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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2246/2003

New Delhi, this the 16th day of April, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Srichand,
Chowkidar,
R/o Village Pallah,
Post Office Dadri,
District Ghaziabad, U.P.

... Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

Union of India & Others through :

1. The Secretary,
Ministry of Textiles,
Udyog Bhavan, New Delhi

2. The Development Commissioner
Ministry of Textiles,
Udyog Bhavan, New Delhi

3. Senior Director,
Ministry of Textiles
National Handicraft & Handloom Museum
Pragati Maidan, New Delhi

.... Respondents

(By Advocate : Shri B.S. Jain)

O R D E R (Oral)

Heard.

2. This OA has been filed against the order of the respondents dated the 9th August, 1996 with prayers that the same be quashed and the Memo dated the 24th August, 1996, seeking explanation of the applicant on the loss of one article during the duty period of the applicant be also quashed with a direction to the respondents to reinstate him with all consequential benefits.

3. The facts of the matter, briefly, are that the applicant, who was initially appointed as a Chowkidar in the year 1982, has been performing various duties in the

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respondents-organisation and during his 14 years of service with them not even a single complaint has been received against him. On 8.8.1996, he had been assigned the duties of watchman at Point No.9 in the National Handicraft and Handloom Museum, New Delhi. He had taken charge of the said point from another Chowkidar, namely, Chetram at 10 PM. He, however, received a Memo on 24.8.1996, as referred to hereinabove, alleging that during the duty hours of the applicant one 'Bartan' was found missing by another Chowkidar, namely, Lakpat Singh at 10.15 PM. The applicant was placed under suspension vide order dated 9.8.1996 for the said charge, though no charge sheet was ever issued to him by the respondents. He has alleged that though he has been placed under suspension, it has not been followed up with any charge sheet. He has also alleged that the respondents have stopped making payment of subsistence allowance to him.

4. Referring to the provisions of FR 53 (ii) (a) regarding increasing the subsistence allowance, the applicant has submitted that while the respondents had issued the relevant orders under the said FR, they have not implemented the same so far. He has alleged that he has never been paid the subsistence allowance.

5. The respondents in the reply, however, have refuted the allegation of the applicant and have submitted that the subsistence allowance has been paid to him as provided for under the relevant rules. They have also annexed photo copies of the acquittance roll to the effect that enhanced subsistence allowance of Rs. 1,055/- has

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been paid to him as ordered by the respondents vide their order dated the 7th May, 1997. It has also been observed, on perusal of the reply submitted by the respondents, that necessary orders for payment of subsistence allowance were issued by the respondents vide their orders dated the 23rd August, 1996 (Annexure R-6) and dated the 7th May, 1997 (Annexure R-7). The photo copies of the acquittance roll in support of their contention that they had paid the enhanced subsistence allowance to the applicant during the period of suspension are placed at Annexure R-8.

6. On the question of whether the applicant was found responsible for missing of the article (Burhan) in question on the 8th August, 1996 night between 10 PM and 6 AM, they have given the details of handing over the charge report of one Shri Chet Ram to the applicant and further by the applicant to Shri Lakpat Singh when the loss of the article was detected. They have further submitted that the applicant was placed under suspension only as a precautionary measure. The matter appears to have been taken up with the Police by filing FIR with the SHO, Tilak Marg Police Station on 16.8.1996. A letter was also written in the matter by the Development Commissioner (Handlooms) to the then Commissioner of Police (Annexure R-3). It appears that the original duty point register and the original daily report register have been seized by Tilak Marg Police Station.

7. On having been asked as to why the applicant continues to be under suspension since the year 1996 when there is a provision that such suspension cannot be

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continued beyond three months unless the matter is reviewed by the competent authority before the expiry of the said period from the date of order of the suspension and, further, on the recommendations of the Review Committee constituted for the purpose, necessary orders either for extending or revoking the suspension have been issued. No such review appears to have been carried out by any Committee or no orders either modifying or revoking the suspension before the expiry of 90 days appear to have been issued as required under Rule 10 of the CCS (Classification, Control and Appeal) Rules, 1965. The said Rule further provides that an order of suspension made or deemed to have been made under sub rule 5 (a) of the said Rules shall not be valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days. On having been asked as to why the applicant has been continuing under suspension since 1996 when no such review has been carried out, the learned counsel for the respondents has submitted that no such review could be carried out by the respondents as the relevant documents were in the possession of the Police and were not with them.

8. The argument advanced by the respondents in support of their action in continuing the suspension of the applicant appears to be not very logical or rational. The natural question which arises in this regard is whether the respondents have applied their mind to the necessity for reviewing the suspension of the applicant and if so whether they have been prevented from taking a view in the matter on the basis of the facts which were

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otherwise available with them apart from the documents which have been taken away by the Police. In any case, following strictly the provisions of the Rules, as referred to hereinabove, it was not within the competence of the respondents to have continued the applicant under suspension unless his case was reviewed before the expiry of 90 days and a decision was taken on the basis of the recommendations of the Committee constituted for review.

9. Having regard to this aspect of the matter and also having considered the facts as placed before the Tribunal by both sides, I am of the considered opinion that continuing the applicant under suspension from 9.8.1996 without carrying out appropriate review as provided for under the Rules is impermissible and, therefore, the impugned suspension order as passed by the respondents dated 9.8.1996 and Memo dated 24.8.1996 are quashed and set aside with direction that the applicant be reinstated as Chowkidar with all consequential benefits within a period of one month from the date of receipt of a copy of this order. The respondents shall, however, be at liberty to proceed further in the matter according to law.

10. The OA is, accordingly, disposed of in the aforesated terms.


(SARWESHWAR JHA)
MEMBER (A)

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