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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2200 of 1992

New Delhi this the 22nd day of September, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN  
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Constable Gulbir Singh  
No.1120/ND  
New Delhi District Lines,  
Parliament Street,  
New Delhi. ..Petitioner

By Advocate Shri Ashish Kalia

Versus

Union of India through

1. The Commissioner of Police,  
PHQ, MSO Building,  
New Delhi-110 002.
2. The Additional Deputy Commissioner  
of Police,  
New Delhi District,  
Parliament Street,  
New Delhi-110 001. ..Respondents

By Advocate Shri Raj Singh

ORDER (ORAL)

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN

This O.A. has been filed against the show cause notice by which the respondents have sought to proceed against the petitioner for the alleged absence during the period of suspension. The

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objection raised by the respondents in this regard is that the O.A. is premature since the petitioner has approached the Tribunal against the show cause notice. On the other hand, the counsel for the petitioner states that the question raised in this petition is whether there exists "jurisdictional fact" for the respondents to proceed with the enquiry which alone gives the respondents the jurisdiction for exercise of power for proceeding with the enquiry against the petitioner. It was stated that once the petitioner is placed on suspension, he cannot be again directed to perform duties. Therefore, there cannot be a misconduct of absence during suspension. The suspension in all circumstances, amounts to temporary suspension of the employeremployee relationship. We are *prima facie* inclined to agree with the contention.

2. Since the matter was raising substantial issues, this O.A. was admitted by an order dated 3.2.1993. While admitting this O.A., a Division bench of this Court stated that the respondents are at liberty to proceed with the enquiry and pass final orders in the departmental proceedings.

3. After about 4½ years, this matter has come on regular Board for hearing. Respondents states that he does not know at this stage whether an order has been passed or not so far, in the disciplinary proceedings and seeks sometime to file the order

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passed, if any, before this Court. We are not inclined to adjourn the case for that purpose for the reason that the matter is coming on regular Board after 5 years of the filing of this O.A. and the respondents had sufficient time during the 4½ years with them to pass appropriate orders for which liberty was given by our order dated 3.2.93.

4. The counsel for the petitioner stated that in the circumstances, it is a fit case for allowing the O.A. It was also stated that a similar view has been taken by the Andhra Pradesh High Court in the matter of Zonal Manager Food Corporation of India and Other vs. Khaled Ahmed Siddiqui, a reference to which has been made at para 4.7 of the O.A. No reference to the said decision has been made in the reply filed by the respondents.

5. In the circumstances, as no other submission is made by either of the parties, we allow this petition and quash the impugned order of 2.7.92, leaving the parties alone to seek appropriate remedy, if any subsequent order has been passed during the pendency of this case. It goes without saying that the show cause notice indicates certain criminal offences having been committed by the petitioner, and our order shall not have any effect on that incident; so too, if any action is taken against the petitioner

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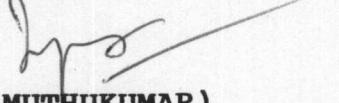
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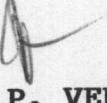
incident,

departmentally, in accordance with law.

6. With these, the O.A. is disposed of finally.

No costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

  
(DR. JOSE P. VERGHESE)  
VICE CHAIRMAN

Rakesh