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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
~~XXWXXDXXX~~

O.A. No. 83 OF 1987.  
~~XXX~~

DATE OF DECISION 10-4-1990.

R.T. SHARMA Petitioner

MR. SHAILESH BRAHMBHATT Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.V. HARIDASAN, JUDICIAL MEMBER.

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

R.T. Sharma,  
125, Vijayanagar,  
Gujarat Housing Board,  
Gorva, Baroda.

.... Petitioner.

(Advocate: Mr. Shailesh Brahmbhatt)

Versus.

1. Union of India,  
(Notice to be served on the  
Secretary, Ministry of  
Communications, Sanchar Bhavan,  
New Delhi).

2. General Manager,  
Telecommunications,  
Gujarat Circle, Ahmedabad.

3. Telecommunications  
District Manager,  
Jalaran Marg., Kareli Bag,  
Baroda.

.... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.NO. 83 OF 1987.

Date: 10-4-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

Applicant R.T. Sharma, a selection grade  
Telecom Office Assistant (Operative) in the office of  
the Telecom District Manager, Baroda, was placed under  
suspension with effect from 1.1.1985 by an order dated  
7.1.1985 issued by the Divisional Engineer Telegraphs,  
Baroda, on the ground that a criminal offence / under  
investigation against him. The applicant has  
challenged this order of his suspension from service  
with prayers that the order be quashed and the  
respondents be directed to take him on duty in the  
office of the District Manager, Telecommunications,

office of the  
Baroda, the third respondent.

2. The applicant's averments and submissions are aimed to show that though clause (b) of Subrule(1) of rule 10 of Central Civil Services (Classification Control and Appeal) Rules, 1965 provides that a Government servant may be placed under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial, this provision has to be read along with Government guidelines on the subject of suspension and provisions in Chapter I of the Post and Telegraph such Manual, Vol. III, for deciding whether a Government servant should be placed under suspension and, once placed under suspension, whether to continue him under suspension and, when so looked at, he was not required to be placed under suspension much less continued under suspension from 1.1.1985 for over five years without any police or disciplinary charge sheet.

3. The respondents' averment is that the CBI had registered RC.No. 13/84 against G.D. Gulani, DET Bharuch, and others alleging corruption and irregularities in recruitment and intimated the Vigilance Officer of the General Manager, Telecommunications, Ahmedabad, by letters dated 1.1.1985 and 4.1.1985 that the applicant was arrested on 1.1.1985 and remanded in police custody upto 3.1.1985 and in judicial custody upto 5.1.1985. The applicant was placed under suspension on this intimation and that the Department decided to proceed against the applicant for major penalty and "further action is awaited against all

the officers who are involved". The respondents have also averred that as the prolongation of suspension of the applicant is "due to reasons not directly attributable to the applicant", his subsistence allowance has been increased in review. The applicant's prayer for reinstatement in service is resisted by the respondents on the ground that his reinstatement would hamper investigation and harm the interests of investigation and that the Superintendent C.B.I. has forwarded investigation report to the Department of Telecommunications, New Delhi, which Department has decided to proceed against the applicant along with other officers including gazetted officers for major penalty. As common proceedings are required to be taken against gazetted and nongazetted employees and sanction of the President of India is required for that "it is not advisable and desirable to revoke the suspension which may end with one of the major penalties".

4. The applicant, in his rejoinder, drew attention to the position that G.D. Gulani, DET, Broach who is the main accused and other persons involved in the case were not placed under suspension and, with the CBI having forwarded the investigation report, there is no need for continuing the applicant under suspension and the order of suspension requires to be revoked on that ground also. As the respondents averred in their counter that the CBI forwarded the investigation report for further action and decision of launching major penalty proceedings

taken, the applicant, through miscellaneous application No. 307/87 dated 28.7.1987, prayed for direction to the respondents to supply its copy which the respondent resisted in reply dated 23.11.1987 filed by Divisional Engineer (Admn), Office of District Manager, Telephones, Baroda, claiming privilege as public interest would suffer and protection under section 123 and 124 of the Indian Evidence Act. In this reply strange and at grave variance from the facts on record is the averment of the respondents that "the services of the applicant has been terminated on the ground of public interest". According to record and according to the respondents counter also, the applicant has only been placed under suspension on the report of the CBI that he was arrested and kept in police and judicial custody before he was released on bail. It is unfortunate that a case of suspension of an employee should be described by a senior officer dealing with administration as a case of termination of service in public interest. In the order dated 2.9.1987, this miscellaneous application was to be heard along with the original application.

5. With regard to the order of suspension we notice that the same has been issued in exercise of powers under rule 10(1) of the CCS(CCA) Rules. Even if such an order was not issued, the applicant's case, for the reason that he had remained in police and judicial custody from 1.1.1985 to 5.1.1985, is governed by rule 10(2) of

the CCS(CCA) Rules which directs that

"A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction."

It therefore flows that even if the impugned order of suspension had not been issued, the applicant was to be deemed to have been placed under suspension by an order of the appointing authority. There was therefore no way for the applicant to escape from suspension with effect from 1.1.1985, the date of his arrest, and what is legally inevitable can neither be quashed nor set aside.

6. Coming to the question of continuance of the applicant under suspension, we find the following instruction in DG, P&T's letter No. 201/43/76-DISC II dated the 15th July 1976 exactly apposite in the case before us.

12

- (d) In case where an official is deemed to have been placed under suspension under Rule 10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as soon as the official is released from police custody the competent authority should consider the case to decide whether the continuance of the official under suspension is absolutely necessary or not. If the period of suspension has already exceeded the limit of three months and the competent authority does not find justification to revoke the suspension, in such case he should immediately make a report to the next higher authority, giving detailed justification for continuing the official under suspension.

It is not the case of the respondents that the competent authority had, as soon as the applicant was released from custody, considered his case to decide whether the continuation of the applicant under suspension was necessary or not. On the contrary, the respondents' case is that on receipt of CBI's intimation about the custody and release from custody of the applicant, "he was placed under suspension in exercise of power conferred by subrule (1) of rule 10 of CCS(CCA) Rules 1965 and still the applicant is under suspension." It is thus not in doubt that instead of examining the applicant's case in the light of the instruction reproduced above, an order of his suspension with effect from 1.1.1985 was mechanically issued. We are of the view that the same cannot be supported for this and for reasons that follow.

7. The main accused G.D. Bulani, DET Broach and others involved in the case were not placed under suspension. The applicant has alleged in rejoinder that they have not been placed under suspension. The respondents have not denied the allegation. If the continuation in service of these accused does not hamper the investigation, there is no reason to believe that the applicant's reinstatement in service would. In any case, the respondents have failed to bring out, in their averments and submissions, as to how the applicant posed a greater danger in this regard than other accused

including the main accused, a gazetted officer. In the absence of any convincing and legally acceptable grounds to show that the applicant's reinstatement in service posed greater danger in this regard, his continuation under suspension is also questionable on grounds of respondents' unfair discrimination between employees figuring as coaccused. It is not the case of the respondents that they, in continuing the applicant under suspension, had apportioned the blame on the several accused and found the applicant distinctly much more blameworthy than the rest of the coaccused, including the main accused, a gazetted officer. Besides, the law is settled that continuing government servants under suspension for an indefinite duration is totally arbitrary and unfettered power. We should, at this stage, refer to the submissions of the learned advocate Mr. J.D. Ajmera for the respondents that the applicant may be directed to prefer an appeal under rule 23 of CCS(CCA) Rules which remedy he has not exhausted. We have no hesitation in not accepting this submission. It is in para 6.3 of the application that the applicant had, by his representation dated 25.9.1986 to DE (Telegraphs) and 9.1.1987 addressed to the DE (Admn) pleaded for revocation of his suspension. To this para, the respondents' reply is that the investigation is going on and appropriate steps will be taken when it ends. Nothing prevented the DE from revoking the order of suspension or,

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in case he nursed any hesitation in doing so, to treat the representations as appeal applications for forwarding to the appellate authority.

8. We are thus convinced that the respondents' continuing the applicant under suspension after his release from custody has to be considered as unjustifiable and untenable and therefore liable to be set aside with effect from the very date next to the date of his release from custody, namely from 6.1.1985.

9. In view of the above, we hereby direct  
Telecommunications District Manager, Baroda, respondent  
No.3, to comply with the following directions:-

(i) To reinstate the applicant within seven days of the date of issue of this order.

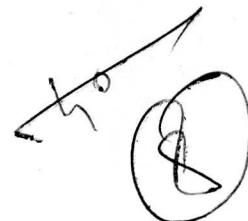
(ii) To revoke the order of suspension of the applicant retrospectively with effect from and inclusive of 1/6.1.1985 and to pay him all consequential benefits within sixty days of this order.

10. It is clarified that the above directions are without any prejudice <sup>to</sup> the action, criminal and/or disciplinary, the respondents or the CBI <sup>or both</sup> might take pursuant to the investigation/inquiry in the matter of RC No. 13/84.

O.A./83/87

with

MA/307/87



Coram : Hon'ble Mr. A.V.Haridasan

: Judicial Member

Hon'ble Mr. M.M.Singh

: Administrative Member

6/4/1990

Heard Mr.Shilesh Brahmbhatt and Mr.J.D.Ajmera, learned counsel for the applicant and the respondents respectively. The case is reserved to 10.4.1990 for orders.



(M.M.Singh)  
Administrative Member



(A.V.Haridasan)  
Judicial Member

a.a.b.