

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.241/2002 Date of order: 30.5.2002

Badri Lall, S/o Sh.Onkar, R/o Village 17, Meel Pali,
Teh. Khandar, Distt.Sawaimadhopur (Raj.) (Khallas).

...Applicant.

Vs.

1. Union of India through Secretary, Central Water Commission, Chambal Division, 84/93-96, Ajay Marg, Pratap Nagar, Sanganer, Jaipur.
2. Executive Engineer, Central Water Commission, Chambel Division, 84-93-96, Ajay Marg, Pratap Nagar, Sanganer, Jaipur.
3. Assistant Engineer, Central Water Commission, Sub-Division, Lower Chambel, Pali (Raj.).
4. Junior Engineer, Central Water Commission, Pali.

...Respondents.

Mr.P.S.Sharma : Counsel for applicant.

CORAM:

Hon'ble Mr.A.P.Nagrath, Administrative Member.

Hon'ble Mr.J.K.Kaushik, Judicial Member.

PER HON'BLE MR A.P.NAGRATH, ADMINISTRATIVE MEMBER.

The applicant was working as Khallas under respondent No.3. An FIR was lodged against him in Khandar Police Station and a case under sections 147, 148, 451, 307 IPC was registered against him. He was arrested and remained in Judicial/Police custody w.e.f. 18.1.99 to 20.1.99. The total period of detention in Jail was more than 48 hours. He was placed under suspension by respondent No.2 vide order dated 23.3.99 (Annex.A6) taking note of the fact that he remained in Jail for more than 48 hours. The order of suspension has been issued under the provisions of sub rule



(2) of Rule 10 of the CCS (CCA) Rules, 1965. The applicant has filed this O.A with the prayer that the impugned suspension order dated 23.3.99 (Annx.A6) be quashed and set aside and that the suspension of the applicant is declared to be illegal.

2. We have heard the learned counsel for the applicant for admission and are disposing of this O.A at the stage of admission itself without giving notice to the respondents.

3. The provisions of Clause (a) of Sub-rule (2) of Rule 10 of CCS(CCA) Rules, 1965 stipulate that if a government servant is retained in custody for a period exceeding 48 hours, he shall be deemed to have been placed under suspension by an order of appointing authority. Respondent No.2 has issued the impugned order of suspension dated 23.3.99, under this rule. The issue which has come up for our consideration is whether the period of suspension shall be confined itself only to the period of actual detention in Jail or shall continue till it is revoked by the competent authority by issuing another order. No formal revocation order has yet been issued and the suspension continues.

4. Similar controversy had come up for consideration of this Bench in O.A No.454/2001 which was decided on 3.4.2002. In the light of Full Bench decision of Allahabad High Court in the case of Chandra Shekhar Saxena & etc. Vs. Director of Education (Basic), U.P, Lucknow & Anr., reported in 1997 (8) SLR 357. It was observed by this Bench in that case as under:

"It is a matter of common knowledge that a criminal case takes years together to conclude. There is a catena of decision of Hon'ble the Apex Court as well as various High Courts to the effect that if a



person has been suspended on a criminal charge, the competent authority should not allow him to remain under suspension till he is finally acquitted after trial. If the applicant is continued under suspension for an indefinite period it would amount to wasteful expenditure which can be avoided, for the reason that on the one hand, the department is paying him subsistence allowance, yet no work is being taken from the concerned employee, who is under suspension."

5. It is considered appropriate to reproduce the relevant portion of the judgment:

"Rule 49-A of the Civil Services (Classification, Control & Appeal) Rules, 1930, as applicable in uttar Pradesh came to be considered in that case (in Chander Shekhar Saxena's case) and in clause (c) of paragraph 27 of the report, it was held that "the deemed suspension provided under sub-rule (2) of Rule 49-A shall be confined to the period of detention in custody and not beyond that". The provisions of Rule 49-A of the Civil Services (Classification, Control and Appeal) Rules, 1930, as applicable in UP are substantially the same as Clause (a) of sub-rule (2) of Rule 10 of the CCS (CCA) Rules, 1965. The order of suspension in the case of the applicant could not, therefore, be continued for a period more than the duration for which the applicant remained under custody of police or in jail. There is a specific provision in sub-rule (5) (a) of Rule 10 of CCS(CCA) Rules, 1965,

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which reads as follows:

"(5)(a) 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 authority competent to do so."

The provision made in this clause itself indicates that the order, if any, passed by invoking the provisions of Clause (a) of sub-rule (2) of Rule 10 is not sacrosanct. It can be modified by the competent authority at any time taking into consideration the facts and circumstances of the case. It would not be out of place to notice that the Full Bench of Hon'ble Allahabad High Court had also observed in paragraph 22 of the judgment in the case of Chandra Shekhar Saxena & etc. Vs. Director of Education (Basic) U.P.Lucknow & Anr., 1997 (8) SLR 371, as follows:

"22. Thus a Govt servant who has been deemed to be under suspension by an order of the appointing authority for the period he was under detention in custody, can approach the appointing authority and convince him for modifying or revoking the order and on such approach being made, the appointing authority may take into account all the facts and circumstances which led to his detention in custody and gave rise to the deemed suspension and then the appointing authority may pass appropriate order modifying or revoking the order of suspension. Thus, the Govt servant is not remediless. On the basis of the language used in sub-rule (5)(a), it has been argued that a deemed suspension once comes into existence, shall continue to remain in force until it is modified or revoked by the appointing authority and the Govt servant shall continue under suspension even after his release from the custody. In our opinion, under sub-rule (5)(a) suspension deemed to have been ordered shall continue to remain in force does not mean that the actual suspension shall also continue after release from custody. However, the deemed suspension shall remain in force for other purposes which may include all

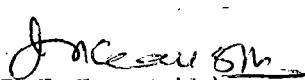


consequences which may flow from an order of suspension of a Govt servant. From the combined reading of sub-rule (2) and clauses (a) and (b) and sub-rule (5) (a) of Rule 49-A, the possible and reasonable conclusion is that deemed suspension shall be operative only for the period of custody and not beyond that. However, it shall remain in force for other purposes which flow from the order of suspension. In our opinion, such a harmonious interpretation can be safely given to the provisions contained in sub-rule (5)(a) without doing any violence to the purpose and subject and the legislative intent behind the aforesaid provisions."

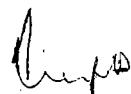
6. In the circumstances of this case, the order of suspension cannot be continued for an indefinite period. In view of the legal position, as has earmarked from the above and taking note of the fact that the impugned order had continued since 23.3.99, we consider it proper to revoke the order of suspension right now, without leaving it to the departmental authorities to take a decision in the matter.

7. The order of suspension dated 23.3.99 (Annex.A6) is hereby revoked. The applicant shall immediately be reinstated on the post he was holding prior to the suspension. Respondent No.2 shall issue appropriate orders on receipt of a copy of this order without any delay.

8. A copy of this order be sent to respondent No.2 alongwith a copy of the O.A.


(J.K.Kaushik)

Member (J)


(A.P.Nagrath)

Member (A).