

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.746/2017.

Date of Decision: 05.12.2017.

CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Shri Jaipal Swami,
 Son of Mahadev Prasad Swami,
 Working as Deputy Commissioner
 of Income Tax, Mumbai (Under
 Suspension). R/at Flat No.74,
 Bldg. No.5, Sector 7, CGS Colony,
 Antop Hill, Mumbai 400 037. ... *Applicant*
*(Advocate Shri S.V. Marne with
 Shri V.A. Nagrani)*

Versus

1. The Union of India,
 Through the Secretary,
 Ministry of Finance,
 Department of Revenue,
 North Block, New Delhi 110 001.
2. The Chairman,
 Central Board of Direct Taxes,
 Noth Block, New Delhi 110 001. ... *Respondents*

ORDER (Oral)
Per : Shri A.J. Rohee, Member (J)

Today when the matter is called out for admission, heard Shri S.V. Marne, learned Advocate assisted by Shri Vicky Nagrani, learned Advocate for the Applicant. We have carefully perused the case record.

2. The Applicant is presently working as

Deputy Commissioner of Income Tax, Mumbai. He has grievance regarding the impugned order dated 03.11.2017 (Annexure A-1) issued by Respondent No.1 by which, on account of applicant being in custody/detention for a period exceeding 48 hours, he was put under suspension from the date of his detention i.e. 22.09.2017 in terms of Sub-Rule 2(a) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and it is directed that he shall remain under suspension until further order.

3. The impugned order further stipulates that during the period that the said order shall remain in force, the headquarters of the applicant shall be Kochi, Kerala and the applicant shall not leave the headquarters without obtaining the previous permission of the Principal Chief Commissioner of Income Tax, Kerala.

4. In this OA, the following reliefs are sought;

“8.a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same quash and set aside the impugned order dated 03.11.2017 to the extent it direct the headquarters of the applicant during

the period of the suspension shall be Kochi, Kerala.

8.b) Costs of the application be provided for.

8.c) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

5. Record shows that applicant came to be arrested in connection with a complaint lodged against him on the allegations of making demand and accepting gratification from the complainant. He was in Police Custody for two days and thereafter in Magisterial (Judicial) Custody for a period of 60 days. It is stated that he was released on bail by the Special Court vide order dated 28.11.2017 on certain conditions. It is stated that charge-sheet is also filed before the Special Court on 18.11.2017 for offences under Prevention of Corruption Act, 1988, which is pending.

6. It is obvious that the impugned order was passed, when the applicant was still in judicial custody. After his release, he did not make any representation against the impugned order regarding change of his headquarters. At present, it is stated that the applicant has no grievance regarding his suspension and the pending Trial before Special

Court may take long time for its conclusion.

7. Considering the peculiar facts of the case and particularly that the applicant has not made any representation to the Respondent No.1 for cancellation/modification of the impugned order dated 03.11.2017, there is no impugned order as such, rejecting his request which can be judicially reviewed.

8. In view of this, we hereby direct that this OA itself be treated as the representation submitted by the applicant against the impugned order.

9. The Respondent No.1 is, therefore, directed to consider the same and pass a reasoned and speaking order thereon in accordance with law, within a period of two weeks from the date of receipt of a certified copy of this order by considering all the relevant facts concerning the criminal prosecution pending against the applicant for the offences punishable under Prevention of Corruption Act, 1988.

10. The order so passed shall then be communicated to the applicant at the earliest, who will be at liberty to approach the

appropriate forum in case his grievance still persists.

11. It is further directed that till a decision is taken by Respondent No.1, the effect, implementation and operation of the impugned order dated 03.11.2017, so far as it relates to change of the headquarters of the applicant from Mumbai to Kochi and attendance there, shall remain in abeyance.

12. Registry is directed to forward copy of this OA along with this order to both the respondents for taking appropriate steps in the matter, as directed above.

13. The OA stands disposed of with the above directions at the admission stage, without issuing notice to the respondents and without making any comments on merits of the claim.

14. *DASTI.*

(R. Vijaykumar)
Member (A)

(A.J. Rohee)
Member (J)

dm.