

Open Court :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH  
AT ALIHAHABAD.

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Dated This The 2nd April, 1997.

Coram: Hon'ble Mr. R.K.Saxena, J.M.,  
Hon'ble Mr. D.S.Baweja, A.M..

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ORIGINAL APPLICATION NO: 698 OF 1996.

Vinay Kumar Shukla, at present posted as  
Peon under the Joint Director General, Office  
of Foreign Trade, IVth Floor Vikas Manjil,  
Guljari Mal, Dharamshala Road, Moradabad.

.. Applicant.

Versus:

1. Union of India through the Secretary,  
Ministry of Commerce And Trade, Govt Of  
India, New Delhi.

2. The Joint Director General,  
Foreign Trade, Office of the  
Foreign Trade, IVth Floor, Vikas  
Manjil Guljari Mal, DharamShala Road,  
District: Moradabad.

.. Respondents.

Appearance of Counsels:

Counsel for the applicant Sri Satish Dwivedi.

Counsel for the respondents Sri Ashok Mohiley.

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ORDER (ORAL)

By Hon 'ble Dr.R.K.Saxena,J.M.

The applicant has approached the Tribunal by moving this application Under Section 19 of Administrative Tribunal Act, 1985, to seek relief that the impugned order dated 31.8.1994 (annexure A1), which was passed by respondent No.2, placing the applicant under suspension, be quashed. Further relief is that the respondents be directed to reinstate the applicant on his post with all the consequential benefits and to enhance Subsistence Allowance @ 75% of the salary.

2. The brief facts of the case are that the applicant was working as Peon under the respondent No.2, and was allotted Watch and Ward duty on 8.7.1994. It appears that the applicant unauthorisedly left office premises unguarded on the said date. During his absence, some miscreants entered into the office premises by breaking open the door and record and property of the office was set on fire. F.I.R was lodged at the police station and the matter is still under investigation. The applicant however, came with the plea in the rejoinder that the investigation ended in the Final report. Anyway, the applicant was placed under suspension on 31.8.1994 vide impugned order (Annexure-A1) for dereliction of duties.

3. The contention of the applicant is that the periodical review of the order of suspension was not done by the respondents and also, no action by way of serving charge-sheet or holding an enquiry, was taken. It is for these reasons that the suspension order is claimed to be bad in law and its quashment is sought.



4. The respondents have contested the case and filed counter-affidavit disclosing the facts which leads to the basis of the impugned order of suspension. It is further contended that the periodical review, though belatedly <sup>done</sup> was done of the suspension order and the Subsistence Allowance was raised to 75% of the salary of the applicant. It is further submitted that the disciplinary action is in progress and for that purpose the enquiry committee was also constituted. For these reasons, the relief claimed in the O.A. has been opposed.

5. The applicant filed rejoinder reiterating the facts which were mentioned in the O.A. Besides this, it is further averred that the local police did not find any case against the applicant and, therefore, the investigation was closed and final report was submitted. It is also stated that the respondents have failed to initiate any disciplinary proceedings despite sufficient time having been spent under suspension,, the impugned order as claimed to be bad.

6. We have heard Sri Satish Dwivedi, counsel for the applicant and Sri Ashok Mohiley, Counsel for the respondents.

7. There is no dispute that the record of the office was reduced to ashes by the fire caused by some miscreants. It is also admitted fact that the applicant was assigned duty of a Chowkidar on the date of occurrence i.e on 8.7.1994. The applicant <sup>contends that he</sup> was informed at the close of the office hours to discharge his duty as Chowkidar as well. <sup>as</sup> Sri Dwivedi, contends that after discharging duty as peon throughout the day, the applicant had gone to his residence to inform the members of his family about his duty in the coming

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hours as chowkidar. It was in the meantime that some miscreants set the office record at fire. The applicant was however, placed under suspension on 31.8.84 with 50% of his salary being paid to him as subsistence allowance. It is, however, clear that the police case ended with the final report. The applicant had clearly averred this fact in the rejoinder whereas, the respondents also pleaded in para-4 of the Counter affidavit that the final report was submitted by the local police but its intimation was not given to the respondents. Final report is submitted by the police only when the charge against the guilty person against whom a report is lodged, is not established; or if it is lodged without any name of the offender, then the offender being not ascertained. In view of these facts, it is clear that the police did not find the applicant guilty of charge levelled against him. Despite the fact that final report having been submitted by the local police, the departmental authorities are competent to initiate the disciplinary proceedings, but it is clear that upto this date, Charge sheet has not been served on the applicant. In such circumstances, the person who was placed under suspension on 31.8.94, cannot be allowed to continue at the same stage of suspension for indefinite period. In case, the department wants to initiate disciplinary proceedings, an early decision of framing charge sheet and actually serving the charge sheet on the applicant, should have been taken. What to say of initiating the disciplinary proceedings, even the review of the suspension order for the purpose of increasing the subsistence allowance, was done sometimes in December, 96. Under rule, the periodical review should take place within a period of every six months and by not

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adopting this procedure, the continuance of the suspension order can hardly be justified.

7. It has been pointed out that under rule 23 of the CCS(CCA)rules, 1965, there is a provision for preferring an appeal but the applicant did not file any appeal. On the other hand, the learned counsel for the applicant has drawn our attention towards Annexure-3, which was given on 15.9.95 in which nowhere it was mentioned that it was an appeal. More or less, it appears to be a representation. In legal language, there exists <sup>2</sup>the difference between the appeal and representation. Thus, annexure-3 by no stretch of imagination, can be deemed to be an appeal. The question however, arises if the respondents should be left uncontrolled if no appeal is preferred. We have already noticed that the respondents failed to have conducted periodical review of Suspension order and to have initiated disciplinary action against the applicant during this period of about two years and six months. It gives indication that the applicant is required to be kept under suspension for an indefinite period. The law does not permit to do so.

8. Considering all these facts, we provide as follows:-

i). Respondents are directed to serve charge sheet on the applicant if really the disciplinary action is contemplating against the applicant, within a period of one month from the date of this order.

ii). Enquiry proceedings, if started after serving charge sheet, be completed within

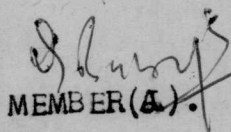
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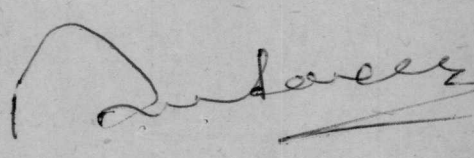
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a period of three months; and final order be passed by the concerned authority within the same period.

iii). In case, this schedule of serving charge sheet and to complete enquiry and final orders by the concerned authority, is not adhered to, the suspension order of the applicant shall automatically come to an end at the close of the period of four months.

9. The O.A has been disposed of accordingly.  
No order as to costs.

  
MEMBER(A).

  
MEMBER(J.)

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