

I/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 6/9/2001

OA 270/2001

A.S.Sayad, Technical Officer 'B' in the O/o Director, Defence Laboratory, Residency Campus, Near Ratanada, Jodhpur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Dte of Defence Research & Development, Sena Bhawan, New Delhi.
2. Director General, Research & Development Organisation, Dte of Personnel/Pers-12, B Wing, Sena Bhawan, New Delhi.
3. Joint Director (pers), Ministry of Defence, Dte of Defence Research & Development, Sena Bhawan, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

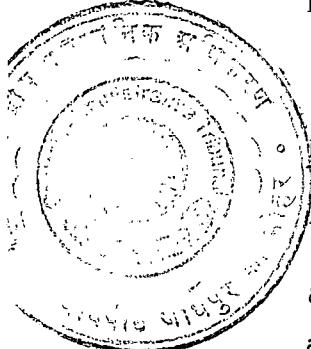
HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant ... Mr.B.Khan

For the Respondents ... Mr.S.K.Vyas

O R D E R

PER MR.A.P.NAGRATH



A FIR was registered against the applicant under Sections 498-A, 406 & 312 IPC in connection with a complaint filed by his daughter-in-law. The applicant was detained in Police/judicial custody w.e.f. 9.7.2000 for a period exceeding 48 hours. He was enlarged on bail on 13.7.2000 by the Sessions Court Jodhpur. He informed of this development to his controlling authority vide letter dated 14.7.2000. By invoking provisions of sub-rule-2 of Rule-10 of CCS (CCA) Rules, 1965, the competent authority placed the applicant under suspension vide order dated 28.8.2000 (Ann.A/1). He continues to remain under suspension. By filing this OA he has made a prayer for declaring the suspension order, so far as it relates/contains the words 'till further orders' as illegal and the period after his being released from detention w.e.f. 14.7.2000 be treated as spent on duty.

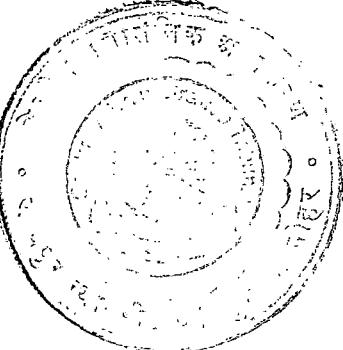
2. Heard the learned counsel for the parties. It is admitted position that no departmental inquiry is contemplated against the applicant and that he has not been suspended pending any such departmental inquiry. The only reason for his suspension is his ^{detention} in Jail for a period, more than 48 hours.

3. Similar controversy had come up for consideration of this Bench at

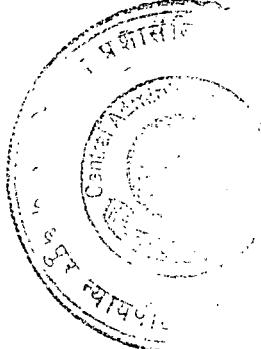


Jodhpur in which one of us (Mr.A.P.Nagrath) was a member. The learned counsel for the applicant referred to the said decision dated 22.5.2002 in OA 24/2002, Babu Lal v. Union of India & Others. In that case, reliance was placed on the Full Bench decision of Allahabad High Court in the case of Chandra Shekhar Saxena & Ors. v. Director of Education (Basic) U.P. Lucknow & Anr., SLR 1997 (8) 357, wherein it has been held that the order of deemed suspension shall be confined only upto the period a person has remained in Jail. As further clarified in that order, if a person has to be kept under suspension, a specific order has to be passed by the authority concerned that a departmental inquiry is contemplated against him. In the instant case, there is no such order and there is nothing to indicate that any departmental inquiry has been contemplated against the applicant. Under such a situation, to keep the applicant under suspension, till the conclusion of the criminal trial, would mean totally unnecessary and avoidable burden on the department concerned. By continuing the applicant under suspension the department shall be paying him subsistence allowance without obtaining any service from him. As held by the Full Bench of Allahabad High Court in the case referred to supra that period of deemed suspension cannot continue beyond the date he is released from Jail and has to be confined only for the period for which he was actually detained in Jail.

4. The respondents have raised a plea that under sub-rule 5(a) of Rule-10 of the Rules (ibid) an order of suspension shall continue to remain in force until it is modified or revoked. The learned counsel for the respondents emphasised that it is under this sub-rule that the suspension of the applicant has continued and the competent authority has not considered it fit to revoke the same. This aspect of the rule has been discussed in para-22 of the judgement of the Full Bench of Allahabad High Court in the case of Chandra Shekhar Saxena, referred to supra. Sub-rule 5(a) of Rule 49-A of the U.P.Civil Services (Classification, Control & Appeal) Rules, 1930 is akin to sub-rule 5(a) of Rule-10 of the CCS (CCA) Rules. The relevant portion of the judgement on this aspect is extracted below :

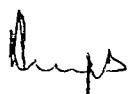
 "On the basis of the language used in sub-rule (5)(a), it has been argued that a deemed suspension once comes into existence, shall continue to remain in force until it is modified or revoked by the appointing authority and the Government servant shall continue under suspension even after his release from the custody. In our opinion, under sub-rule (5)(a) suspension deemed to have been ordered shall continue to remain in force does not mean that the actual suspension shall also continue after release from custody. However, the deemed





suspension shall remain in force for other purposes which may include all the consequences which flow from an order of suspension of a Government servant. From the combined reading of sub-rule (2) and clauses (a) and (b) and sub-rule (5)(a) of Rule 49-A, the possible and reasonable conclusion is that deemed suspension shall be operative only for the period of custody and not beyond that. However, it shall remain in force for other purposes which flow from the order of suspension. In our opinion, such a harmonious interpretation can be safely given to the provisions contained in sub-rule (5)(a) without doing any violence to the purpose and object and the legislative intent behind the aforesaid provisions."

5. In view of the discussions aforesaid, we allow this OA. The period of suspension in the impugned order in respect of the applicant shall only be confined to 9.7.2000 to 13.7.2000. The respondents are directed to permit the applicant to join his duty forthwith. The applicant shall be at liberty to make a representation to the competent authority for regularising the period of suspension from 14.7.2000 onwards till the date of his joining. The respondents shall decide the representation, so received, within a period of one month keeping in view of the observations made by us in the preceding paragraphs. No order as to costs.



(A.P.NAGRATH)

MEMBER (A)



(G.L.GUPTA)

VICE CHAIRMAN