

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 341 /1996

Date of Decision: 1.11.96

Ashok Narayanrao Kulkarni

Petitioner/s

Shri M.S.Ramamurthy

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar.

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S.Hegde, Member(J).

Hon'ble Shri M.R.Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 341 of 1996.

11th this Friday day of November 1996.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Ashok Narayanrao Kulkarni,
O/O.Divisional Engineer
(EPABX-BI) M.T.N.L., Telephone
House, 16th Floor, Prabhadevi,
Dadar(West),
Bombay - 400 028.

... Applicant.

(By Advocate Shri M.S.Ramamurthy).

V/s.

1. Union of India, through
the Secretary,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi - 110 001.

2. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House,
15th Floor, Prabhadevi,
Veer Savarkar Marg,
Bombay - 400 028.

3. The Divisional Engineer,
(DPN-BI), MTNL, Telephone
House, 16th Floor, Prabhadevi,
Dadar (West),
Bombay - 400 028.

... Respondents.

(By Advocate Shri V.S.Masurkar, counsel).

O R D E R

(Per Shri B.S.Hegde, Member(J))

In this O.A. the applicant is challenging the Order of Suspension passed by the Respondent No.3 on 22.2.1994. The applicant joined the P & T Department on 14.11.1977 in Karnataka as a Technician and was subsequently recruited and posted as Junior Engineer in Bombay Telephones in the year 1981 (June, 1981), which was redesignated as Junior Telecom Officer (JTO) in the scale of Rs.1640-2900.

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...2.

The applicant was posted to Mazagoan Telephone Exchange II (872 Exchange) Switch Room in September, 1982. It is stated by the applicant that the applicant was posted to work in the '872' Exchange Meter Room for the first time in November, 1990 till October, 1991. An investigation was carried out on 13.5.1991 jointly by the C.B.I. and Vigilance staff in Mazagoan Telephone Exchange on the basis of information received that one G.A. Nalawade, JTO of Wadala Telephone Exchange was in connivance with certain persons diverting STD/ISD Calls and thereby causing loss to the MTNL. The other officials of the M.T.N.L. involved in the said incident were suspended in the year 1991 itself. The applicant continued to work till March, 1993 and thereafter he was transferred. After inquiry the C.B.I. filed a charge sheet in the said case before the Special Judge on 25.05.1993 in which the name of the applicant was shown as a co-conspirator in the charge sheet filed by the C.B.I. The applicant made a representation in the year 1994 seeking for revocation of the suspension order received by the applicant, but no reply has been filed. In the circumstances, the applicant contends that the suspension order is passed without any application of mind ignoring the DOP Circular in this behalf and the impugned order of suspension passed by the Respondents is belated one and has no nexus to the object to be achieved. Further the applicant's name does not figure in the First Information Report filed by the C.B.I. and since the investigation was completed and charge sheet has already

been filed no public interest would be served by keeping the applicant under suspension. As per the Circular the suspension is required to be periodically reviewed and if the object can be achieved by transferring the applicant then the same may be resorted to. The applicant was allowed to work for more than three years after the investigation and was further transferred to Marol Exchange in the year 1993 and he had satisfactorily worked there till he was served with the impugned order of suspension. Since the charge sheet filed on 2.5.1993 by the C.B.I. is vague and devoid of any particulars and the suspension order passed by the Respondents on 22.2.1994 is subsequent to filing of charge sheet as such the same is not sustainable. The applicant is made a scapegoat in the whole episode as no other JTO's in charge of the Meter Room 872 have been charged for the said incident. Since the investigations have been completed and the charge sheet having been filed long before the impugned order was passed, there is no question of his interfering with the investigation. Therefore, he seeks for revocation of suspension order.

2. In the reply filed by the Respondents, it is stated that the suspension order was passed by the President and the charge against the applicant is very serious and if the applicant's suspension is revoked, the public interest will be jeopardised. The charge against the applicant is that he was incharge of the meter room in Mazagaon Telephone Exchange during the period 1990-91.. It is alleged that applicant unsoldered 'C' wires of Meters connected to two telephone Nos.860703 and 8720955 at

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Mazagaon Telephone Exchange, so that the ISD/STD calls made from these numbers will not be metered. It is further submitted that the suspension order is to be continued till the court case in a special court is over because taking the said official on duty will be against the public interest. It is also stated that the Supreme Court has time and again held that the authority also should keep in mind the public interest and the Courts should not ordinarily interfere with the suspension order unless the bias or mala fides are established.

3. It is true that the CBI lodged the FIR against one Malavade, JTO but in the investigation it was alleged that apart from Malavade other three persons were included, including the applicant. It is stated that the applicant was suspended as per the instructions of the Vigilance Officer, though he is working in IMS unit for about one year from March 1993 to February, 1994 and the conduct and work of the official has been found satisfactory. However, the said position will not change the misconduct and criminal conspiracy to which he is co-conspirator in the incident occurred in the year 1990-91 CVC official's advise received in February, 1993 and the applicant's case is finalised in a Court of Law, vide his letter dt. 9.2.1994. The same has not been re-considered by the Competent Authority despite his request for revocation of the suspension order. On the basis of the representation made by the applicant for revocation of suspension order which has been recommended by D.G.M.(IMS) for revocation of suspension order, nevertheless, on the basis of the

advise of the vigilance it was decided that the suspension be continued till the final decision of the Court case.

4. Heard the arguments of Shri M.S.Ramamurthy counsel for the applicant and Shri V.S.Masurkar, counsel for the respondents and perused the pleadings.

5. In the Rejoinder, the applicant has raised a plea that since the applicant belongs to a Class-III post and his appointing authority is not the President of India, but by much lower authority, therefore it is not understood how the suspension order was issued by the President of India, thereby his right of appeal to the appellate authority has been denied. He further denies the allegation of the respondents that since the charge is very serious, the revocation of suspension of the applicant would be against public interest. In what way the public interest would be jeopardised has not been explained. As a matter of fact, the revocation of the suspension order is recommended by the DGM and thereafter he has been working satisfactorily even after the incident of alleged connivance with other people. Though his name has not been included in the FIR and there is no evidence to show that he has committed any offence, allegation made by the respondents is false and the same is not sustainable. As a matter of fact, the applicant has been falsely implicated, thereby the suspension order issued by the respondents is wholly unjustified and in the circumstances the same is required to be revoked. In this connection, the learned counsel for the applicant relies upon the

decision of the Madras High Court in the case of The State of Madras V/s. K.A.Joseph (AIR 1970 Mad.155) wherein it has held that the officer cannot be placed under suspension for indefinite period. Again, in the case of D.Mangaleswaran V/s. Commissioner of Income-tax, Tamil Nadu & Another (1987 2 ATC 828) it has held that if the applicant is continued under suspension for six months, reviewed by the Disciplinary Authority is warranted. The Tribunal after considering the contentions of the parties set aside the suspension order and directed the respondents to transfer the official to any other place other than Madras to see that the pending investigation may not be hampered. If the order of suspension is based on the grounds of inquiry or trial that can be solved as pointed out in the guidelines of the DOP by transferring the official to any other place in revoking the suspension order. The application was allowed. He has also cited another decision of the Central Administrative Tribunal, Principal Bench, New Delhi in the case of Kamal Kishore Prasad V/s. Union of India and Another (1990 13 ATC 853), in which case it was held that the suspension is not justified in the facts and circumstances of that case and therefore the order has been quashed. The Supreme Court in O.P.Gupta V/s. Union of India (1987 5 ATC 14) it was observed that "There is no doubt that an order of suspension unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an

undeniable penal significance. 'Subsistence' means - means of supporting life, especially a minimum livelihood. The expression 'life' does not merely connote animal existence or a continued drudgery through life. It has a much wider meaning. Although suspension is not one of the punishments specified in Rule 11 of the Central Civil Services (CCA) Rules, an order of suspension is not to be lightly passed against the government servant." In that case since the departmental inquiry was not completed within a reasonable time, the same was quashed and set aside.

6. On a perusal of the pleadings, we find that the reply filed by the respondents is very vague and nowhere it is stated in what way the revocation of the suspension order would be prejudicial to the interest of the pending criminal case in a Court of Law. As stated earlier the investigation has already been completed and charge-sheet has been filed, thereby the question of tampering the evidence by the applicant does not arise. Since the applicant has been suspended as back as 1994, if the Competent Authority feels that his continuance in a particular place would hamper the pending trial, it is open to the respondents to transfer the applicant from the place where criminal case is pending on the ground that he is likely to tamper the evidence to some other place whereby result can be achieved. It is not known when the criminal case will be completed and further the

the departmental authority in their pleading certify that the conduct of the applicant has been found satisfactory.

7. It is on record to show except the applicant, others who were involved in shifting the Telephone and tampering with the Exchange Meter. Therefore, others were suspended in the year 1991, whereas the applicant's name had not figured in the FIR filed by the CBI and thereafter he was transferred to DGM Unit and worked there for more than a year and thereafter he was suspended in the year 1994 subsequent to the filing of charge sheet in 1993 including the name of the applicant. The only contention of the Respondents is that on the basis of advise received from the Vigilance Section in 1993 stating that in view of pendency of Criminal Case against the applicant he should be suspended till the case is finalised in a Court of Law, thereby he has been suspended by the Competent Authority without application of mind and whether such suspension order is warranted, and simply on the basis of the advise received by the Vigilance, they suspended the applicant w.e.f. 22.2.1994 without applying their mind. Though the DGM (IMS) recommended for revocation of suspension order, nevertheless, keeping in view of the advise of the Vigilance section. The applicant was allowed to continue under suspension till the disposal of the case. It is not the contention of the respondents that the suspension cannot be revoked. In fact, in the reply they have stated that in many cases on re-consideration of the case they did not revoke the suspension orders. The respondents in their sur-rejoinder clarified that the Disciplinary Authority, insofar as, the applicant is concerned is the Divisional

signing the actual
Engineer. However, while / suspension order the word
'President' is not scored off by mistake.

8. In the light of the legal position stated above, normally we are reluctant to interfere with the suspension order passed by the respondents, but in this case so far as the applicant is concerned he was suspended merely on the ground of suspicion that he is involved in the episode of 1991 and accordingly a charge sheet was filed by the CBI which is pending consideration and will take its own course. Therefore, the ground taken by the respondents that the public interest will be jeopardised is not based on sufficient materials. Therefore, we are of the view that there is no justification in continuing the suspension in the instant case. Revocation of suspension and reinstatement of the applicant will not in any way prejudice the pending case in a Court of Law. Though the respondents have enhanced the subsistence allowance, they have not considered why the continuance of the officer concerned under suspension is really necessary except that investigation by CBI is not completed, hence continuance of the suspension of the applicant is required keeping in view the pending trial in a Court of Law. If the order of suspension is based on the ground that his presence will be detrimental to the investigation or inquiry or trial, that could be solved, as pointed out in the guidelines of DOP by transferring the applicant to any other place on revocation of the suspension order. Further considering the status of the

official who is a Class-III employee and the pending trial in the Court of Law, we see no justification in continuing the suspension. Accordingly, we allow the O.A. and the order of suspension dt.22.2.1994 is quashed and set aside. We came to this conclusion in the facts & circumstances of this case but that should not be a precedent or authority on the subject. The pay and allowances due to the applicant from the period of suspension till the date of reinstatement in pursuance of this order be determined in accordance with law within a period of two months from the date of receipt of this order. However, this order will not prevent the respondents from posting the applicant to any other offices in India and to assign him duty which they consider appropriate. The application is disposed of with the above directions. The parties to bear their own costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)


(B.S. HEGDE)
MEMBER(J).

B.

Stayed by the
in SLP 8224 (9)
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