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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.751/2004

New Delhi, this the 15th day of July, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

N.S. Kain
S/o Late Sh. B. Singh
R/o 15, Delhi Admn. Officer Flats
GK Part-I
New Delhi – 110 048. ... Applicant

(By Advocate: Sh. Yashpal proxy for Sh. M.K.Bhardwaj)

Versus

Union of India & Ors. through

1. Secretary
Govt. of India
Ministry of Home Affairs
North Block
New Delhi – 11.
2. Chief Secretary
Govt. of NCTD
5, Sham Nath Marg
Delhi – 54. ... Respondents

**(By Advocate: Sh. Yogesh Sharma proxy for Ms. Jyoti Singh
for R-1)**

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (N.S.Kain), by virtue of the present application, seeks to declare that orders of 19.5.1997 issued by the respondents placing him under suspension and of 23.5.2001 rejecting his representation, followed by an order of 20.2.2002, are illegal. He further prays that a direction should be issued to the

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respondents to pay full pay and allowances for the period of suspension with consequential benefits.

2. Some of the facts in this regard can conveniently be delineated.

3. The applicant was a member of the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Civil Service. He was placed in the Junior Administrative Grade and has since superannuated on 31.3.03. While in service, the applicant had been placed under suspension when his services were placed at the disposal of the Municipal Corporation of Delhi on deputation terms with effect from 20.10.1995. He was working as Director (Slum & JJ) in MCD on deputation. He was assigned the job of demolition of unauthorized constructions of Residential-cum-Commercial buildings. A complaint was received by the Central Bureau of Investigation that the applicant was demanding a bribe of Rs.50,000/- from the occupants of tenements of the DDA Flats at Kalkaji, as illegal gratification. A case was registered. A trap was laid and the applicant was arrested alleging that he was demanding and accepting Rs.15,000/- which formed part payment of the total bribe amount. The applicant remained under custody till 1st May, 1997. Simultaneously, raids were conducted at the residence of the applicant. It was alleged that assets disproportionate to his known sources of income to the extent of Rs.29,82,029/- were recovered. This led to the recovery of another case.

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4. The applicant was suspended. In terms of Sub-Rule (2) to Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provides that a Government servant shall be deemed to have been placed under suspension when he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours, subsistence allowances had been permitted.

5. In terms of Fundamental Rule 53(1), subsistence allowances with effect from the date of deemed suspension was permitted. Subsequently, it was enhanced. Charge sheets in the two cases referred to above have been filed by the Central Bureau of Investigation on 13.11.1998 and 24.12.1999 before the Special Judge and trial is proceeding against the applicant.

6. The applicant had filed OA 2081/1998 seeking a direction for revocation of his deemed suspension and setting aside of the order of 19.5.1997. This Tribunal dismissed the said OA on 19.5.1999. His Review Application also failed. The suspension of the applicant was reviewed in July 1999, April 2000 and November 2000 and the was continued.

7. The applicant filed another OA No.2012/2000 seeking a direction for quashing of the order of 19.5.1997 placing him under suspension. The said application was disposed of on 28.3.2001 with direction to respondents to review the suspension of the applicant. The suspension was reviewed and an order was passed to continue with the suspension.

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8. The applicant preferred an OA 1107/2002. On 31.12.2002, this Tribunal had allowed the said OA and quashed the suspension order. In the meantime, the suspension of the applicant had been continued. The respondents challenged the order of this Tribunal dated 31.12.2002 by filing the Civil Writ Petition No.2430/2003 in the Delhi High Court. The Delhi High Court had passed an interim order that the applicant shall not be treated as on duty but he shall be paid pensionary benefits as payable to any other officer under suspension. Respondents had sanctioned provisional pension and paid Group Insurance, Leave Encashment and General Provident Fund amount to the applicant. The Delhi High Court on 16.10.2003 had set aside the order passed by this Tribunal on 31.12.2002 but permission was granted to bring to the notice of this Tribunal any events, which took place during the pendency of the Writ Petition.

9. The applicant contends that the suspension orders are not valid and further prays that after the order was quashed by this Tribunal, he had joined service on 13.3.2003. Thereafter, he superannuated on 31.3.2003 and, therefore, he is entitled to the benefit in this regard because he has been reinstated before he superannuated.

10. The application is being opposed.

11. In support of his claim, the applicant even had filed written submissions.

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12. The first and foremost question that comes up for consideration is as to whether the suspension orders are valid or not? At this stage, it is relevant to mention that the applicant even had filed OA 1107/2002 which he had withdrawn on 29.1.2004 with liberty to file a fresh application with all legal and factual pleas available in law. It was allowed.

13. Reverting back to the question as to whether the suspension orders passed against the applicant are valid or not, in the present case, it will be a futile attempt to urge that continued suspension cannot be allowed for years together. In the peculiar facts, we find that the said contention has simply to be stated to be rejected.

14. The applicant had challenged the suspension orders firstly in OA 2081/1998 which was dismissed on 19.5.2003 and once again in the subsequent OA No.1107/2002. Though it was allowed by this Tribunal but subsequently, the Delhi High Court set aside the order passed by this Tribunal. Therefore, if any pleas that can be raised, it can only be in accordance with the directions of the Delhi High Court. The whole matter cannot be reopened and reconsidered. The Delhi High Court had only permitted as under:

"At this juncture Mr. Tiku, learned counsel for the respondent submits that in the interregnum certain events, like retirement of the respondent after the order of the Tribunal and before the grant of stay of the said order by this Court on 7 April 2003 have taken place, which would have material bearing on the issues raised in the original application filed by the respondent. He prays that the Tribunal be directed to take into consideration these

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subsequent events while deciding the application.

We feel that it may not be fair on our part to give any such direction. Nonetheless, in order to cut short, the life of litigation, without commenting on the merits of the submission, we permit the respondent to bring to the notice of the Tribunal any events which have taken place during the pendency of this writ petition. We are confident that if considered relevant the same shall be taken into account by the learned Tribunal while taking a fresh decision on respondent's original application. We say no more on this aspect, except to add that the interim orders by this court will not preclude the respondent from seeking appropriate interim directions from the Tribunal.

The writ petition and the application for interim relief stand disposed of."

15. In this process, the applicant was only permitted to bring to the notice of this Tribunal the events which have taken place during the pendency of the Writ Petition in the Delhi High Court and thereupon a fresh decision was directed to be taken. Except to events to which we shall refer to hereinafter, there are no other events to set aside the suspension orders that have been passed and continued. To that extent, therefore, prayer must fail. Otherwise also, the applicant has superannuated.

16. It has been pleaded that after this Tribunal had quashed the order passed by the respondents suspending the applicant, he has joined the service.

17. In the present case, when the Civil Writ Petition No.2430/2003, challenging the order of this Tribunal, was filed, the operation of the order of this Tribunal was stayed to the extent

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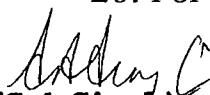
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that the applicant was to be taken on duty from 2.5.1997 till the date of the impugned order. The High Court directed that the applicant would be paid all the pensionary benefits to which he was entitled because, it was pointed to the High Court that the applicant has since retired. As already pointed, the applicant meanwhile had superannuated. Subsequently orders passed by this Tribunal was set aside.

18. The applicant claims that he is entitled to be treated as a person who was reinstated and thereupon he retired. In this regard, we only require to mention that in the reliefs claimed by the applicant he has only prayed that the order of 19.5.1997 suspending the applicant, order of 23.5.2001 rejecting his representation, followed by another order of 20.2.2002, should be set aside. He prays that he should be paid full pay and allowances for the period of suspension. The relief that is now being mentioned is not a part of the relief claimed in the OA. Once such a relief has not been claimed in the OA, it will be improper for this Tribunal to go beyond the relief claimed and consider the questions, which may cause prejudice to either side. In this regard, no further opinion is being expressed.

19. As a result of the aforesaid, we are of the considered opinion that there is no merit in the OA.

20. For these reasons, the OA must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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