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O.A.NO. 316 OF 2001.

ORDER DATED 19-12-2001.

Heard Shri Akshaya Kumar Parida, the applicant in person and Shri B.K.Nayak, Learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the pleadings of the parties. The applicant has also filed written note of submission with copy to other side, which has also been taken note of.

Applicant, in this Original Application, has prayed for quashing the order dated 19-7-2001, at Annexure-5 on different grounds urged in the Original Application. Respondents have filed counter opposing the prayer of applicant. No rejoinder has been filed. By way of interim order, the applicant has prayed for staying operation of the order at Annexure-5. On the date of admission, the counsel for the applicant, who was appearing then, only prayed for consideration of granting him the Subsistence Allowance and accordingly, order was passed to grant him the subsistence allowance in accordance with Rules. Before considering various submissions made by the applicant and Learned Additional Standing Counsel in support of their respective stands, a few admitted facts of the matter will have to be noted.

The applicant is working as Senior Auditor in the office of the Accountant General (Audit). In order dated

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4-8-2000 (Annexure - 1), he was placed under suspension pending drawal of disciplinary proceedings against him. While the applicant remained under suspension, he was arrested by the Police on 31-5-2001 in a Crl. case, which according to him is false and fabricated but admittedly, the applicant remained in custody from 31-5-2001 till 19-6-2001 when he was enlarged on bail. Applicant in his letter dated 20.6.2001 (Annexure-2) informed the Departmental Authority about his having been taken into custody on 31-5-2001 and having been released on bail on 19-6-2001. Thereafter, in order dated 16-7-01, at Annexure-3, the suspension order dated 4-8-2000 was revoked with immediate effect. Applicant's case is that after getting on 17.7.2001, this order dated 16-7-2001/he reported for duty on 19.7.2001 and submitted his joining report which is at Annexure-4. Again on 19.7.2001, the impugned order of suspension was issued. On this order of suspension, it has been mentioned that a case against the applicant in respect of a Crl. offence is under investigation and in connection with the case, the applicant had been detained in custody from 31.5.2001 exceeding 48 hours and therefore, in terms of Sub-rule-2 of Rule-10 of CCS Rules, 1965 he is deemed to have been suspended w. e. f. the date of detention i.e. 31.5.2001 and was remained under suspension until further orders. It is this order, which the applicant has challenged on various grounds which are discussed below in seriatim.

S. J. Jamm
The first point urged by the applicant is that going by the CCS (CCA) Rules, the order at Annexure-5 is mis-conceived as no such order could have been passed

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under sub-rule-2 of Rule-10 and the order, if at all, should have been passed under sub rule 5(b) of Rule-10. Before considering the submissions made by the Applicant, in support of this contention, it must be noted that even if it is taken for granted that the above submission of Applicant is correct, merely by the reason of quoting a wrong rule, the order at Annexure-5 will not get invalidated because this is an order of deemed suspension. In any case, the submission made by the applicant in regard to the above stand has to be noted. clause-b of sub-Rule-5 of Rule-10 is extracted below:

*10. Suspension.

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(5) (b) where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Govt. servant shall continue to be under suspension until the termination of all or any of such proceedings*.

On a careful reading of the above rule, it appears that this rule only provides that when a Government servant is suspended or is deemed to have been suspended (in connection with any disciplinary proceeding or otherwise) and another disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings. On a plain reading of the rule,

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it is clear that this Rule is attracted when during the period of suspension of a Government servant, another disciplinary proceeding is commenced against him. Rule specifically speaks of "any other disciplinary proceeding". It is not the case of applicant that his suspension order at Annexure-5 is because of initiation of a second disciplinary proceedings against him and therefore, clause-b, sub-rule-5 of Rule-10 is not at all applicable in the case. In the instant case, applicant has been ordered to be deemed to have been placed under suspension with effect from the date of his detention. Such an order can be issued only under sub rule-2. Even though from the date of being detained in custody, a Government servant is deemed to have been placed under suspension, if the period of detention exceeds 48 hours. Sub rule-5(b) specifically provides for an order of Appointing Authority. As such even in the case of deemed suspension, an order is necessary and Annexure-5 is nothing but such an order. In view of this, we reject the first contention of the applicant.

J.Jm The second contention of the applicant is that he was placed under suspension on 4.8.2000 w.e.f. 31-5-2001 when he was taken to custody and detained for more than 48 hours. Applicant's case is that when the Departmental Authorities have revoked the suspension in order dated 16.7.2001, then both the orders of suspension have come to an end and a further order of suspension as at Annexure-5 can not be legally issued. We find no merit in this contention because even though the Applicant is deemed

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to be under suspension from 31.5.2001 because of his detention in custody for ~~more than~~ 48 hours, sub rule(2) of Rule-10 provides for an order of the Appointing Authority and there has to be such an order stating that the Applicant is deemed to be under suspension from 31.5.2001 even though on 16.7.2001 his earlier suspension order was revoked. Moreover, the order itself specifically provides that order placing him under suspension dated 4.8.2000 is revoked and there is no mention in this order regarding his deemed suspension from 31.5.2001 which order has been issued only on 19.7.2001. This contention of the applicant, is, therefore, held to be without any merit and is rejected.

The applicant has relied upon the decision of the Hon'ble High Court of Calcutta in SURYA KUMAR CHATTERJEE AND ANOTHER VRS. S.N.BANERJEE AND OTHERS reported in AIR 1955 CALCUTTA 365. we have gone through this decision. In this decision the Hon'ble High Court of Calcutta have held that when a person is suspended inasmuch as he was arrested and the Memorandum directing his suspension was on the footing that he was arrested by virtue of certain charges having been preferred against him, this could not be taken to be a specific order which directed his suspension during a time when he was not detained in custody or imprisoned. In the instant case the deemed order of suspension dated 19.7.2001 was issued after the applicant has been enlarged on bail. Moreover, the above decision of the Hon'ble High Court of Calcutta came much before the introduction of CCS(CCA Rules, 1965

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and in the above decision, the Hon'ble High Court of Calcutta have considered the provisions of Posts and Telegraphis Manual Vol.II, Appendix-3, Section IV. The case before us is governed by Rule-10 of CCS(CCA) Rules, 1965 and the above decision of the Hon'ble High Court of Calcutta does not therefore provide any support to the case of Applicant. Learned ASC has relied on the decision of the Hon'ble High Court of Calcutta in the case of MIHIR KUMAR DAS VRS. STATE OF WEST BENGAL reported in Vol.23 1980 (1) SLR. The Hon'ble High Court of Calcutta have held in the context of West Bengal Classification, Control and Appeal Rules, 1971 that when a Govt. employee is detained in custody exceeding 48 hours, he is *ifsofacto* placed under suspension and that suspension does not stand revoked automatically on his being released from custody or acquittal from the Criminal charge. An order of revocation of suspension is necessary. This decision has no application to the present case. Learned ASC has referred to the decision of the Hon'ble Supreme Court in the case of R.JEEVARATNAM VRS. STATE OF MADRAS reported in AIR 1966 SC 951. This decision has been cited by learned ASC in the context of the averment made by the applicant that the impugned order dated 19.7.2001, he is deemed to have been placed under suspension w.e.f. 31.5.2001 and thus, this order of 19.7.2001 has given retrospective effect. An order of deemed suspension must necessarily be with retrospective effect because only after the concerned Government servant is detained in custody exceeding 48 hours he is deemed to be under suspension from the time he is detained.

J.S.W.

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in custody. The very rule, therefore, provides for retrospective operation of the order of deemed suspension. This contention of the applicant being without any force, it is not necessary to decree further into the decision cited by learned ASC.

In view of our above discussions, we hold that the Original Application is without any merit and the same is rejected. No costs.

[Signature]
(NITYANANDA PRUSTY)
MEMBER(JUDICIAL)

[Signature]
(SOMNATH SOMA -
VICE-CHAIRMAN)

KNM/CM.

Free copy of order
dt. 19/12/01 issued to
the applicant and
counsel for resps.

[Signature]
S. O.

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26/12/01