

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Date of order : 28.10.2011

O.A. No. 446 of 2006 with MA 220 of 2011

C O R A M

Hon'ble Mr. Naresh Gupta, Member [Administrative]
Hon'ble Mrs. Bidisha Banerjee, Member [Judicial]

Suresh Kumar, s/o Shri Chhndeshwar Singh, r/o Shahpur, P.S. Danapur, District – Patna, wireless operator, MGD – V, Central Water Commission, Patna.

.....Applicant.

By Advocate : Shri Shekhar Singh

Vs.

1. Union of India through the Chairman, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.
2. The Secretary, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.
3. The Under Secretary, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.
4. The Chief Engineer, Lower Ganga Basin, Central Water Commission, Patna.
5. The Director, Monitoring Directorate, Central Water Commission, Patna.
6. The Executive Engineer, Middle Ganga Division – V, Central Water Commission, Patna.
7. The Assistant Engineer, Middle Ganga Division – V[HQ], Central Water Commission, Patna.

.....Respondents

By Advocate : Shri K.N. Jha

O R D E R

Naresh Gupta, M [A] :- This OA has been filed by one Suresh Kumar for quashing the order dated 30.06.2005 of the Director [Mon] – cum – SE [HOC], Central Water Commission [CWC] , Monitoring Directorate, Patna whereby the payment of additional salary and allowances [i.e., over and above the subsistence allowance paid] for the period of suspension of the applicant between 19.01.1998 and 28.05.2005 has been kept in abeyance till the disposal of the criminal proceedings against him in the court, and for a direction to the authorities to make payment of the same. The back ground of the case is as follows :

2. The applicant who was Wireless Operator, Middle Ganga Division – 5 , CWC, Patna was placed under deemed suspension vide order dated 25.06.1998 of the Director [Mon] and SE [HO], CWC, Patna [Annexure 1 of OA] with effect from the date of detention, i.e., 19th February, 1998 with reference to

rule 10[2] of the CCS [CCA] Rules, 1968, in view of a criminal case in which he was detained in custody exceeding 48 hours. The order of suspension was subsequently revoked by order dated 24th February, 2005 [Annexure A/2 of OA] in exercise of the power under clause [c] of sub-rule [5] of rule 10 of the CCS [CCA] Rules, 1968. It is contended by the applicant that when there is no departmental proceedings against him, the applicant could not be debarred from getting full pay and allowances for the period of suspension. The Director [Mon.] -cum-SE [HO] CWC, Patna had vide letter dated 15.06.2005 [Annexure 8 of OA] indicated that the period of absence of the suspended employee can be treated as duty and full pay and allowances, but later he, vide letter dated 30.06.2005 [Annexure 8 of OA] 'revised his own order' [according to the applicant] stating that full pay and allowances ought to be paid only after the final verdict of the Court in the matter. Also, the second financial up-gradation granted to the applicant vide order dated 30.08.2005 [Annexure 9 of OA] was withdrawn by order dated 28.06.2006 of the CWC [Annexure 12 of OA]. The above actions of the respondents were arbitrary and unsustainable in law.

3. In the supplementary application filed by the applicant, it is contended that none of the allegations in the criminal case are connected with the performance of the applicant's official duties, that on being released on bail, he had reported for duty on 23.05.1998 which was evident from the letter dated 05.06.1998 addressed to the Director -cum S.E, CWC, Patna [respondent No. 5] by the Executive Engineer [Annexure S/2 of supplementary application], and that he had given several representations to respondent No. 5 for revocation of suspension [Annexure S-3 series], but the suspension continued even after the applicant's release from custody.

4. In the written statement filed by the respondents, it has been pointed out that the applicant was placed under deemed suspension in view of a criminal case in which he was detained for more than 48 hours, and that the criminal case was still pending. There was no document on record to suggest that the detention of the applicant was without any reason. The period of suspension could be regulated only after the conclusion of the criminal

proceedings and the final verdict of the Court and till then no decision could be taken on the applicant's plea for allowing him full pay and allowances. For the same reason, the grant of the 2nd financial up-gradation was ordered to be kept in abeyance.

5. Heard the learned counsel for the applicant and the respondents on 14.10.2011 and perused the entire records. The learned counsel for the applicant cited the following two decisions to support his case.

[i] CWJC No. 3852 of 1998 [order dated 13.10.1999], Ajay Kumar Jha vs. State of Bihar & Ors, reported in 2000 [1] PLJR 227, wherein it was held that the suspension of a Government servant merely on the ground of involvement in a criminal case wholly unconnected with the performance of his duties, was not justified.

[ii] 2004 [2] SLJ 57 [CAT] [New Delhi], N.S. Kain vs. Union of India, wherein it was held that a deemed suspension of the employee concerned came to an end on his release from custody. The suspension even after the release of the petitioner from custody was held to be illegal de hors the rules, in absence of any order passed under sub-rule [1] of Rule 10 of CCS [CCA] Rules, 1965.

6. In the first case, referred to in para 5 above, the petitioner was placed under suspension after almost 3 years and 4 months of the registration of a case on the basis of a FIR pertaining to assault of a person and snatching of a watch from him, and his release thereafter on bail and is, therefore, not relevant to the instant case.

7. In CA Nos. 5007 of 2003 , Union of India & Ors vs. Rajiv Kumar and 5008 of 2003 , Union of India & Ors vs. Bani Singh [date of judgment – 18.07.2003], the scope and ambit of sub-rule [2] of Rule 10 of the CCS [CCA] Rules, 1965 and the question whether the order of suspension was effective only for the period of detention and not beyond it where by legal fiction a person is deemed to be under suspension for being in custody for a period exceeding 48 hours, came up for consideration. The Hon'ble Supreme Court made it clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. Until it is modified and revoked by another order as envisaged under Rule 10 [5] [c], the same continues by operation of Rule 10 [5] [a], and the employee has no right to be reinstated to service.

8. In view of the above legal position, the action of the authorities in continuing the applicant under suspension even after his release from custody on bail cannot be held to be unsustainable.

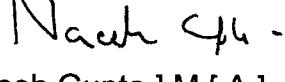
9. In regard to payment of full back wages for the period of [deemed] suspension [arising out of the criminal proceedings and detention in custody for more than 48 hours], the Hon'ble Apex Court has had occasion to consider in a number of cases the question of payment of back wages etc., when an employee who was kept under suspension due to criminal proceedings or dismissed due to conviction is acquitted in appeal and consequently reinstated. It has been held that "*the department is not obliged to pay back wages for the period on reinstatement, unless the department had taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging his duties*" [Corp. Mithiless @ Mithiless Singh vs. Union of India & Ors in CA Nos. 9601 – 9602 of 2010 decided on 9th November, 2010, in which a reference has been made to decision of the Apex Court in a number of earlier cases, viz., [1] Ranchhodji Chaturji Thapore vs. Superintending Engineer, Gujarat Electricity Board, Himmatnagar [Gujarat] and Anr., [1996] 11 SCC page 603, [2] Union of India & Ors vs. Jaipal singh, [2004] 1 SCC p. 121 and [3] Baldev Singh vs. Union of India & Ors, [2005 6SCC P. 747].

10. Having regard to the above position, the department's action to keep in abeyance the payment of the additional salary and allowances [over and above the subsistence allowances paid already] for the period of suspension awaiting the final verdict in the pending criminal case cannot be faulted.

11. In view of the findings in paras 9 & 10 above, the OA is dismissed. No order as to costs.


[Bidisha Banerjee] M [J]

/cbs/


[Naresh Gupta] M [A]