

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00502/2018

Wednesday, this the 13th day of March, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

N. Velmurugan, aged 42 years, S/o. Late S. Nagarathinam,
 Assistant Director, (under suspension), India Tourism,
 Kochi – 682 009, Residing at 62/1287, Councillor Road,
 Church Road, Kaloor, Kochi – 682 017. **Applicant**

(By Advocate : Mr. Liju V.Stephen &
Mrs. Indu Susan Jacob)

V e r s u s

1. Union of India, represented by the Secretary,
 Ministry of Tourism, No. 1, Parliament Street,
 Transport Bhavan, New Delhi – 110 011.
2. The Regional Director, India Tourism,
 Southern Regional Office, 154, Anna Salai,
 Chennai – 600 002.
3. The Manager, India Tourism, Willingdon Island,
 Kochi – 682 009. **Respondents**

(By Advocate : Mr. V.A. Shaji, ACGSC)

This application having been heard on 07.03.2019 the Tribunal on
 13.03.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicants are as under:

- “i) To call for the records leading to Annexure A1.
- ii) To set aside Annexure A1 order dated 3.10.2011 which has become invalid with effect from 3.1.2012 as per Rule 10(7) of CCS (CCA) Rules, 1965.

iii) To direct the respondents to reinstate the applicant with effect from 3.1.2012 with all the consequential benefits thereof.

And

iii) Issue such other orders as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant while working as Assistant Director, India Tourism, Kochi under respondent No. 1 was placed under suspension vide Annexure A1 order. Annexure A1 order is issued under CCS (CCA) Rules, 1965 consequent to the registration of a regular case No. RC.31(A)/2011-CBI/Cochin against him by the CBI, Ernakulam. Charge sheet in the above case has been filed in 2012 itself before the CBI Special Court-I, Ernakulam but no charge has been framed and the case is pending at the pre-trial stage. More than six years have elapsed the applicant is under suspension without any statutorily mandated review or extension. Applicant is allowed subsistence allowance of 50% of leave salary and he was not granted the benefit of pay fixation in the revised pay scales of 7th CPC. The applicant has not committed any offence as is alleged in the criminal proceedings. Long years of suspension without any review or extension has resulted in great injustice to the applicant. The suspension has adversely affected the applicant and his family mentally, emotionally and financially also. The applicant had made several representations but the authorities neither considered the same nor passed any orders on those representations. Recently the applicant received a reply from the 2nd respondent dated 24.8.2017 (Annexure A5) where the applicant's pay was fixed in the new pay scale as per 7th CPC but the said

reply was silent about non-compliance of the statutorily required review and extension. Aggrieved the applicant has filed the present OA seeking the above reliefs.

3. Notices were issued to the respondents and they were represented by Shri V.A. Shaji, ACGSC who filed a reply statement contending that the applicant while working as Assistant Director was arrested by the CBI along with two other officials and were detailed under custody for more than 48 hours. A crime was registered as case No. RC 31(A)/2011-CBI/Cochin against the applicant and two others involving corruption which involves speeding up issuance of classification to a hotel after obtaining illegal gratification, demand and acceptance of illegal gratification under Section 7 of Prevention of Corruption Act and abuse of official position while dealing with the matter of hotels, classification in Kerala. The applicant was placed under suspension by the competent authority vide Annexure A1 order. Vide order dated 21.9.2012 Annexure R3 the competent authority had accorded sanction under section 19(1)(a) of Prevention of Corruption Act, 1988 and under Section 197 of Cr. PC for the prosecution of the applicant for the offence under Section 120 B of IPC read with Section 13(2), reading with Section 13(1)(d) read with Section 12 of Prevention of Corruption Act, 1988 and substantive office thereof for taking cognizance of said offences by the competent court of law. Vide Annexure R5 the applicant's suspension was first reviewed by the competent authority within 102 days. The 2nd review as thereafter held on 2.8.2017. The respondents also submitted that the competent authority had decided to increase the subsistence allowance

of the applicant from 50% to 75% of the present pay as per the 7th CPC. 8 criminal cases Nos. CC Nos. 4/2012, 5/2012, 6/2012, 7/2012, 8/2012, 9/2012, 10/2012 and 11/2012 are pending against the applicant before the Hon'ble Special Judge Court-1, CBI, Ernakulam. As per records no discharge petitions are pending before the court in these cases. The charges against the applicant are grave in nature for obtaining illegal gratification. Respondents pray for dismissing the OA.

4. Heard the learned counsel for the applicant and Shri V.A.Shaji, ACGSC learned counsel for the respondents. Perused the records.

5. Vide order dated 22.6.2018 this Tribunal after considering the interim prayer of the applicant directed the respondents to reinstate the applicant in service with all consequential benefit with effect from the expiry of 90 days from the date of Annexure A1 order of suspension. Further vide order dated 24.7.2018 the said interim order was amended to the limited extent that the interim order will apply to the reinstatement of the applicant in service and a decision on disbursement of consequential benefits can be taken afterward.

6. The applicant while working as Assistant Director, India Tourism, Kochi under respondent No. 1 was arrested by the CBI along with two other officials and were detailed under custody for more than 48 hours. Accordingly, the CBI registered a crime with case No. RC 31(A)/2011-CBI/Cochin against the applicant and two others, which involved corruption to speed up the issuance of classification to a hotel after obtaining illegal

gratification. Vide Annexure A1 the applicant was placed under suspension and the competent authority accorded sanction for the prosecution of the applicant for the offence under Section 120 B of IPC read with Section 13(2), reading with Section 13(1)(d) read with Section 12 of Prevention of Corruption Act, 1988 by the competent court of law. As per the respondents we find that vide Annexure R5 the applicant's suspension was first reviewed by the competent authority within 102 days. The respondents submitted that there was a delay of 12 days which was unintentional and was only due to procedural issues. The respondents thereafter reviewed the suspension of the applicant 2nd time on 2.8.2017. Moreover, the respondents had decided to increase the subsistence allowance of the applicant from 50% to 75% of the present pay as per the 7th CPC looking to the financial condition of the applicant. Further we find that the respondents in compliance of the interim of the Tribunal dated 24.7.2018 revoked the suspension of the applicant w.e.f. 30.7.2018 and directed the applicant to report for duty as Assistant Director under the office of Regional Director (North), India Tourism, New Delhi vide order dated 30.7.2018. We also find that 8 criminal cases Nos. CC Nos. 4/2012, 5/2012, 6/2012, 7/2012, 8/2012, 9/2012, 10/2012 and 11/2012 were pending against the applicant before the Hon'ble Special Judge Court-1, CBI, Ernakulam and no discharge petitions are pending before the court in these cases. As per Annexure R4 the charges against the applicant are very grave in nature i.e. demand and acceptance of illegal gratification for speeding up the issuance of classification to a hotel.

7. The applicant has relied upon the judgment of the apex court in ***Depot Manager, Andhra Pradesh State Road Transport Corporation, Hanumakonda v. V. Venkateswarulu & Anr.*** - 1994 KHC 614 and the order passed by the Principal Bench of the Tribunal in OA No. 3275/2013 – ***Shri Ronjon Lahiri v. Union of India & Anr.***, dated 16.4.2014, in support of his contentions. We find that the judgment of the apex court do not apply to the present case as there the rule under challenge was SRTCE (CCA) Regulations, 1967 (AP) which is not the rule applicable in the present case. Here the applicant was suspended under Rule 10 of CCS (CCA) Rules, 1965. Further in pursuance to the interim direction the applicant's case was considered by the respondents and he was reinstated in service. There is sufficient reason with the respondents for not releasing his consequential benefits as various criminal cases are pending for the act committed by the applicant of alleged abuse of power during his posting as Assistant Director, India Tourism, Kochi. Therefore, the judgment of the apex court in ***V. Venkateswarulu***'s case (supra) is of no help to the applicant. With regard to the order passed by the Principal Bench of the Tribunal in ***Shri Ronjon Lahiri***'s case (supra) we find that in the present case several criminal cases have been filed against the applicant one after the another. In such a situation to suspend the applicant for every case separately is not possible. The facts and circumstances of the case decided by the Principal Bench in ***Shri Ronjon Lahiri***'s case (supra) are dissimilar and thus the benefit of the said order cannot be extended to the applicant. Moreover, because of the delay no prejudice is caused to the applicant.

8. Therefore, since the applicant has been reinstated in service in compliance of our order dated 24.7.2018, we feel that interference of this Tribunal at this stage is premature as several criminal cases are still pending consideration before the court of law. Further as regards the consequential benefits on account of his reinstatement, let the respondents consider and decide the same after a decision is taken in all the cases pending before the appropriate court of law. Therefore, we do not find any merit in this Original Application. Accordingly, the Original Application is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00502/2018**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the order dated 3.10.2011 issued by 1st respondent.

Annexure A2 - True copy of the representation dated 7.7.2017 made to 1st respondent.

Annexure A3 - True copy of the representation dated 25.7.2017 made to 1st respondent.

Annexure A4 - True copy of the representation dated 8.8.2017 made to 1st respondent.

Annexure A5 - True copy of the order dated 24.8.2017 issued by the 2nd respondent.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the status report of the cases against the applicant submitted by the Superintendent of Police, CBI, ACB, Kochi dated 6.7.2018 to the 1st respondent.

Annexure R2 - True copy of the order dated 7.10.2011 issued by the Ministry of Tourism granting the subsistence allowance to the applicant.

Annexure R3 - True copy of the order dated 21.9.2012 by the competent authority.

Annexure R4 - True copy of the letter dated 20.11.2012 from the Superintendent of Police, CBI along with the copies of charge sheets against the applicant.

Annexure R5 - True copy of the review order of suspension of the applicant by the competent authority.

Annexure R6 - True copy of the order of review dated 2.8.2017 by the competent authority.

Annexure R7 - True copy of the charge sheet dated 23.4.2018.

Annexure R8 - True copy of the appointing order of Inquiry Officer dated 4.6.2018.

Annexure R9 - True copy of the appointing order of Presenting Officer dated 4.6.2018.

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