

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.468 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Shri Aloke Chakraborty, S/o Late
Pravash Chakraborty, of Ichapur
Housing Complex, Block B/I, Flat
No.4, Ichapur, Howrah-1, working
as Section Supervisor (Operations)
in Exchange '662' Serampore

... Applicant

VS

1. The Union of India, service through
the Secretary to the Govt. of India,
Ministry of Communications, Deptt. of
Telecommunications, Sanchar Bhavan,
New Delhi-110 001
2. The Secretary, Government of India,
Ministry of Communications, Deptt. of
Telecommunications, Sanchar Bhavan
New Delhi-110 001
3. The Chief General Manager, Calcutta
Telephones, 34, B.B.D.Bag, Telephone
Bhavan, Calcutta-1
4. The General Manager, Howrah,
Calcutta Telephones, 34, B.B.D. Bag
Telephone Bhavan, Calcutta-1
5. The Area Manager, Howrah, Calcutta
Telephones, 64, Suburban Park Road,
Howrah-1
6. The Divisional Engineer, Phones,
Howrah (North), Calcutta Telephones,
7A, Rajmohan Road, Uttarpara, Hooghly
7. The Sub-Divisional Engineer, Calcutta
Telephones, 62&662 (Internal) Exchange,
Dey Street, Serampore, Hooghly

... Respondents

For the Applicant(s): Mr. Sunder Singh, counsel

For the Respondents : Mr. B. K. Chatterjee, counsel

Heard on 30.8.1999

: : Date of order: 30.8.1999

O R D E R

D. Purkayastha, JM

The applicant, Shri Aloke Chakraborty, a Section
Supervisor (Operations) now under suspension has challenged the

validity of the order of suspension dated 18.7.96, Annexure/A1 to the application on the ground that the impugned order of suspension is arbitrary and illegal and he also sought for a direction upon the respondents to allow him to resume his duties and functions attached to the post of Section Supervisor (Operation), Telephone forthwith and to release his pay and allowances, which have been withheld by the respondents. According to the applicant, he was placed under suspension with effect from 18th July, 1996 in contemplation of a departmental proceeding against him in exercise of the power under Sub-Rule (1) of Rule 10 of the CCS(CCA) Rules, 1965. Though he was placed under suspension on 18.7.96, no departmental proceeding or departmental action has been taken against him till date by the authority by initiating any departmental proceeding as stated in the order of suspension dated 18.7.96, Annexure/A1 to the application. It is also stated by the applicant that in the original suspension order no indication has been given regarding the payment of the subsistence allowance to the applicant, but it is stated by the applicant that he was subsequently allowed subsistence allowance under the rules. But he is suffering from mental agony due to inaction on the part of the respondents for initiating a departmental proceeding against him till date. And therefore, he approached this Tribunal for setting aside the order of suspension and also for reinstatement in service with consequential benefit.

2. The respondents denied the claim of the applicant and they filed written statement stating inter alia that the applicant drawn OTA and salary payment from Area Office, Howrah on behalf of SDE, 62 and 662 for disbursing payment to different officials on 21.6.96, 26.6.96 and 3.7.96, but after receiving such money from Area Office, Howrah he did not hand over such money amounting to Rs.58,268.00 to the SDE, 62 & 662 and he retained the money with him. Such incident was reported to the

Police authority for enquiry and a criminal proceeding is pending in the Court of SDJM, Serampore. In the said criminal proceedings, chargesheet has been submitted by the Police authority. It is also stated by the respondents that it is an inherent power of the employer to place the employee under suspension in order to keep him out duty temporarily pending final action being taken against him when allegation of serious nature involving moral turpitude are received against Government servant and it is decided to initiate enquiries into such allegations. Pending departmental enquiry suspension is a safeguard against the Government servant interfering with and hampering the preliminary investigation and tampering with material evidence. Under such circumstances the respondents concerned considering the gravity and nature of the conduct of the applicant justifiably and bonafidely issued suspension order against the applicant. And it is also denied by the respondents that the suspension order was issued on whims and fancy. Therefore, the application is devoid of merit and liable to be dismissed.

3. The applicant in the supplementary application has stated that he was under Police Custody for the period from 18.7.96 to 16.10.96.

4. The learned advocate of the applicant strenuously argued before us contending that the continuation of the suspension order had kept the applicant under mental agony without any reasonable ground and the applicant was placed under suspension in contemplation of the departmental proceeding and no proceeding has been initiated against him in pursuance of the said suspension order till date. Since the respondents failed to start a departmental proceeding against the applicant within the reasonable period, therefore, the order of suspension should be quashed and the applicant should be reinstated in service forthwith. It is also stated by the learned advocate of the

applicant that the reason for suspension has been disclosed in the suspension order itself (Annexure/A1) and now the respondents cannot disclose fresh reason for keeping the applicant under suspension for an indefinite period. Therefore, it would be a fit case to direct the respondents to reinstate the applicant in service till completion of the departmental proceeding or criminal proceeding, as the case may be in this case.

5. Mr. Chatterjee, learned advocate on behalf of the respondents contended that the applicant was under Police custody for nearly three months and a criminal case was started against the applicant and the chargesheet has been issued by the ~~Police~~ ^{appellate} authority and the criminal case is now pending in the Court of SDJM, Serampore. It is also submitted by the learned advocate, Mr. Chatterjee that the records of criminal proceeding will be required in the departmental proceeding and until the criminal case is concluded by the criminal Court, the departmental proceeding cannot be initiated and the suspension order cannot be revoked in the interest of departmental proceeding.

6. We have considered the submissions of the learned advocates of both the parties and perused the records. We find that the Hon'ble Apex Court recently in a case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Anr., reported in 1999 SCC (L&S) 810 at para 22 held as below :

"The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

7. In view of the aforesaid settled position of law, in the instant case, we find that the applicant was placed under suspension on 18.7.96 in a contemplation that the departmental proceeding, ~~would be started against him~~. In the said suspension order, the pendency of the criminal case has not been mentioned. It is contended by Mr. Chatterjee that since the applicant was in Jail custody for nearly three months, so suspension was automatic and he was deemed to have been under suspension from the expiry of the 48 hours while he was in custody. We find that such contention has not been stated in the reply of the respondents. However, it remains undisputed fact in this case that a criminal case has been pending against the applicant and a chargesheet has been issued against him and the applicant involved in alleged misappropriation of Govt. money.

8. Regarding the order of revocation of the suspension order, we find that to place an employee under suspension is an unqualified right of the employer and this right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Governments; as for example, Rule 10 of the Central Civil Service (Classification, Control and Appeal) Rules. Even under

the General Clauses Act, 1897, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss. The Hon'ble Apex Court also held that the order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than his salary. After making the aforesaid observation the Hon'ble Apex Court in the said judgment at para 31 held as below:

"On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Art 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee."

We are of the view that keeping an employee under suspension for an indefinite period on the ground of non-conclusion of the criminal case within a reasonable time affects the Government servant seriously and he is ~~likely~~ to be prejudiced. So, in view of Clause (v) of the guidelines, as mentioned in para 6 of this judgment and as enunciated by the Hon'ble Apex Court it is obligatory on the part of the department to consider the fact ^{as to} whether they would initiate the departmental proceeding immediately or not. If the departmental proceeding is not initiated by them within a period of three months from the date of communication of this order, the question of reinstatement is

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required to be considered by the Department. Therefore, we direct the respondents to consider the case of the applicant in respect of initiation of departmental proceeding within three months from the date of communication of this order. If the Department decides not to start any departmental proceeding till the conclusion of the criminal case, his case for reinstatement in service should be considered made by the respondents. If any departmental proceeding is initiated, that should be concluded within a period of four months from the date of serving chargesheet to the applicant. Liberty is also given to the applicant for making representation claiming enhancement of the subsistence allowance as per rules and that should be disposed of by the respondents with reasoned and speaking order within a period of one month from the date of receipt of the representation. With this observation the application is disposed of awarding no cost.

G.S. Maingi 30.8.99
(G. S. Maingi)

MEMBER (A)

D. Purkayastha 30.8.99
(D. Purkayastha)

MEMBER (J)