

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

10

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Original Application No. 211/1994 with O.A. 205/1994.

Date of Admission: This the 10th Day of November 1994.

Justice Shri M.G. Chaudhari, Vice-Chairman

Shri G.L. Snaglyine, Member (Administrative)

Shri Dhirendra Kumar Das,
Staff No. 93115, presently
working as Telecom District Engineer,
Silchar.

... Applicant.

-Versus-

Union of India & Ors.

... Respondents.

Mr. B.K. Sharma with Mr. P.K. Tiwari
and Mr. B. Mehta.

Advocate for
Applicant.

Mr. S. Ali, Sr. C.G.S.C.

Advocate for
Respondents.

(For admission):

ORDER.

Heard learned counsel for the applicant as well as the learned Sr. counsel for the respondents at length. The applicant was arrested on 6-10-1994 at Silchar in connection with a case registered and being investigated by the CBI for offences under the Prevention of Corruption Act 1988. On 7-10-94 he was produced before the Chief Judicial Magistrate Silchar and was remanded to the Police custody for four days. His application for bail was rejected. On 8-10-94 the applicant was again produced before the CJM Silchar and on a request made by the investigating Officer he was remanded to judicial custody to enable the CBI to produce him before the Special Judge, Assam at Guwahati who was exercising jurisdiction under the Prevention of Corruption Act. The applicant was produced before the Special Judge at Guwahati on 10-10-94. The learned Special Judge by

order dated 10-10-94 in RG.7(A)/91-SIC released the applicant on bail and after the applicant furnished the bail he was released from custody. Thus from the time of his arrest on 6-10-94 the applicant had been detained in custody till 10-10-94.

The Assistant Director General (Vigilence) acting under sub Rule 10(1)(S) read with clause (a) of sub Rule 2 of the G and A Rules 1965 passed the impugned order dated 21-10-94 suspending the applicant from the date of detention i.e. 6-10-94 as the period of detention exceeded 48 hours. That order is the subject matter of challenge in O.A. 211/94.

By way of consequential order the Assistant Director, Telecom, Guwahati passed an order on 26-10-94 directing the applicant to hand over the charge as TDE, Silchar to Sr. SDE/HRD/O/O the TDE, Silchar mentioned in the order with immediate effect. That has been challenged in O.A. No. 205/94. One of us sitting singly (Chaudhari v. G) granted Ad-interim stay of the said order on 28-10-94 as it appeared prima facie that the said order was passed without serving the order of suspension on the applicant and notice was directed to the respondents to show cause against continuance of that order. Since the order of suspension itself has now been challenged that application is also heard along with O.A. 211/94 on the question of continuance of stay by us in Division Bench. Mr. Ali learned counsel for the respondents, prays for vacating that order.

Mr. Sharma, the learned counsel for the applicant has urged firstly, that the detention of the applicant cannot be regarded as of 48 hours duration and therefore,

3

the authority concerned has misapplied the provisions of Rule 10 of the CC & A Rules 1965. His contention is that the order passed by the learned Chief Judicial Magistrate on 8-10-94 and the order passed by the learned Special Judge on 10-10-94 show that the learned CJM had no jurisdiction to remand the applicant to custody as that jurisdiction is exclusively vested in the Special Judge under the Prevention of Corruption Act before whom the applicant was produced on 10-10-94. Thus according to the learned counsel the detention for the period after 24 hours after the arrest on 6-10-94 and till his production before the learned Special Judge with the further exclusion of the time taken for bringing him from Silchar to Guwahati, amounted to applicant's illegal detention and that could not be taken into account for the purpose of computing the period of 48 hours for the purpose of Rule 10 and therefore, the order of suspension is illegal. In this connection the learned counsel for the respondents, Mr. S. Ali submitted that such question neither can be determined by the departmental authority nor this Tribunal has jurisdiction to go into that question. According to him it was open to the applicant to have moved the ~~applicant~~ the competent Court for declaring that part of detention illegal but that neither can be urged nor done by the Tribunal.

The fact that the total period of custody of the applicant i.e. from 6-10-94 till 10-10-94 would exceed 48 hours cannot be disputed. That being the position Rule 10 is attracted and the applicant is deemed to have been placed under suspension w.e.f. the date of his detention in custody, that is 6-10-94. The impugned order of suspension merely gives effect to this

the said authority. However, the nature of detention contemplated under Rule 10 needs to be examined. Whether the detention for any part of the detention period was illegal and such period can be taken into account for the purpose of determining the period of 48 hours under Rule 10 or not is an important question of law that requires detailed consideration. For that reason the applications can be admitted. *Prima facie* the authority concerned acting under the CCA Rules has to look to the factum of detention and its duration and pass the order of suspension formally if at all an order is passed, for otherwise by virtue of the deeming provision of Rule 10 it automatically takes effect.

Yet the above mentioned aspect does call for scrutiny.

Mr. Sharma next submitted that the order of suspension per-se is bad in law as it has been given retrospective effect although between 6-10-94 and 21-10-94, the applicant was actually working in the post of TDE. This submission does not appeal to us as Rule 10 itself contemplates retrospective deeming of the suspension and in any case the order cannot be held to be bad from the date on which it was passed for subsequent period. It is therefore, futile to embark upon an hair splitting exercise over this question. *at this prima facie stage*

Having regard to the language of Rule 10 we find no merit in the third submission of Mr. Sharma that the order of suspension is mechanically passed without application of mind and is malafide aimed at victimising the applicant as his reversion had been stayed by this Tribunal earlier and that was not to the *liking of* the respondents. He has gone to the length of making a

5

serious allegation: that the respondents managed to get the applicant arrested and have then suspended him. The fact that offences have been registered against the applicant by the CBI and the investigation is in progress and having regard to clear provisions of Rule 10 the order of suspension cannot be attacked on the aforesaid grounds in any event at this stage.

We are not therefore persuaded to admit the ~~solely~~ applications on the submissions urged by the counsel on merits but we are so persuaded ^{more} in order to settle the legal position. However since the application is admitted all the contentions raised before us touching the merits are left open to be agitated at the final hearing.

Since we are not *prima facie* satisfied that either the order of suspension or the consequential order of handing over charge is bad in law, there does not arise any question of granting interim relief even though the application may have been admitted for the reasons indicated above. It is not possible in the circumstances to stay the operation of the suspension order. That would be contrary to law. The question of quashing it alone can be considered at the final hearing. It will also be futile to stay its operation even assuming for the sake of argument that to the extent retrospective effect is given it may not be valid because the respondents can always pass a fresh order. We hasten to add that we do not ^{so} hold at this stage. The consequential order of handing over charge also cannot be stayed in the face of the order of suspension. We are not therefore inclined either to continue the Ad-interim order in O.A.No.205/94

6

or to grant any other interim order in either of the applications.

Even though we are simply admitting the applications at this stage, we have given elaborate reasons above, in the light of sub rule 5(a) of Rule 10 of the CC and A Rules 1965. That enables the authority (competent to do so) to modify or revoke a deemed suspension order. Having regard to the questions including the question of law involved in the matter we are inclined pending the final hearing of the applications, to direct the Assistant Director General, Vigilance (respondent No.2) to consider whether the order of suspension may be revoked having regard to the following circumstances :-

- (a) Whether (in this opinion) the period of detention of the applicant amounts to 48 hours or more having regard to the contention of the applicant that part of it was illegal.
- (b) Whether the order having operated retrospectively ought to be necessarily continued in the context of offences registered against the applicant and for which he was arrested particularly as the detention of the applicant did not arise in connection with any offence committed during the course of discharging of his duties.
- (c) The gravity of the offence or involvement of moral turpitude can be taken into account only after the criminal case is decided and that may not be presumed at this stage.

contd/-

[Signature]

7

(d) The order of suspension did not arise out of any disciplinary proceeding.

(e) The overall circumstance and conduct of the applicant in discharge of his duties till his suspension.

(f) It is stated by Mr. Sharne that if the order of suspension would be revoked formally then the applicant will immediately proceed on leave and that may help him avoid the stigma of suspension for the time being. We leave it to the respondent No.2 to consider this aspect also.

The decision is left entirely to the discretion of the respondent No.2 whether to revoke the suspension order or continue it after taking into account the aforesaid circumstances. The decision will be taken solely by the respondent No.2 and no enquiry is contemplated. The respondent No.2 may inform the applicant as to whether the order of suspension is continued or revoked. It is desirable that the respondent No.2 indicates in brief his views on the aforesaid points if he would be inclined to continue the order of suspension. We expect the respondent No.2 to comply with the exercise directed above within four weeks from the receipt of the copy of this order. The conclusion shall be conveyed to this Tribunal through the learned C.G.S.C. The decision taken shall be without prejudice to the rights and contentions of the parties at the final hearing of the applications. No interim order is passed. Consequently the order of suspension as also the order directing