing the charge sheet even after 18 months as there is no valid ground for such an action.

2. The respondents have opposed the prayer of the applicant in their written statement to which a rejoinder has been filed by the applicant.

3. We have heard the learned counsel for both sides and perused the pleadings. The learned counsel for the respondents pointed out that relief prayed for at a) & b) above has already been granted. The learned counsel for the applicant while not disputing such submission insisted that prayer at c) above still survives and the suspension of the applicant cannot be sustained.

4. In support of such prayer our attention has been drawn to the impugned order dated 11.5.2004 at Annexure A-1 of the application. It is contended that the earlier suspension of the applicant by order dated 9.4.2003 passed by the CEO Prasar Bharti under Rule 20 of CCS/CCA Rules 1965 in contemplation of disciplinary proceedings had been declared to be void by this Presidential order, as it was found that the CEO, Prasar Bharati was not competent to exercise such powers. In fact the suspension had already been revoked by Prasar Bharati order dated 27.2.2004 even as his appeal against the suspension was under consideration according to the directions dated 28.11.2003 of this Tribunal in OA 2897/2003. The period of suspension of the applicant from 9.4.2003 to 27.2.2004 was treated as duty with all consequential benefits. But once again in contemplation of disciplinary proceedings the applicant was placed under suspension with immediate effect by this order of the President under rule 10(1) of the CCS/CCA Rules 1965.

5. The learned counsel for the applicant strenuously argued that the continuation of suspension was irregular and illegal since the authorities had disregarded the provisions of DOP&T notification dated 23.12.2003 and OM dated 07.01.04 at Annexure A-2 of the Rejoinder (pp 145-146), carrying amendment to Rule 10 of the CCS/CCA Rules, 1965 and instructions in that regard. It is pointed out that the amendment/instructions provide for Review of





suspension and issue of order by the competent authority, on the recommendation of a Review Committee that will be constituted for the purpose, within 90 days of the suspension and thereafter before expiry of the extended period which shall not exceed 180 days at a time. The order of suspension made under Rules 10(1) or (2) shall not be valid after 90 days unless extended as above after review for a further period before expiry of the 90 days. The notification dated 23.12.2003 came into effect on publication in the Official Gazette on 3.1.2004, and as per DOP&T OM dated 19.3.2004 at page 148 pending cases of suspension exceeding 90 days were to be reviewed by 2.4.2004.

6. It is submitted that since no charge memo was issued timely nor suspension was reviewed, as per the prescribed time schedule, the continued suspension of the applicant was not valid. The learned counsel for the respondents has contended that the applicant has no case since his suspension by order dated 11.5.2004 was reviewed from time to time without delay. It is stated that the chargesheet had also been issued which was not disputed.

7. In this regard it would be relevant to notice para 3 of the DOP&T OM dated 7.1.2004 which reads:-

“3. The Review Committee(s) may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice to the foregoing, if the officer has been under suspension for one year without any charges being filed in a court of law or no charge memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in police/judicial custody or is accused of a serious crime or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned.”

8. We find that the applicant is alleged to have committed irregularities including taking of bribes etc., in sanctioning of programmes for North East channels while posted as Director PPC (NE) Doordarshan, Guwahati. The amendment to Rule 10 CCS/CCA Rules, 1965 and consequent instructions dated

7.1.2004 in para 3 thereof do not make it mandatory that the suspension must be revoked if no charge memo has been issued for one year but instead indicate various other considerations to be borne in mind by the Review Committee in this regard. Besides, a glance at the order dated 27.10.2005 of the Ministry of I&B placed by the applicant shows that since the suspension of the applicant w.e.f. 11.5.2004, the same has been reviewed on five occasions and orders issued extending the same within the stipulated period each time, the last extension being by this order dated 27.10.2005 for 180 days beyond 16.11.2005 which is current. Since the earlier period of suspension stands regularized with all consequential benefits, it has no further significance in relation to the amendment to Rule 10 of CCS/CCA Rules, 1965. There is also no rule that could be a bar to such action, as has been taken by Presidential order dated 11.5.2004 to suspend the applicant, that has been brought to notice by the applicant.

9. Lastly, the learned counsel for the applicant has placed reliance upon a judgement of the Gujrat High Court decided on 04.04.2005 in the case of **D. K. Mehta vs State of Gujrat & Anr., 2006(1) ATJ 82**, wherein the suspension under Rule 5(1) of Gujrat Civil Service (D&A) Rules, 1971 had been challenged by the petitioner, as being without authority of law. It was, however, not made clear as to in what specific manner this judgement was applicable to the facts of the present OA. In that case, the petitioner was suspended on 27.8.2003. The Rules were similarly amended by publication in Official Gazette on 23.9.2004. The amendment stipulated that suspension would be invalid if no disciplinary proceedings were initiated within 90 days of suspension and extension of suspension could be only for 90 days at a time. The chargesheet was issued on 10.1.2005 and the suspension was held by the Court to be invalid, inter alia, by treating the stipulation of issue of chargesheet within 90 days as mandatory and because the suspension though reviewed was not extended by written orders within 90 days. Also no order had been produced to establish that the Review Committee was empowered by the Court for the purpose. In our considered

opinion, this judgement is clearly distinguishable and does not advance the applicant's case.

10. Therefore, we do not find sufficient grounds to intervene in this matter and the application is dismissed without any order as to costs. However, we note that the applicant had in actual fact faced suspension from 9.4.2003 to 27.2.2004 by an invalid order and has again been under suspension since 11.5.2004 which background along with other aspects of the case would no doubt be kept in view by the authorities along with para 3 of the DOP&T OM dated 7.1.2004 at the time of next review of suspension.

(N.D. Dayal)
Member (A)

(B. Panigrahi)
Chairman

/Patwal/