

S/L 02
20.03.2026
Court No.04
B.K.N

M.A.T. 603 of 2020
With
CAN 1 of 2020
CAN 2 of 2020
CAN 3 of 2020

Union of India & Ors.
Vs.
Virender Singh

Mr. Debapriya Gupta,
Mr. Arijit Majumdar,
Mr. Monishankar Sengupta

...for the U.O.I./Appellants.

1. Affidavit of service is filed showing service of notice upon the private respondent. The same is kept on record.
2. In the past notice was issued several times as is apparent from the order sheet of the present case.
3. The learned advocate appearing for the Union of India submits that the sole respondent is also participating in the pending criminal trial against him. Despite service of notice he has chosen not to appear.
4. We find the affidavit of service to sustain service of notice upon the sold respondent on 19.01.2026. Despite such service till date he is unrepresented. We, therefore, proceeded to consider the case on merits.
5. The Court is faced with an issue as to whether the sole respondent (writ petitioner) who was placed under suspension on 09.09.2019 with immediate effect and whose suspension continued till 22.02.2019, can be made to suffer a deprivation and not paid anything other

than the subsistence allowance for the said period, or not.

6. The learned advocate for the Union of India submits that the writ petitioner at the relevant point of time was holding a responsible post in the force. A complaint was lodged with the Central Bureau of Investigation against the petitioner involving commission of offences under the provisions of the then I.P.C. (Section 120 B) read with Section 7, 12, 13(2) and 13(i)(d) of prevention of Corruption Act, 1988. The allegations which are not relevant for the present, admittedly involved an investigation for commission of civil offences involving civilians, apart from the writ petitioner, who was a member of the Forces. The authorities, therefore, as per the provision contained in the Border Security Force Act 1968 (Act for short) and the 1969 Rules (Rules for short) framed thereunder were prevented from proceeding against the petitioner by a Security Force Court.
7. In view of his implication in a criminal case, the competent authority, however, was vested with a discretion to place the writ petitioner under suspension, which discretion the competent authority exercised.
8. The suspension continued for a period of nearly five and half years. When the petitioner was approaching the age of superannuation the authorities revoked the suspension. Referring to the provisions contained in the Act and Rules the learned advocate tried to justify placing of the writ petitioner under suspension since the

authorities had no scope and jurisdiction to initiate Force Court proceedings against the writ petitioner in respect of the allegations. He placed reliance on a decision of the Hon'ble Apex Court in the case of ***Union of India – Vs.- Rajiv Kumar*** reported in ***(2003) 6 SCC 516***.

9. It is submitted that the petitioner's suspension, its continuance and revocation was in compliance with the statutory procedure, and by an authority competent under the Act and Rules. He, therefore, submits that the suspension being valid and in accordance with law there was no scope for the writ petitioner to claim any amount in addition to the subsistence allowance paid for the period of suspension. The Hon'ble Single Judge has glossed over this aspect of the matter. The direction passed by the Hon'ble Single Judge in the writ petition for payment of balance amount, to ensure payment of full salary for the period of suspension is unsustainable.
10. We have considered the submissions of the learned advocate, the provisions relied upon as well as the judgment of the Hon'ble Apex Court in the case of ***Rajiv Kumar (supra)***.
11. The learned advocate vociferously tried to justify the continuance of suspension and tried to sustain the consequence of petitioner's deprivation by relying upon the statutory provision including the Rules. The provisions in Section 80 of the Act and 40A of the Rules relied upon, however, are all in relation to the power and

procedure for placing a member of the Force under suspension and continuance of such suspension.

12. The issue in the present case, however, now has nothing to do with the petitioner being placed under suspension, its continuance or revocation by the competent authority in exercise of its discretion. The issue arising for consideration is whether after revocation of petitioner's suspension, when no proceeding was conducted against the petitioner and there is no proved misconduct; and no finding of guilt/conviction in any criminal proceeding, he can be deprived of the salary and be paid only subsistence allowance for the period of suspension.
13. On a specific query being made by the learned advocate whether there is any statutory provision which supports withholding of salary under such circumstance, he fairly submitted that in this regard the statute is silent.
14. There is no statutory provision and no source of power to deprive the petitioner of his due salary and limit his income during the period of suspension to a subsistence allowance, after revocation of the suspension and without there being any finding of guilt either in a departmental proceeding or a criminal trial. Therefore, the action of the authorities of depriving the petitioner of his salary for such period in our opinion cannot be sustained.
15. The law regarding suspension is clear. The Courts normally do not consider the suspension to be penal, but

have repeatedly held that its long continuance does result in hardship and may assume stigmatic proportion.

16. It is for such circumstance that the Rules and provisions governing suspension generally incorporate procedure for an assessment regarding requirement of continuance of the suspension by a competent authority.

17. The law, however, cannot countenance that even though the suspension was revoked without initiating any proceeding and there is no finding of guilt in any proceeding, then a person can be deprived of his salary for the period of suspension. In this case admittedly no departmental proceeding or Security Forces Court was conducted against the writ petitioner. It is also an admitted position that till date he has not been convicted in the pending criminal trial.

18. We, therefore, find no infirmity in the decision of the Hon'ble Single Judge directing for payment of full salary to the petitioner for the period of suspension that is from 09.09.2013 to 22.02.2019.

19. The appeal is accordingly dismissed. Pending applications are also disposed of.

20. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)