

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI (Hyderabad)

CAT/J/11

O.A./T.A. No. 403 of 1987.

Mr. Venkataramiah, Counsel for Applicant(s)

Versus

Mr. K. Jagannatha Rao, CGC Respondent(s)
Mr. M. P. Chandramani, SC for AP Govt

Date	Orders	
	<u>8/9/87</u>	
	Mr. M. P. Chandramani and Mr. Parameswara Rao on behalf of Mr. K. Jagannatha Rao present. Post the case on 10/9/87	
	<u>BNJ</u> BNJ VC	<u>D</u> DSR M(J)
	<u>13.9.87</u> counsel for both sides present. Part heard part heard. Adjourned to Thursday (17.9.87)	<u>D</u> DSR
	<u>BNJ</u> BNJ	<u>D</u> DSR
	<u>17.9.87</u> counsel for both sides present. Part heard adjourned to Tuesday (22.9.87) at the earliest. In both	<u>D</u> DSR
	<u>BNJ</u> BNJ	
	<u>24/9/87</u> <AV	
	<u>16/9/87</u> Counsel for applicant: <u>Partha</u> <u>Partha</u>	
	Application rejected vide separate order	
	<u>BNJ</u> (VC)	<u>D</u> M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. ~~PA~~ No. 403 1987

G. S. Prabhakar, I.P.S. Applicant(s)

Versus
Secretary Ministry of Home Affairs
and Others Respondent(s)

Sr. No.	Date	Orders
		<p>26-6-87</p> <p>Mr. V. Venkateswaran Mr. K. Jagannatha Rao Mr. M. P. Chandy Rao W. D. Jay Admitted to hearing (17-7-87) at the nearest Mr. Venkateswaran</p> <p><i>BVN</i></p> <p><i>BVN</i></p> <p>1-7-87 C.A.V</p>
		<p>17-7-87</p> <p>Admitted vide order dt. 17-7-87. on separate day Post this Case on Monday i.e 20-7-87 for Interim orders.</p> <p><i>BVN</i></p> <p><i>BVN</i></p> <p>17-7-87 (D.R.) M.G.</p>
		<p>24-7-87</p> <p>24-7-87 counsel for both sides present rejecting date to be fixed Separate orders not regarding interim order and fixing dates for filing counter & final hearing Post the main case for final hearing on 21-8-87 at the top of the list</p> <p><i>BVN</i></p> <p><i>P.T.O.</i></p>

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Sr. No.	Date	Orders
		24-7-87
		Mr. Venkateswara - P Mr. Chandrasekari - P Mr. Parameswara Rao f/a Mr. K. Jagannatha Rao - P.
		Interim orders rejected. Post the main case for final hearing on 21-8-87 at the top of the list. Office to communicate the two orders of Tribunal dt 17-7-87 and 24-7-87 immediately. <i>note</i>
		<i>DR</i> DSR
		<i>BWP</i> <i>BNS</i>
		<u>For being Remanded</u>
		31-7-87
		couched for both sides present. Mr. Venkateswara under notice to file an addl affidavit and seeks adjournm't. Post for orders on Friday 7-8-87
		<i>DR</i> DSR
		<i>BWP</i> <i>BNS</i>
		7-8-87
		<u>MAB 296/87</u> directed
		Post the main case on 21-8-87 for final hearing
		<i>DR</i> DSR
		<i>BWP</i> <i>BNS</i>
		1-9-87
		adjourned to 3-9-87 at the request on behalf of Pelpoony court
		<i>DR</i> DSR
		<i>BWP</i> <i>BNS</i>

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ORIGINAL APPLICATION NO. 403 / 87
(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.
JAYASIMHA, VICE CHAIRMAN.)

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The applicant who is a Senior Indian Police Service Officer in the rank of Special Inspector-General of Police, has filed this application questioning the order issued in G.O.Rt.No.1944 dated 6-6-1987 under which he has been placed under suspension on grounds of contemplated disciplinary proceedings.

2. According to the applicant, he worked as D.I.G. of Police, Vigilance Cell, Civil Supplies Department from 2-12-1982 to 28-2-1985 and later in the rank of I.G.P. in the same post from 1-3-85 to 23-3-85. In this capacity, he was in overall charge of the Police Wing in the Civil Supplies Department. He did not have anything to do with either according of sanction under Secret Service Fund or with its drawal and disbursement. The Sanctioning Authority is the Superintendent of Police (Vigilance Cell). The drawal of funds is by an officer designated as "Drawal Officer", who is a Deputy Supdt. of Police. During this period, Shri Ch.Koteswara Rao was working as Supdt. of Police, Vigilance Cell.

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3. The applicant says that as expenditure under Budget allocation has to be incurred and the pending bills have to be met before the end of financial year, that is, 31st March, 1985, two bills of Rs.30,500/- were claimed in March, 1985 to meet Secret Service Funds claims. The first cheque was received on 21-3-85 and the second on 29-3-1985. The Cash Supdt. in-charge, one Mr. Krishnaji Rao, is responsible for encashing the cheques, disbursement of funds and maintenance of cash book. The applicant himself never dealt with Secret Service Funds in 1983 or 1984 ^{or} even in 1985. Any allegation on disbursement of funds cannot be fastened on the applicant. The applicant was relieved from that post on transfer on 23-3-1985. The second cheque was received on 29-3-1985 and the first cheque could not have been cashed on 21st or 22nd.

4. The applicant received the order dated 6-6-1987 placing him under suspension only on 16-6-1986, that is, ten days after its issue. Before the service of the order, the issue of the order was reported in the press. The applicant was called by the D.G. of Police on 11-6-1987 and when he called on the D.G.P., he asked the applicant

to seek voluntary retirement indicating that if he did so, the suspension order would be withdrawn. The applicant was surprised at this proposal.

5. The order of suspension says that he had connived with Ch.Koteswara Rao in misappropriating Govt. Funds. It also states that he had abused his official position by keeping certain official papers with him even after relinquishing the charge in the Civil Supplies Department. The applicant says that he had no connection with Secret Funds and to lend verisimilitude to the charge, some insignificant missing files unconnected with the allegations in the offence attributed to him have been added to the charge. The applicant further says that according to his knowledge, the Law Department had advised the Administrative Department that there was no basis or legal justification for suspending the applicant. The ACB in a desperate state to make out a case against him has deputed one K.Subbanna, Deputy Supdt.of Police to conduct ^Q preliminary enquiry. Subbanna was an officer subordinate to the applicant and entrusting investigation to him is a grave error of propriety. The allegations

are themselves based on a complaint filed by a Clerk in the Vigilance Cell dissatisfied with the distribution of Secret Service Funds by Krishnaji Rao. One, SSP. Yadav, ~~Supdtt of Police~~, Vigilance Cell, obtained statements from Krishnaji Rao and A. Subba Rao, Court Clerk of the applicant and sent them to ACB. Alleging intimidation, threats and pressures. Subba Rao made complaints to the ACB.

6. The applicant further says that the Respondent No.2, that is, State Government had not applied its mind to the relevant statutory requirement under Rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1969. The order has been issued mechanically without any material before the Government as regards the applicant's alleged nexus with the allegations. Receipts show the alleged misappropriation is only about Rs. 8,500/- and is exclusively traceable to Krishnaji Rao. There is a deliberate attempt to trap the applicant on extraneous considerations.

7. The applicant also mentions ~~on~~ various instances to show that the ACB's credibility as an impartial investigation agency is suspect. (1) He had pointed out taking ~~out~~ one Prabhakar Rao by the ACB was not desirable; (2) in the matter of suspension of one K. Ch. Venkatara Reddy he had

pointed out total absence of any such *prima facie* case; (3) he had clashed with the Director, ACB in the matter relating to irregularities committed by Director, Police Communications (4) he had objected to Subbanna conducting the enquiry and (5) SSP. Yadav is having ~~a~~ animus with the applicant, as he had worked as applicant's subordinate and he had issued memos. for his slack work.

8. The applicant also contends that his case does not fall ^{under} in any of the guidelines issued by the Government of India in M.H.A. Letter no.43/56/64-AVD dated 22-10-1964. No action can be taken by way of suspension or initiation of disciplinary action in regard to secret funds as it will involve breach of secrecy, confidentiality and inviolability of services of information. The disciplinary enquiries would frustrate the said objects and hence cannot be held.

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9. In Miscellaneous Application No.290/1987 praying for a direction to ~~the~~ reinstate the applicant revoking the suspension orders, the applicant had stated that under Rule 3(1)-proviso (2) of the AllIndia Services (D&A) Rules, an order of suspension ~~shall~~ cease to be valid after the expiry of the period of 45 days from the date of despatch by the competent authority of the order unless within the said period, for reasons to be recorded, the Central Government extend the period of 45 days for a further period of 45 days. The Rule also mandates either within the period of 45 days or within the period of extension (if any), the disciplinary proceedings should be initiated or orders of suspension is confirmed by the Central Government. The applicant submits that the period of 45 days expired on 25-7-1987. No orders of extension have been passed by the Central Government within the said period. The applicant went to Delhi and was away from Hyderabad from 28-7-1987 to 31-7-1987. He had informed the Director-General, Police about his leaving for Delhi for preferring an appeal to the Central Government. On return

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From Delhi on 1-8-1987, he learned that a memorandum of charge/tied to the gate of his residence on 30-7-1987 and the document of Memorandum of Charge was dated 25-7-1987 and communicated with a memorandum of Director-General, Police dated 27-7-1987 in Ref.No.1030/ g1/87 . The memo. of charge with the authentication of the Section Officer stating "forwarded by orders" does not contain any date. It did not also contain the date on which the Chief Secretary to the Government had signed the memo. The applicant apprehends that the order was served by affixure hurriedly on 30-7-1987, and contends that such affixture is invalid in view of the Rule 27 of the All India Services (D&A)Rules, 1969. Hence, in the eye of the law, there is no initiation of disciplinary proceedings by the second respondent either within 45 days or even thereafter. The applicant states having regard to the subsequent circumstances, viz., expiry of 45 days from the date of suspension, absence of initiation of proceedings within the said period by communication of charge-memo., absence of an order of extension or confirmation by the Central Government within the stipulated period and the consequent invalidity of the suspension/by virtue of Rule 3(1) proviso(2), the applicant submitted an appeal

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to the Central Government on 29-7-1987 bringing these facts to the notice of the Central Government through proper channel. The applicant has, therefore, sought for a declaration that the impugned orders of suspension dated 6-6-1987 has ceased to be valid and its continued operation is illegal and unjust.

10. We have heard Shri V. Venkataremanaiah, Learned Counsel for the applicant and Shri M.P. Chandramouli, Special Counsel for the State of Andhra Pradesh. The following issues have been raised in the affidavit and in the course of the arguments : (1) whether the applicant has to exhaust the alternate remedy available to him before filing this application in this Tribunal; (2) whether the suspension order has ceased to become effective consequent non-compliance with the provisions of proviso(2) to Rule 3 of the All India Services (D&A) Rules, 1969 and (3) the order suspension is arbitrary, illegal and invalid for the reasons urged by the applicant.

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11. We will take up the first contention now. Section 20 of the Administrative Tribunals Act, 1985 says that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed all the remedies available to him under the relevant service rules as to redressal of grievances. An order of suspension made or deemed to have been made under the All India Services (D&A)Rules, 1969 is one of the specified order over which an appeal lies to the Central Government vide Rule 16(1) of the said Rules. At the time of admission, Shri Venkataramaiah had argued that an appeal to the Central Government having regard to ^{the} facts and circumstances of the case was not an effective remedy and pending a further consideration in this issue, we had admitted this application. This Tribunal felt that the question as to whether an appeal to the Central Government is an efficacious remedy and therefore, a bar to admit an application is one of general importance which is frequently raised in respect of action taken by the State Govt. against members of the All India Service, and therefore,

it should consider this issue after notice to the Government of India.

12. No counter has been filed by the Government of India on this issue even though a notice has been sent to them. Shri M.P.Chandramouli, Special Counsel for the State of Andhra Pradesh has argued & that after the admission of this case, the applicant had submitted an appeal to the Central Government on 28-7-1987, in accordance with the Rule 16(1) of the All India Services (D&A)Rules,1969. In his appeal, the applicant has stated that the suspension order was not served on him on 16-6-1987 at 18-35 hours, after ten days, although he was very much on duty till 16-6-1987. He urged two grounds against the order of suspension, viz., (1) violation of statutory and mandatory rules & contained in All India Services (D&A)Rules, 1969 and (2) even on consideration of facts and merits of the case, the suspension order lacks substance and is arbitrary, illegal and influenced by extraneous considerations. In his

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appeal grounds, the applicant has urged practically all the points which he has raised before this Tribunal.

Shri Chandramouli relies on 1987(2) ATC 850 - Bhagwan Das Vs. Northern Railway Chief Engineer, New Delhi & Ors., in which the Allahabad Bench of this Tribunal held that it is not open to an applicant to pursue two remedies, one in the Tribunal and the other in the Department, simultaneously. Shri Venkataramaiah on the other hand contends that even though the applicant has submitted an appeal to the Central Government against the order of suspension, there is no bar to this Tribunal considering this application on merits. He relies on Purshottam Singh Vs. Union of India & Ors. (1981 (1) SLJ 428).

Shri G. Parameswara Rao, Advocate appearing on behalf of Shri K. Jagannadha Rao, Standing Counsel for the Central Government submitted that in view of the fact that while the Tribunal was considering the issue whether an appeal to the Government of India is an effective alternate remedy or not and the applicant had taken a stand that it is not an effective remedy and therefore, the application should be admitted, the applicant himself has chosen to

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submit an appeal under Rule 16 of the All India Services (D&A)Rules, 1969. In his appeal, the applicant has raised the same issues which he has urged before this Tribunal. He submitted that the plea taken by the applicant that an appeal to the Central Government is not an effective alternate remedy fails and therefore, the applicant has to be rejected on the ground of non-exhausting ~~non-existing~~ of alternate remedies available.

13. We have considered these contentions. It may be mentioned there that on consideration of the grounds urged by the Learned Counsel for the applicant, we had in our Order dated 17th July, 1987 while admitting the application, specifically stated that the issue an appeal to whether/the Central Government under Rule 16 of the All India Services (D&A)Rules is an effective and efficacious remedy would be ~~again~~ gone into at the time of final hearing. When the applicant has taken the stand ~~stated~~ that he has approached this Tribunal since the appeal provided under the A.I.S.(D&A)Rules is not an effective ~~an~~ remedy, it would be a contradiction ~~in~~ his

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own stand if he submits an appeal under Rule 16 of the All India Services (D&A) Rules, 1969 on the same issues which he has raised before this Tribunal. The applicant in his affidavit says that he had gone to Delhi personally for submitting an appeal to the Central Government. If that be the position, we do not see how the applicant can contend that an appeal to the Central Government is not an effective alternate remedy. We also concur with the view expressed by the Allahabad Bench of this Tribunal in 1987(2) ATC 850, which held that two remedies cannot be pursued simultaneously. We, therefore, hold that the applicant has to exhaust the alternate remedy available to him, viz., appeal to the Central Government under Rule 16 of the All India Services (D&A) Rules, 1969 and since the applicant has availed of that opportunity even while the Tribunal was considering his application, this application is to be rejected on the ground that it is not open to the applicant to pursue two remedies simultaneously for the same relief for the same reasons.

XXXXXX Similarly, we are

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unable to accept the contention of Shri Venkataramanaiah that it is open to the applicant to pursue two alternate remedies or that even though he has submitted an appeal to the ~~Government~~ Central Government that itself is not bar to his advancing the view that it is not an effective one. The decision rendered in 1981(1)SLJ 428 relied upon by Shri Venkataramanaiah is distinguishable for the reason that in that case the Writ Petition had already been admitted and heard on merits. In the present case, the admission itself was subject to the issue whether the alternate remedy available is effective or not being considered. In these circumstances, the application has to be rejected. Consequent to the view we have taken, we direct the Central Government to dispose of the appeal within two months from the date of receipt of this order.

14. In view of our decision rendered above, we do not consider it appropriate for us, at this stage, to express any view on the two other points over which arguments were submitted. The application is accordingly rejected.

No costs.

B.N.Jayasimha

(B.N.JAYASIMHA)
Vice Chairman

D.Surya Rao

(D.SURYA RAO)
Member (Judl.)

16th October, 1987.

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