

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00533/2019

DATED THIS THE DAY 04TH OF MARCH, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

Mohammed Mohsin
S/o Late Ghulam Mohammad,
Aged about 48 years, I.A.S (Karnataka Cadre)
Presently Working as Secretary,
Backward Class Welfare Department,
Bengaluru-56 001
And residing at No.318
PWD Quarters
15th Cross, 5th Main,
Dollors Colony, RMV II Stage,
Bengaluru-560 094.

.....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. Election Commission of India,
Represented by its Secretary,
Nirvachan Sadan,
Ashoka Road,
New Delhi-110 001.

2. Chief Electoral Officer,
Heads of Department Road,
Unit 9, Bhubaneswar,
Odisha Pin-751001.

3. Chief Electoral Officer,
Nirvachana Nilaya Maharani College Circle,
Sheshadri Road,
Bengaluru-560 001.

4. Union of India
 Represented by its Secretary,
 Department of Personnel and Training
 Ministry of Personnel, Public Grievance & Pensions,
 North Block, New Delhi-110 001.

5. State of Karnataka
 Represented by its Chief Secretary,
 Department of Personnel & Administrative Reforms
 Vidhana Soudha,
 Dr. B.R. Ambedkar Veedhi,
 Bengaluru-560 001.

6. Shubham Saxena
 The District Collector,
 Sambalpur District,
 Odisha Pin-768001.

7. Sanjeev Arora IPS
 The District Superintendent of Police,
 Sambalpur District,
 Odisha Pin-768001.

8. Manas Ranjan Swain,
 Addl. Tehsildhar Sambalpur,
 Odisha, Pin-768001.

9. Asheet Kumar Panigrahi
 IGP Police HQs,
 Bhubaneswar,
 Odisha, Pin-768001.

10. Mr. Uday Kumar,
 SSO, Special Protection Group (SPG)
 No.9, Loka Kalyana Marg,
 HQs, New Delhi-110 001

....Respondents

(By Shri S.R. Dodawad, Counsel for Respondent No. 1-3,
 Shri R.B. Sathyanarayana Singh, Counsel for Respondent No. 5 and
 Shri N. Amaresh, Counsel for Respondent No. 4 & 10)

ORDER
(HON'BLE DR. K.B. SURESH, MEMBER (J))

This is a sequence to another case we have. The matter relates to certain rights available to persons holding high positions and the extent to which oversight is possible on them. The respondents rely on Commissioner

of Police, Delhi and Another Vs. Registrar, Delhi High Court, New Delhi reported in (1996) 6 SCC 323. We cannot but be in respectful agreement to this decision of the Hon'ble Apex Court but the question in issue, de hors the cloud of steam, it seem to us to be right of 3 persons – the deputationist, the lending organization and the borrowing organization.

2. We had held a detailed discussion with the learned counsels on this and have come to a conclusion that:

- 1) The borrowing authority, based on several decisions of the Hon'ble Apex Court, have no disciplinary control over the deputationist except in certain limited situations. This is covered by the decision of the Coordinate Bench in the case of J. Krishna Kishore Vs. State of Andhra Pradesh in OA No. 1092/2019. Therefore, in certain very emergent matters, some limited authority might be given to the borrowing authority but basically there is no way that the borrowing authority had to take disciplinary action. We quote:

“: **ORDER:**

(Per Hon'ble Mr. Justice L. Narasimha Reddy, Chairman)

The applicant is an officer of Indian Revenue Service of 1990 batch. In 2015, he was working as Private Secretary to the Ministry of Civil Aviation on deputation. At that time, a request is said to have been made by the Government of Andhra Pradesh for the deputation of the applicant for a period of 3 years, to work as Special Secretary. The applicant has also made a request in that behalf. The Ministry of Civil Aviation relieved the applicant, and thereafter the Central Board of Direct Taxes, Ministry of Finance, accorded permission for shifting the applicant to the Government of Andhra Pradesh; on deputation basis, through order no.147 of 2015 dated 28.08.2015, and to enable him to join as Special Secretary to the Government of Andhra Pradesh. Through orders in G.O.Rt.No.2911, dated 23.09.2015, the applicant was appointed as Chief Executive Officer (CEO) of the Andhra Pradesh Economic Development Board, (for short “the Board”). Vide orders dated in G.O.Rt.No.2028, dated 17.09.2018, the

deputation was extended by another two years from 29.08.2018 to 28.08.2020. The applicant states that he has undertaken several works to promote investment in the State of Andhra Pradesh, in his capacity as the Chairman of the Board.

2. On 24.05.2019, the applicant addressed a letter to the 1st respondent with a request to repatriate him to the parent department. That was followed by representation dated 3.7.2019. The first respondent issued orders in G.O.Rt.No.1464 dated 3.7.2019, transferring the applicant from the post of CEO of the Board and directing him to report to the Government in GAD, the 2nd respondent herein. On 7.11.2019, the Central Board of Direct Taxes, the 6th respondent herein, addressed a letter to the first respondent requesting them to repatriate the applicant to the parent department.

3. On 12.12.2019, the applicant was promoted to the post of Principal Commissioner of Income Tax. On the same day, the first respondent passed an order in G.O.Rt.No.2814 placing the applicant under suspension in exercise of powers conferred under Sub-Rule (1) of Rule 20 r/w Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965. This OA is filed challenging the order of suspension and with the prayer to direct the 1st respondent to repatriate him to the parent department.

4. The applicant contends that since he was becoming ripe for promotion to the post of Principal Commissioner of Income Tax, he made a request seeking repatriation and even the parent department viz., Respondent No.6 also addressed a letter to the first respondent for his repatriation. According to the applicant once there is a request for repatriation by himself and his parent department, the first respondent was under obligation to accede to the request and there was no basis to continue him, that too by transferring from a specific post without assigning any duties whatever. He contends that his deputation was post specific, and the employee who is taken on deputation to handle a particular post cannot be put to any other post without his consent.

5. The applicant contends that there was no complaint whatever against him at any stage of his service and the order of suspension was passed without any basis and purely as a measure of vendetta. He further stated in the OA that in his capacity as an officer of the Income Tax Department, he had to verify the assessment of the firms owned by the present Chief Minister earlier and that in turn led to initiation of proceedings against the latter under the relevant provisions of law. He contends that once there was a change of guard in the Government of the State, he has been transferred from the post of CEO, and though he wanted to go back to the parent department, it was not acceded to with the sole objective of harassing him.

6. The applicant contends that there was no complaint whatever from any circle, as regards his functioning as the CEO of the Board, for the past 4 years and he was suspended grossly misusing the power. He submits that a borrowing department is under obligation to bring to notice of the parent department, the instances of irregularities or deviations on the part of an employee on deputation, if any, and it is only when a serious allegations are made and there exist a consensus between the borrowing and lending departments, that the employee on deputation, can be placed under suspension. He submits that impugned order of suspension passed does not accord with law and is motivated.

7. On behalf of the respondents 1 and 2, a counter affidavit is filed. It is stated that the verification of the performance of the applicant as CEO revealed that certain irregularities have taken place and with a view to initiate disciplinary proceedings, he was placed under suspension. It is stated that it is very much competent for the first respondent to issue the impugned order of suspension and the various grounds raised by the applicant are not tenable in law. It is also stated that the term of the applicant is in force till 28.08.2020. They did not deal, much with the plea as to repatriation

8. On behalf of the 4th respondent, an affidavit is filed by the Deputy Superintendent of Police, CID, stating that an FIR has been filed against the applicant by the Special Grade Deputy Collector of the Board on 15.12.2019 and an FIR No.22 of 2019 was also registered with PS, CID, AP.

9. Arguments on behalf of the applicant are advanced by Shri Neeraj Malhotra, learned Senior Counsel. He contends that the deputation of an employee takes place with the consent of the lending department, the borrowing department and the employee and once a request is made by the borrowing department as well as an employee i.e, the applicant herein, there is no basis for the first respondent to deny repatriation. He contends that the order of suspension was unwarranted on facts and untenable in law. Learned counsel submits that there did not exist any complaint against the applicant ever since joining the first respondent on deputation, muchless any complaint was forwarded to the principal employer i.e., CBDT. He submits that even on the date on which the order of suspension was passed, nothing existed on record nor any mention was made of it. He submits that the very fact that a direction was issued in the impugned order to file a criminal complaint against the applicant, discloses the motive on the part of the respondents to penalize the applicant for the role played by him in the verification of assessment of the Chief Minister on an earlier occasion. Placing reliance upon certain precedents, the learned Senior Counsel submits that the order of suspension is liable to be set aside and that the applicant be relieved, forthwith from deputation.

10. *Shri D.Prakash Reddy, learned Senior Counsel, advanced arguments on behalf of the respondents 1 to 4. He submits that the tenure of the applicant on deputation with the first respondent, subsists till August 2020 and it is for the borrowing department to decide whether or not to relieve the employee on deputation, before the expiry of the term. He submits that the verification of the activities undertaken by the applicant as CEO of the Board revealed certain irregularities and to ensure that the applicant does not meddle with the further inquiry, he was initially relieved from the post and thereafter placed under suspension. He submits that Rule 20 of the CCS (CCA) Rules confers power upon the borrowing department to place an employee under suspension and that no irregularity has crept in to the impugned proceedings. He further contends that occurrence of various events in the OA are incidental, and not interrelated, as pleaded by the applicant.*

11. *The challenge in this OA is to the order of suspension dated 12.12.2019 as well as to refusal on the part of the respondent no.1 to repatriate the applicant. It is felt appropriate to deal with the 2nd aspect, first.*

12. *The relevant facts pertaining to the service of the applicant are mentioned in the preceding paragraphs. The applicant is an officer of IRS, of 1990 batch and by the year 2015, he was on deputation to the Ministry of Civil Aviation. On a request made by the applicant, and the 6th respondent, his deputation was shifted to the Government of Andhra Pradesh and he was posted as CEO of the Board. Though the applicant enlisted his achievements in the Board and the first respondent on the other hand pointed certain deficiencies, lapses and irregularities on the part of the applicant, we do not find it necessary to refer to them, in the context of the discussion, pertaining to repatriation.*

13. *It is fairly well settled and known that the deputation of an employee involves three players viz., the parent department, the borrowing department and the employee concerned. It is only when an agreement emerges among the three that a valid deputation takes place. Even if one of them are unwilling, it cannot materialize. The deputation, particularly at a higher level of administration, is resorted to whenever the services of a specialized nature required in a department or Government. A particular department or Government may not have on its services, the employees of a given specialization. If a necessity arises to avail the services of a particular nature, one option is to create a post of that nature and to make appointment. The other option is to avail the services of an existing employee in the other department or Government, on deputation basis. Much would depend upon the duration for which the services are needed and the desirability or otherwise, of having a permanent cadre.*

14. The deputation, once it takes place, would normally remain in force till the end of the term or the extended term. Instances are not lacking where the deputation is terminated before the expiry of the term. This can be at the instance of borrowing or lending department. If either of them repatriate the employee before the expiry of the term, he does not have any vested right to continue. Similarly, if an employee requests for repatriation, the same needs to be acceded to, unless extraordinary circumstances exist.

15. It becomes necessary to refer to certain background facts. In the OA itself, it is stated that the applicant was associated with the verification of the records of the Agencies connected with the present Chief Minister of the 1st respondent State at a time when he was not holding that office, and that such verification in turn has resulted in initiation of proceedings under the relevant provisions of law. Obviously for that reason, the applicant submitted a letter seeking repatriation, once there was change of guard in the Government in the State. The respondents issued G.O.Rt.No.1464, dated 3.7.2019, transferring the applicant from the post of CEO of the Board requiring him to report in GAD. No specific duties were assigned to him. On the same day, the applicant reiterated his request to repatriate him to the parent department. It reads as follows:

"I would like to be repatriated to the Income Tax Department as I am due for promotion as Principal Commissioner Income Tax within the next few days. My immediate repatriation will enable me to rejoin the department in time for the Annual General Transfers that are slated to take place within the next 10 days and I would be required to apply for reposting before the Annual General Transfers.

I am grateful for all the support, guidance and the trust reposed on me by the administration. I, cherish and value the opportunity given to me to serve in the State of Andhra Pradesh, for which I am eternally grateful."

The parent department (6th respondent) addressed a letter dated 7.11.2019 requesting the first respondent to repatriate the applicant to their department, which reads as under:

"I am directed to refer your letter No.388/SC.A/A-2/2014-15 dated 17.08.2015 on the above mentioned subject and to

request you to repatriate Shri J.Krishna Kishore, IRS (IT:90025), CIT, working as Special Secretary in the State Government of Andhra Pradesh, Hyderabad, immediately as his name falls in the zone of promotion to the post of Principal Commissioner of Income Tax.”

It thus emerges that the applicant on the one hand and his parent department on the other hand, made request for his repatriation. The first respondent was under obligation to respond to such requests.

16. Normally, the borrowing department would be reluctant to relieve an employee under deputation, in case he was assigned any particular specific work or project and it is half way through. Such an eventuality does not exist in this case. The reason is that the applicant was transferred from the post of CEO and he was kept idle from July 2019 onwards. In any way the very purpose of taking the applicant on deputation stood defeated from the date on which he was kept idle i.e., 3.7.2019. The applicant was also impressing upon the first respondent that he is due for promotion in his parent department and his repeated requests did not evoke any positive response. Further, nothing adverse was either noticed or informed to the parent department.

17. In **Kunal Nanda vs Union of India & Others (2000) 5 SCC 362**, the Hon'ble Supreme Court observed as under:

“The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.”

Though this was said in the context of a request of an employee for absorption in the borrowing department, the principle operates on the general aspect of deputation as such. This is particularly so, when the lending department intended to recall the employee.

18. In **Umapati Chourdary v. State of Bihar & Another (1999 (4) SCC 659)**, the Hon'ble Supreme Court explained the concept of deputation as under:

“9. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or

even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled.”

19. In the instant case, two, out of the three players, wanted repatriation. The agreement or consensus to continue his deputation ceased. Therefore, in the facts of the case, there was absolutely no basis or justification for the first respondent in not acceding to the request made by the applicant as well as the lending department for repatriation. The applicant cannot be continued on deputation contrary to his wish and the demand made by the lending department for repatriation. On its part, the 1st respondent did not respond at all, may be because, they did have much to say under these circumstances. The applicant was entitled to be repatriated.

20. The next issue is, the suspension of the applicant. It was already been mentioned that on 12.12.2019, the applicant was promoted to the post of Principal Commissioner of Income Tax. On the same date, the first respondent passed order in G.O.Rt.No.2814, placing the applicant under suspension. The order reads as under:

“GENERAL ADMINISTRATION (SC-D)
DEPARTMENT

G.O.Rt.No.2814

Dated:12.12.2019

Report received from Industries, Infrastructure,
Investment & Commerce Department.

ORDER:

Government is in receipt of the report read above. After careful examination, Government hereby issue following orders:

2. In exercise of the powers conferred by the sub rule (1) of rule 20 read with sub rule (1) of rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, the Government hereby places Sri J. Krishna Kishore, IRS under

suspension with immediate effect and he shall continue to be under suspension in public interest until the conclusion of disciplinary proceedings.

3. The Director General, ACB and Director General, CID shall register a case in his regard and investigate into the irregularities and take necessary action within six months.

4. It is further ordered that during the period for which this order remains in force, the headquarters of Sri J.Krishna Kishore, IRS shall be Amaravati and the said officer shall not leave the headquarters without obtaining prior permission of the competent authority.

(BY ORER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

NILAM SAWHNEY

CHIEF SECRETARY TO GOVERNMENT”

21. Two aspects become relevant in this behalf. The first is about the competence of the first respondent and the second is about the legality and propriety of the order. So far as the competency is concerned, Rule 20 of CCS (CCA) Rules, does confer power upon the borrowing department/department to place an employee on deputation under suspension. Hence, it cannot be said that the first respondent lack competence.

22. Coming to the legality of the order of suspension, it needs to be observed that whatever be the freedom of an employer to place its employee under suspension, some amount of restraint is to be maintained when the employee is the one, who is under deputation. Basically it is for the original employer i.e., the lending department to regulate conduct of its employee. If an employee, while on deputation to another department, has resorted to any acts of illegality, such instances are required to be brought to the notice of the parent department so that it can take appropriate steps. It can withdraw the employee forth with, or may suggest a course of action. In a way the reputation of the lending department also would at stake. Obviously, for that reason, the ultimate punishment can take place in the hands or with the consent of the lending department. It is only when the matter cannot brook any further delay, or when the lending department did not object to such a course, that a borrowing department can place the employee on deputation under suspension.

23. In the instant case, the record does not disclose that any acts or omissions on the part of the applicant were either pointed out to him or to his parent department. Even the counter affidavit is silent as to

whether any such thing existed, by the time the impugned order was issued.

24. The circumstances under which an employee can be placed under suspension are fairly well settled. The principal objective is to ensure that the employee does not meddle with the inquiry into his alleged irregularities. Many a time, the transfer of an employee to another post or place, is treated as a close substitute for suspension. However, if the charges or allegations are grave, suspension is taken recourse to. The impugned order of suspension does not even refer to the existence of any serious acts or omissions on the part of the applicant. He was already stripped of his position as CEO way back in July 2019, and he was idle for 5 months. No where, it is mentioned that during the period of 5 months, the applicant has indulged in any objectionable activities. On the other hand, his complaint is that he was not assigned any duties and was not paid salary and thereby he faced mental agony.

25. In **Union of India v. Ashok Kumar Aggarwal (2013 (16) SCC 147)**, the Hon'ble Supreme Court dealt with the subject of suspension pending inquiry in detail. Quite large number of precedents were taken note of. In paras 25 to 30, the Hon'ble Supreme Court observed as follows:

"13. There cannot be any doubt that the Rules 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (Vide: [Union of India & Ors. v. Udai Narain](#), (1998) 5 SCC 535).

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in [State of M.P. v. Sardul Singh](#), (1970) 1 SCC 108; [P.V. Srinivasa Sastry v. Comptroller & Auditor General of India](#), (1993) 1 SCC 419; [Director General, ESI & Anr. v. T. Abdul Razak](#), AIR 1996 SC 2292; [Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. & Ors.](#), AIR 1988 SC 2118; [Delhi Cloth General Mills vs. Kushan Bhan](#), AIR 1960 SC 806; [U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjeev Rajan](#), (1993) Supp. (3) SCC 483; [State of Rajasthan v. B.K. Meena & Ors.](#),

(1996) 6 SCC 417; [Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan](#), (1996) 3 SCC 157; and [Allahabad Bank & Anr. v. Deepak Kumar Bhola](#), (1997) 4 SCC 1, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of [Article 21](#) of the [General Clauses Act](#), 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or

control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review.

15. Rule 10 of the Rules 1965 provides for suspension and clause 6 thereof provides for review thereof by the competent authority before expiry of 90 days from the effective date of suspension. However, the extension of suspension shall not be for a period exceeding 180 days at a time. The CVC can also review the progress of investigation conducted by the CBI in a case under the Act 1988.

The Vigilance Manual issued by CVC on 12th January, 2005 specifically deals with suspension of a public servant. Clause 5.13 thereof provides that Commission can lay down the guidelines for suspension of a government servant. However, if the CBI has recommended suspension of a public servant and the competent authority does not propose to accept the said recommendation, the matter may be referred to the CVC for its advice. The CBI may be consulted if the administrative authority proposes to revoke the suspension order. Clause 6.1 read with Clause 6.3.2 thereof provide that suspension is an executive order only to prevent the delinquent employee to perform his duties during the period of suspension. However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma, an order of suspension should not be made in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account.

Clause 6.3.3 further provides that before passing the order of suspension the competent authority may consider whether the purpose may be served if the officer is transferred from his post. Clauses 17.42 to 17.44 of the CBI (Crime) Manual 2005 also deal with suspension. The said clauses provide that the government servant may be put under

suspension if his continuance in office would prejudice the investigation, trial or enquiry e.g. apprehension of interfering with witnesses or tampering of documents or his continuation would subvert discipline in the office where the delinquent is working or his continuation would be against the wider public interest.”

If the parameters mentioned above are applied to the facts of the present case, the order of suspension becomes untenable. Further, this is a rare case in which the Chief Secretary of State Government has directed the Director General of APEDB, to register a case and investigate into the irregularities. As a matter of fact, the known course is that if an employee commits any acts, which attract punishment under relevant provisions of law, the concerned authority registers a case duly obtaining the necessary permissions. If he is arrested, suspension follows as a consequence. The issuance of charge sheet is examined thereafter. When there was no complaint, muchless any initiation of proceedings by the prosecuting agency, it was just ununderstandable as to how the Chief Secretary can direct the registration of a case that too, against senior officer of the Central Government, who was just on deputation to the State. Adequate thought does not appear to have been given to such a serious and delicate aspect. In a way, presence of such clauses or directions in the order of suspension speak about lack of bonafides or arbitrariness touching on the very legality of the order of suspension. Obviously, in obedience to the direction issued by the Chief Secretary, a complaint was submitted on 15.12.2019 by Special Grade Deputy Collector, which is associated with its letter and curiously that a subordinate employee has made a complaint against CEO and that in turn gave rise to registration of FIR.

26. *The impugned order of suspension does not even refer to the existence of any grave charges nor any charge memo was issued. Curiously enough, it is mentioned that the suspension shall remain till the conclusion of the disciplinary proceedings. This runs contrary to the very Scheme under the CCS (CCA) Rules. Another aspect is that the order of suspension is required to be in force for 90 days and thereafter to be reviewed in case no charge memo is issued. The question of directing the suspension till the conclusion of the disciplinary proceedings even before the charge memo is issued, does not arise.*

27. *Viewed from any angle, we do not find any factual or legal basis for issuing the impugned order of suspension. It does not stand scrutiny of law and the same deserves to be set aside.*

28. *We therefore allow the OA by –*

(a) *Setting aside the G.O.Rt.No.2814, dated 12.12.2019; and*

(b) Directing that the applicant shall forth with be relieved for his repatriation to the parent department. Since he is kept in waiting in the 2nd respondent office since 03.07.2019 and not assigned with any duties, he shall be entitled to report to the parent department i.e., Respondent No.6;

(c) In case, the first respondent intends to initiate any disciplinary proceedings against the applicant, it shall be open to them to do so in consultation with the respondent no.6, in accordance with law.

29. There shall be no order as to costs.

Sd/-
(**B.V.SUDHAKAR**)
MEMBER (ADMN.)

Sd/-
(**JUSTICE L.NARASIMHA REDDY**)
CHAIRMAN"

That raises a question. What can the borrowing authority do in the circumstances? As stipulated by the Hon'ble Apex Court in many a case that they issued Annexure-A18 and the consequential complaint to the State Government is the only issue. We quote from Annexure-A18:

**"ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI 110 001**

No. 464/OR/2019

Dated:- 25.04.2019

ORDER

Whereas, the Commission placed Sh. Mohammed Mohsin, the then General Observer 3-Sambalpur (Odisha), under suspension vide its Order No. 464/OR/2019 dated 16th April, 2019 for dereliction of duty; and

Whereas, the Commission further shifted the headquarters of Sh. Mohammed Mohsin from Sambalpur (Odisha) to the Office of Chief Electoral Officer, Bengaluru vide its order No. 464/OR/2019 dated 20th April, 2019; and

Whereas, Commission has received a factual report from Sh. Dharmendra Sharma, Deputy Election Commissioner in the matter;

Now, therefore, on consideration of the report, without prejudice to the outcome of the disciplinary proceedings, the

Commission hereby orders the following:

- 1. Recommending to State Government Karnataka for initiating disciplinary action on the basis of the factual report;*
- 2. Debarring Sh. Mohammed Mohsin from election duty with immediate effect until further orders; and*
- 3. Revoking the suspension of Sh. Mohammed Mohsin with immediate effect with the direction to report to the State Government of Karnataka.*

*By Order
Sd/-
(Rakesh Kumar)
Secretary”*

2) It is seen that an application of mind is made by the borrowing authority as the Deputy Election Commissioner had looked into the matter, taken evidence and then had reported. On the basis the State Government is now seeking to take disciplinary action against the applicant, which the applicant now challenges. But applicant points out the inapplicability of R10 and R11 and the fact that the counsel for Election Commission was unable to point out any specific infraction by the applicant.

3. The learned counsel for the applicant would submit that the Court should look into the entirety of the case as if exercising jurisdiction under Section 482 of the CrPC to find out:

- 1) Whether there is any transgression of laws?
- 2) Whether there is an abuse of the process of Court?

4. Therefore, with the help of both the counsels we had looked into the matter and found that the factual transgressions are such that which are

answerable in a departmental inquiry, as rival contentions has to be balanced by the adjudicator otherwise. While it is not prohibited for an adjudicator to look into the rival contentions under Article 226, it should be avoided as much as possible because, normally under Section 226 of the Constitution of India, even a first instance Court is not expected to look into the rival contention unless it is so apparent on the face of record. No such contention has been raised also that it is so apparent except to point out that there is a correction made by the Special Protection Group in one portion of their report which may indicate that instead of the General Observer it might be the District Election Officer who might have ordered a search.

5. He also raises a case that ordering of search is improper. But, without any doubt, if sufficient ground exists, a search could have been ordered. But then, no further details are available to support an adjudication in this regard that whether there was material enough for him to believe that such a search was necessary and in fact it is his case that he had not ordered any such search. Therefore, without any doubt, this is a matter which can and should be decided only in the inquiry by only the disciplinary authority without any extraneous juncture. Therefore, we hold that there is nothing wrong in the part of the State Government and in fact they could not have done anything else as the borrowing authority has complained and it is their fundamental duty to comply with the request to conduct an inquiry and find out the truth and revert back. But then, it is not correct for an officer to be held responsible for an offence he has not committed and, as soon as he is cleared from this morass, it is better for him and for the Government also

who is the lending authority. Therefore, we will further direct that let the explanation be called for from the applicant in the first instance before issuing a formal charge sheet under the rules and the applicant also will co-operate. In view of the circumstances, we direct that a retired Chief Secretary of Karnataka Cadre should conduct the inquiry should the Government decide to conduct an inquiry after the due and unbiased examination of the explanation given by the applicant. Needless to say, he should be issued copies of all documents necessary to provide the explanation.

6. The OA is disposed of with the above orders. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

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