

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 382/98.

Date of Decision : 11-9-98

Ashok Narayanrao Kulkarni 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 ?

Revised
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 382/98.

Dated the 11th day of September, 1998.

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

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

Ashok Narayanrao Kulkarni,
Junior Telecom Officer,
St. No. 26283 in the Office
of Divisional Engineer (EPABX-B-I),
Ground Floor, Telephone House,
Prabhadevi,
Mumbai - 400 025.

Residing at -

... Applicant

Bhramani Building,
Phule Road, Vishnu Nagar,
Dombivali (West),
District Thane.

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union Of India through
The Secretary,
Department of Telecommunication,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.

2. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, 15th Floor,
Prabhadevi, Veer Savarkar
Marg, Dadar (West),
Mumbai - 400 028.

3. The Deputy General Manager
(IBM), Mahanagar Telephone
Nigam Ltd., Telephone House,
16 Floor, V.S. Marg,
Prabhadevi, Dadar (West),
Mumbai - 400 028.

... Respondents.

4. The Divisional Engineer,
(EPABX-B-I), Mahanagar Telephone
Nigam Ltd., Telephone House,
Ground Floor, V.S. Marg,
Prabhadevi, Dadar (W),
Mumbai - 400 028.

(By Advocate Shri V.S. Masurkar)

ORDER

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

This is an application challenging the order of suspension. Respondents have filed reply. Since the point involved is short, by the consent of both the counsels, we have heard the application on merits and disposing of the same at the admission stage.

2. Few facts which are necessary for the disposal of this application are as follows :-

The applicant is working as a Junior Telecom Officer in the Mahanagar Telephone Nigam Limited, Bombay. He is one of the accused in a criminal case filed by the C.B.I. for alleged tampering with the telephone lines and diverting the STD/ISD calls to favour certain persons and, thereby causing loss to the telephone department. The applicant came to be arrested and has been released on bail. The applicant was placed under suspension by an order dated 22.02.1994. The applicant challenged the said suspension order before this Tribunal in O.A. No. 341/96. This Tribunal considered the application on merits and quashed the order of suspension by order dated 01.11.1996. As a result of this order, the applicant was reinstated on 20.06.1997 without prejudice to the right of the department in the S.L.P. filed before the Supreme Court which was pending at that time. Even the applicant was paid the full salary for the suspension period.

See The Supreme Court vide Civil Appeal No. 5511 of 1997 heard the parties and allowed the appeal *Vide* judgement dated 11.08.1997 by holding that the Tribunal

was not right in quashing the suspension order and having regard to the gravity of the charges, it was a fit case for suspension. Then the disciplinary authority, namely - Respondent No. 4, the Divisional Engineer, passed a fresh order dated 13.01.1998 stating that the applicant must be deemed to be under suspension till that date and then, by way of review, revoked the order of suspension. This matter came to the notice of the higher authority, namely - the Respondent No. 3, the Deputy General Manager. He suo-moto passed an order dated 19.03.1998 placing the applicant under suspension and also directed him to pay back whatever amount he has received in excess of subsistence allowance, treating the entire period as under deemed suspension.

The applicant is now challenging the second order of suspension dated 19.03.1998 and the demand for repayment of pay and allowances paid for the suspension period. He has taken number of grounds in the application for challenging this order of suspension.

3. The respondents have filed reply justifying the action taken in issuing the impugned order of suspension after the judgement of the Supreme Court. They have also mentioned the facts of the case to show the seriousness and gravity of the charges against the applicant which necessitated in passing the impugned order of suspension.

4. The Learned Counsel for the applicant has questioned the correctness and legality of the impugned order of suspension. He contended that the officer who has issued that order was incompetent and had no jurisdiction to pass the order of suspension. Then, on merits, he contended that the order of suspension was not called for. He further contended that the demand in the impugned order for re-payment of pay and allowances received by him during the suspension period is illegal. That there was non-application of mind by the competent authority and the order is not bonafide and it was passed to the dictation of C.B.I., etc. and there was no fresh material to order suspension. He further submitted that the disposal of the criminal case may take long time and hence, there was no necessity to pass the order of suspension. On the other hand, the Learned Counsel for the respondents submitted that the Deputy General Manager had jurisdiction and competence to issue the order of suspension. While supporting the order of suspension on merits, he further contended that this issue cannot be raised when the matter is concluded ^{by} with the decision of the Apex Court. Respondents' Counsel also justified that the demand for re-payment of excess amount paid to the applicant for the period of suspension over and above the subsistence allowance.

5. In the light of the arguments addressed before us, the points for determination are -

(i) Whether the Deputy General Manager had no jurisdiction and competence to issue the impugned order of suspension dated 19.03.1998 ?

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- (ii) Whether, on merits, the order of suspension was unjustified and not called for?
- (iii) Whether the demand on the applicant to refund the amount in excess of subsistence allowance for the suspension period is not justified?
- (iv) What order ?

6. POINT NO. 1 -

The first order of suspension was issued by the Disciplinary Authority, namely - the Division Engineer. On the second occasion, the Divisional Engineer passed the order dated 13.01.1998 holding that the applicant must be deemed to be under suspension till that date and then he revoked the order of suspension from that date. Then, suo-moto the Deputy General Manager passed the impugned order of suspension dated 19.03.1998. He has stated that, after reviewing the case, he is setting aside the order dated 13.01.1998 passed by the Divisional Engineer and kept the applicant under suspension.

Rule 10 of the C.C.S(C.C.A) Rules, 1965 provides for suspension of government servants for facing departmental enquiry or criminal case or contemplated disciplinary enquiry. The officers who can suspend the Government servants are mentioned in Section 10(1) as follows :-

"The appointing authority or any authority to which it is subordinate or the disciplinary authority may place a Government servant under suspension."

Therefore, even an authority who is not himself a Disciplinary Authority, can suspend an officer if he himself is either an appointing authority or he is an authority to whom the appellate authority is subordinate. Further, it is seen that the Disciplinary Authority, namely - the Divisional Engineer, is subordinate to the Deputy General Manager. Hence, in these circumstances we find that the Deputy General Manager, being the higher authority than the Disciplinary Authority and the Disciplinary Authority being subordinate to him, has powers under Section 10(1) of the C.C.S(C.C.A) Rules to place the applicant under suspension. Then in Rule 10(5)(c) it is further provided that an order of suspension made under this rule may at any time be modified or revoked by an authority which made or is deemed to have made the order or by any authority to which that authority is subordinate. Since the Disciplinary Authority had powers to modify or revoke his order of suspension, then the same order can be passed by the higher authority to whom the disciplinary authority is subordinate.

The Learned Counsel for the applicant submitted that the higher authority has only power to modify or revoke an order of suspension, but he himself cannot pass any order of suspension. The higher authority has powers to modify the order of the Disciplinary Authority. Now in this case, the Disciplinary Authority has passed the order treating the applicant as under deemed suspension till the date of the order and then revoked the order of suspension. That order can be

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modified by the higher authority and the modification may result in placing the applicant under suspension. We cannot restrict the meaning of the word 'modified' to mean only cancellation or revocation of the order only, as contended by the Learned Counsel for the applicant. The intention of the legislature is very clear that either the Disciplinary Authority or the Authority to whom he is subordinate, can pass such an order.

7. Then we may also refer to Rule 29 of the C.C.S.(C.C.A) Rules, which provides the powers of revision. Though the Learned Counsel for the respondents has not argued on this point, we are only just mentioning the powers under Rule 29 though we are not giving any final opinion whether such an order can be passed under Rule 29.

In Rule 29, ^{members} of Revisional Authorities are mentioned, which includes under sub-clause (v) an Appellate Authority, but the condition ^{is} that he can pass an order of revision only within a period of six months.

The powers of revision are given to certain authorities, including Appellate Authority to revise any order passed by a ^{lower} authority and this power can be exercised suo-moto. Therefore, it is quite likely that the Deputy General Manager, being the appellate authority, can exercise suo-moto powers under Rule 29(1)(v) and set aside or modify the order passed by the Disciplinary Authority. But the Learned Counsel for the applicant contended that even in such a case, principles of natural justice is required. That a show cause notice should be issued to the persons likely to be affected. But proviso

to the rule says that such a show cause notice is necessary in the case of imposing or enhancing a penalty.

It is well settled that suspension is not a punishment. It is well-known and well-settled that an officer can be placed under suspension in contemplation of disciplinary enquiry without giving any show cause notice to him and without hearing him. It is the subjective satisfaction of the authority that is important, namely - that the suspension of the officer is necessary in public interest. We are, therefore, expressing our tentative opinion that the appellate authority may exercise such a power in revision. However, since this point has not been argued in detail before us, we are not expressing any final opinion on this question, since our earlier finding that the higher authority has power under Rule 10(1) and Rule 10(5)(c) to pass such an order of suspension is sufficient to uphold the impugned order of suspension. For these reasons, we hold that the Deputy General Manager's order of placing the applicant under suspension is permissible in law. It is neither illegal nor without jurisdiction.

8. We have ourselves perused the P & T Manual Volume-III, para 6, pertaining to General Central Services Group 'C'. For re-designated Junior Telecom Officers, the appointing authority is the Deputy General Manager (Telephones) or District Manager. We have already seen that under Rule 10(1) the appointing authority can pass an order of suspension. Similarly, a Disciplinary Authority can pass an order of suspension. Here, the

Deputy General Manager is both the appointing authority and also disciplinary authority for major penalties and hence, he has every right to pass an order of suspension both under Rule 10(1) and Rule 10(5)(c) of the C.C.S. (C.C.A.) Rules. Hence, the order is fully justified and according to law.

Point No. 1 is answered accordingly.

9. POINT NO. 2 -

The Learned Counsel for the applicant made some submissions by attacking the order under suspension on merits. The Learned Counsel for the respondents also joined the issue on this point and contended that having regard to the gravity of the charges against the applicant and pendency of criminal case, the order of suspension was fully justified.

In our view, the applicant cannot be permitted to challenge the order of suspension on merits. It may be re-called that this Tribunal went into the merits of the case and quashed the order of suspension in the previous O.A. On appeal, the Supreme Court set aside the order passed by this Tribunal by observing that it is in the discretion of the competent authority to pass an order of suspension and such exercise of discretion should not be easily interfered with by the Tribunal. Then the Supreme Court has further observed in the order dated 11.08.1997 (vide page 46 of the paper book) as follows :

"In the facts of this case, a very serious allegation has been made and a charge-sheet has been framed on the charges of tampering with the telephone lines by an employee of the Telephone Exchange. We are of the view that there is no reason for the Tribunal to interfere with the order of the suspension."

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Therefore, the Supreme Court has recorded categorical findings that on merits, having regard to the gravity of the charges, the order of suspension was justified and this Tribunal had no right to interfere with the same. Now, in the second round of litigation, the applicant cannot be permitted to challenge the suspension on merits. The applicant is bound by the order of the Supreme Court to which he was a party and the Supreme Court has ruled that the suspension was justified and the Tribunal should not have set aside this order. Then, what is more, an argument was pressed on behalf of the applicant in the Supreme Court that the order of suspension has become infructuous because the Tribunal's order had been implemented and hence, there was no case for interference by the Supreme Court. The Supreme Court rejected that argument by observing that the order has been implemented because of the direction given by the Tribunal and, therefore, it is necessary to set aside the order of the Tribunal to enable the Government to pass an appropriate order in the case.

Therefore, the argument that interference by the Supreme Court is not necessary because the order of suspension was no longer in force, was rejected by the Supreme Court. It set aside the order of the Tribunal so that the competent authority can pass an appropriate order, namely - to keep the applicant under suspension again. Otherwise, there was no necessity for the Supreme Court to set aside the order of the Tribunal. The Supreme Court has made

it clear that order of the Tribunal should be set aside so that the competent authority can pass appropriate order, which necessarily means and implies that the competent authority should pass a formal order of keeping the applicant under suspension, which is the legitimate and normal course when once the order of the Tribunal is set aside. Therefore, the applicant cannot now be permitted to canvass the arguments on merits questioning the order of suspension. Even otherwise we must mention that having regard to the materials produced by the respondents and the gravity of the charge against the applicant and pendency of the criminal case, it was a fit case to keep the applicant under suspension. Public interest and discipline in Government service demands that ~~in~~ such a case, a person facing trial for a serious offence should be placed under suspension. It is also seen from the record that trial has begun in the criminal case and six witnesses are already examined.

Point No. 2 is answered accordingly.

10. POINT NO. 3 -

In the impugned order, the applicant has been called upon to pay back the difference of pay, namely - full pay less subsistence allowance, from 22.02.1994 till the date of the impugned order of suspension.

The first order of suspension is dated 22.02.1994. After ~~the~~ the order of the Tribunal, the applicant was reinstated on 20.06.1997 in view of the Suspension Order being quashed by the Tribunal. In view of the quashing of the order of suspension by the Tribunal and contempt petition being filed in this Tribunal, the department was forced

to pay the full wages from 22.02.1994 to 19.06.1997. This is clear from the order of the Divisional Engineer which is dated 20.06.1997 and found at page 437 of the paper book. It is clearly mentioned that applicant is being reinstated in service in view of the order of the Tribunal without prejudice to the decision of the Supreme Court in S.L.P. filed by the department. For the same reason, since the Tribunal had quashed the order of Suspension, an order was being issued for paying full wages for the period of suspension. The applicant got the benefit of full pay for the period of suspension because the order of suspension was quashed by this Tribunal and that is the reason given in the order dated 20.06.1997. When the order of the Tribunal is quashed by the Supreme Court and it is further held that the order of suspension was fully justified, the applicant cannot get full wages for the actual period of suspension, namely - 22.02.1994 to 19.06.1997. Admittedly, he had not worked during that period. Admittedly, he was under suspension during that period. He was ~~entitled~~ entitled to only subsistence allowance and not full pay for that period. But he got full pay for that period by virtue of the order of the Tribunal, which has since been quashed by the Supreme Court. Therefore, everybody has to obey the order of the Supreme Court and since the order of the Tribunal is set aside, whatever financial benefits the applicant got as a result of the order of the Tribunal, which has since been set aside by the Supreme Court, he must refund it to the Government.

Therefore, we hold that the applicant is liable to repay to the Government the difference between the full pay less subsistence allowance for the period from 22.02.1994 to 19.06.1997. Hence, to that extent the direction given in the impugned order is fully justified.

11. Then remains the question as to what should happen to the period from 20.06.1997 till the date of impugned suspension order dated 19.03.1998. The Competent Authority has directed that even for this period the applicant must be deemed to be under suspension and therefore, he must pay back the difference in pay and subsistence allowance. In our view, this cannot be permitted. The applicant has actually worked after reinstatement for the period from 20.06.1997 till he was again kept under suspension on 19.03.1998. Since he has already worked during this period, he is entitled to full wages for this period. He is not bound to refund any amount for this period. To that extent, the direction in the impugned order will have to be set aside.

Though we have held that the applicant is entitled to only subsistence allowance for the first period of suspension, we make it clear that as and when the order of suspension is revoked or the applicant is exonerated in the criminal case, then it is open to the competent authority to pass appropriate order as to how the period of suspension from 22.02.1994 to

19.06.1997 should be treated, namely - whether on duty and whether on full pay and allowances, etc.

12. Before parting with the case, we may have to consider one technical objection taken by the Learned Counsel for the respondents that the application is not maintainable for not exhausting statutory remedy of appeal before approaching the Tribunal. In our view, the question of exhausting statutory remedies before approaching this Tribunal provided under Section 20 of the Administrative Tribunals Act is only an enabling provision. That is the normal procedure, since the word used is "ordinarily". There is no blanket prohibition that no application should be received unless statutory remedies are exhausted. It all depends upon the facts and circumstances of each case. In the facts and circumstances of the present case, since the applicant was kept under suspension and he wanted immediate relief, he had to rush to the Tribunal. Hence, we do not find any merit in the respondents' contention that the O.A. is not maintainable and should be rejected on this ground.

13. In the result, the application is allowed partly as follows -

- (i) The prayer for quashing the order of suspension dated 19.03.1998 is rejected.
- (ii) The direction in the impugned order dated 19.03.1998 calling upon the applicant to pay back the difference in pay, namely - full pay less subsistence allowance is

confirmed only for the period from 22.02.1994 till 19.06.1997. The direction in the said order that applicant should pay the difference in pay even after 20.06.1997 till the date of the order dated 19.03.1998 is set aside.

(iii) In the circumstances of the case, there will be no order as to costs.

D. S. Bawali
(D. S. BAWALI)

MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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