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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 433 /93
T.A. No.

199

DATE OF DECISION 9-7-1996

Ashok Kumar Bhardwaj Petitioner

Mr. J. K. Kaushik Advocate for the Petitioner (s)

Versus

The Union of India and others Respondent

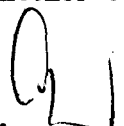
Mr. U. D. Sharma, Advocate for the Respondent (s)

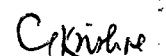
CORAM :

The Hon'ble Mr. Hon'ble Shri Gopal Krishna, Vice Chairman

The Hon'ble Mr. Hon'ble Shri O.P. Sharma, Member (Administrative)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*.
2. To be referred to the Reporter or not ? *yes*.
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*.
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*.


(O.P. Sharma)
Member (A)


(Gopal Krishna)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH:
J A I P U R.

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O.A. NO. 433/1993

Date of order: 9-7-1996

Ashok Kumar Bhardwaj

: Applicant

Vs.

The Union of India and Ors. : Respondents

Mr.J.K.Kaushik, learned counsel for the applicant
Mr.U.D.Sharma, learned counsel for the respondents

CORAM:

HON'BLE SHRI GOPAL KRISHNA, VICE CHAIRMAN
HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)

O R D E R

(PER HON'BLE SHRI GOPAL KRISHNA, VICE CHAIRMAN)

Applicant Shri Ashok Kumar Bhardwaj has filed this application under Section 19 of the Administrative Tribunals Act, 1985, assailing the impugned order dated 21.6.1993 at Annexure A-1 passed by respondent No.4 rejecting his request for revocation of suspension.

2. Briefly, the facts of the case are that the applicant while being posted as Postal Assistant in Bharatpur Division was implicated in a case under Section 109 of the Criminal Procedure Code on 20.7.1990. He was placed under suspension vide letter dated 23.7.1990 (Annexure A-3). However the criminal case against the applicant was dropped. His case was not reviewed after three months in terms of the provisions contained in

C.A. No. 433/1993

FR. 53. The case was reviewed on 9.11.1990 and only 5% increase was made and the applicant was paid 55% of pay by way of subsistence allowance. He is being treated and continued as under suspension. After the criminal case was dropped, he represented to respondent No.4 for revocation of his suspension but ultimately his request was rejected by the impugned order. The main contention of the applicant is that the criminal case having been dropped, the suspension order automatically comes to an end. It is also contended that the suspension has to be treated as duty with full pay and allowances.

3. On the contrary, the respondents have stated that the present application was filed without preferring an appeal against the order of suspension as envisaged by Rule 23(I) of the C.C.S. (C.C.A.) Rules, 1965 (for short 'Rules') and therefore the present application is not maintainable without exhausting the remedy of appeal provided by law. It is also stated by the respondents that three other criminal cases have been registered against the applicant at the Police Station Kotwali Bharatpur and they are being investigated by the Police. The applicant's case was reviewed in terms of FR 53 but no justification was found by the competent authority to increase the subsistence allowance. Since there are other criminal cases under investigation against

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the applicant by the police, there was no legal requirement to first revoke the suspension order and pass another suspension order in respect of the other cases. It is further stated that it is permissible under law to continue the former suspension order even in respect of other criminal cases under investigation, inquiry or trial as laid down in rule 10(5)(a) of the Rules.

4. We have heard the learned counsel for the parties and have carefully perused the records.

5. The main burden of the arguments of the learned counsel for the applicant is that since the criminal case under Section 109 of the Cr.P.C. was dropped against the applicant, the suspension order automatically comes to an end and it ceases to be operative. Reliance has been placed by him on a judgment in the case of Devendra Pratap Narain Rai Sharma Vs. State of U.P. and others, reported in AIR 1962 S.C.1333 and a decision in OA No.57/87 dated 4.9.1991 Tejpal Yogi Vs. Union of India and others. It is note worthy that the Hon'ble Supreme Court had decided the case referred to above on 3.11.1961 when the C.C.S.(CCA) Rules, 1965, had not come into force. The Rules of 1965 had come into force on 1.12.1965. Further-more, the matter before the Hon'ble Supreme Court was in relation to the rules applicable to the employees of Uttar Pradesh Government. All the details of those Rules have not been placed before us. The other case

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relied upon by the learned counsel for the applicant namely Tej Pal Yogi vs. Union of India and others (supra) bears facts which are distinguishable from the facts of the present case and in that case the applicant Tej Pal Yogi had impugned the Communication dated 2.2.1987 sent to him by the respondents by which he was informed that the question of payment of pay and allowances for the period of his suspension would be decided on finalisation of the disciplinary proceedings.

6. In view of the provisions contained in rule 10(5)(a) of the Rules to the effect that an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authorities competent to do so, we are of the view that the authorities referred to by the learned counsel for the applicant and relied upon by him are not of any help to him. Rule 10(5)(a) of the Rules lays down that an order of suspension shall continue to remain in force until it is modified or revoked by the competent authority. There is nothing like deemed revocation of suspension in the provisions contained in rule 10 of the Rules. Therefore, the suspension of the applicant cannot be treated as automatically revoked on the dropping of the criminal proceedings under Section 109 of the Code of Criminal Procedure against the applicant.

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7. In view of the legal position stated above, this application has no merits. It is, therefore, dismissed. No order as to costs.


(O.P. Sharma)
Member (A)


(Gopal Krishna)
Vice Chairman