

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 709/98.

Date of Decision : 14.12.1998.

N. S. Nikhare, Petitioner.

Shri G. K. Masand, Advocate for the
Petitioner.

VERSUS

Union Of India & Anr. 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 ? *NO*
- (ii) Whether it needs to be circulated to
other Benches of the Tribunal ? *NO*


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 709/98.

Dated this Monday, the 14th day of December, 1998.

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

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

N. S. Nikhare,
Deputy Chief Engineer
(Under Suspension),
Western Railway,
Churchgate,
Mumbai - 400 020.

Residing at -

Railway Officers' Flat No. P-61,
Budhwar Park, Wode House Road,
Colaba, Mumbai - 400 005.

(By Advocate Shri G. K. Masand)

... Applicant

VERSUS

1. Union Of India through
The General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.

2. The Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi.

(By Advocate Shri V.S. Masurkar)

... Respondents.

: OPEN COURT ORDER :

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

In this application, the applicant is
challenging the order of suspension dated 18.11.1997.
The respondents have filed reply opposing admission.
We have heard the Learned Counsels appearing on both sides.

2. The applicant who was working as Deputy Chief Engineer, Western Railway, Churchgate, Mumbai, was placed under suspension by order dated 18.11.1997.

The applicant's grievance is that, no charge-sheet has been filed in ^{me} a criminal case and investigation is not complete and unnecessary^y, the suspension is being continued. Therefore, he has approached this Tribunal for directing the respondents to reinstate him in service after quashing the order of suspension dated 18.11.1997.

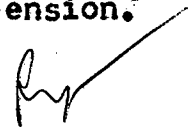
3. The respondents in their reply have justified the action taken against the applicant. They have pleaded that the applicant was caught red-handed when he was allegedly taking a bribe of Rs. 10,000/- from Mr. Ashok Shah and was arrested by the police. Therefore, the respondents have kept the applicant under suspension.

4. The Learned Counsel for the applicant has invited our attention to the observations of the Supreme Court in S.L.P. 3747/93 where the Supreme Court has observed that the order of suspension stands revoked if the ~~charge-sheet is~~ not filed within a particular date. Infact, earlier, a Division Bench of this Tribunal had quashed the order of suspension and on appeal, the Supreme Court only gave a direction that if the charge-sheet is not filed within a particular time, then the suspension will be revoked.



The Learned Counsel for the applicant placed reliance on Civil Appeal No. 1829 of 1998, where the Supreme Court by order dated 30.03.1998 set aside the order of the Tribunal which had quashed the order of suspension. But in the meanwhile, the Supreme Court noticed that the applicant had already been taken on duty as per the order of the Tribunal. In those circumstances, the Supreme Court did not interfere with the order of the Tribunal. In our view, a matter like this, cannot be decided on a straight ^{Jacket}away formula. Each case depends on its own facts and circumstances. The Learned Counsel for the respondents brought to our notice a decision of the Apex Court [1993 (24) ATC 386 - Children Film Society Of India] where the Supreme Court has observed that having regard to the seriousness of the charges, reinstatement cannot be ordered during the pendency of criminal case. We may also take notice of another judgement of the Supreme Court in Ashok Narayan (Civil Appeal No. 5511/97) where, by order dated 11.08.1997 the Supreme Court interefered with the order of cancellation of Suspension ^{by} of this Tribunal where it has been observed that when serious allegation has been made, the Tribunal should not have interefered with the order of suspension.

Therefore, each case depends on its own facts and circumstances. In the present case, the applicant is alleged to have been caught red-handed while accepting bribe of Rs. 10,000/- and he has been arrested by the police and remanded to police custody and then to judicial custody and later he was released on bail. Therefore, it is not a fit case where this Tribunal can interfere with the order of suspension.

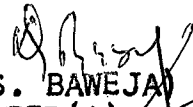



It is well settled that while exercising judicial review, this Tribunal is not sitting in appeal over the correctness of the order passed by the administration.

The Learned Counsel for the applicant contended that no charge-sheet is filed for the last one year and continuing the applicant indefinitely under suspension, is not warranted. This is a matter which the administration has to take into consideration while considering the representation of the applicant. Further, the rule itself provides for periodical review of suspension. Therefore, we feel that necessary direction should be given to the competent authority.

In our view, no ground is made out for our interference with the order of suspension at this stage.

5. In the result, the application is disposed of with a direction to the competent authority to consider and pass appropriate orders on the applicant's representation dated 06.03.1998 seeking revocation of suspension. Further, the competent authority should review the case of the applicant from time to time as provided under the rules. In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)
MEMBER(A)


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.