

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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O.A. No. 286/2003
T.A. No.

199

DATE OF DECISION 16.4.2004

D.L.Verma

Petitioner

Mr. C.B.Sharma

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. Bharat Vyas

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J.K. KAUSHIK, MEMBER (JUDL.)

The Hon'ble Mr. M.K. MISRA, MEMBER (ADMV.)

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


(M.K. MISRA)

Member (A)


(J.K. KAUSHIK)

Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision: 16th April, 2004

OA No.286/2003

D.L.Verma s/o Shri Ramji Lal aged about 49 years, r/o H.No.207, Bajrang Colony, Deoli, presently working as Sub-Divisional Engineer, Keshorai Patan, District Kota (under suspension), with Headquarter Deoli.

.. Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Telecommunication, Ministry of Telecommunication and Information Technology, Sanchar Bhawan, 20 Ashoka Road, New Delhi.
2. Chief General Manager (BSNL), Rajasthan Telecommunication Circle, Sardar Patel Marg, C-Scheme, Jaipur.
3. General Manager, Telecom (Operation), BSNL, Jaipur.
4. General Manager, Telecom (BSNL), District Kota.
5. Telecom District Engineer, Bundi.

.. Respondents

Mr. C.B.Sharma, counsel for the applicant

Mr. Arun Chaturvedi, proxy counsel to Mr. Bharat Vyas, counsel for the respondents.

CORAM:

HON'BLE MR. J.K.KAUSHIK, MEMBER (JUDICIAL)

HON'BLE MR. M.K.MISRA, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. J.K.Kaushik.

A very short controversy is involved in

this case which we are required to answer is as

to whether the order by which the suspension was revoked can be cancelled.

2. Shri D.L.Verma has inter-alia assailed the order dated 23.5.2003, letter dated 23.5.2003 and order dated 26.6.2002 (Ann.A1, A2 and A3) and has sought for their quashment with all consequential benefits with further directions to the respondents that the applicant should be allowed to work on the post of Officer on Special Duty (ISD), Bundi from 28.4.2003 and also allow 75% pay and allowances for the period of suspension.

3. As far as factual aspect of the matter is concerned, the applicant was appointed as Repeater Station Assistant and enjoyed his further promotion to the post of Sub-Divisional Engineer w.e.f. 3.1.2002. He was placed under suspension vide order dated 26.6.2002 by the General Manager Telecom, Jodhpur under Rule 10(1) of the CCS (CCA) Rules, 1965 on the ground that a criminal offence is under investigation. His headquarter was fixed at BSNL, Bharatpur. Further facts of the case are that the applicant requested the respondents for change of his headquarter and the request was accepted by the authorities and his headquarter was accordingly fixed to Deoli. Thereafter, he submitted a representation for revocation of suspension as well as enhancement of subsistence allowance, but there was no response for quite sometime. It is only on 28.4.2003, an order was passed by which

[Signature]

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the suspension of the applicant was revoked and in compliance of the same, the respondent No.5 also issued another order dated 28.4.2003 by confirming the order of revocation and further posting of the applicant as OSD with headquarter at Bundi (Ann.A7 and A8). The applicant joined his duties on 28.4.2003, but on 26.5.03 order for revocation of suspension has been ordered to be cancelled without any reason and with further directions that suspension order dated 26.6.2002 will stand revived against the applicant against which the applicant represented before the competent authority.

3.1 It has next been averred that the applicant is holding the post of Sub Divisional Engineer, Group-B, and his appointing authority is respondent No.1 and the respondent No.3 did not have any power to place the applicant under suspension. Cancellation of revocation of suspension order is not at all justified since the suspension once revoked cannot be cancelled by any order. The applicant was also entitled for revision of subsistence allowance.

3.2 The Original Application has been filed on diverse grounds mentioned in para 5 and its sub-paras, which we shall discuss a little later in this order.

4. The respondents have contested this case and have filed detailed counter reply to the Original Application. It has been averred that

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the competent authority revoked the order dated 28.4.2003 and the same was withdrawn for the reasons indicated therein. As a matter of fact, the revocation of suspension was passed in an erroneous manner, inasmuch as the applicant was trapped by the Anti-corruption Bureau, Government of Rajasthan. Looking to the gravity of the charge, the order dated 28.4.2003 has been cancelled in the interest of the department. It has been averred that the suspension order has been passed by the competent authority in terms of Rule 12 of the CCS (CCA) Rules. The challenge of the order of suspension dated 26.6.2002 is beyond the period of limitation. The grounds have been generally denied.

5. A short rejoinder has been filed controverting the facts and grounds of defence raised in the reply. There has been certain repetition of facts narrated in the OA.

6. With the consent of the parties, the case was heard final disposal at the admission stage. We have carefully perused the pleading and record of the case.

6.1 The learned counsel for the applicant has reiterated his pleadings and has submitted that once the suspension order has been revoked and the applicant has been reinstated in service and continued to work, whereby the said order was executed and there remained nothing, the impugned

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orders Ann.A1 and A2 are without jurisdiction. He has also submitted that it is unfair on the part of the respondents to treat the applicant as under suspension for the period even for which he has physically worked. He has also contended that the order of cancellation of revocation order does not contain any reason whatsoever and the same is against the fairplay and principles of natural justice and is meant only to harass the applicant. The learned counsel for the applicant has invited our attention that once the order of suspension has been revoked there is no question of cancelling the revocation order, since the very order of suspension does not survive as such. In this connection, he has invited our attention to the judgment by a coordinate Bench of the Tribunal at Calcutta in case of Bimlendu Halder vs. Union of India and ors., (1991) 16 ATC 705, and contended that complete action of the respondents is ex-facie arbitrary and should be declared as inoperative. He has also reiterated the ground relating to competence of authority who has passed the impugned order.

6.2 On the contrary, the learned counsel for the respondents has reiterated his pleadings and submitted that it is the prerogative of the respondents to recall its order and it is only the review which was conducted by the competent authority and thereafter the order of cancellation of revocation of suspension order has been passed. Thus, no illegality has been

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committed by the respondents.

7. We have considered the rival submissions made on behalf of both the parties. As far as Ann.A3 and A4 are concerned, these are the suspension orders and the order for fixing the headquarter of the applicant and have remained unchallenged so far. They have been carried out without any protest. We cannot permit these challenges now and thus we shall not debate on them. In this view of the matter, we are only concerned regarding illegality or otherwise of the basic order which has been passed by the General Manager, Telecom, Kota dated 23.5.2003 (Ann.A1) and Ann.A2 is only a covering letter but unfortunately in pleadings the same has been placed at Ann.A2 whereas basically Ann.A1 is supposed to be the enclosure of Ann.A2. Firstly, we do not find any reason for cancelling the order by which the suspension order was revoked. Secondly, once a person has physically worked on the post, the question of treating him as a suspended employee during the said period does not arise. However, even if the theory of severable legal part from the impugned order i.e. treating it as effective prospectively, is applied, still the impugned order Ann.A1 cannot be termed as justified.

8. We have gone through the judgment which has been relied upon by the learned counsel for

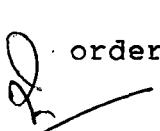
(15)

the applicant in Bimlendu Halder's case (supra) and we find that the same covers up the controversy involved herein squarely on all fours and we have absolutely no reason to take a different view. Rather, we are impressed with the contention of the applicant that once the suspension order has been revoked, suspension does not remain in existence and the thing which does not remain in existence, cannot be revived. We find support of this contention from one of the judgment of the Rajasthan High Court reported in 2003 (3) SLR 102, Kalu Singh vs. The State of Rajasthan and ors. It was a case of cancellation of transfer order. In that case the transfer order was already executed and carried out. Their Lordships of the High Court have held that once the order has been implemented its cancellation was illegal. Similar is the position in the instance case. At this juncture we can only assert that if we were to examine the controversy independent of the aforesaid authorities, we would have reached to the same conclusion.

9. As regards, the ground of competence of the authority who has passed the impugned order is concerned, we find that the suspension order, revocation of suspension order as well as the cancellation of order of Revocation have been passed by the GMT (O), Jaipur Respondent No.3. But in reply it has been averred that competent authority has reviewed the order of revocation.

As per rules inforce, the power of review has been given to the President of India and power of revision are vested in the next higher authority. But no such authority has passed the order at Annex. A/1. The impugned order does not indicate otherwise. Mere perusal of it reveals that it does not contain any reason at all. It is the settled law that while interpreting an order nothing is to be added or deducted, the order has to be read as it is otherwise every order which is bad in the beginning can be legalised by the support of additional affidavits and by the supplementing reasons. This proposition of law has been laid down by the Apex Court in case of Mohinder Singh Gill vs. State of Punjab AIR 1978 SC 851 and the issue does not remain res-integra. The same fully supports the case of applicant and submissions of learned counsel for applicant have our concurrence.

10. The upshot of the aforesaid discussion is that we reach to an irresistible conclusion that the impugned orders at Ann.A1 and A2 cannot be sustained and the OA merits acceptance. The same stands allowed. The impugned order Ann.A1 and A2 are hereby quashed. The applicant shall be entitled to all consequential benefits. As regards the review of subsistence allowance i.e. enhancement to 75% is concerned, the competent authority is directed to decide the same. This order shall be implemented within a period of one



month from the date of receipt of a copy of same. However, in the facts and circumstances of this case parties are directed to bear their own costs.



(M.K.MISRA)

Member (A)



(J.K. KAUSHIK)

Member (J)