

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1058/2003

This the 31st day of March, 2004

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI BHARAT BHUSHAN, MEMBER (J)

H.S.Gill [D-I/996]
[under suspension]
S/O Sh. Jawahar Singh,
House No.23, I-Block,
Lajpat Nagar-III,
New Delhi-110024.

... Applicant

(By Shri Arun Bhardwaj, Advocate)

-versus-

1. Govt. of NCT of Delhi through its Chief Secretary, Players Building, I.P.Estate, Delhi.
2. Commissioner of Police, Delhi Police Headquarters, I.P.Estate, New Delhi.
3. Jt. Commissioner of Police, Special Cell [SB], Police Headquarters, I.P.Estate, New Delhi.

... Respondents

(By Ms. Jasmine Ahmed, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, V.C.(A) :-

Applicant has challenged Annexure-A dated 11.2.2003 whereby he was placed under suspension with immediate effect. The learned counsel of the applicant stated that on 25.3.2003 he was released on bail (Annexure-B) in Criminal Mis. (M) No. 948/2003 upon executing a personal bond of Rs.30000/- with one surety. The learned counsel stated that on release on bail, applicant's deemed suspension in terms of rule 28 of Delhi Police (Punishment and Appeal) Rules would come to an end. He

has sought quashing and setting aside of suspension orders w.e.f. 25.3.2003 and reinstatement in service with all consequential benefits. He has relied on *Union of India v. Rajiv Kumar*, JT 2003 (5) SC 617.

2. The learned counsel contended that in FIR 5/2003 dated 2.2.2003 it was stated that an illegal telephone exchange was being run from ground floor of house No.320, Sant Nagar, East of Kailash, New Delhi under the name and style of Primus Networks by Ashish Gupta, Anup Tiwari and Amit Chaturvedi. SI Gurdev Singh was assigned the investigation of the case. Applicant's name is neither among the accused persons nor among the list of witnesses. Still his suspension is being continued. He was arrested in connection with a raid on his premises. When he had nothing to do with the case relating to the illegal telephone exchange, his arrest in another case and consequential release on bail could not have become the basis for continuance of his suspension. The learned counsel also relied upon the order dated 17.1.2003 in the case of *Ashok Kumar Aggarwal v. Union of India* in OA No.783/2000 in which it was held that in a case of deemed suspension, fresh orders are required to be passed for suspension which has not been done in the present case.

3. The learned counsel also submitted that respondent No.3 has no jurisdiction or authority to place the applicant under suspension, since rule 28(a) ibid provides that a police officer of subordinate rank, who is detained in custody under any law providing for

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preventing detention or detention which is a result of a proceeding on a criminal charge shall, if the period of detention exceeds 48 hours and unless he is already under suspension from the date of detention, be deemed to be under suspension from the date of detention until further orders.

4. On the other hand, the learned counsel of respondents stated that while the investigation in the case against the Primus Networks was being conducted by the applicant, there was a complaint against him regarding demand of bribe for release of computers seized as case property relating to Primus Network. A case was registered against the applicant vide FIR A-10 dated 10.2.2003 whereupon he was placed under suspension on 11.2.2003. The present case is not a case of deemed suspension as the applicant had not been considered deemed suspended in terms of rule 28(2) ibid but he had been placed under suspension under the provisions of rule 28(b). As such, his release on bail would not affect his suspension at all. The cases of Ashok Kumar Aggarwal (supra) and Rajiv Kumar (supra) are not applicable to the facts of the present case.

5. We have considered the rival contentions and also perused the official records relating to applicant's suspension. He had been suspended on the basis of FIR A-10 dated 10.2.2003 in a case of bribery for release of properties which had been seized by the applicant and his team in another FIR No.5/2003 dated 2.2.2003 under Sections 420/379/120-B. True, applicant was neither an

accused person nor a witness in the case related to FIR 5/2003. However, he was the head of the team investigating the case related to FIR 5/2003. When there was a complaint of bribe for release of the properties seized in the case under FIR 5/2003, that case was related to FIR A-10 dated 10.2.2003. While the FIR was dated 10.2.2003, applicant was placed under suspension on 11.2.2003 within less than 48 hours of the FIR. In this backdrop, the provision of rule 28(b) ibid would be applicable which reads as follows :

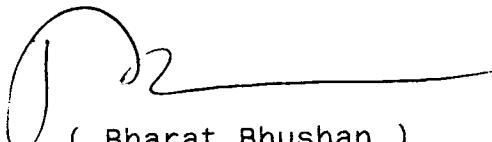
"(b) A police officer of subordinate rank against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g. a person released on bail) may be placed under suspension by an order of appointing authority. If the charge is connected with the official position of the Government servant or involves any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course. In the latter case permission of the next higher authority for not suspending the individual concerned shall be obtained."

6. The provisions of rule 28(a) would not apply as they relate to cases where the period of detention exceeds 48 hours and unless the concerned is already under suspension, from the date of suspension he is deemed to be under suspension from the date of detention until further orders. Such are not the facts of this case.

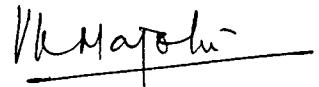
7. The ratios of the cases of Rajiv Kumar and Ashok Kumar Aggarwal (supra) would not be applicable to the facts of the present case.

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8. In view of the above discussion, in our view, contentions raised on behalf of the applicant have not been established before us and this OA must fail, therefore. Dismissed accordingly. No costs.



(Bharat Bhushan)
Member (J)



(V. K. Majotra)
Vice-Chairman (A)

31.3.04.

/as/