

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 813/89
xxx xxx Nox

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DATE OF DECISION 21.3.1990Shri N.P.K. Unnithan PetitionerShri G.K.Masand Advocate for the Petitioner(s)

Versus

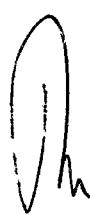
Director, Enforcement Directorate Respondents
New Delhi and another.Shri R.C.Kotiankar for Shri M.I.Sethna. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Kamleshwar Nath, Vice Chairman

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

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 ?


 21/3/90

(3)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A.No. 813/89

Shri Nanu Pillai Krishnan Unnithan ... Applicant

vs.

Director, Enforcement Directorate
Lok Nayak Bhavan, New Delhi
And Another.

... Respondents

CORAM: Hon'ble Vice Chairman Mr. Justice Kamaleshwar Nath
Hon'ble Member (A) Mr. P.S.Chaudhuri

Appearances :

Mr. G.K.Masand
Advocate
for the Applicant

Mr. R.C.Kotiankar
For Mr. M.I.Sethna
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 21.3.1990

(PER: Mr. Justice Kamaleshwar Nath, Vice Chairman)

We have heard the learned counsel for the parties at the stage of admission which is opposed. The applicant Shri Nanu Pillai Krishnan Unnithan was an Enforcement Officer in the Enforcement Directorate at Bombay when he was placed under suspension by the impugned order dated 12.2.1988 (Ex.'C'). The order states that the disciplinary proceeding against the applicant was contemplated and therefore in exercise of the powers conferred under Rule 10(1) of the CCS (CCA) Rules, 1965 he was placed under suspension. Annexure - V to the short reply is a memorandum dated 10.5.1988 informing the applicant that he had been placed under suspension for serious negligence and dereliction of duty and for failure to maintain devotion to his duty.

2. Annexure - VI is the memorandum of chargesheet dated 23.8.1988 in the contemplated disciplinary inquiry. The chargesheet mentioned, inter alia, that the applicant had

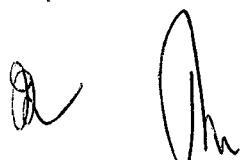
failed to take action on a number of files in 1985, 1986 and 1987 detailed in Annexure V and VI to the chargesheet and did not hand over the files to his successor in the year 1987. It was further alleged that the applicant was responsible for the loss of a file which file was found on 18.1.1988 at the place of the person against whom the investigation was being conducted by the applicant.

3. This application was filed on 17.11.1989. The learned counsel for the applicant says that the suspension is invalid because it was done malafide. The basic facts and allegations and malafide are alleged by the applicant to be contained in his report dated 29.1.1988 (Annexure 'B'). Certain grounds are also stated in the main body of the application.

4. It is admitted that on 4.12.1989 an order of compulsory retirement of the applicant was passed on the conclusion of the disciplinary inquiry. The applicant has preferred a departmental appeal against the order of compulsory retirement.

5. The relief claimed in this petition is that the suspension order may be revoked forthwith and that the applicant may be paid his full salary and allowances for the entire period from suspension till reinstatement that he may also be paid costs. There is an oral submission by the learned counsel that the applicant may also be awarded interest on the arrears of the subsistence allowance.

6. It appears that the applicant in his capacity as an Enforcement Officer was a prosecution witness in a criminal case launched by his department. He did not appear in the court of Magistrate on the date fixed for the purpose. The complaint is that since he was under suspension, he could



not appear although he might have if he was on duty. It is also said that he could not appear because he has not received any payment for the purpose. As a consequence of non-appearance, a warrant was issued and according to applicant he has to incur an expenditure of Rs.528/- in withdrawing that warrant.

7. The learned counsel for the opposite party says that the applicant had been paid his subsistence allowance although with delay which was caused by non-submission of some certificates by the applicant, that the case has ended in compulsory retirement and that the applicant had no justification for not attending the court of the Magistrate. The applicant's counsel says that the certificates had been submitted in time.

8. We are clear in our mind that the grievance regarding suspension cannot be connected in this petition with the claim for reimbursement of Rs.528/- on account of expenditure for having the arrest warrant withdrawn. The cause of action for suspension is entirely different for the cause of action for the claim of reimbursement within the meaning of Rule 10 of the Central Administrative Tribunals (Procedure) Rules, 1987. The counsel for the applicant does not choose to exercise an option in respect of plural relief for the purpose of continuance of this application.

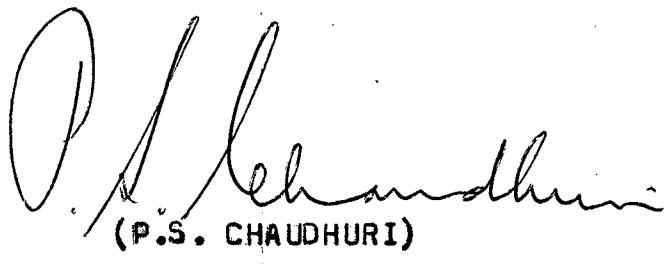
9. So far as the relief in the matter of suspension is concerned, the impugned order of suspension has merged into the order of compulsory retirement and therefore does not subsist any longer. The claim that if the suspension order was invalid, the applicant could be entitled to claim full salary is also a claim which will automatically arise in the

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grievance against order of compulsory retirement. We hold therefore that this petition which was filed almost one year and 9 months after passing of suspension order is no longer maintainable.

10. The learned counsel for the applicant has pointed out that suspension allowance was paid only in part by the opposite party after the interim order has been passed by this Tribunal in this case and that despite representation dated 4.1.1990 for payment of the balance of subsistence allowance, the opposite party has not taken any decision so far. A copy of this representation has been handed over to the learned counsel for the opposite party just now; it would be appropriate to the opposite party to take a decision thereon as early as possible.

11. The petition is dismissed in limine with the observation that it would be open to the applicant to file a fresh application in respect of relief '(d)' concerning reimbursement of expenditure incurred. The opposite parties are also called upon to decide the applicant's representation dated 4.1.1990 in respect of payment of balance of subsistence allowance within a period of one month from the receipt of a copy of this order.



P.S. CHAUDHURI
MEMBER (A)



(KAMALESHWAR NATH)
VICE CHAIRMAN