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CENTRAL ADMINISTRATIVE TRIBUNAL

## CUTTACK BENCH, CUTTACK

O. A. No. 260/00324 OF 2013Cuttack, this the 26<sup>th</sup> day of March, 2015

CORAM

**HON'BLE MR. A.K. PATNAIK, MEMBER (J)****HON'BLE MR. R.C. MISRA, MEMBER (A)**

.....

Bhaskar Gadanayak,

aged about 59 years,

S/o Late Dandapani Gadanayak,

Of Village- Kudutai, PO- Kudutai, PS- Tarasingi,

At present serving as Security Guard, All India Radio,

Berhampur, At/PO/PS- Berhampur, Dist- Ganjam.

...Applicant

(Advocates: M/s. A.R.Dash, S.K.Nanda-1, B.Mohapatra, L.D.Acharee.

**VERSUS**

Union of India Represented through

1. Director General,

    All India Radio, Akashavani Bhawan,  
    New Delhi.

2. Addl. Director General (P) (ER),

    All India Radio, Eden Gardens,  
    Kolkata- 700001.

3. Security Officer,

    All India Radio, O/o the Station Engineer,  
    Lochapada Road, Berhampur, Dist- Ganjam.

4. Asst. Station Director,

    All India Radio, Lochapada Road,  
    Berhampur, Dist- Ganjam.



5. Director (Engineering), Prasar Bharati,  
All India Radio, Berhampur,  
Orissa, Pin-760001.

..... Respondents

Advocate(s) : Mr. D.K.Behera.

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## O R D E R

### A.K.PATNAIK, MEMBER (JUDL.):

In this second round of litigation, the applicant has prayed to quash the order dated 01.06.2012, the order dated 25.02.2013 and to direct the Respondents to reinstate him into service with all service benefits. In the order dated 01.06.2012 the applicant was placed under deemed suspension with effect from 29.03.2012 i.e. the date of detention under sub rule (2) of Rule 10 of CCS (CC&A) Rules, 1965. He submitted representation/appeal dated 07.05.2012 praying for his reinstatement and, thereafter, alleging inaction of the authority he has approached this Tribunal in OA No. 993 of 2012 which was disposed of on 02.01.2013 with a direction to consider his representation dated 07.05.2012 within a period of six weeks from the date of receipt of the order of this Tribunal. In compliance thereto, the Respondent No.5 considered the said representation/appeal and communicated the reason of rejection of his prayer vide order dated 25.02.2013.

2. The case of the applicant, in nut shell is that while he was working as a Security Guard in the Office of the All India Radio, Berhampur he was arrested by the Tarasingi Police on 29.03.2012 at 2.30 pm, in connection with Tarasingi PS Case No. 22 of 2012. He was produced before the Learned SDJM, Bhanjanagar on 30.03.2012 and was remanded to Jail custody where he continued to stay till 31.03.2012 when he was released on bail. As he was in jail custody for less than 48



(forty eight) hours, the order of suspension dated 01.06.2012 is per se illegal. Hence he has prayed for the aforesaid relief.

3. The Respondents have filed their counter in which they have seriously objected to the stand taken by the Applicant by stating therein that as per the records the applicant was arrested by the police on 29.03.2012 at 2.30 PM in GR Case No. 104/2012 (Tarasingi PS Case No. 22/2012) and produced before the Learned SDJM, Bhanjanagar on 30.03.2012. His application for bail though was allowed by the Learned SDJM, Bhanjanagar but he could not be released till 24.04.2012 due to his failure to furnish the bail bond. As the applicant was in custody for more than 48 hours, as per Rule sub rule (2) of Rule 10 of the CCS (CC&A) Rules, 1965 he was placed under deemed suspension. His representation was duly considered by the Respondent No.5 but the same was rejected. Accordingly, the Respondents have prayed for dismissal of this OA.

4. We have heard Mr.A.R.Dash, Learned Counsel for the Applicant and Mr. D.K.Behera, Learned Additional CGSC appearing for the Respondents and perused the materials produced by both sides in support of the stand taken in their respective pleadings. Learned Counsel for both sides, in order to assist us for taking a decision in the matter, have also filed their written note of submissions which have been taken note of.

5. The contention of Mr.Dash is that the impugned orders (placing the applicant under deemed suspension and rejecting his representation) are not sustainable as it does not attract the provisions of Sub Rule 2 (a) of Rule 10 of Rules, 1965 as the same were issued without following the provision of Sub rule 7 of the Rule 10 of the aforesaid rules. The sub rule 2(a) of aforesaid rule has defined "in custody" vis-a-vis "detention". The applicant was arrested on 29.03.2012. His bail application was allowed on 30.03.2012 and was released on bail on 31.3.2012.



Therefore he was never "detained" in 'custody' for more than 48 hours. As such, sub rule 10(2)(a) of the aforesaid rule has no application to facts and circumstances of the case. In this connection, Mr.Dash has placed reliance on the decision of the Hon'ble Apex Court in the case of Directorate of Enforcement Vrs Deepak Mahajan and another reported in AIR 1994 SC 1775 particularly the observations made in paragraph 10 in which it has been held that in case of every arrest there is custody but not the vice versa and the <sup>c</sup>ustody and arrest are not synonymous terms whereas in the instant case the applicant was <sup>t</sup> remained in custody even after grant of bail on 30.03.2012 and as such at no stretch of imagination it can be held that the applicant was detained in custody for more than forty eight hours. Mr.Dash has also taken us through he provision of Article 22 (2) of the Constitution of India and Section 167 ( c ) of the CrPC to bring the distinction between "arrested and detained in custody". He has stated that "being detained in custody" is not the same as the period where the applicant had to "remain in custody for any reason after he was released from arrest by virtue of grant of bail in his favour". Further contention of Mr.Dash is that as the respondents have not complied with the provisions enumerated under rule 10(7) of the Rules, 1965, the impugned orders are liable to be set aside thereby entitling the applicant to all consequential benefits as in the meantime, he has already retired on reaching the age of superannuation.

6. On the other hand Mr.Behera by placing reliance on the connected records in GR Case No. 104/2012 has strongly opposed the contentions advanced by Mr.Dash. His stand is that the applicant was arrested by the police on 29.03.2012 at 2.30 pm and consequently was produced before the Learned SDJM, Bhanjanagar on 30.03.2012. The applicant was released from jail custody on 31.03.2012 at 6.50 pm as per the letter No. 886 dated 09.07.2013 of the Superintendent of Special Sub Jail, Bhanjanagar. In this regard by drawing our

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attention to the provision of the Rules he has contended that as the applicant was remained in custody for more than forty eight hours i.e. from 29.03.2012 (2.30 pm) to 31.03.2012 (6.50 pm) which comes to a total period of 52 hours and 20 minutes placing the applicant under deemed provision is justified. Hence he has prayed for dismissal of this OA.

7. Before advertig to various contentions advanced by the counsel appearing for the respective parties, it is worthwhile to quote the provision of Rule 10 of the Rules is stated herein below:

#### “10. SUSPENSION

(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension –

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor –General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) 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.”

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Sub rule 2(a) of Rule 10 clearly postulates that a government servant shall be deemed to have been placed under suspension by an order of the appointing authority 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 48 hours. Nowhere in the said rules has it been provided that the detention in custody comes to an end the moment bail is granted irrespective of the date and time of his actual release/physically release from the custody. Rather we are of the considered opinion that the period of detention is from the date and time of arrest till the date and time of one is physically released from the custody. We have also gone through the decision relied on by Mr.Dash but we are at a loss as to how the said decision is of any help to the applicant. It is not in dispute or cannot be disputed as per the record that the applicant was arrested by the police on 29.03.2012 (2.30 pm) and physically remained in custody till 31.03.2012 (6.50 pm) even if it is taken that the learned SDJM, Bhanjanagar allowed his application on 30.03.2012 which means the applicant was in custody for a period of 52 hours and 20 minutes.

8. At this stage, it is relevant to take support of a decision of the Hon'ble Apex Court in the case of ***State of Haryana v. Dinesh Kumar, (2008) 3 SCC 222***, at page 227 which runs thus:

**“13.** In order to resolve the controversy that has arisen because of the two divergent views, it will be necessary to examine the concept of “arrest” and “custody” in connection with a criminal case. The expression “arrest” has neither been defined in the Code of Criminal Procedure (hereinafter referred to as “the Code”) nor in the Penal Code or any other enactment dealing with criminal offences. The only indication as to what would constitute “arrest” may perhaps be found in Section 46 of the Code which reads as follows:

**“46. Arrest how made.—(1)** In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

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(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the First Class within whose local jurisdiction the offence is committed or the arrest is to be made."

**14.** We are concerned with sub-sections (1) and (2) of Section 46 of the Code from which this much is clear that in order to make an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be submission to the custody by word or action.

**15.** Similarly, the expression "custody" has also not been defined in the Code.

**25.** We also agree with Mr Anoop Chaudhary's submission that unless a person accused of an offence is in custody, he cannot move the court for bail under Section 439 of the Code, which provides for release on bail of any person accused of an offence and *in custody*. (emphasis supplied) The precondition, therefore, for applying the provisions of Section 439 of the Code is that a person who is an accused must be in custody and his movements must have been restricted before he can move for bail. This aspect of the matter was considered in *Niranjan Singh case*<sup>2</sup> where it was held that a person can be stated to be in judicial custody when he surrenders before the court and submits to its directions.

**26.** It is no doubt true that in the instant case the accused persons had appeared before the Magistrates concerned with their learned advocates and on applying for bail were granted bail without being taken into formal custody, which appears to have swayed one of the Benches of the Punjab and Haryana High Court to take a liberal view and to hold that no arrest had actually been effected. The said view, in our opinion, is incorrect as it goes against the very grain of Sections 46 and 439 of the Code."

**27.** The interpretation of "arrest" and "custody" rendered by the Full Bench in *Roshan Beevi case*<sup>1</sup> may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to "custody" but not to "arrest", but such custody could subsequently materialise into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the

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custody of the court or the police authorities before he can be granted the benefit thereunder. In Vol. 11 of the 4th Edn. of *Halsbury's Laws of England* the term "arrest" has been defined in Para 99 in the following terms:

"99. *Meaning of arrest.*—Arrest consists in the seizure or touching of a person's body with a view to his restraint; words may, however, amount to an arrest if, in the circumstances of the case, they are calculated to bring, and do bring, to a person's notice that he is under compulsion and he thereafter submits to the compulsion."

**28.** The aforesaid definition is similar in spirit to what is incorporated in Section 46 of the Code of Criminal Procedure. The concept was expanded by this Court in *State of U.P. v. Deoman Upadhyaya*<sup>3</sup> wherein it was inter alia observed as follows: (AIR p. 1131, para 12)

"12. ... Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the 'custody' of the police officer...."

9. In view of the discussions made above, we find no substance on the contentions advanced by Mr.Dash that as he was granted bail on 30.03.2012 by the learned SDJM, Bhanjanagar irrespective of his physical release from custody i.e. on 31.3.2014, the period of his detention shall have to be counted from his date and time of his arrest till he was granted bail which is less than 48 hours, the order of deemed suspension is liable to be set aside.

10. Learned counsel for the applicant in his written notes of submission has urged that the Respondents in their counter-reply have not stated whether the provision under Rule-10(7) of CCS(CCA) Rules has been complied with in so far as deemed suspension is concerned. For the sake of clarity sub rule-7 of Rule-10 of CCS(CCA) Rules, is quoted hereunder.

[7] An order of suspension made or deemed to have been made under sub-rule(1) or (2) of this rule shall not be valid after a period of ninety days unless it is

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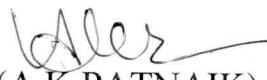
extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule(2), if the Government servant continues to be under detention at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date of the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later].

11. It is not evident from the pleadings whether the Respondents in the instant case have taken steps in pursuance of sub rule-7 of Rule-10. It is also found that this was not one of the prayers made by the applicant in his representation and for the first time, this point has been raised by the learned counsel for the applicant. In the meantime, the applicant has retired from the Government service on reaching the age of superannuation. This being the position, applicant is at liberty to make a representation to the Respondent-authorities within a period of thirty days hence regarding the review of deemed suspension under sub-rule 7 of Rule, 10 as quoted above, and in the event such a representation is received, the same shall be considered and disposed of through a well-reasoned order and decision thereon communicated to the applicant within a period of sixty days from the date of receipt of the representation. Ordered accordingly.

12. In the result, this OA stands disposed of. There shall be no costs.

  
(R.C.MISRA)  
Member (Admn.)

  
(A.K.PATNAIK)  
Member (Judl.)