

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 539/97

Date of Decision: 29-1-98
29/3/98

Shri Satish Chander Sachdev

Applicant.

Shri G.K. Masand instructed by
Shri A.I. Bhatkar.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri V.S. Masurkar.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

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

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *no*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 539/97

Presented the 29th day of January 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri M.R. Kolhatkar, Member (A)

Satish Chander Sachdev
Residing at
2, Sabarmati
Naval Park Officers Colony,
Ghatkopar (West)
Mumbai.

... Applicant.

By Advocate Shri G.K. Masand instructed by
Shri A.I. Bhatkar.

V/s.

Union of India through
The Secretary,
Ministry of Defence
Sena Bhavan, New Delhi.

The Chief of Personnel
Naval Headquarters,
DHQ P.O. New Delhi.

The Admiral Superintendent
Naval Dockyard, Lion Gate
Mumbai.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application under Section 19 of the Administrative Tribunals Act 1985. Respondents have filed reply. Since the point involved is short legal point, we have heard both the counsels about the merits of the application and dispose of the same by this order at the admission stage itself.

2. The applicant is working as Assistant Store Keeper in Navy. He was kept under suspension by the order dated 26.10.94. Since no disciplinary enquiry was started and no progress in the matter, the applicant challenged the order of suspension

Per
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JUDICIAL BRANCH, GROUND FLOOR, BUILDING NO. 2
PRESIDENT HOUSE, DELHI

Original Application No. 233/97

the day of January 1998

General: Hon'ble Shri Justice R.G. Vaidyanathan, Vice Chairman

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

Sajid Chander Sachdev

Residing at

S. Subramanian

Naval Park Officers Colony,

Gratkopar (West)

Mumbai.

Applicant.

By Advocate Shri G.K. Masand instructed by

Shri A.I. Bhaskar

Via

Union of India through

The Secretary,

Ministry of Defence

Sena Bhawan, New Delhi.

The Chief of Personnel

Naval Headquarters,

DLR 2, U. New Delhi.

The District Superintendent

Naval Dockyard, Lion Gate

Mumbai.

By Advocate Shri V.S. Masankar.

O A D R

For Shri Justice R.G. Vaidyanathan, Vice Chairman

This is an application under Section 10

of

of the Administrative Tribunal Act 1985. The applicant

has filed reply. Since the fact involved is short

and simple, we have heard both the counsels about

the merits of the application and discuss it in the

by this order at the conclusion stage itself.

The applicant is working as a

Senior Officer in Navy. He is a

by the order dated 20.11.97. Since no

objection was filed, the order is

the applicant is entitled to be

by filing an application in O.A. 226/96 in this Tribunal. By order dated 13.9.96 ~~of a Division~~ Bench of this Tribunal quashed the order of suspension. Then the applicant was taken on duty and he has been given order of posting. Then the department issued show cause notice to the applicant dated 25.11.96 regarding the manner of treating the suspension period till the disposal of the criminal proceedings. The applicant gave a reply to the show cause notice. Then the Competent Authority passed the impugned order dated 3.3.97 to the effect that the suspension period will be treated as period not spent on duty ~~and not~~ being entitled to backwages except the subsistence allowances being 50 % of pay and allowances. Being aggrieved ~~by~~ this order, the applicant has come up with the present application. His ~~case is that~~, once an order of suspension has been quashed by the Tribunal and the applicant has been reinstated, he is entitled to full backwages by treating the period of suspension as being spent on duty.

3. The respondents have filed the reply justifying the impugned order. It is stated that the applicant has been prosecuted through CBI for offence ~~under~~ Prevention of Corruption Act 1988. A charge sheet has been filed ~~in~~ the Court of Special Judge at Bombay. The applicant was arrested for taking bribe by laying trap by the Anti Corruption Branch of the CBI. Since the criminal case is still pending, the applicant is not entitled to treat the period as duty period and he is not entitled to full pay and allowances for that ~~period~~ period. The suspension order has ~~been~~ revoked by

this Tribunal only from the date of the order and hence it does not effect the validity of the order of suspension prior to the date of judgement. It is only after the criminal proceedings, the Government will have to decide the question as to how the period of suspension is to be treated.

4. The learned counsel for the applicant contended that once an order of suspension has been quashed by ^a Court or Tribunal and the applicant is reinstated. As a matter of course the applicant is entitled to full backwages for the period of suspension and the Government has no discretion in this matter. On the other hand, the learned counsel for the respondents contended that when a criminal case is pending against an applicant for offence of taking bribe which is detected by laying trap. No decision can be taken as to how the period of suspension should be treated till the conclusion of criminal proceedings.

5. The short point for consideration is whether the applicant is entitled to full backwages for the period under suspension and whether the period of suspension should be treated as period spent on duty.

6. This is not a case where the order of suspension was quashed on the ground that it was illegal order or void order or being the order passed by an authority who was not competent to pass the order or on the ground that the order was passed without jurisdiction. In order to satisfy about the nature of the previous case filed by the applicant and the nature of the order passed by this

Tribunal, we have not only perused the previous order which ^{is} produced by the applicant himself but we have also perused the pleadings of the previous case by securing the ~~file of O.A. 226/96~~

On perusal of the application filed by the applicant in the previous case shows that he never questioned the legality or validity of the order of suspension. In fact he was kept under suspension by order dated 26.10.94, which he has challenged about one year and four months later. The challenge of order of suspension, ~~as could be seen~~ from the previous application, was mainly on the ground that no disciplinary enquiry has been commenced and that there was no progress in the matter and hence the ~~continuation~~ of suspension of the applicant was not necessary. It is stated that inspite of the Rules, the competent authority has not reviewed the question of ~~suspension~~ after a particular period of time ; even after 15 months from the date of suspension, ~~no~~ charge sheet is filed and the suspension is not yet revoked. Therefore the grievance in the previous case was not about the legality or validity of the order of suspension but it was ~~mainly on the ground of~~ delay and the suspension being continued indefinitely without issue of charge sheet and ~~without~~ holding departmental enquiry. Therefore, the suspension was sought to be revoked or challenged only on the ground that continuation of suspension is not called for.

7. Even in the previous order we find that this Tribunal pointed^{out} that there is no necessity to continue the suspension, since the contemplated enquiry has not yet started and pending criminal case is no bar to revoke the suspension. That the respondents have not considered revocation of suspension after the prescribed period as per Rules. Since the disciplinary enquiry has not been commenced at all, There is no necessity to continue the order of suspension. This Bench relied on the decision of this Tribunal of Madras Bench in P. Subramani V/s. Union of India. The relevant portion of that order is extracted in the previous order of this Tribunal, wherein it is mentioned that the department has not shown the necessity of the continuance of suspension of the official. The suspension is based on the ground to facilitate the investigation or enquiry or trial then that can be taken care of by transferring the officer. Therefore this Bench held that continuation of the order of suspension is not necessary and hence quashed the order of suspension with liberty to the department to transfer the official to some other place.

8. Therefore it is not a case of order of suspension being quashed on the ground that it was without jurisdiction or it was illegal or the officer who passed the order was in-competent to pass the said order etc. The order of suspension was revoked only on the ground that continuation of suspension was not necessary, since disciplinary enquiry has not yet been commenced at all. In such a case merely because the suspension order is quashed, it does not automatically make the period of suspension as period spent on duty.

9. The learned counsel for the applicant has relied upon two authorities :

In (1992) 20 ATC 842 (Kamal Kishore Prasad V/s. Union of India and others) of Principal Bench, New Delhi, It is observed that when an order of suspension was quashed by the Tribunal in the previous case the applicant is entitled to full pay and allowances. Another ground was that no show cause notice was issued to the officer before passing the order. So far as the present case is concerned the show cause notice has been issued to the applicant and on the basis of the reply the impugned order is passed. We do not know on what ground in that case suspension order had been quashed. That is not available from the facts of the reported case. Therefore, we cannot apply the said decision to the fact of the present case since in the present case order of suspension is not quashed on the ground that it is illegal but only on the ground that continuation of suspension is not necessary. Further the Principal Bench of the Tribunal in para 7 has clearly mentioned that in the facts and circumstances of that case the relief is granted.

In an un-reported judgement dated 3.4.95 in O.A. 1361/95 of this Tribunal (Tapas Neogy V/s Union of India and others) the order of suspension was quashed and the department was directed to pay backwages. There is no discussion as to what on provision of law or on what reasons the backwages are being granted. Therefore, the said judgement cannot be used as precedent on question of law but it can be used as precedent to show that after

quashing the suspension order, ~~backwages~~ are granted. Even otherwise in that case order of suspension was quashed on the ground that it was ~~not valid,~~ since suspension was ordered on ~~one~~ ground and sought to be continued on another ground. Hence in our view both the above decisions are not applicable to the facts of this case.

10. Further in the previous case the Tribunal followed the observations of the Madras Bench by extracting the relevant portion. Wherein it is stated as follows:

" In this view of the matter the application is allowed and the order of suspension will stand set aside as and from this date."

This Bench followed this observation as applicable to this case also. Therefore the order of suspension was set aside from the date of the order and onwards. The previous suspension order was ~~not quashed~~ but only the continuation of suspension order from the date the Tribunal passed the order was quashed or set aside.

11. In this connection we may make useful reference to latest decision of the Supreme Court which we have come across on the point under consideration. It is the case reported in 1997(2) AISLJ 166 Krishnakant Raghunath Bibhavnekar V/s State of Maharashtra and Ors. In that case the delinquent officer was suspended pending criminal case. He was prosecuted in the offence of mis-appropriation before the criminal Court.

He was acquitted in the criminal case. Then he was reinstated. But he was not given full backwages for the period on suspension. He filed an application before the Bench of this Tribunal who dismissed the application. Then he went an appeal before the Supreme Court. The Supreme Court has pointed out that by virtue of acquittal in the criminal case, the Government servant is entitled to be reinstated, he is not entitled to consequential benefits with all backwages as a matter of course. The Supreme Court has observed as follows:

" In our considered view, this grant of consequential benefits with all backwages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person ~~suspended~~ suspended on valid considerations is given full backwages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority viz it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all, but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice pass appropriate order including treating suspension period as period of not on duty."

In the judgement the Supreme Court has observed that the purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty.

12. It was a case of acquittal in criminal case but how as a matter of acquittal he is entitled to reinstatement. The similar as a result of quashing the continuation of suspension, the applicant is entitled to reinstatement. But the question whether the applicant is entitled to full backwages for the suspension period as a matter of course cannot be decided at this stage. It is only after the conclusion of the disciplinary enquiry or criminal proceedings the Competent Authority will have to decide as to how the period of suspension should be treated. In our view it is premature stage to grant the full wages for the suspension period and to treat the suspension period as period spent on duty when the applicant is facing the criminal prosecution for serious offence of taking bribe when he was caught red handed after laying trap.

If the criminal case ends in conviction then the period of suspension cannot be treated as period spent on duty and the applicant will not be entitled to full wages for that period. If the criminal case ends in honourable acquittal on merits

then it may be that the applicant will be entitled to full wages for that period, which ofcourse will have to be decided by the competent authority. If it is a case of acquittal on a technical ground or by giving benefit of doubt then again the competent authority will have to be decide as to any further departmental enquiry is necessary or not as observed by the Supreme Court. In the above case. Therefore, we find that this is not a fit case ~~where interference~~ is called for by this Tribunal at this stage, when admittedly criminal case is pending.

13. We find that there is one mistake which has occured in the impugned order. Though in the show cause notice it is stated that the question of treating the period of suspension as ~~period~~ spent on duty cannot be decided till finalisation of the criminal proceedings by the Court. While passing the impugned order the competent authority has passed a final order treating the period of suspension as not spent on duty. In our view this portion of the impugned order cannot be sustained. Final decision could not be taken at this stage when criminal case is pending. We, therefore, set aside that portion of the order and make it clear that the impugned order will be confined ~~to be followed till the~~ date of the criminal proceedings and after the criminal proceedings the competent authority will have to pass a fresh order as to how the period of suspension should be treated in the manner we have mentioned in the previous para.

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There is no doubt that the applicant is entitled to subsistence allowance during the period of suspension. He is also entitled to higher rate of subsistence allowance, if there is any delay in completion of the proceedings during the suspension period. But here the suspension order is already quashed and the officer is taken on duty. Therefore, we leave it open the question whether the applicant is entitled to any higher subsistence allowance during the period when he was kept under suspension as per Rules.

14. In the result, the O.A. is partly allowed as follows:

1. The impugned order of suspension dated 3.3.97 is partly quashed to the extent it purports to be a final order to treat the period of suspension as not spent on duty. However we make it clear that the impugned order should be read as tentative decision till the disposal of the criminal proceedings pending against the applicant. The competent authority shall take a final decision as to how the period of suspension should be treated, after the completion of criminal proceedings, in the manner indicated in this order.
2. The applicant may make representation, if he is entitled to higher subsistence allowance during the period of suspension as per Rules. If such a representation

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is made , the competent authority may consider the same and then decide whether under the Rules the applicant is entitled to higher rate of subsistence allowance and if so how much and then grant the same.

In the circumstances of the case there will be no order as to costs.

M.R. Kolhatkar
~~(M.R. Kolhatkar)~~
Member (A)

R.G. Vaidyanatha
29.1.98
(R.G. Vaidyanatha)
Vice Chairman

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