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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A. No. 381/93

Dt. of order: 21.4.94

Pawan Singh

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. K.L.Thawani

: Counsel for applicant

Mr. U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Judl.)

Hon'ble Mr. O.P.Sharma, Member (Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER (ADM.).

Applicant Pawan Singh has filed this application under Sec. 19 of the Administrative Tribunals Act, 1985, wherein he has prayed that the order of suspension Annex.A-1 dated 27.2.90 may be quashed and the respondents may be directed to reinstate the applicant in service.

2. The applicant who belongs to Indian Postal Service, RMS, while functioning as Sr. Superintendent, RMS 'J' Division, Ajmer, was removed from the service vide order dated 28.9.78. The applicant's application registered as T.A.825/86 against the order of removal from service, was disposed of by the Tribunal vide order dated 23.1.89. The order of removal was set aside by the Tribunal with the directions to the Departmental Authorities to continue the proceedings from a certain stage. According to the applicant, the Departmental Authorities did not act within the time limit laid down by the Tribunal and certain further extensions were granted by the Tribunal to the Departmental authorities on their request for further action. However, the Departmental Authorities had time only upto Oct. 89 for passing any final orders. After the Tribunal passed the order dated 23.1.89 quashing the order of removal from service and allowing the Departmental Authorities to proceed from a certain stage of disciplinary proceedings the respondents passed order Annex.A-1 dated 27.2.90 deeming the applicant to be under suspension in view of the provisions of sub-rule 4 of Rule 10 of the CCS (CCA) Rules. This order was deemed

4. The respondents in their reply have taken a preliminary objection as to limitation in filing the O.A. But during the arguments the learned counsel for the respondents stated that he would not press this point. The respondents have further stated that the applicant has not availed himself of the statutory remedy of appeal provided under Rule 23(1) of the CCS (CCA) Rules. They have added that the representation dated 13.3.93 made by the applicant has no relevance to the prayer made by him in para 7 of the O.A. for quashing the suspension order. The respondents had initiated again in pursuance of the directions of the Tribunal contained in their order dated 23.1.89 but it was not possible to adhere to the time schedule prescribed by the Tribunal because a large number of documents pertaining to the enquiry including the written brief submitted by the Presenting Officer which had been produced before the Tribunal during the hearing of the T.A. No.825/86 had to be obtained from the Registry of the Tribunal. They have further stated that since the Disciplinary proceedings against the applicant are not concluded and these are in the final stages, there is adequate justification to continue the applicant under suspension till the conclusion of the disciplinary proceedings culminating into the passing of the final order, by Disciplinary Authority.

5. During the arguments, the learned counsel for the respondents stated that there was nothing to suggest in this case that because of the time schedule laid down by the Tribunal in their order dated 23.1.89 or by extensions subsequently granted, for finalising disciplinary proceedings, the Department was now precluded from continuing with the disciplinary proceedings. He added that the department would now finalise the disciplinary proceedings within a period of 3 months and the order of suspension need not be disturbed till then.

6. We have heard the learned counsel for the parties and have gone through the records and the judgments cited before us.

7. No appeal lies against an order by the President and therefore, the objection that the remedy of appeal has not been

to be effective from the date of removal of service of the applicant namely 29.9.78.

3. The applicant's case is that in view of the fact that the time limit, as extended by the Tribunal from time to time, for finalising the disciplinary proceedings has already expired, the Department cannot now continue with the disciplinary proceedings. The applicant has been actually under suspension from February 1990 for a period over 4 years now and nationally from 1978. There is no justification now to continue the applicant under suspension. The learned counsel for the applicant has cited before us a judgment of the Hyderabad Bench of the Tribunal in P.Chandra Manoharan Vs. Union of India & Aar. (1987) 4 ATC 979 wherein the Tribunal were dealing with a case involving, inter alia, suspension of an officer to whom no charge sheet had yet been issued. The Tribunal had noted that all records of investigation had been taken over by the Appropriate Authority in charge of the investigation and were of the view that reinstatement of the government servant would therefore not prejudice investigation, trial or inquiry. He also referred to the judgment of the Hon'ble Supreme Court in the case of O.P.Gupta Vs. Union of India & Ors. (1987) 5 ATC 14 wherein the Hon'ble Supreme Court held that long continuation of suspension, pending departmental enquiry is punitive in nature and is entitled to make representation for expeditious disposal of the departmental proceedings. If Disregarding such a representation and treating the official under suspension for an unreasonably long period, such action would be arbitrary, unjust and against the principles of natural justice. The learned counsel for the applicant has drawn our attention to Annex.6 dated 13.3.93, which is a representation by the applicant to the Secretary, Ministry of Communications on the subject of revocation of suspension. In this representation, the applicant has sought reinstatement in service on various grounds mentioned therein. The respondents have not taken any decision on this representation of the applicant.

availed ~~settled~~ of is not tenable. According to the respondents, the disciplinary proceedings are at their concluding stage. The learned counsel for the applicant and the applicant who is present in person have however both stated that the enquiry has already been finalised and the I.O. has submitted his report dated 14.1.91. The applicant claims that he has not only received a copy of the report but has also given a reply to the Disciplinary Authority. The suspension order dated 27.2.90 is actually an order of deemed suspension in view of the provisions of Rule 10(4) of the COS(CCA) Rules. The applicant has already been under actual suspension for over 4 years. As stated by the learned counsel for the applicant and the applicant himself the enquiry itself was finalised as far back as Jan.1991. Question now arises, what purpose would be served by keeping the applicant under suspension for a period of over ~~4~~ ^{three} years even after the conclusion of the enquiry. Ordinarily government servants are placed under suspension in contemplation of disciplinary proceedings against them. No grounds were cited before us by the learned counsel for the respondents to justify the applicant's continued suspension. However, one of the objects in placing them under suspension is that they should not be able to tamper with the documents relevant for the investigation or enquiry and should not be able to suborn witnesses who may be relevant to the case. None of these factors would be relevant now in this case once the enquiry had already been completed. The applicant's representation seeking revocation of his suspension was not replied to by the respondents. In view of the circumstances of the case and keeping him view the ratio of the judgments cited before us, we are of the view that there is no justification for keeping the applicant under continued suspension. We, therefore, direct that the applicant shall be taken back on duty forthwith. The applicant on being taken back on duty may be given a non-sensitive post in the Department at a place other than the one where the misconduct alleged to have been committed by him took place.

8. The O.A. stands disposed of accordingly with no order as to costs.

(O.P.Sharma)
Member(A).

Gopal Krishna
(Gopal Krishna)
Member(J).