

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1739 of 2002

New Delhi, this the *7th* day of August, 2003

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri S.K. Aggarwal
S/o Late Shri K.L. Aggarwal
R/o 139, SFS Shakti Apartments,
Ashok Vihar, Phase-III,
Delhi-110 052.

...Applicant

(By Advocate: Shri S.K. Gupta, proxy counsel for
Shri B.S. Gupta, Counsel)

Versus

1. Union of India
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Principal Chief Controller of Accounts,
Central Board of Direct Taxes,
9th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.
3. Deputy Controller of Accounts,
Office of the Principal Chief
Controller of Accounts,
Central Board of Direct Taxes,
9th Floor,
Lok Nayak Bhawan,
Khan Market, New Delhi-110 003. ..Respondents

(By Advocate: Shri M.M. Sudan)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this OA seeking the setting aside of the order of suspension dated 3.4.2001 being illegal and arbitrary and further sought a direction to the respondents to reinstate the applicant in service with all consequential benefits.

2. Facts in brief are that the applicant was working as a Pay and Accounts Officer in the Ministry of

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Water Resources. A pseudonymous complaint was received about certain irregularities in drawl and payment of Government funds so the applicant was suspended under sub-rule (i) of Rule 10 of the CCS (CCA) Rules, 1965. The applicant has challenged the same on the ground that the suspension order has not been issued by competent authority and further that he had been suspended with effect from 3.4.2001 and continues to remain under suspension and still neither any charge-sheet has been issued nor any action has been taken though the order of suspension says that since a disciplinary proceeding is contemplated so the applicant was put under suspension.

3. The applicant submitted that his continued suspension without issuing of any charge-sheet for such a long delay is not justified and the order of suspension calls for a review or to be quashed and set aside.

4. Respondents are contesting the OA. Respondents pleaded that applicant while working in the office of Water Resources was involved in defalcation of Government money for which an FIR dated 6.2.2001 was registered by the CBI against 16 officials and as a result of the FIR, the applicant was arrested and remained in judicial custody for long time and the matter is still under investigation by the CBI so on receipt of the information from the concerned Ministry the applicant was placed under suspension by the competent authority, i.e., Pr.CCA and charge-sheet will be issued on receipt of enquiry report from the CBI.

5. We have heard the learned counsel for the parties and gone through the records of the case.

6. The learned counsel appearing for the

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applicant submitted that first of all the suspension order has not been issued by the competent authority so on this ground also the OA is liable to be dismissed.

7. Besides this the counsel for the applicant relied upon the judgment reported in 1991 (1) CAT page 327 entitled as Baidya Nath Ghosh Vs. U.O.I. & Others wherein it has been held as follows:-

"CCS (CCA) Rules - Rule 10 (1) - Suspension in contemplation of action - Non application of mind, Delay in charge-sheet, OM of 15.7.76, Exemplary costs - Suspended without chargesheet and suspension continued - Neither case reviewed nor various aspects to revoke suspension or to frame the charge-sheet taken OM of 15.7.76 provides charge-sheet to be issued within 3 months or the matter to be referred to higher authorities - CAT found utter disregard of guidelines - Directed to reinstate and awarded exemplary costs of Rs.5000/-".

8. The applicant also referred to another judgment in the case of S.A. Mendies Vs. U.O.I. & Others reported in 386 Swamy's CL Digest 1996/2 wherein it was held as under:-

" Prolonged suspension without issuing charge memo and review of subsistence allowance is contrary to Government of India directions although Rule 10 of CCS (CCA) Rules do not prescribe such limitations."

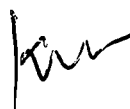
9. On the contrary the learned counsel for the respondents submitted that the order of suspension in this case has been passed by the competent authority and on the application of the applicant the respondents have also produced the record before this court and submitted that the record reveals that the order has been passed by the competent authority. The counsel for the applicant has referred to a Full Bench decision in the case of J.S. Goel VS. U.O.I. & Others in OA 2119/97 wherein it was also a case of prolonged suspension and the question posed before the Full Bench was whether in every case of

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suspension, including suspension on the basis of pendency of criminal case involving moral turpitude or corruption, the Government is bound to consider the factors as discussed and directed by the Tribunal in OA No. 1449/97 and the court came to the conclusion that the authority punishing the employee is required to consider the relevant rules and instructions from time to time to supply those.

10. We have considered the rival contentions of the parties and gone through the records of the case.

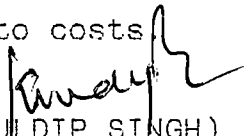
11. Though in this case the applicant has been suspended on the basis of an FIR registered by the CBI in which the applicant is also involved besides other cases. However, from the perusal of the record produced by the respondents we find that FIR has been registered under Section 120-B/420/468/477-A IPC & 13(2) read with 13(1)(c) of the Prevention of Corruption Act and the case Section 120(B) is itself an independent offence of hatching a criminal conspiracy of syphoning of Government money and since the matter involved is a serious one as the record shows that a sum of Rs.23-24 lakhs of Government amount has been syphoned off and various documents had also been forged such as deposit challan etc. were forged, so we find that the applicant is involved in a serious criminal case and the department is justified to continue the suspension of the applicant. Though there is delay in issuing of charge-sheet, but the delay is being caused as the respondents are not getting the report from the CBI despite the fact that the respondents are making various efforts to call for the report so there is no dereliction on the part of the respondents in issuing the charge-sheet itself.




12. The judgment relied upon by the learned counsel for the applicants are distinguishable and do not apply to the present facts of the case. In case of Baidya Nath Ghosh (Supra) the department had even not reviewed the suspension order and in case of S.A. Mendies (Supra) the review held was contrary to the rules.

13. But in the case in hand there is not complaint about review of suspension and/or suspension allowances. Moreover, the departmental file speaks that department is not sitting over the case rather the correspondence shows that they are active and awaiting the report from CBI. Thus as per Full Bench judgment, the department is to follow the guidelines on the subject.

14. So in these circumstances, we find that the OA has no merits and the same has to be dismissed. Accordingly, the same is dismissed but without any order as to costs.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

Rakesh