

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 529/87

199

T.A. NO:

DATE OF DECISION 15.12.1992

V.A.KERKAR

Petitioner

Satyajit Mukerjee

Advocate for the Petitioners

Versus

Accounts officer (Traffic) Respondent  
MTNL, Bombay and ors.

A.I.Bhatkar

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A)

The Hon'ble Mr. V.D.DESHMUKH, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(M.Y.PRIOLKAR)  
MA

ibm\*

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO: 529/87

Vilas Atmaram Kerkar, Bldg.No.  
A-Wing-B, Room No.403/YAC NAGAR,  
Kondivita Road,  
Opp:Marol Bazar, Andheri (E),  
Bombay - 400059

.... Applicant

V/s

Accounts Officer (Traffic),  
MTNL, Bombay.

and Area Manager(Long Distance)  
MTNL, Bombay.

CORAM : HON'BLE SHRI M.Y.PRIOLKAR, MEMBER (A)

HON'BLE SHRI V.D.DESHMUKH, MEMBER (J)

Appearance :

Shri Satyajit Mukerjee,  
Adv. for the applicant.

Shri A.I.Bhatkar, for the  
respondents.

ORAL JUDGEMENT

15th Dec.1992

(PER : M.Y.PRIOLKAR,M/A)

The applicant in this case while working as a Lower Division Clerk in the Office of the Accounts Officer (Traffic-Long Distance) at Bombay was placed under suspension for disappearance from office after misappropriation of Government moneys to the extent of Rs.11,000/- on 16.3.1981. After acquittal in 1984 in the criminal case, the applicant had been taken back on duty on 7.1.1987 revoking the earlier suspension order, but was immediately placed again under suspension on the same day in contemplation of disciplinary proceedings. The said suspension order dated 7.1.1987 is being challenged in this application before the Tribunal as being without jurisdiction as it was by an authority

not so competent to order his suspension. The revocation of this suspension is also urged on the ground that no periodical review was conducted before continuing the suspension in violation of government instructions on the subject.

2. The suspension order dated 7.1.1987 is mainly challenged on the ground that the Accounts Officer (Traffic) who ordered the suspension was not a competent authority to do so. We do not find much substance in this contention. Rule 10(1) of CCS CCA Rules dealing with suspension lays down that the appointing authority or the disciplinary authority may place the government servant under suspension under certain circumstances. The Disciplinary Authority for this purposes is defined under Rule 2(g), as the authority competent under these rules to impose on a government servant any of the penalties specified in Rule 11. Under Rule 11, the penalties are categorised under minor penalties and major penalties and in Schedule (1) one of the authorities competent to impose minor penalties under rule 11 is "Gazetted Officer (in respect of staff under his administrative control".

3. The learned counsel for the applicant argued that the suspension order was issued by the Accounts Officer (Traffic), but no administrative powers have been delegated to the Accounts Officer (Traffic). Administrative powers of Accounts Officer are defined, according to him, in Schedule 16 of the P and T Manual which is "Schedule of Administrative powers of Accounts Officer Telephone revenue or telephone stores and Workshops". It was his case, therefore that no other Accounts Officer except Accounts Officer telephone revenue and Accounts Officer telegraph stores and Workshops should be considered to be vested with any administrative powers including powers of suspension.

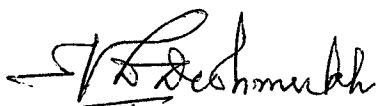
It is difficult for us to accept this contention. It is clear under the rule cited above that Gazetted Officer, which term includes the Accounts Officer also, has the power to place a government servant under suspension if such government servant is under his administrative control. The CCS (CCA) Rules do not require any specific delegation of powers to Gazetted Officers for the purpose of suspension and Schedule 16 of the Manual is, in our view, not relevant at all for this purpose. The only requirement of rules is that the government servant who is suspended must be under administrative control of the gazetted officer ordering his suspension. In the present case, the applicant himself has admitted in the application that he was posted to work as Lower Division Clerk under the Accounts Officer (Traffic). Admittedly, the Accounts Officer is reporting officer writing his confidential report as well as the officer who is competent to sanctioning casual leave etc. The respondents have also stated in their written reply that it is the Accounts Officer (Traffic), who exercised control over the manner of day to day working of the applicant and this is not disputed by the learned counsel for the applicant. In the circumstances, we are of the view that the Accounts Officer (Traffic) should be considered as the competent authority for the purposes of ordering suspension of the applicant. The suspension order cannot, therefore, be questioned on the ground that the officer ordering the suspension had no powers to do so.

4. The second ground urged by the applicant, namely abnormally long suspension period, has however, some merit. The applicant is continuing under suspension continuously from 16.3.1981 although he was acquitted in the criminal case on 30.1.1984. The <sup>second</sup> suspension order passed on 7.1.1987 is still continuing. The completion of the departmental proceedings is nowhere in sight. The learned counsel for the

14

respondents stated that there has been some progress in departmental proceedings and so far, five sittings have taken place. It is also stated by the counsel for the respondents that the delay in completing the proceedings is due to the fact that the applicant himself has given in writing that no enquiry proceedings be continued during the pendency of the present application before the Tribunal. But there is no satisfactory explanation for the long delay of 3 years and 8 months in initiating disciplinary proceedings only on 8.9.1987 when the applicant was acquitted by the Additional Chief Metropolitan Magistrate on 30.1.1984.

5. In our view, therefore, this application can be disposed of only with a direction to the respondents to finalise the disciplinary proceedings within a fixed time limit. We accordingly direct the respondents to complete the inquiry proceedings within a period of four months from the date of receipt of a copy of this order. Needless to say the applicant will co-operate with the respondents in expeditious completion of the inquiry. We also direct that, in case, inspite of co-operation of the applicant, the respondents are not able to complete the inquiry proceedings within this prescribed period, the suspension order should be revoked and the applicant should be taken back forthwith on duty on the expiry of this period. In case, the result of the departmental proceedings goes against the applicant, he shall be at liberty to approach this Tribunal again in accordance with the law. There will be no order as to costs.



(V.D.DESHMUKH)  
MJ



(M.Y.PRIOLKAR)  
MA