

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 20th November, 2020

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W.P.(C) 6150/2020

DR. PARITOSH VERMA

.... Petitioner

Through: Dr. S.S. Hooda and Mr. Aditya
 Hooda, Advs.

Versus

UNION OF INDIA & ANR.

... Respondents

Through: Ms. Sarika Singh, Adv. with Deputy
 Commandant Vinod Kumar, Law
 Officer, BSF.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. On 9th September, 2020, when this petition first came up before this Court, the following order was passed:

"3. The petitioner, an Assistant Commandant (Medical Officer) in the respondents Border Security Force (BSF), has filed this petition (i) impugning the order dated 10th August, 2020 of extension of the suspension of the petitioner; (ii) seeking mandamus, directing supply to the petitioner of the copies of the Summary Court of Inquiry proceedings against the petitioner; and, (iii) seeking mandamus, directing the respondents to change the headquarter of the petitioner, from Panjipara to Raninagar, Jalpaiguri, where the petitioner, at the time of suspension was posted.

4. It is the case of the petitioner, (i) that on 29th January, 2020, a corruption case pertaining to the Unit where the petitioner was posted, was handed over to Central Bureau of Investigation (CBI) and is under investigation; (ii) on 15th May, 2020, the petitioner was suspended and his headquarter changed to Panjipara; (iii) that the wife and son of the petitioner, though were occupying the official accommodation along with the petitioner at Raninagar, Jalpaiguri, owing to harassment, left the official residence and have gone to reside in the village; (iv) that the Summary Court of Inquiry held, opined against the petitioner; (v) that the extension, vide order dated 10th August, 2020 of the suspension of the petitioner, without the requisite review of subsistence allowance, in terms of FR 53(a) (1) is illegal; (vi) though the petitioner sought documents of Summary Court of Inquiry but the same were denied to the petitioner; and, (vii) though the petitioner, on 13th August, 2020 applied for change of his headquarter during suspension, from Panjipara to Jalpaiguri but the same has not been allowed as yet.

5. The counsel for the petitioner on enquiry states that the wife and son of the petitioner, though in their village, are close to Raninagar, Jalpaiguri and owing to the headquarter of the petitioner having been changed to Panjipara, the petitioner, during suspension, is deprived of their company.

6. It is the contention of the counsel for the petitioner that since disciplinary proceedings against the petitioner have been deferred awaiting the investigation of CBI and which investigation can take a very long time, the petitioner cannot be ordered to remain under suspension till then and without even enhancement of his suspension allowance.

7. *Mr. M.R. Panda, Second in Command (Confidential), BSF appears on advance notice and states that his advocate is not available.*

8. *Issue notice.*

9. *Notice is accepted by Mr. M.R. Panda, Second in Command (Confidential), BSF.*

10. *Counter affidavit be filed within four weeks (since the counsel for the petitioner states that the petitioner has not been paid the suspension allowance either) and rejoinder be filed within two weeks thereafter.*

11. *List on 22nd October, 2020.*

12. *In the meanwhile, suspension allowance due to the petitioner be released within one week and the application of the petitioner for leave from the headquarter at Panjipara to visit his family be also decided by a reasoned order, within one week of today."*

2. The respondents Border Security Force (BSF) have filed a counter affidavit and the counsel for the petitioner and Deputy Commandant Vinod Kumar, Law Officer, of the respondents BSF have been heard.

3. The counsel for the petitioner has contended that the petitioner has claimed four reliefs in this petition i.e. (a) of revocation of his suspension; (b) of change of his headquarter from Panjipara, West Bengal to Jalpaiguri, West Bengal; (c) of revision of his suspension allowance; and, (d) of supply to the petitioner of proceedings of the Court of Inquiry constituted against the petitioner.

4. Though the counsel for the petitioner wanted to commence his arguments by arguing for the third of the aforesaid reliefs first, but being of the opinion that if the petitioner succeeds in the challenge to his order of

suspension, the need to hear qua the other reliefs may not arise, we have requested the counsel for the petitioner to first argue on the challenge to the suspension order.

5. The counsel for the petitioner has drawn our attention to Rule 40A of the Border Security Force Rules, 1969, the relevant portion whereof is as under:

"40A. (1) Notwithstanding anything contained in these rules, the appointing authority may, at its discretion, place a person serving under him, under suspension:-

(i) where a disciplinary action under the Act against him is contemplated or is pending; or

(ii) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest or the security of the state; or

(iii) where a case against him in respect of any civil offence is under investigation, inquiry or trial.

....."

and has contended that suspension under the aforesaid Rule can be ordered only when a disciplinary action against the petitioner under the Border Security Force Act, 1968 (BSF Act) was contemplated or pending.

6. The counsel for the petitioner has next drawn our attention to Annexure R-11 to the counter affidavit filed by the respondents BSF, being a letter dated 14th October, 2020 dealing with the request of the petitioner for supply of Court of Inquiry proceedings, and wherein it is recorded that though a Court of Inquiry was constituted to enquire into the charge against the petitioner but has opined that further course of action against the petitioner may await the final outcome of the investigation of Anti-

Corruption Branch, Central Bureau of Investigation (CBI), Patna, Bihar and which opinion was accepted. The counsel for the petitioner has drawn special attention to paragraph 3 of the said communication, which is as under:

"3. In view of above, since, the COI has not given an opinion against the officer and the COI proceedings is inconclusive subject to the outcome to CBI investigation, the officer may not be entitled to get a copy of the COI proceedings at this stage. The COI proceedings received vide your letter under reference is returned herewith for your record, please."

and has contended that from the aforesaid, it is clear that no action is intended against the petitioner as of now and thus the continuation of the order of suspension is erroneous.

7. We have however drawn the attention of the counsel for the petitioner to the other grounds, mentioned in Rule 40A aforesaid, for placing a person under suspension i.e. where a case against the subject person in respect of any civil offence is under investigation, inquiry or trial and enquired, whether not in view of the Anti-Corruption Branch of CBI enquiring/investigating offence against the petitioner, a case of keeping the petitioner under suspension, within the meaning of under Rule 40A (1) (iii) is made out.

8. The counsel for the petitioner contends that 'civil offence' means an offence under the BSF Act and has in this context drawn our attention to Section 46 of the BSF Act which *inter alia* provides that any person subject to the BSF Act, who commits any civil offence, shall be deemed to be guilty of an offence against the BSF Act.

9. At this stage, Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF has drawn our attention to Section 2(1)(d) of the BSF Act defining 'civil offence' as an offence which is triable by a Criminal Court.

10. The petitioner, who is under investigation, as aforesaid, by the Anti-Corruption Branch of CBI, thus has a case against him in respect of a 'civil offence' and which offence is under investigation and Rule 40A(1)(iii) of the BSF Rules will thus apply.

11. To be fair to the counsel for the petitioner, he has not pressed for the relief of revocation of his suspension further.

12. The counsel for the petitioner has next argued for the second relief of change of headquarter and has drawn our attention to the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and to Office Memorandum (OM) dated 8th September, 1956 issued by the Ministry of Home Affairs in pursuance thereto. On the basis thereof, it is argued that the headquarter should normally be the last place of posting and on request of the employee under suspension, can be changed. It is argued that the petitioner was last posted at Jalpaiguri but his headquarter has been changed to Panjipara. On enquiry, it is informed that Panjipara is at a distance of 80-90 Km from Jalpaiguri. It is further contended that the petitioner has been allotted official accommodation at Jalpaiguri, where the family of the petitioner is residing and the petitioner, on account of his headquarter having been changed to Panjipara, is not only deprived of the company of his family but is also having to bear expenses separately for his boarding and lodging when he has already been allotted official accommodation.

13. With respect to the third relief of revision of suspension allowance, the counsel for the petitioner has drawn our attention to Fundamental Rule 53

which *inter alia* provides for suspension allowance to be an amount equal to half/50% of the salary and to revision thereof upto 75% of the salary, if the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the government servant. It is thus contended that since the Disciplinary Authority of the respondents BSF, though entitled to not agree with the opinion of the Court of Inquiry of awaiting the conclusion of investigation by Anti-Corruption Branch of CBI, did not do so and resulting in the period of suspension of the petitioner having been prolonged. It is contended that a case for enhancement of the suspension allowance upto 75% of the salary is made out. Reference is also made to OM dated 16th February, 1999 contending that the same makes it obligatory to review the suspension allowance every three months but the same has also not been done.

14. Arguing lastly for the fourth relief of supply of Court of Inquiry proceedings, attention is drawn to Rule 176 of the BSF Rules which provides as under:

"176. Copies of Court of Inquiry Proceedings.—A person subject to the Act against whom the court of inquiry has given an opinion or who is being tried by a Security Force Court on a charge relating to matter investigated by the court of inquiry, shall be entitled to copies of the proceedings of the court of inquiry unless the Director General orders otherwise."

15. The respondents BSF, in Annexure R-11 to the counter affidavit referred to hereinabove, while dealing with the request of the petitioner for copy of the Court of Inquiry proceedings, have reasoned that since the Court of Inquiry has not given any opinion against the petitioner and the petitioner as of now is not being tried by a Security Force Court, the petitioner is not

entitled to Court of Inquiry proceedings. The counsel for the petitioner has again argued that since the Court of Inquiry has not put any blame on the petitioner, the continuation of the suspension of the petitioner is illegal.

16. Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF arguing on the relief of change of headquarter has contended, (i) that under the Central Civil Services (Classification, Control & Appeal) Rules and OM dated 8th September, 1956 cited by the counsel for the petitioner, it is the place of last duty and not the place of posting which is relevant; the petitioner though posted at Jalpaiguri, was last on duty at Panjipara and thus there is no violation of the Rules/OM aforesaid for the reason of Panjipara having been made the headquarter of the petitioner; (ii) that the investigation against the petitioner by the Anti-Corruption Branch of CBI is being carried out in the State of Bihar and Panjipara is closer to the State of Bihar, being just at a distance of about 8 Km; for the purposes of CBI investigation, continuation of the petitioner at Panjipara is convenient; and, (iii) that all other persons being investigated are also at Panjipara and it is thus convenient to CBI to investigate the petitioner at Panjipara, rather than at Jalpaiguri.

17. On enquiry, it is informed that Jalpaiguri falls in the State of West Bengal and allowing the petitioner to have his headquarter at Jalpaiguri will not only interfere with the CBI investigation but also give opportunity to the petitioner to influence witnesses and investigation, as a large number of witnesses including other officials of the respondents BSF are at Jalpaiguri. With respect to the grievance of the petitioner of being away from his family, it is contended that the petitioner, as an officer is entitled to all privileges of an officers mess and since 9th September, 2020, when the petition had come

up first before this Court, an order has been passed to allow the petitioner to visit his family as and when sought.

18. The counsel for the petitioner contends that sanction of leave for the said visits takes a long time.

19. Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF disagrees and states that the permission is immediately granted unless there exists reason for denying the same.

20. Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF also informs us that permission to the CBI to investigate the petitioner under the Prevention of Corruption Act, 1988 was given only in September, 2020 and thus even 90 days therefrom are not over as yet.

21. Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF arguing with respect to the enhancement of suspension allowance has contended that revision of suspension allowance under Fundamental Rule 53 is not mandatory and is discretionary. On enquiry, whether the concerned authorities have considered the aspect of revision since the suspension is continuing since May, 2020, Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF states that he has no records or knowledge in this regard.

22. The counsel for the petitioner, in rejoinder contends that no purpose is being served by keeping the petitioner at Jalpaiguri.

23. We have considered the rival contentions.

24. As far as the challenge to the suspension order is concerned, that, as aforesaid, has not been pressed by the counsel for the petitioner in view of the provisions of Rule 40A(1)(iii) of the BSF Rules aforesaid.

25. With respect to the relief of supply of the Court of Inquiry proceedings, no error is found in the reasoning given in Annexure R-11 to the counter affidavit of the respondents BSF aforesaid, of the petitioner, under Rule 176 aforesaid of the BSF Rules being not entitled to Court of Inquiry proceedings. Rule 176 of the BSF Rules requires copies of the proceedings of the Court of Inquiry to be furnished only to the person “against whom” the Court of Inquiry has given an opinion or who is being tried by the Security Force Court on a charge relating to matters investigated by the Court of Inquiry. Here, neither has the Court of Inquiry given any opinion as yet, for it to be in favour of or against the petitioner, nor has any Security Force Court been constituted to try the petitioner.

26. We have thus considered the reliefs of change of headquarter and revision of suspension allowance.

27. Considering the fact that permission to investigate the petitioner for charges under the Prevention of Corruption Act has been given only in September, 2020 to the Anti-Corruption Branch of CBI, we feel that at this stage, any direction for change of headquarter may interfere with the investigation by the CBI and which is not before the Court. Merit is also found in the contention of Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF that Rule 10(2)(2) of the CCS (Classification, Control and Appeal) Rules titled “Headquarter of Government Servant Under Suspension” indeed uses the expression “last place of duty” as distinct from last place of posting. It is not in dispute that the petitioner though posted at Jalpaiguri was last on duty at Panjipara. There is thus no violation of the Rule cited by the counsel for the petitioner and no case for

this Court to interfere is made out. We are thus not inclined to grant the said relief to the petitioner.

28. However, as far as the relief claimed by the petitioner of enhancement of suspension allowance is concerned, it is clear that the delays are not attributable to the petitioner. The petitioner is thus entitled to consideration of revision of his suspension allowance. There is no clarity whether the authorities who are to consider the said revision, have considered the aspect of revision. Reliance placed by the counsel for the petitioner in this regard on Fundamental Rules is apposite.

29. We thus dispose of this petition, declining all the other reliefs claimed and only directing the respondents BSF to, if have not already considered the revision of suspension allowance in terms of Fundamental Rule 53, to now within 30 days, consider the aspect of revision of suspension allowance and to thereafter also, if the petitioner remains under suspension, from time to time, in accordance with Fundamental Rule 53, consider the aspect of revision and communicate the orders passed on such consideration to the petitioner within one week. If the matter has already been considered, copy of the decision taken be supplied to the petitioner forthwith.

30. The counsel for the petitioner also makes a grievance that suspension allowance is not being paid regularly and is still in arrears of two months.

31. Deputy Commandant Vinod Kumar, Law Officer of the respondents BSF states that the delay in payment of suspension allowance occurs because the petitioner is required to every month give a Non-employment Certificate.

32. We are surprised. Once the petitioner is still in the employment of the respondents BSF, the question of his being employed elsewhere does not

arise. In our opinion, suspension allowance should be disbursed on the same day on which salary to all others at the same station is disbursed.

33. The counsel for the petitioner, on enquiry states that the petitioner has been submitting the Non-employment Certificate on the 1st of every month but the delay occurs because of the officers of the respondents BSF not counter-signing the same immediately.

34. We direct the concerned officers of the respondents BSF to, within 48 hours of delivery of the Non-employment Certificate by the petitioner in the office, counter-sign the same and process the same so that the suspension allowance is disbursed within ten days of the disbursement of the salary for the same month.

35. We also grant liberty to the petitioner to approach the Anti-Corruption Branch of CBI conducting the investigation in the State of Bihar with a request for permitting him to be stationed, instead of at Panjipara, at Jalpaiguri/wheresoever the battalion of the petitioner is and if CBI has no objection thereto, the respondents BSF should change the headquarter of the petitioner from Panjipara to Jalpaiguri/wheresoever is the battalion of the petitioner.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 20, 2020

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