

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA.

D.A. No. 235 of 1996

Date of order August 5, 1996

Shri Sylvester Kullu Applicant.

Versus

Union of India & Ors Respondents.

Counsel for the applicant : Shri Bhupendra Kumar.

Counsel for the respondents: Shri B.N.Yadav, Standing
Counsel for the State of
Bihar.

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

O R D E R

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

Heard Shri B. Kumar, the learned counsel

for the applicant and Shri B.N. Yadav, the learned
counsel for the State of Bihar. On the previous
occasion when the matter came up for consideration
on 8.7.96, an opportunity was given to the State of
Bihar respondents to give detailed reply in the
matter as to why the sanction of the Government of
India was not obtained regarding continuance of
the suspension order passed on the applicant and

secondly why it was not possible for the State of Bihar to frame charges against the official for the alleged misappropriation of fund and other irregularities committed in connection with Jawahar Rojgar Yozana. It was also decided that based on the reply to be filed by the respondents, the matter shall be disposed of at the admission stage itself on the next date of hearing i.e. 5.8.96.

2. The learned counsel for the State of Bihar respondents, Shri B.N. Yadav has already filed written statement followed by supplementary written statement wherein it has been stated that repeated references were made to the Department of Personnel and Training, Pension and Public Grievances in the Ministry of Govt. of India wherefrom no confirmation regarding continuance of the suspension order has been received so far. The last Wireless message sent by the Govt. of Bihar dated 25.7.96 has also not been replied back by the Department of Personnel, Govt. of India. This only indicates that the Govt. of India, though seized with the matter, has not made up its mind either to disagree with the suspension order or to agree with the suspension order and the matter, therefore, remains where it was. Even in regard to framing of the charge-sheet, Shri Yadav brought to my notice that the Department of Rural Development where

the applicant was serving as D.D.C has yet not framed charge-sheet and charge-sheet, therefore, has not been issued by the Department of Personnel, Govt. of Bihar. Unfortunately, the applicant has neither impleaded the Commissioner of Rural Development, Govt. of Bihar ~~nor~~ ⁴⁶⁹ nor the Secretary, Department of Personnel who were both the officer in charge of the matter as they are one who can either initiate charge-sheet or give decision regarding suspension order. In view of this Shri Yadav prayed that another opportunity may be given to the State of Bihar to ascertain the position in regard to this matter.

3. Shri B. Kumar, the learned counsel for the applicant brought to my notice Rule 3 of All India Services(Discipline & Appeal) Rules, 1969 wherein it has clearly been stated that the suspension order " was not valid unless before the expiry of the period of 45 days from the date from which the member is placed under suspension, or first further period not exceeding 45 days as may be specified by the Central Govt. for the reasons to be recorded in writing, either disciplinary proceedings are initiated against him or order of suspension is confirmed by the Central Govt." According to the reading of this proviso, one thing which is essential is ^{that} there must be confirmation of the suspension order by the Central Govt.

through reasoned order recorded in writing or there should be initiation of disciplinary proceedings against him and in view thereof the suspension order is confirmed by the Central Government. Neither of this stipulations has been followed by the State Govt. of Bihar. The suspension ~~has been~~ continuing since 11.8.95 without either disciplinary proceedings being initiated or confirmation from the Central Govt. to the effect that suspension is necessary to be continued for whatever reasons to be recorded in writing. Mere contemplation of disciplinary action against the officer is not initiation of disciplinary proceedings. What has happened is that facts have come to light by which the applicant is alleged to have been involved in misappropriation of fund or irregularities connected with financial matter. It was open to the State Govt. to proceed against that officer either in criminal case or departmental action if the nature of the charges against him were so grave. But the State Govt. cannot relax and sit tight over the suspension of senior officer of the Government belonging to the IAS and just ~~await~~ confirmation of the Central Govt. If the Central Govt. has not been reacting to the request, the message is very clear that it has not agreed to the request of the State Govt. In view of this submission, Shri Kumar prayed that the

suspension order may be ordered to be quashed.

4. Having heard both sides I am left with no alternative but to come to this conclusion that the suspension order is not sustainable in the eyes of law, as per reading of the Rule 3 of All India Services (Discipline & Appeal) Rules, 1969, the suspension order rendered itself ^{invalid} beyond 45 days. It is hereby directed that the suspension order passed on the applicant is quashed from the date 45 days elapsed. The applicant shall be appointed to ~~the~~ post deemed suitable by the State Govt. The period of suspension shall be treated as on duty as per relevant rules. The case is disposed of accordingly.

No order as to cost.


(N.K. Verma)
Member (A)

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