

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH: PATNA.

O.A. No. 190 of 1996

Date of order : 13.08.1996

Shri Prabhu Narayan Singh ..... Applicant.

Versus

Union of India and ors. .... Respondents.

Counsel for the applicant : Shri R.R. Mishra.

Counsel for the respondents: Shri P.K. Verma.

CORAM : Hon'ble Shri N.K. Verma, Member (A)

O R D E R

Hon'ble Shri N.K. Verma, Member (Administrative) :-

The agitation in this OA is against the continued suspension order passed on the applicant dated 10.1.1995 by Annexure A/1. The case of the applicant is that the applicant was involved in a criminal offence and had remained in the police custody for <sup>a</sup>~~the~~ period exceeding 48 hours. The learned counsel for the applicant, Shri R.R. Mishra brought to my notice that the allegation made against the applicant in the CBI case is in his private capacity and not as a Railway Servant. The CBI had already chargesheeted the applicant in a Court of law and cognizance of the matter had already been

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taken. During the course of argument, it was also brought to my notice that the applicant was again taken into custody on 22.4.96 and had been released on bail. The Court case of this offence will continue for a period which cannot be specified now and in view of the fact that the applicant has been implicated in the criminal charge in his private capacity, the question of continued suspension as per Annexure A/1 should not arise and his suspension must be revoked. The applicant had also made two representations to the authority concerned - one by Annexure -A/4 dated 2.5.95 and another by Annexure - A/5 dated 16.3.96. The earlier application was to the DME who was the authority who passed the suspension order and the next representation was to the DRM, Sonapur under whose control the DME is working. However, this representation of the applicant has gone unheeded and no reply so far has been given to him. He is suffering privation and unnecessary harassment and therefore, prays for quashing of the suspension order.

2. Shri P.K. Verma, the learned counsel for the respondents was asked to file W/S in the matter and he has done so after repeated directions from this Court. The matter was filed before the Registrar on 2.4.96 and W/S has been filed only now on 5th of

August, 96<sup>7</sup>) The only plea Shri Verma took on behalf of the respondents is that the representation dated 16.3.96 cannot be considered as an appeal prescribed under Rule 18 of the Rly. Servant D&A Rules and stated that the case for revocation of suspension can only be considered by the competent authority. Shri Verma feels that the DRM in the matter was not the competent authority and the representation had not been considered so far. After certain argument, it was established that the DRM is superior officer to DME ~~and~~ The authority<sup>s</sup> competent to decide an appeal in regard to suspension etc. are already given in the schedule annexed to the Rly, Servant D.&A Rules. If the DRM is not competent authority, the respondents should have advised the applicant to make<sup>an</sup> appeal to the appropriate authority. Since this has not been done so far, in all fairness, the applicant deserves to be given opportunity of filing a fresh request for treating the representation dated 16.3.96 as an appeal to the competent authority. In any case, the applicant even now can make a request for treating that representation as an appeal.

3. After hearing both the parties, I feel that the suspension order has been continued without application of mind. Once the official is put under

suspension because of pending criminal case, it is not necessary that he should be under suspension for the entire length of prosecution till he is acquitted or convicted. If that were so, a large number of Govt. employees <sup>would be</sup> placed under suspension for some cases or the other. Rule 5 of the D & A Rules prescribes that the competent authority may suspend the official if official is undergoing criminal proceedings or trial. If the allegation against the applicant is not as grave and serious as to merit his continued suspension, the competent authority has power to revoke the suspension and take him back in service. With this observation, the respondents are directed to consider the representation as an appeal as per <sup>fresh</sup> ~~new~~ request to be made by the applicant within one week from now and they shall also dispose of that appeal within one and half month through a reasoned and speaking order, from the date of receipt of this order. With this direction the DA is disposed of at the admission stage itself.

  
(N.K. Verma)  
Member (A)

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