

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 931/97

Transfer Application No.

Date of Decision 10.12.1997

S.K. Agarwal

Petitioner/s

Shri G.K. Masand

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S. Masurkar

Advocate for
the Respondents

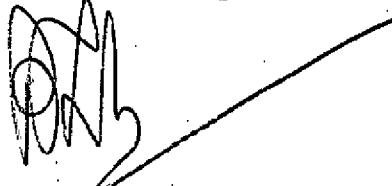
CORAM :

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

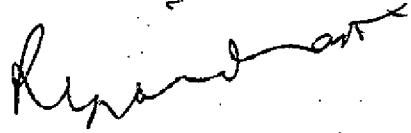
Hon'ble Shri P.P.Srivastava, Member (A)

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

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


(P.P.SRIVASTAVA)

MEMBER (A)


(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO.931/97

Wednesday this the 10th day of December, 1997

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

Sunil Kumar Agarwal
Telecom District Manager,
Akola. R/o Staff Quarters,
Sub-Divisional Office Telegraph
Compound, Civil Lines, Akola.

By Advocate Shri G.K.Masand

... Applicant

V/S.

1. Union of India
through the Secretary,
Ministry of Communications,
Dept. of Telecom,
Sanchar Bhavan, New Delhi.
2. C.V.Rajan,
Chief General Manager,
Maharashtra Telecom Circle,
Fountain Telecom Building No.2,
8th Floor, Bombay.

By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

O R D E R

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application under Section 19
of the A.T.Act challenging the order of suspension
dated 25.9.1997. Respondents have filed the reply
opposing the admission. We have heard both the
counsel and we have also perused the concerned
file produced by the learned counsel for the
respondents on our direction.

2. The applicant who was working as Telecom
District Manager at Akola has now been kept under
suspension by the impugned order. The applicant is
challenging the same on the ground of malafides and
also on the ground of delay in initiating the

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disciplinary action. It is also his case that the suspension is contrary to the guidelines issued by the Government and further on facts the suspension is not justified since the applicant is working at different place and there is no question of ~~tempering~~ with the record.

3. Respondents have filed reply opposing the admission. It is stated that there is no scope for judicial review against the order of suspension. The administration has taken a decision on the available material to place the applicant under suspension. The allegations of malafides are denied.

4. On perusal of the file produced by the respondents, we find that the applicant is involved in the alleged ~~and~~ corruption/mis-conduct of committing fraud of the Government money to the extent of Rs.1,40,000/- and it is also ~~alleged~~ that the applicant has fabricated bills. Now the disciplinary enquiry has been initiated on the report of 2nd Respondent. Further the administration has taken a decision to place the applicant under suspension.

5. As far as the allegations on malafides are concerned, we are not impressed by the contention of the applicant. The two grounds are that the applicant has been promoted but his posting order is not given by the 2nd Respondent. Then, it is alleged that the 2nd Respondent did not forward the Bio-data of the applicant for Foreign posting. Now there is sufficient explanation by the respondents on both the points. We are not impressed by the argument that the action taken by the administration for keeping the applicant under suspension suffers from malafides. From a perusal of

the file, we find that the 2nd Respondent did not even recommend that the officer should be placed under suspension. The Head Office who received the report has taken a decision to keep the applicant under suspension as a first step before initiating disciplinary action.

6. Then, as far as justification for suspension is concerned, we are afraid this Tribunal cannot sit in appeal over the decision of the administra^{tion}tion. Whether suspension is justified or not is a matter to be decided by the administration. We are not sitting in an appeal over the order of suspension. Learned counsel for the respondents invited our attention to a recent decision of the Apex Court dated 11.8.1997 in Civil Appeal No. 5511 of 1997. In that case, the Tribunal had set aside the order of suspension. On appeal the Supreme Court observed that "the impossibility of tampering with the evidence is not a consideration on which Tribunal can set aside the order of suspension" and on that ground the Tribunal cannot interfere with the order of suspension. It is further observed by the Apex Court that the decision to place the applicant under suspension is to be decided by the competent authority. Even in that case an observation had been made by the Tribunal that if the officer is transferred, then he will not interfere with the disciplinary action. The Supreme Court did not agree with the decision of the Tribunal.

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7. In our view, the Tribunal cannot sit in an appeal over the decision of disciplinary authority. If the authority was not competent to pass the order or if there is any violation of statutory rules in passing the order of suspension, then, of course, this Tribunal can interfere with the order. But in the present case, after applying the mind the appropriate authority has passed the order. Whether the material was sufficient or not or whether the administration was justified in passing the order are not, are matters which can be considered by this Tribunal. Therefore, we do not find any illegality in the order which was passed or no need of interference by the Tribunal. Hence, we do not find any infirmity with the order of suspension. We are also not impressed about the argument regarding delay in initiating disciplinary action and then passing order of suspension. All contentions regarding merits of the case are left open since it may prejudice the enquiry.

8. In the result, OA. is rejected at the admission stage. No costs.



(P.P. SRIVASTAVA)

MEMBER (A)



R.G. Vaidyanatha

(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.