

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO. 609 OF 2001
Cuttack this the 30thday of Sept./2003

Pradipta Kumar Mohanty ... Applicant(s)

-vs--

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

Sudha
(B.N. SOM)
VICE-CHAIRMAN

Sudha
(M.R. MOHANTY)
MEMBER(JUDICIAL)

30/09/2003

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 609 OF 2001
Cuttack this the 30th day of Sept./2003

CORAM:

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

Pradipta Kumar Mohanty, aged about 51 years,
Son of Late Chaturbhuj Mohanty, Sub-Divisional
Engineer Telecom, Microwave Project, Bhubaneswar
(at present under suspension) . . .

By the Advocates

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Applicant

M/s. G.Rath
S.Misra
A.K.Panda
T.K.Prahraj

VERSUS

1. Union of India represented by the Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi-110 001
2. The Member(Services), Telecom Commission, Department of Telecommunication, West Block, No.1, Wing No.2, Ground Floor, R.K.Puram, New Delhi
3. The Director Telecom Microwave Project, Plot No.82, Sahid Nagar, Bhubaneswar-751007

By the Advocates

Mr.S.Behera, A.S.C.

O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL): In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for quashing of (a) the order dated 12.11.1999 by which, he has been placed under suspension with effect from 09.09.1999, following to his arrest and detention in judicial custody for a period exceeding forty eight hours during investigation of a criminal case and (b) the order dated 16.05.2000 passed by the Member(Services) of the Telecom Commission; by which his prayer for revocation

of the order of suspension was rejected. He has also prayed for a direction to be issued to the Respondents to reinstate him in services by treating the period from 22.9.1999 (till the date of reinstatement) as on duty with consequential service benefits.

2. The facts of this case in brief are that the Applicant, while working as Sub-Divisional Engineer of Microwave Projects at Bhubaneswar was arrested by the CBI on 09.09.1999 (during pendency of investigation of a criminal case initiated on the allegation of he having acquired properties disproportionate to his known sources of income) and, accordingly, he was placed under suspension on 12.11.1999 (w.e.f. 09.09.1999) and the Applicant, having been released on Bail on 20.9.1999, represented with prayer for his reinstatement; which was rejected on 16.05.2000 on the ground that the case was under investigation.

3. Heard Shri Ganeswar Rath, the learned counsel for the Applicant and Shri S. Behera, learned Addl. Standing Counsel appearing on behalf of the Respondents-Department.

Shri Rath, the learned counsel for the applicant submitted that the applicant having been released on bail, he ought to have been reinstated in service. It is his further argument that the CBI having been in session of the matter, there is no scope for the Applicant either to tamper the documents or the evidence. It is the further plea of Shri Rath that in the instant case the Applicant has been continuing under suspension since 1999 and, therefore, it would not be proper to prolong the suspension of the Applicant any more; as there is no certainty as to when

the criminal proceedings before the CBI Court would come to an end. Shri Rath also submitted that as long as the Applicant has not been held guilty by the CBI Court, he should not be kept under suspension for indefinite period (merely on the basis of Criminal Investigation conducted by the CBI Police); because it's implication deprives the Applicant to discharge his duties and to get his full salary.

On the other hand Shri S. Behera, learned Addl. Standing Counsel appearing on behalf of the Respondents-Department submitted that since the allegation against the Applicant is serious in nature, it would not be safe for the Department to revoke the order of suspension. In this connection, Shri Behera drew our notice to Annexure-A dated 6.8.2002; which is a letter addressed to the Deputy General Manager of Microwave Project at Bhubaneswar (from the S.P., CBI, Bhubaneswar) and submitted that in terms of this letter, there is every chance for the Applicant to influence the witness.

4. We have considered the rival submissions advanced at the Bar. Before proceeding further on the merits of the case, it is pertinent to deal with the rules on the subject from the stage at which the matter now stands. It is not in dispute that the Applicant has been placed under suspension (deemed to be w.e.f. 09.09.1999) in terms of sub-rule(2) of Rule 10 of CCS (CCA) Rules, 1965 and, thus, it is almost four years drawing near that the order of suspension is continuing. Therefore, there is no doubt to construe the applicant's suspension to be 'continued suspension'. 

Comments on 'continued suspension' as given out in Swamy's Compilation on Suspension & Reinstatement (13th Edn.) 1995 (Para-8 at Page-7) reads as under :-

" Under Rule-10(5)(b) where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the competent authority 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"

(Emphasis ours)

Para 12(2) & (4) at Page-9/10 of the said Swamy's Compilation on Suspension reads as under :-

xxx xxx xxx

"(2) The rules of natural justice require that when a Government servant is placed under suspension, charges against him should be framed within a reasonable period of time and a final decision be taken expeditiously and terminate suspension".

To have such cases disposed of quickly, it has been laid down that -

- i) in cases involving criminal proceedings against the Government servant, every effort should be made to complete the investigations and file the charge-sheet in a court of law within three months of the date of suspension, and
- ii) in cases, other than those pending in Courts, the total period of suspension, viz., both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months"

In exceptional cases where it is not possible to adhere to these time-limits, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay.

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(4) In court cases it is incumbent on the disciplinary authority to make arrangements for getting the result very promptly and take action thereafter without delay under Rule 19(i) of CCS (CCA) Rules, 1965 or revoke the suspension if it is not decided to continue the same without a view to taking further departmental action.

Para 11(2) at Page-9 of the aforesaid Compilation (dealing with duration/end of suspension) reads as under:-

"Suspension should not be continued beyond the minimum period for which it is essentially required. Prolonging the continuance of suspension when enquiry is unduly delayed would smack of mala fide".

5. In the above premises, the following points needs to be considered :-

- (a) Can this Tribunal invalidate Annexure-3 being not in conformity with what has been stated in Para-8 at Page-7 of Swamy's Compilation(Supra) pertaining to 'CONTINUED SUSPENSION' ?
- (b) Can the period of suspension (w.e.f. 09.09.99 till date) be held a reasonable period of time ?
- (c) Whether the effort made by the Department is justified to uphold the order of suspension ?
- (d) Whether by this suspension the Applicant has been put to undue hardship and/or whether payment of subsistence allowance to him can be said to be just, without the employee performing any useful service to the Government ?
- (e) Whether suspension in the instant case can be construed mala fide ?

6. The answers to the issues raised above would be as under :-

- (a) The order of suspension under Annexure-3 dated 12.11.1999 states that the Applicant has been put under deemed suspension w.e.f.

09.09.1999. However, on the representation made by the Applicant for revocation of suspension, the Respondents (Vide Annexure-6 dated 16.5.2000) replied that since the case is under investigation, there was no justification to revoke the suspension order. But at the same time, the Department enhanced subsistence allowance by 50% of the initial sum. It is to be noted that although four years have elapsed in between, no review of suspension has been undertaken (by the Respondents) as required under Rule-19(5)(b) and, thereby, the Applicant has been placed in a prejudicial circumstances. Therefore, by resorting to Rule-10(5) of the CCS(CCA) Rules, the Respondents ought to have (for the reasons to be recorded in writing) reviewed the matter to findout as to whether the Applicant should continue to be under suspension or not. The intention of legislating such a provision is only to assure the suspended employee that his authorities have not forgotten about him, following to his suspension. In this case, apparently, no steps have been taken (by the Respondents) to review the matter and, thereby, the Applicant has not only been kept in total darkness, but on the face of it, the continuance of the Applicant under suspension appears to be bad.

(b) It is undoubtedly clear that since the date of suspension of the Applicant w.e.f. 09.09.1999 till date, fourth year is approaching and in the circumstances, it was incumbent on the part of the disciplinary authority to make arrangements for getting the result in the proceedings very promptly and take action thereafter without delay under the provisions of CCS(CCA) Rules, 1965 or revoke the suspension, if it is decided not to continue the same. Till the date of filing of this application (and as on date) no effective steps, in this regard, seemed to have been taken by the Respondents, and, therefore, it is far beyond comprehension to hold that the period of suspension (and its continuance) to be a reasonable one; especially when the Respondents are not keen to get the matter disposed of within a reasonable time-frame. It appears, things are beyond their control and, therefore, they should reinstate the Applicant.

(c) It is clear that in the cases (involving criminal proceedings against the Government servant) every effort should be made to complete the investigation and file charge-sheet in a Court of Law within three months of the date of suspension. In the instant case, no materials have been placed on record

to show as to whether investigation has been completed and charge-sheet have been filed in the CBI Court. Viewed from this angle, it cannot be said that efforts made by the Respondents are justified to keep the Applicant under continued suspension for years together.

(d) As regards the efforts of the Department (in so far as relevant rules for reviewing the Applicant's suspension is concerned) we feel that there has been no satisfactory steps taken by them in this regard. It is only on the basis of representation made by the Applicant for revocation of suspension, the Respondents-Department rose from the slumber and passed order (vide Annexure-A/6 dated 16.5.2000, i.e., after more than eight months of the date of suspension) reviewing the matter and enhanced the quantum of subsistence allowance and, as on date, no review has been undertaken with a view to either revocation of the order of suspension or otherwise and, thereby, the applicant is still continuing under suspension.

(e) We have gone through the letter dated 6.8.2002 filed by the Respondents (along with a Memo, in course of hearing of this O.A.) addressed to the Deputy General Manager of Microwave Project at Bhubaneswar (from the

S.P., CBI) in response to letter dated 5.8.2002 of the Respondents-Department.

Prima facie, we are of the view that this letter has been obtained from the CBI with some ulterior motive. It is too stretching to conceive that a reply is received just on the next date of receipt a letter. In other words, reply has been received vide letter dated 6.8.2002 with reference to letter dated 5.8.2002. In the 4th Para of the letter it has been mentioned that SP's report along with the aforesaid findings was sent to the Department vide original office letter No.927/3/(A)/99-BBSR/CRO dated 28.6.2000 but the Respondents-Department have not produced any such report of the CBI before the Tribunal for its satisfaction). The Applicant is facing a criminal proceedings pertaining to allegation of possessing properties disproportionate to his known sources of income. It is **not** understood (nor explained to us) as to how on his **reinstatement**, the Applicant will influence the evidence/witness of such a case. Thus, his continuance on suspension cannot be stated to be a **bona fide** one.

7. Apart from the discussions held above, it would be profitable to give a look at what has been stated

under the aegies of "Review of Suspension" in Swamy's Compilation(supra) on Suspension & Reinstatement; the relevant portion of which reads as under :-

- (i) It is in the inherent powers of the disciplinary authority and also mandatory to review periodically the case of a Govt. servant under suspension in which charge-sheet has been served/filed to see what steps could be taken to expedite the progress of the court trial/departmental proceedings and revoke the order permitting the Government servant to resume duty at the same station or at a different station, when in his view the continuance of suspension is not justified having regard to the circumstances of the case at any particular stage. ...
- (ii) Unduly long suspension while putting the employee concerned to undue hardship involves payment of subsistence allowance without the employee performing any useful service to the Government. The concerned authorities, therefore, should scrupulously observe the time-limit laid down and review the cases of suspension, in the interest of public service as well to see whether continued suspension in each case is really necessary.
- (iii) In appropriate cases, if the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence, etc. or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order. When documentary and oral evidence has already been collected and risk of tampering with evidence by the official no longer exists, the cancellation of suspension orders should be considered by the competent authority. When, however, there is still such a risk, the question of his transfer should be considered keeping in view the nature and gravity of offence committed by him.
- (iv) The order regarding the review of the subsistence at the end of three months from the date of suspension, incidentally gives the concerned authority an opportunity

to review not merely the subsistence allowance, but also the substantive question of suspension itself.

8. We are also fortified by the views expressed by the Madras High Court in the case of State of Madras vs. K.A.Joseph (reported in AIR 1970 Mad. 155), wherein, with reference to the principles of natural justice, their Lordships held that an officer could not be placed under suspension for indefinite period. In the said case of Joseph (supra), the Division Bench of Madras High Court held as under :-

" There is a very clear and distinct principle of natural justice, that an Officer is entitled to ask, if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence, and that charges should be framed against him within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a total, arbitrary and unfettered power of placing its officer under disability and distress, for an indefinite duration".

9. Viewed from the above, the competent authority should not have delayed in reviewing the suspension of the applicant; the ~~as~~ ~~imbalance~~ ~~that~~ between keeping a person under suspension and payment of subsistence allowance without the employee performing any useful service to the Government are to be weighed with. It has also to be kept in mind that if it is apprehended that the presence of the officer in the particular place of work would give scope for tampering evidence, then he can be transferred (on revocation of suspension order) suitably. In other words, in a matter

of suspension the intention of the legislation should be correctly understood and the competent authority, in the matter of suspension, should look to the pros and cons of the matter and always review the same(suspension) so that neither of the parties(Government or the employee concerned) are put to needless detriment. As it appears, the competent authority has failed to take any such spectacular step in this case.

10. Having regard to the facts and circumstances, as well as the position of law, we are of the view that there has been delay in reviewing the suspension of the Applicant (and as a result thereof, he is being paid subsistence allowances; for no useful purpose of the Government) and accordingly, we hereby direct the Respondents Department to review the suspension of the Applicant in the light of our findings to the issues raised in para-5 above and pass appropriate orders within a period of one month from the date of receipt of a copy of this order; failing which the order of suspension of the Applicant shall stand revoked; warranting reinstatement of the Applicant.

11. With the above observations (and directions to the Respondents) we dispose of this n.A. No costs.

[Signature]
(B.N.SOM)
VICE-CHAIRMAN

[Signature] 30/09/2003
(MANORANJAN MCHANTY)
MEMBER (JUDICIAL)