

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 558/02

THIS THE 28TH DAY OF OCTOBER, 2002

HON. MRS. MEERA CHHIBBER, MEMBER-J

Mukhtar Ali,
T.No. 349/EM/Wireman,
s/o Shri Sheikh Shakoor,
r/o G-II/251
Armapur Estate,
Kanpur.Applicant

(By Advocate:-Shri K.K.Mishra)

Versus

1. Union of India through
Secretary, Ministry of Defence,
Defence Production and Supply,
New Delhi.
2. Secretary,
Ordnance Factory Board,
10-A, S.K.Bose Road,
Kolkatta.
3. Senior General Manager,
Ordnance Factory, Kanpur. ...Respondents.

(By Advocate:- Shri P.D.Tripathi)

O. R D E R

HON. MRS. MEERA CHHIBBER, MEMBER-J

By this O.A, applicant has sought quashing of the order dated 19-7-1997 and further direction to the respondents to reinstate the applicant and to pay him all consequential benefits.

2. By order dated 19-7-1997 the applicant was deemed to have been suspended w.e.f. the date of his detention i.e. 20.1.1997 in terms of Sub rule (2) of Rule-10 of the

Subrule (2) of Rule -10 of the CCS CCA rules as
Mukhtar Ali was detained in Jail Custody on
20-1-1997 for a period exceeding 48 hours.

It was further stated ⁱⁿ the said order that
the applicant shall remain under suspension until further
orders (page 11 of the O.A.).

3. The grievance of the applicant is that he
had not remained in Jail Custody for more than
48 hours, which is evident from the order passed
by IInd Additional Sub-Judge, Kanpur wherein it was
specifically stated that if the applicant will be
detained more than 48 hours, he would be suspended
hence in the interest of justice, he should be enlarged
on bail. The order dated 22-1-1997 passed in case
Crime No. 230/97 is annexed at page 24 of the O.A.
Thus the first argument of the applicant's counsel
is that since he has been granted bail by the Court
within 48 hours, he could not have ~~been~~ ^{been} put under deemed
suspension w.e.f. 20-1-1997 ~~wide~~ ^{wide} order dated
19-7-1997. The applicant's counsel has next
contended that there is neither any chargesheet
nor any disciplinary proceedings against the applicant
in the Department and as for as Criminal Case is
concerned, ~~it go on indefinitely for no R~~ ^{it go on indefinitely for no R} number of years ^{is}
~~More over this case is~~ ^{is} has nothing to do
with ^{his R} ~~his R~~ ^{is} duties in the Office, ^{is} there is no
justification for keeping him under continued suspension
for such a long period. He has further submitted
that by the order dated 4-5-2000 (page 25), the
applicant's subsistence allowance was reduced from
50% to 25% without any justification and even ^{then}
25% subsistence allowance has not been paid to the
applicant from May, 2002. Therefore, he has
submitted that he has been suspended and denied
his subsistence allowance without any justification.

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The applicant's counsel has relied on number of judgements for example 1996(1) AWC 288 RAM CHETAN VERSUS STATE OF U.P. AND OTHERS wherein ⁱⁿ some ~~way~~ ¹⁸ similar circumstances the Hon'ble High Court has held as under:-

" If a person is taken into custody, it is quite impossible for him to function his official duties. It is because of this reason, that provision of suspension is must, during the period of his remaining in jail. But when he is enlarged on bail, he should be given duty as during the pendency of Criminal Trial, keeping him under suspension is against the principle of natural justice."

He also relied on 1990(12) ATC 551 in the case of R.PERUMAL AND OTHERS VERSUS UNION OF INDIA AND OTHERS wherein the Court held as under:-

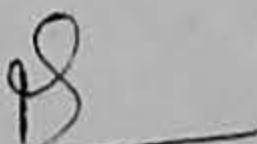
"Suspension-prolonged suspension-Criminal trial and departmental enquiry continuing-Consequently suspension continuing for a long period of 5 years and 10 months-Legality-Such a long suspension, held, bad "

He also relied on 1990(14) ATC 547 in the case of R.T.SHARMA VERSUS UNION OF INDIA AND OTHERS wherein it has held as under:-

"Suspension-CCS(CCA) Rules, 1965-Rule 10-Suspension under Rule 10(1)-Release from custody after more than forty-eight hours-without considering the necessity of continuation of suspension, order of suspension under Rule 10(1) passed-Legality-Such an order of suspension, held, unsustainable-DG, P&T letter No. 201/43/76-DISC II- AIS(DA) Rules, 1969, Rule 3.

Suspension- Suspension of government servant-continuation of, for indefinite duration, held, arbitrary-Constitution of India, Articles 14 and 16."

He further relied on 2002(2) ATJ 332 in the case of P. RAJENDRA VERSUS UNION OF INDIA AND OTHERS wherein the Division Bench of Andhra Pradesh High Court held as under:-



"Central Civil Services (Classification, Control and Appeal) Rules, 1965-Rule 10-Suspension-Suspension on account of Criminal case-continuation of suspension-Authorities have to apply their mind as regards the stage of the matter in which the criminal case is pending while ordering continuation of suspension."

4. On the basis of these judgement ^{and} instructions issued by Government of India on the subject of suspension, the applicant's counsel submitted that it is not in the interest of either the employee or the administration to keep any person under suspension for an indefinite period. In any case the respondents are required to review the matter and to see whether in the given circumstances the suspension is still required to be continued or the suspension can be revoked and person reinstated in the service. It is further submitted by the applicant's counsel that after the year 2000, no review has been carried out by the respondents whereas a period of 5 years has already elapsed. Even though he has already given number of representations and even a legal notice through his counsel (Annexure A-3,A-4) but till date no reply has been given on either of the representations or legal notice. Therefore, he has prayed for the reliefs as mentioned above.

5. The respondents on the other hand ^{have} opposed the O.A and have stated that petitioner was involved in a Criminal offence for which a Crime Number 80/96 was registered against him in the Armapur Police Station under section 147/302/323/342 of IPC and under section 3(1) (10) of S.C/S.T Act. At present a case Crime Number 191/97 is pending against him before the Additional District Judge II, Kanpur. They have stated that on 25-11-1996 one shri Ramesh Valmiki was abducted and kept in Quarter No. G-II/242 at Armapur estate which is a Government

accommodation by petitioner and few others. He was seriously injured and sent to hospital on 26-11-1996 and subsequently he expired on 2-12-1996. It is stated by the respondents that thereafter the applicant was absconding and was also absent from duty from 3-12-1996 to 10-2-1997. He surrendered before the Court on 20-1-1997 and was sent to jail on the same day. He was under Custody/Jail from 20-1-1997 to 22-1-1997 which exceeds 48hours and therefore as per rules he was placed under deemed suspension w.e.f. 20-1-1997 vide order dated 19-7-1997. The said case is still subjudice and applicant is involved in a grave misconduct. The respondents ^{thus} ~~have~~ submitted, the revocation of suspension at this stage is not tenable, ^{to} ~~to~~ be more precise, ^{they} ~~they~~ have explained that applicant surrendered himself in the court on 20-1-1997 and was sent to jail on the same day and he remained in jail up to 20-1-1997, on which he was released from jail at 19.10 hours. Therefore, ^{and} ~~it~~ ^{for} ~~for~~ it is wrong to say that he was in jail ^{for} more than 48hours. It is however, admitted by the respondents that vide order dated 4-5-2000 the subsistence allowance of applicant has been reduced from 50% to 25%. The respondents have thus submitted that this case calls for no interference and in support of their contention they have relied on 1999 (1) AISLJ (SC) 112 in the case of State of Tamil Nadu Vs. Thiru G.A.Ethiraj wherein in somewhat similar circumstances the Tribunal had set aside the order of suspension on the ground that the chargesheet had already been filed against the applicant therein therefore ^{there was} ~~no~~ justification to continue the said applicant under suspension in law, but the Hon'ble Supreme Court quashed the order passed by the Tribunal by holding as under:-

"The Tribunal has held that the premise on which the order of suspension was passed is no longer in existence since the stage of investigation is already over and a charge sheet has been filed before the Court of law and as such the order of suspension cannot survive any further and has been set aside on that ground. We are unable to appreciate the said direction of the Tribunal in setting aside the order of suspension. By the order of suspension dated August 22, 1995 the respondent was placed under suspension till further orders. The said order was not confined to the period during which the investigation was in progress. After the completion of the investigation, the charge sheet has been filed against the respondent on basis that a ~~prima facie~~ case about the commission of the ~~offence~~ mentioned in the chargesheet has been made out. This means that as a result of the filing of the charge sheet the reason for keeping the respondent under suspension continues and it cannot be said that the said reason has ceased to exist after the filing of the chargesheet. In these circumstances, we are unable to uphold the impugned judgment of the Tribunal.

The Appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside and O.A No. MP-1832 of 1996 filed by respondent is dismissed. No order as to costs.

6. I have heard both the counsel and perused the pleadings as well as the various ^{judgments relied on} by the counsel on both the sides.

7. The first contention of the applicant's counsel is that his client could not have been put under deemed suspension w.e.f. 20-1-1997 is rejected because the applicant had surrendered in the court on 20-1-1997 and ^{released} was actually from jail only on 22-1-1997 at 19.10 hours, which makes it more than 48 hours. The applicant has relied on the order by which he was granted bail, but the fact remains that even though the bail was granted ^{by the court} on 22-1-1997 but he had actually remained in the jail for 48 hours. Therefore, rule-10 (2) of ^{CCS} (CCA) Rules gets attracted automatically since the deemed suspension is based on rule 10 (2) we cannot ^{by which} find any fault with the order. ^{the} applicant was deemed to be under suspension w.e.f. 20-1-97.

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8. Even otherwise in matters of suspension, the Hon'ble Supreme Court has held in catena of judgements that Courts and Tribunals should not interfere in the matter because it is for the administration to decide whether the person needs to be kept under suspension or the suspension can be revoked after considering the facts and circumstances of case. The suspension order shows in the last line it is made clear that he shall remain under suspension until further orders, and as per the Judgement of Hon'ble Supreme Court as referred to above, once the suspension is till further orders, it can continue till further orders are not issued. In JT 1997 (3) SCC in the case of Allahabad Bank and Others Versus Deepak Kumar Bholu, the Hon'ble Supreme Court has held that once the CBI had filed the chargesheet and offence was involving moral turpitude it was sufficient for suspending the employee and mere delay of 10 years was held to be no ground to allow him to be reinstated. Similarly in the case of U.P Rajya Krish Utpadan Mandi Parishad and others versus Sanjiv Rajan which is reported in AISLJ 1993 Supp 3 SCC 483, the Hon. Supreme Court has held as under:-

Service Law-Suspension-Revocation-Prolongation of suspension due to delay in filing charge-sheet -Such delay will not justify revocation of suspension order-Remedy lies in calling for an explanation for the delay and it found unsatisfactory, to direct the authorities to complete the inquiry within a stipulated period and to increase the subsistence allowance adequately.

Service Law-suspension-judicial review-Court should not ordinarily interfere with suspension orders, unless passed mala fide and without there being even a prima-facie evidence connecting the delinquent with the misconduct in question." *48*

9. I respectfully agree with the Judgment given by Hon'ble Supreme Court and do not find it a fit case for quashing the suspension in view of facts as explained above. However, the respondents have admitted in their counter affidavit that vide order dated 4-5-2000 they have reduced the subsistence allowance of applicant from 50% to 25% but a perusal of the order shows that no reasons are assigned as to why the subsistence allowance was reduced from 50% to 25%. It is a two line order (Annexed with the O.A on page 25). The applicant's counsel has stated at bar that even this 25% reduced subsistence allowance has not been paid to him from 4-5-2000. The respondents counsel was not in a position to give any positive reply on this aspect. I had also asked the respondents counsel whether a review has been carried out in the present case after the year 2000 to which I was informed that after 2000 no review has been carried out. At this juncture it would be relevant to refer to the instructions issued by the Government of India wherein it is specifically stated that even though suspension may not be considered as a punishment but it does constitute a great hardship to the employee. It is neither in favour of Government nor Government servant. In fairness to him, it is essential to ensure that this period is reduced to the barest minimum. It is also stated in the instructions that if the cases are prolonged for unduly long period, the matter should be referred to the committee for consideration as to whether the suspension order should be revoked and the officer permitted to resume the duty or he should be continued under suspension. It is reiterated that unduly long suspension puts the employee concerned to undue hardship and on the other hand involves payment of subsistence allowance to the employee

without his performing any duty. Therefore, the cases should be reviewed keeping in mind, the instructions issued by Government of India.

10. It is stated by the applicant's counsel that applicant has already given his representation as well as a legal notice through his counsel to the authorities which are annexed as annexure-3 and annexure-4 but till date the authorities have not responded to the same. In view of the instructions issued by Government of India, I think it would be in the interest of justice to dispose of this O.A by issuing directions to the respondents to carry out a review of applicant's case by keeping the latest position ^{as} ~~as~~ cases and instructions in mind and pass a detailed and reasoned order as to whether the applicant's suspension should be revoked or he has still to be continued under suspension, also give reasons as to why he is not being given the subsistence allowance from 4-5-2000 and also state the reasons as to why his subsistence allowance has been reduced from 50% to 25% w.e.f. 4.5.2000. If the respondents find there is no valid justification for reducing the subsistence allowance or withholding the same, appropriate action should be taken by respondents to release the said amount immediately as subsistence allowance cannot be withheld without any valid justification. This exercise shall be completed by the respondents within a period of 3 months from the date of receipt of a copy of this order and the orders passed should be communicated to the applicant.

11. With the above directions the O.A is disposed of with no order as to costs.