

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 19.04.02

OA No.429/2000

Shiv Ratan Swami s/o Shri Gangadhar Swami at present working on the post of Senior Accountant in the office of Accountant General (A&E), Rajasthan, Jaipur r/o O.No.89, Type-II, A.G.Colony, Bajaj Nagar, Jaipur

..Applicant

Versus

1. Union of India through the Comptroller and Auditor General of India, Bahadur Shah Zafar Marg, New Delhi.
2. The Accountant General (A&E), Rajasthan, Jaipur

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. P.C. Sharma, proxy counsel to Mr. Sanjay Pareek, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Member (Judicial)

Hon'ble Mr. H.O.Gupta, Member (Administrative)

ORDER

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the orders dated 16.8.2000 (Ann.A1) and 25.8.2000 (Ann.A2) whereby he has been placed under deemed suspension from 17.3.1997 and has been issued a Memorandum of charges under rule 14 of the CCS (CCA) Rules, 1965. In relief, he has prayed for holding the said orders as illegal.



2. The case of the applicant as made out, in brief, is that:-

2.1 During his employment as Senior Accountant, on 14.1.1997, his wife met with an accident in the kitchen as her saree caught fire and in spite of best efforts, she died on 21.1.1997. His father-in-law lodged a F.I.R. on 17.1.1997 and a case against him, under Section 498-A read with Section 306 of the Indian Penal Code, was registered. On 17.3.1997, the Judicial Magistrate ordered for his judicial custody and based on his bail application he was bailed out on 19.3.1997. After release from the judicial custody, he reported for duty and was allowed to join his duties. Based on the requirement of the respondents, he submitted a certificate dated 15.4.1997 (Ann.A3) issued from the office of the Superintendent, Central Jail, Jaipur wherein the jail authorities have clearly stated that he remained in jail for a period less than 48 hours. A criminal case against him was tried in Special Court, Jaipur. The case against the applicant was found to be false and he was exonerated from the charges levelled against him, as may be seen from judgment dated 5.8.2000 (Ann.A4). Vide order dated 16.8.2000 (Ann.A1), he was placed under suspension w.e.f. 17.3.1997. On 24.8.2000 (Ann.A5), he submitted a representation stating that he has already ^{been} acquitted by the Criminal Court in the pending criminal case in which he was detained in judicial custody. He was placed under suspension on the ground that in the year 1997, he was detained in judicial custody for a period more than 48 hours. He was issued a chargesheet dated 25.8.2000 (Ann.A2) under rule 14 of the CCS (CCA) Rules, 1965 on the allegation that he furnished incorrect

information vide his letter dated 15.4.1997 wherein he intimated his detention in judicial custody as less than 48 hours.

3. The main grounds taken by the applicant are that:-

3.1 The order dated 16.8.2000 (Ann.A1) placing him under suspension is illegal as the Deputy Accountant General was not the competent authority to place him under suspension. Similarly, the memorandum of charges Ann.A2 on the same grounds is illegal.

3.2 The accident relates to the month of March, 1997. It was in the knowledge of the respondents that he remained under judicial custody and thereafter bailed out. He faced trial and ultimately he was acquitted by the Criminal Court. This fact was also brought to the notice of the Department. The effect of final order of the Criminal Court is that his detention was bad in law. Once the applicant has been exonerated, he cannot be placed under suspension in connection with the said criminal case with retrospective effect.

3.3 In view of the the detailed judgment passed by the Criminal Court, it is an exercise in futility to conduct an inquiry on the same charge which is not sustainable in law. Therefore, it deserves to be held as illegal.

4. The respondents have contested this application and have submitted that:-

4.1 He was suspended w.e.f. 17.3.1997 in terms of sub rule 21(1) of rule 10 of the CCS (CCA) Rules, 1965. He

has been chargesheeted for furnishing incorrect information wherein he has intimated the Department that his detention in judicial custody was less than 48 hours. The father-in-law of the applicant vide his letter dated nil received in the office of the respondents on 18.2.1997 informed that his daughter has been allegedly burnt by setting her on fire with the match stick by the applicant after putting Kerosene oil on 14.1.1997. She died after struggling for 8 days. Based on the F.I.R. filed, a case under Section 498A and 306 was registered against the applicant. Immediately after the F.I.R. was filed, the applicant absconded himself wilfully to evade police arrest and subsequently deemed suspension was ordered. Thus, it is clear that he was absenting himself unauthorisedly and wilfully. Therefore, the order dated 16.8.1997 treating the said period as dies-non is in confirmity with the provisions of FR 17(1) and proviso to FR 17(A), was passed. The applicant has challenged the said order in OA No.144/99 which is still pending. Further, leave is not a matter of right under rule 7(1) of CCS (Leave) Rules, 1972.

4.2 The certificate issued under the signature of the Deputy Superintendent of Jail, as furnished by the applicant, does not mention the exact timings of entering and subsequent release from the judicial custody. Therefore, the Superintendent, Central Jail was requested vide letter dated 23.5.2000 (Ann.R3). The Superintendent, Central Jail, Jaipur vide his letter dated 25.5.2000 (Ann.R4) has informed that the applicant was in judicial custody for more than 48 hours and accordingly, the applicant was placed under deemed suspension and the

disciplinary proceedings have been instituted against him for supplying incorrect information to the Department. The action of the respondent No.2 in placing the applicant under deemed suspension is in conformity with the rules. While placing the applicant under deemed suspension vide order dated 16.8.2000, the copy of the acquittal order has not been received in the office of the respondent No.2 which was provided by the applicant only on 17.8.2000. Besides this, the certificate dated 15.4.1997 submitted by the applicant did not contain the timings of entering and release from the judicial custody. This certificate was incorrect since in a reference, the jail authorities confirmed that he remained under judicial custody for more than 48 hours.

4.3 The orders issued in the instant case by the Deputy Accountant General are perfectly in order and are as per instructions contained in Schedule "E" of CAG (MSO) Administrative Vol.II (Ann.R5). The applicant will have full opportunity to defend his case before the Enquiry Officer/Disciplinary Authority, but without putting up his defence, he has rushed to the Tribunal and on this ground the OA is liable to be dismissed. The memorandum of chargesheet has been served on the ground that he misrepresented the Department and concealed material fact.

5. The applicant has not filed rejoinder.

6. Heard the learned counsel for the parties and perused the record.

6.1 During the course of arguments, the learned

counsel for the applicant submitted that the applicant has been placed under deemed suspension vide order dated 16.8.2000 with retrospective effect from 17.3.1997. He submitted that notwithstanding the power of respondents to place him under deemed suspension under sub-rule (2)(a) of Rule 10 of CCS (CCA) Rule, 1965, such powers cannot be exercised after a long period of three years and that too when the applicant has been exonerated in criminal case which was the very basis of his deemed suspension. He further submitted that when the applicant has been exonerated of the criminal charge, keeping him in judicial custody is established to be incorrect. Therefore, notwithstanding whether the applicant was in judicial custody for 48 hours or more, the very order of placing him under suspension after he was exonerated in the criminal case, which was the basis of placing him under suspension, would be non-application of mind. He further submitted that he will not press the grounds with regard to the competency of the Deputy Accountant General to place under suspension or to issue the chargesheet. He further submitted that the applicant had submitted a valid document from the jail authorities wherein the jail authorities have clearly stated that the applicant was under detention for less than 48 hours. The respondents after three years have obtained another certificate from the jail authorities wherein the jail authorities have stated that the applicant was under suspension for more than 48 hours and this was made the basis for placing him under deemed suspension. Since the applicant had given a valid certificate from the jail authorities, he cannot be issued a chargesheet based on a subsequent letter issued by the jail authorities.

6.2 The facts of the case are that the applicant was placed under deemed suspension vide impugned order dated 16.8.2000 (Ann.A1) w.e.f. 17.3.1997 for the reason that he remained in judicial custody for a period exceeding 48 hours in terms of sub-rule 2(a) of rule 10 of CCS (CCA) Rules, 1965. Based on the F.I.R. filed by the father-in-law of the applicant, the applicant was arrested and later on released on bail. The Special Court, Jaipur vide their judgment dated 5.8.2000 acquitted the applicant of the charges levelled against him under Section 498-A and 306 of the I.P.C. The respondents have stated that the applicant brought to their notice the order of the Criminal Court acquitting the applicant, only on 17.8.2000 whereas the applicant was placed on deemed suspension vide order dated 16.8.2000. This is not denied by the applicant. The chargesheet was issued for furnishing incorrect information with regard to his detention in judicial custody. As per respondents, the applicant remained in judicial custody for more than 48 hours based on the letter dated 25.5.2000 (Ann.R4) issued by the Superintendent, Central Jaipur, Jaipur. According to the applicant, he remained in police custody for less than 48 hours relying on the letter dated 15.4.97 (Ann.A3) issued by the Dy. Superintendent, Central Jail, Jaipur.

6.3 So far as the prayer of the applicant for holding the enquiry based on the chargesheet dated 25.8.2000 (Ann.A2) as illegal, we are not inclined to grant this relief for the reasons that the chargesheet contains allegations for furnishing incorrect information based on the documents as available with the respondents. The respondents have to prove the allegation in the

enquiry. The applicant can put forth his defence before the Enquiry Officer and the Disciplinary Authority, who performs quasi-judicial functions.

6.4 With regard to the prayer of the applicant for holding the deemed suspension as illegal, we find that the applicant was placed under deemed suspension vide order dated 16th August, 2000 w.e.f. 17.3.97 i.e. after about 3½ years on the ground of detention in judicial custody for a period exceeding 48 years under sub rule 2 (a) of rule 10 of the CCS (CCA) Rules, 1965. Under the said rule, the applicant ~~can~~ ^{is to} be placed under suspension from the date he was detained in police custody provided the detention is for more than 48 hours. Although the order of suspension was passed after the acquittal order of the Criminal Court dated 5.8.2000, but this order was brought to the notice of the respondents by the applicant only after they passed the suspension order. Be that it may, in case of deemed suspension, the suspension takes effect automatically even without a formal order. Although such an order is desirable, the validity of suspension is not affected by non-issue of the specific order of the suspension. Therefore, the action of the respondents in ordering suspension w.e.f. 17.3.97 vide their order dated 16.8.2000 (Ann.A1), is in accordance with statutory rules.

7. In view of above discussions, the prayer of the applicant is devoid of merit and this O.A. is, therefore, dismissed without any order as to costs.


(H.O.GUPTA)
Member (Administrative)


(S.K.AGARWAL)
Member (Judicial)