

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 22 JUL 1994

APPLICATION NUMBER: 857 / 94.

APPLICANTS: Sri. N.K. Suparna [✓] RESPONDENTS: Secretary, Department
of Posts, N. Delhi & Co.
Telecom

To.

① Sri. P.A. Kulkarni,
Advocate, No. 47,
2nd Floor, 5715-A-Cross
4th Block, Rajajinagar,
BANGALORE-560010.

② Sri. M. Vasudev Rao,
Addl. C.G.S.C.,
High Court Bldg.,
BANGALORE-560001.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER~~, passed by this Tribunal in the above
mentioned application(s) on 15-07-94.

Issued on
22/7/94
R.

o/c

for Se Shanwar 22/7
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.857/94

FRIDAY, THIS THE 15TH DAY OF JULY, 1994

SHRI V. RAMAKRISHNAN .. MEMBER (A)

SHRI A.N. VUJJANARADHYA .. MEMBER (J)

Sri N.K. Suparna, S/o
N. Krishna Iyengar,
aged about 51 years,
Occn: Accounts Officer (Under Suspension),
O/O Telecom Civil Division I,
No.9, Infantry Road,
Bangalore - 560 010. ... Applicant

(By Advocate Shri P.A. Kulkarni)

Vs.

1. Union of India,
represented by its Secretary,
Department of Telecom,
No.20, Sancha Bhavan,
Ashoka Road, New Delhi - 110 001.
2. Member Finance,
Telecom Commission,
Deptt. of Telecom.,
No.20, Ashoka Road,
Sancha Bhavan,
New Delhi - 110 001.
3. Chief General Manager,
Telecom, Karnataka Circle,
No.1, Old Madras Road, Ulsoor,
Bangalore - 560 008.
4. Executive Engineer,
Telecom Civil Division-I,
No.9, Infantry Road,
Bangalore-560 001. ... Respondents

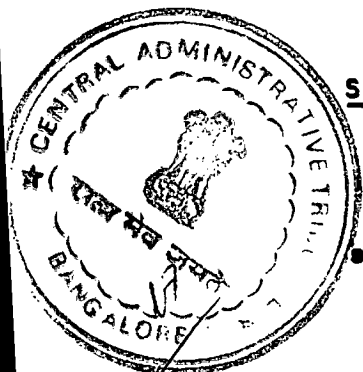
(By Advocate Shri M. Vasudeva Rao)
Central Govt. Addl. Stg. Counsel.

ORDER

Shri V. Ramakrishnan, Member (A):

We admit this application and proceed to dispose off the
same on merits.

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2. The applicant, an Accounts Officer in the Telecommunication Department was placed under suspension as a criminal case has been registered against him by the C.B.I. under the Prevention of Corruption Act. The suspension order dated 16.11.1993 is at Annexure-A3. He has challenged this suspension order and prays for a direction to the department that they should consider and take a decision regarding revocation of the suspension order. He also seeks a further direction that his subsistence allowance should be increased for the remaining suspension period with effect from 17.2.94, i.e., on completion of three months of suspension.

3. We have heard Shri P.A. Kulkarni for the applicant and Shri M.V. Rao for the department.

4. The learned counsel for the applicant submits that continuance of the suspension order is bad in law for the following reasons:

a) The suspension order does not spell out details of the criminal offence which is under investigation/trial.

b) The applicant submitted an appeal praying for revocation of the suspension order soon after he was served with the same in November, 1993. He has also sent a reminder dated 1.3.1994 in this regard. The department had not responded to these letters. He was, however, informed by a letter dated 13.6.94 that his subsistence allowance has been increased by 25%. F.R.53 read with Govt. of India instructions thereon makes it obligatory for the department to conduct the first review within 3 months from the date of suspension. The department's silence till June, 1994, would indicate that they had flouted this requirement.

c) The department has not properly applied its mind to the need for continuing the suspension. There is no material before the department which can justify its decision to continue the suspension.

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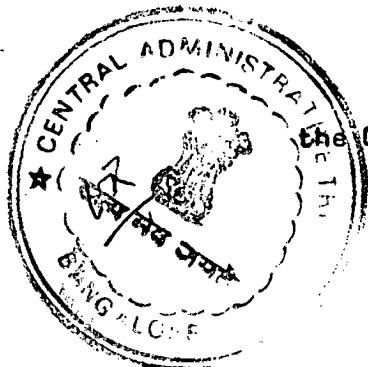
d) The department had issued an order dated 13.6.94 increasing the subsistence allowance by 25% prospectively from that date. It was incumbent on the department to have given the increase immediately on completion of 3 months of suspension.

5. The learned Standing Counsel opposes the application. He also makes available to us the files where a decision was taken to place the officer under suspension and also where the review as required has been conducted by the department.

6. We have gone through the relevant files. It is seen that the C.B.I. informed the Telecom Dept. by its letter dated 11.11.1993 that a case had been registered against the applicant who was arrested and released on bail. The letter also enclosed a copy of the F.I.R. The C.B.I. requested that the official may be kept under suspension. On receipt of this communication, the department examined the matter and the competent authority ordered suspension of the applicant with immediate effect by its order dated 16.11.1993. Accordingly, the suspension order was issued under Rule 10(1)(b) of the CCS (CCA) Rules which empowers the authority to place a Govt. servant under suspension where a case against him in respect of any criminal offence is under investigation, enquiry or trial.

As regards the appeal filed by the officer, the Chief General Manager has forwarded the same to the Telecom Department, New Delhi, by his letter dated 21.1.94, giving his parawise comments on the appeal and suggesting that the appeal should be disposed off by the competent authority.

We further notice that the department had taken up with the C.B.I. by its letter dated 31.1.1994 informing that the suspension



of the applicant was due for mandatory review in February, 1994 and seeking C.B.I.'s views on the advisability of revoking the suspension or otherwise. The C.B.I., by its letter dated 15/16.2.1994 replied inter alia that "revocation of his suspension is not recommended". This was considered by the Department which decided by its order dated 25.2.1994 that the suspension should continue. There was, however, no specific discussion at this stage in the department's file as to the need or otherwise for enhancing the subsistence allowance of the applicant.

Again, on 16.5.1994, the C.G.M., Bangalore, took up with the C.B.I. regarding their views as to whether the suspension should continue or not. The C.B.I., by their letter dated 27.5.94 advised against revoking the suspension of the officer at this stage. It further transpires from the file that the C.B.I. is only awaiting for sanction for prosecution before filing of the charge sheet. On receipt of this advice from the C.B.I., the department went into the question again and decided that the suspension should be continued by a decision taken in the file on 8.6.1994. They, however, enhanced the subsistence allowance by 25% over the present level drawn by the applicant. This was communicated to the applicant by the order dated 13.6.1994 referred to supra.

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7. It is clear from the sequence of events that the applicant knew the nature of criminal case registered against him. The fact that the suspension order merely stated that there is a criminal case against him pending investigation/trial and did not spell out the details of such a case will not vitiate the order. It is also clear that the department had undertaken the review as required regarding the need for continuance of the suspension and after getting the relevant material from the C.B.I., etc. and after considering the case with due application of mind came to the conclusion that his suspension should not be revoked at this stage. ,

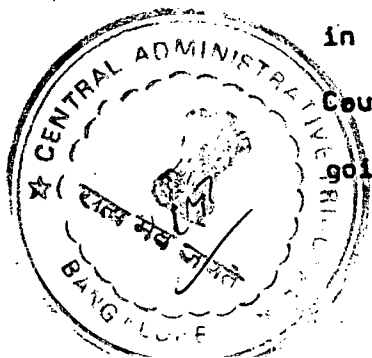
8. However, the department had not gone into the question of varying the amount of subsistence allowance immediately on completion of the first 3 months as required under the proviso to FR 53(1)(ii)(a) read with Govt. of India O.A. dated 23.8.1979.

The instructions state:

"First review to be made within three months:- It has been decided that a review of the subsistence allowance would be made at the end of three months from the date of suspension instead of the present practice of varying the subsistence allowance after 6 months. This would also give an opportunity to the concerned authority to review not merely the subsistence allowance but also the substantive question of suspension."

This review for varying the subsistence allowance was undertaken only after 6 months and not after 3 months even though the department had reviewed the need for continuance or otherwise of the suspension both on expiry of 3 months and on expiry of 6 months.

9. Shri Kulkarni also submitted that prolonged suspension beyond reasonable limits is bad in law and has cited some decisions in this regard. He submits that as an alternative remedy the applicant would pray for issuing a direction to the department fixing a time limit within which the process of investigation, etc. should be completed after which the applicant should be reinstated in service. He draws our attention to the observations of the Tribunal in O.A.No.764/93 in the case of Shri S.M. Pattanaik. Shri Kulkarni concedes that the decision in Pattanaik's case was based on the facts and circumstances of that case. However, he contends that the reference in that case to the decision of the Supreme Court in U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. Vs. Sanjiv Rajan, reported in JT 1993(2)SC 550 will be applicable in all such cases of suspension. In the light of this Supreme Court decision, Shri Kulkarni argues that if the investigation is going to be prolonged, it would not be justified to keep the



applicant under suspension for an indefinite period. He also requests that we should call for the relevant documents from the C.B.I. to satisfy ourselves as to the need for continued suspension of the applicant. The Standing Counsel submits at this stage that the investigation has been going on only for a period of 7 months and that the same cannot be taken as inordinate^{ly} long time. Shri Kulkarni asserts that it is not the number of months alone that is relevant and what is crucial is to ascertain whether the authorities acted with expedition so as not prolong the applicant's agony.

10. From the files made available to us, we find that the C.B.I. had been asking the department to issue sanction for prosecution immediately after registering the case and had been following up the matter. The C.G.M., Bangalore, had taken up this matter with the Dept. of Telecommunications, New Delhi, by his letter dated 2.3.1994. However, the competent authority is still to communicate its decision regarding issue of the sanction. The communications of the C.B.I. give an impression that filing of the charge-sheet is held up only for want of the sanction. If such is the case, it is necessary for the competent authority to communicate its decision regarding sanction for prosecution. The department will do well to attend to this matter urgently and with care. From the materials made available to us, it is clear that the C.B.I. is not sleeping over the matter and that the investigation is not being unduly prolonged. Once, we are satisfied on this point, we hold that it is neither necessary nor appropriate to call for the records of the C.B.I., as the criminal case registered against the applicant is not an issue before us.

11. We have gone through the Supreme Court decision in U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. Vs. Sanjiv Rajan case

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referred to by Shri Kulkarni. In that case, the Supreme Court held that the authority can pass a suspension order a second time and that interference by the High Court which revoked the second order of suspension was held unjustified. This is not relevant in the present case and clearly does not help the applicant's case in any way.

12. In the light of the above, we hold that the applicant is not entitled at this stage to the relief sought for to set aside the suspension order, as the department had conformed to the rules while placing the officer under suspension and till now have also complied with the instructions regarding review as to the need for continuance of the suspension. It is, however, obligatory on the part of the department to conduct the subsequent review as and when it falls due in terms of the relevant instructions. The department should also take all possible steps to ensure that there is no further delay in taking a decision regarding the issue of sanction for prosecution.

13. As has been brought out earlier, the department had not conducted the review regarding varying the subsistence allowance on completion of three months from the date of suspension as required under the relevant rules and instructions. We, therefore, direct the department to conduct the review as to the need for varying the subsistence allowance after expiry of 3 months, i.e., for the period from 16.2.94 to 12.6.94 within three months from the date of receipt of a copy of this order. The department should take further action on the basis of such a review.

14. With the above observations, we dispose off the matter finally with no order as to costs.



TRUE COPY

R. S. Narayan
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/-
15/7/94
(A.N. VUJJANARADHYA)
MEMBER (J)

Sd/-
15/7/94
(V. RAMAKRISHNAN)
MEMBER (A)