

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1423 of 1998

Allahabad this the 23<sup>rd</sup> day of April 1999

Hon'ble Mr. S. Dayal, Member (A)  
Hon'ble Mr. S.L. Jain, Member (J)

Harish Chandra Singh, aged about 42 years, I.P.S.  
Supdt. of Railway(Under Suspension), Resident of  
M-18, Agra Cantt. Agra.

Applicant

By Advocates Shri Shishir Kumar  
Shri R.P. Singh

Versus

1. Union of India through the Secretary, Govt. of India, Ministry of Home Affairs, New Delhi.
2. State of U.P. through The Principal Secretary, Department of Home, Lucknow.

Respondents

By Advocate Shri N.B. Singh (respondent no.1)  
Shri K.P. Singh (respondent no.2)

O R D E R

By Hon'ble Mr. S.L. Jain, Member (J)

This is an application under Section 19 of the Administrative Tribunal Act, 1985 for a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.10.1998(annexure A-1), mandamus directing the respondents to treat the applicant in continuous service, pay the entire salary and allowances admissible and same status which he was enjoying before 28.10.1998 alongwith cost of the application

2. The suspension order is challenged on the ground that no disciplinary proceedings are contemplated, even after a lapse of 45 days, Central Government has not accorded any sanction for prosecution, the applicant has submitted a representation dated 26.11.98, the State Government failed to forward the same within a week from the date of receipt of the same as per instructions of the Government, no investigation, inquiry or trial is pending against the applicant.

3. The short C.A. filed by the respondent no.2 discloses that a F.I.R. No.C.C. 35 of 1997 was registered on the information of Rulia Singh, son of Shri Kehana Singh, resident of village Daudpur, Police Station Behat, District Saharanpur at Police Station Behat to the effect that on 28.2.97, 3 persons came in police uniform in a Car No.U.P.-11, C-1958 having a blue light on its head and wireless set, fired on Kuldeep Singh, Suraj Bhan, Sompal, while they were returning to their house. They were shot dead. Deputy General Police, Merrut Range enquired the case and recommended to investigate the case by the C.B.C.I.D. investigation, who after investigation, submitted its report to the State Government. The State Government scrutinise closely the inquiry report which reveals that the applicant was one of the Police Officer who chased the deceased persons and his gunner has fired on them, resulting death of all those persons. The State Government accorded sanction under Section 197(1) C.R.P.C. for the prosecution of the applicant on 02.11.1998 which was challenged before the High Court of Allahabad by Cr.Misc.Writ Petition No. 5296 of 1998. Hon'ble

High Court has quashed the sanction order dated 02nd November, 1998 on the ground that Central Government would be the proper authority to accord sanction and not the State Government as on the date of commission of the alleged offence a proclamation under Article 356 of the Constitution was enforced in the State of U.P. and President of India had proclaimed to have assumed to himself all of the power of the State Government. The matter is referred by the State Government to the Government of India, Ministry of Home Affairs, New Delhi to accord sanction of prosecution of the applicant and other involved Police Constables vide letter dated 17.12.1998 alongwith all the relevant documents. It is further alleged that the State Government has been empowered by the Central Government that such members of service against whom an investigation, inquiry or trial relating to criminal charge is pending or disciplinary proceedings are contemplated, the State Government may place such officers under suspension.

4. After filing the short counter-affidavit, on 28.12.1998 by the respondent no.2, detailed counter-affidavit has been filed. Even respondent no.1 has not come up with any of the pleas which gives different facts regarding review of the suspension order.

5. The applicant is governed by All India Service (Discipline and Appeal) Rules, 1969. The said rules are amended by All India Service (Discipline and Appeal) Amendment Rules, 1998 which are published in the Gazette of India part II Ind Section 3(1) dated 25.7.98 at page 500 to 502.

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6. For earlier Rule 3(1) for the 1<sup>nd</sup> proviso the following proviso is substituted;

"Provided further that, were a member of the Service against whom disciplinary proceedings are contemplated is suspended, such suspension shall not be valid unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him.

Provided also that the Central Government may at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceedings to be recorded in writing, allow continuance of the suspension order beyond the period of ninety days without the disciplinary proceedings being initiated."

7. Perusal of the amended Rule, Second Provision makes it clear that where a member of Service against whom disciplinary proceedings are contemplated is suspended, such suspension shall not be valid unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him. As the applicant was suspended on 28.10.1998, his suspension can be valid upto 90 days and it can be continued to be valid if disciplinary proceedings are initiated against him within the said 90 days. If disciplinary proceedings against the applicant is initiated upto 26th January, 1999, his suspension can continue to be valid one thereafter.

8. It is true that short counter-affidavit, which was filed on 28.12.1998, period of 90 days has not elapsed, hence, the applicant is not entitled to

any relief even in view of Rule 3(1) Second Proviso even after amendment incorporated vide Amendment Rules, 1998. The Second Part of Rule 3(1) Second Proviso has no bearing in the present case for the reason that it is no-one's case that the Central Government before the expiry of such a period of 90 days and after considering the special circumstances for not initiating the disciplinary proceedings, allowed continuance of suspension order beyond the period of 90 days without the disciplinary proceedings being initiated.

9. Rule 3 of All India Service(Discipline and Appeal) Rules, 1969 after amendment to the same vide Amendment Rules, 1998, Sub Rule 8 has been inserted which is as under:-

"After sub rule(7), the following sub rule shall be inserted, namely:-

8(a) An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time unless revoked earlier.

(b) An order of suspension made or deemed to have been made or continued, shall be reviewed by the competent authority on the recommendations of the concerned Review Committee.

(c) The composition and functions of the Review Committee and the procedure to be followed by them shall be as specified in the Schedule annexed to these rules.

(d) The period of suspension under sub-rule(1) may, on the recommendations, of the concerned Review Committee, be extended for a further period not exceeding one hundred and eighty days at a time.

Provided that where no order has been passed under this clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed.

d) After new sub-rule(8), the following sub rule shall be inserted, namely:-

"(9) Every order of suspension and every order of revocation shall be made, as nearly as practicable, in the appropriate standard form appended to these rules."

10. Perusal of Rule 8(a) makes it clear that an order of suspension which has not been extended, shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time, unless revoked earlier. Rule 8(b) makes it clear that an order of suspension made or deemed to have been made or continued, shall be reviewed by the competent authority on the recommendation of the concerned Review Committee. Rule 8(c) is with respect to the composition and function of the Review Committee and the procedure to be followed by them. Rule 8(d) creates a bar for exercise of the power of the Review Committee and the bar is that the Review Committee cannot extend a period of suspension more than 180 days at a time. Proviso to the same makes it clear that if no order has been passed under this clause, the order of suspension shall stand revoked w.e.f. the date of expiry of the order being revoked. Rule 9 relates to only the form in which the suspension order and revocation order are to be passed as far as possible.

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11. Considering Rule 3(1), Second Proviso, Second Part of the same alongwith Rule 8(a) (b) and (d), makes it clear that suspension is valid upto 90 days from the date the member concerned was suspended, if disciplinary proceedings are not initiated, Central Government is competent before expiry of the said 90 days to consider the special circumstances for not initiating disciplinary proceedings to be recorded in writing allow continuance of the suspension order beyond the period of 90 days without the disciplinary proceedings being initiative. If there is continuance of the same that can only be for a further period not exceeding 180 days in view of Rule 8(a). The Central Government is to act through competent authority on the recommendation of the concerned Review Committee and even the power of the Review Committee while considering the suspension order is limited to the period not exceeding 180 days at a time.

12. In the present case, we find that Rule 3(1) Second Proviso, Second Part do not come into play for the reason that the Central Government has not acted accordingly. Hence, the first part of the Rule 8(a) comes into operation and the suspension order passed on 28.10.1998 is operating only till 26.1.1999. Question of coming into operation of Rule 8(b) and 8(d) does not arise for the reason that the Competent Authority on the recommendation of the Review Committee has not passed any order.

13. After expiry of 90 days from the date of suspension i.e. 28.10.1998, the suspension of the applicant becomes invalid and not operative. Period

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under suspension since 28.10.1998 and onwards be treated by the respondent no.2 as per rules governing the same and pay the salary alongwith emoluments. The applicant's suspension has become invalid during the pendency of the application, during which another incumbent has been posted against the post which the applicant was occupying which is the privilege of the respondent no.2. We are not concerned where the applicant is to be posted but it is made clear that it is the privilege of the respondent no.2 to post the applicant or not to post him at a particular place.

14. Looking to the facts and circumstances of the case, it is ordered that both the parties shall bear their own cost.

*J. (J.W)*

Member ( J )

*A. (A)*

/ M.M. /