

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 30 OF 1998.

Date of Decision : 4-9-98

N. B. Hosamani. Petitioner.

Shri M. S. Ramamurthy Advocate for the
Petitioner.

VERSUS

Union Of India & Others Respondents.

Shri V. S. Masurkar Advocate for the
Respondents.

CORAM :

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

Hon'ble Shri D. S. Baweja, Member (A).

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


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 30/98.

Dated the 4th day of September, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

N. B. Hosamani,
Sub-Divisional Engineer,
RLU Installation,
O/o. the Divisional Engineer
(External), G.P.O. Building,
Panaji, Goa 403 001.

... Applicant

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Telecommunications,
Sanchar Bhavan,
New Delhi - 110 001.
2. The Member (Services)
(Telecom), Ministry of
Telecommunications, Govt.
Of India, Sanchar Bhavan,
New Delhi - 110 001.
3. The Chief General Manager,
Maharashtra Telecom Circle,
G.P.O. Building,
Mumbai - 400 001.
4. The General Manager
(Telecom),
Government of India,
Ministry of Telecommunications,
Department of Telecommunications,
Goa Telecom District,
18th June Road,
Panaji 403 001 (GOA)

... Respondents.

(By Advocate Shri V. S. Masurkar)

: 2 :
OPEN COURT ORDER

| PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN |

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard the learned counsels appearing on both sides. By consent, we have admitted the O.A. and disposing of the O.A. at the admission stage itself.

2. The applicant was working as a Sub-Divisional Engineer in E-10B Exchange at Panaji at the relevant time. Due to certain irregularities in telephone billing and involving loss of Rs. 10 Lakhs and odd to the Government, the applicant came to be suspended by an order dated 13.11.1995 by the General Manager, Telecom, Panaji. Subsequently, this order came to be revoked and a fresh order of suspension was passed by the Chief General Manager of Maharashtra Telecom Circle by an order dated 13.05.1996. The applicant's appeal to the competent authority has since been rejected. The applicant is challenging the legality and validity of the Suspension Order and validity of the continuation of the Suspension Order.

The other grievance of the applicant is about demand of penal rent for the quarters occupied by him. It is stated that the applicant was not allotted any alternate quarters and he continued in the quarters since there was no alternate allotment of quarters, but the respondents have started deducting Rs. 2,510/- per month as penal rent from the subsistence allowance of the applicant, which is said to be illegal. The applicant has, therefore, filed this application challenging the order of suspension and challenging the recovery of

penal rent from the applicant.

3. The respondents have filed reply justifying the action taken in suspending the applicant in view of his misconduct in tampering with the telephone lines. A criminal complaint was also lodged against the applicant and the ~~police~~ has filed a F.I.R. and the matter is under investigation ^{by the C.B.I.} The suspension of the applicant is fully justified. As far as the demand for penal rent is concerned, it is stated that the quarters in question was a post-attached quarter and since the applicant did not vacate the same inspite of the order of suspension, the department was forced to recover penal rent from the applicant, which is fully justified.

4. In the light of the pleadings and contentions urged before us, the points that fall for determination are -

- (i) Whether the order of suspension or continuation of the suspension order is not justified ?
- (ii) Whether the demand recovery of penal rent from the applicant is not justified ?
- (iii) What order ?

5. POINT NO. 1

The applicant was kept under suspension in view of a contemplated departmental enquiry. The Learned Counsel for the applicant could not point out any illegality in the decision to suspend the applicant but his main contention is that, since the suspension

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was in contemplation of departmental enquiry and since no charge-sheet is issued, the continuation of the applicant under suspension is illegal and invalid. The Learned Counsel for the respondents pointed out that since the applicant is a senior officer, concurrence of the Central Vigilance Commission is necessary in issuing a charge-sheet and the matter is referred to the Central Vigilance Commission. He further submitted that number of important documents are seized by the C.B.I. and therefore, there is delay in initiating the departmental enquiry. He further pointed out that the police have already filed a F.I.R. against the applicant and the F.I.R. is pending before the Criminal Court. However, the reply of the Learned Counsel for the applicant is that the order of suspension is not in contemplation of criminal case. It may be so. Even now, it is open to the competent authority to pass a formal order that the suspension order is in contemplation of not only departmental enquiry but also criminal case. Merely because only departmental enquiry is mentioned in the order of suspension, we cannot lose sight of the subsequent event. It is also explained that in view of the ~~seizure~~ ^{Reasonable} of number of documents by the Central Vigilance Commission and C.B.I., it cannot be said that there is delay in issuing the charge-sheet in the departmental enquiry case. It is open to the competent authority to pass an order to treat the suspension as one in contemplation of the criminal case or the department can issue the charge-sheet in the departmental enquiry case and proceed with the enquiry according to rules. But as things stand on today, we do not find any illegality in continuation of the order of suspension.

6. The question whether an officer has to be suspended or not, is a decision to be taken by the competent authority. In this case, the competent authority has decided that suspension of the applicant is absolutely necessary. This Tribunal cannot sit in appeal over the decision of the competent authority. The Learned Counsel for the respondents invited our attention to an unreported judgement of the Supreme Court in the case of Union Of India & Others V/s. Ashok Narayan Rao Kulkarni in Civil Appeal No. 5511 of 1997 where by an order dated 11.08.1997 the Supreme Court set aside an order passed by this Tribunal under which an order of suspension has been quashed. The Supreme Court has observed that the decision to suspend an employee must be taken by the appropriate authority and such a decision cannot be easily interfered with by the Tribunal.

Here there are serious allegations against the applicant about loss of Government money to the tune of Rs. 10 Lakhs and odd. Having regard to the gravity of the charges against the applicant and pendency of criminal case and contemplated departmental enquiry, we are not inclined to interfere with the order of suspension. However, we make it clear that the competent authority will have to review the order of suspension from time to time as required by rules and then decide whether the suspension should be continued or not.

Point No. 1 is answered accordingly.

7. POINT NO. 2

We are not very much impressed by the stand of the respondents that the quarter in question is a post-attached quarter. The applicant came to be promoted as a Sub-Divisional Engineer in 1994 but the applicant is in possession of the quarter in question from July, 1987, when he was a Junior Telecom Officer. He came to be promoted as Sub-Divisional Engineer in July 1994. The applicant has continued in the same quarter from July 1987 and even after promotion. Therefore, the argument that this particular quarter was attached to the post of Sub-Divisional Engineer cannot be accepted, since even prior to promotion and for seven years earlier, the applicant was residing in the same quarter.

Even otherwise, when the applicant was suspended, he should have been given an alternate quarter to enable him to shift to the new quarter. Suspension is not a punishment. Suspension is not termination of service. Even after suspension, the official gets subsistence allowance. What is more, the order of suspension clearly says that the applicant should not leave the headquarter without prior permission of the competent authority. Since the applicant's service has not come to an end by virtue of suspension, the respondents should have allotted him some other quarter to enable him to vacate the official quarter. Therefore, in the facts and circumstances of the case, we are satisfied that applicant's continuation

in the quarters after suspension was not illegal, since he was not allotted any alternate quarter. There are number of correspondence between the applicant and the department requesting for allotment of alternate quarter to enable him to vacate the disputed quarter. It is now brought to our notice at the time of argument by the Learned Counsel for the applicant that the department has since allotted an alternate quarter and therefore, the applicant vacated the quarter in question and shifted to the new quarter on 30.07.1998. In the circumstances, we hold that recovery of penal rent from the date of order of suspension till 30.07.1998 is illegal and contrary to rules. If inspite of allotment of alternate quarter the applicant had not vacated the official quarter, then the question of charging damage rent would arise.

For the above reasons, our finding is that the demand ^{an} in recovery of damage rent from the applicant is illegal and contrary to rules. Therefore, the respondents are bound to refund that amount to the applicant.

Point No. 2 is answered accordingly.

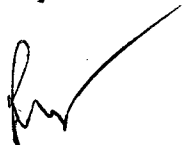
8. Before parting with the case, we have to refer to one technical objection raised by the Learned Counsel for the respondents. He submitted that there is misjoinder of reliefs and therefore, the O.A. is not maintainable as per Rule 10 of the C.A.T. (Procedure) Rules. It is true that misjoinder of reliefs is not permissible if they are independent of each other. Here,

the question of damage rent is connected with the period of suspension. That means, the two questions about order of suspension and about order recovering damage rent are inter-connected and inter-dependent. Suppose the Tribunal quashes the order of suspension as illegal, then the demand for penal rent automatically gets wiped out. Hence, it cannot be said that the two reliefs are distinct and different, but on the other hand, the two reliefs are inter-connected and inter-dependent. Hence, we do not find any merit in the technical objection raised by the Learned Counsel for the respondents about maintainability of the application.

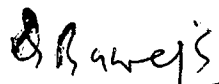
9. In view of our findings on point no. 1 and 2, the application has to succeed partly. We will have to direct the respondents to refund the damage rent recovered from the applicant within a period of two months.

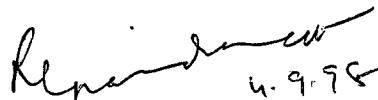
10. In the result, the application is allowed partly as follows :

- (i) While rejecting the prayer of the applicant for quashing the order of suspension, we direct the competent authority to review the order of suspension periodically from time to time as required by the rules and take a decision whether continuation of suspension is necessary or not.



- (ii) The demand in recovery of damage rent at the rate of Rs. 2,510/- from the salary of the applicant during the period of suspension is held to be illegal and unjustified. The respondents are directed to refund whatever amount they have collected from the applicant towards penal rent within a period of two months from today.
- (iii) In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)
MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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