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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1727 of 2001

New Delhi, this the 17th day of May, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri R.B.S. Tyagi
S/o Late Shri Ram Avtar Tyagi
DANI Civil Service Officer,
(under suspension)
Government of Delhi
R/o Quarter No. 47/20
Delhi Admn. Flats Rajpura Road,
Delhi-110 054.

-APPLICANTS

(By Advocate: Shri T.R. Kakkar)

Versus

Union of India
through
Secretary to Government of India
UT Section-II, Ministry of Home Affairs,
North Block,
Central Secretariat,
New Delhi.

-RESPONDENTS

(By Advocate: Shri N.S. Mehta)

ORDER

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

The applicant impugns an order dated 8.6.2001 passed by the President of India stating that the applicant shall continue to remain under suspension until further orders.

2. The applicant claims that he was involved in a false case under POC Act No. 49 of 1988 and Sections 201, 420, 468, 471, 120B of IPC and he was suspended w.e.f. 17.11.1995 vide order dated 15.1.1996 under Rule 10(2) of the CCS (CCA) Rules, 1965. The applicant had approached the Tribunal earlier also against the suspension order but the OA was disposed of with a direction to the respondents to consider the case whether

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the impugned suspension order should be revoked or not and while considering the same they should take into account the relevant facts and Government instructions but it is stated that the respondents did not comply with the directions. The respondents reviewed the suspension in August, 2000 after filing the charge-sheet in July, 1999 and thereafter though the charge-sheet has been filed but no charges have been framed and the matter is still pending and the respondents lastly reviewed the order of suspension vide impugned order dated 8.6.2001. And without any valid reason, the respondents decided to continue the applicant under suspension.

3. Challenging the same the applicant alleges that since the investigation is complete and all the evidence and records have been taken into custody by the court and there is no apprehension of tampering with the evidence and influencing witnesses in the event of revocation of his suspension.

4. He further pleads that ordinarily suspension should not exceed 6 years and the applicant suffered great hardship, mental agony and social humiliation etc. and it is to be examined whether reinstatement of the applicant is a hurdle to the progress of the court case and it has been so observed by the Tribunal that unduly long suspension is deprecated and the case is fully covered by its earlier judgments in the case of OA 2278/94 Madhukar Vs. U.O.I. decided on 27.7.99.

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5. The applicant also relied upon another judgment in OA No.833/2k Bani Singh Vs. UOI.

6. The applicant also pleaded that the continued suspension for an indefinite period is against public interest as no valid reasons are given by the respondents for continued suspension.

7. The OA is opposed by the respondents. The respondents in their reply pleaded that the case FIR 32/95 of Anti Corruption Branch was registered against applicant and others on a complaint made by Shri H.D. Birdi, the then Director, Employment, Government of NCT of Delhi under whom the applicant was working in the same Directorate.

8. It was specifically alleged that the applicant had abused his official position as public servant by sanctioning unauthorised payment of salary for 17 months to Shri Banarsi Lal, LDC by forging the official records although Shri Banarsi Lal was wilfully absent from duty during the said period. The applicant was arrested and remanded to judicial custody till 22.11.1995 and since his judicial custody exceeded 48 hours so in terms of sub-rule (2) of Rules 10 of the CCS (CCA) Rules, 1965 the applicant was placed under suspension as being deemed to have been placed under suspension w.e.f. 17.11.1995.

9. The applicant had earlier filed an OA wherein directions were given to the respondents to consider his case as to whether the impugned suspension order dated 15.1.1996 should be revoked or not and after taking into

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consideration the representations made by him, the relevant facts and circumstances of the case as also the Government instructions on the subject, passed a speaking order thereon. It was also stated that the major penalty proceedings had been initiated against Shri Banarsi Lal by the applicant himself and a decision regarding the period of absence was pending against him and that the applicant in conspiracy with other officials forged official records and showed that Banarsi Lal was present on duty during the entire period of absence from 23.3.92 to 23.8.93 with the intention of justifying the orders of release of salary. The applicant manipulated and fabricated official records to give undue pecuniary benefits to Shri Banarsi Lal and thus caused loss to the Government. After considering the evidence on record, sanction was accorded to prosecute the applicant and the case is presently pending before the Sessions Judge, Delhi.

10. It is also stated that the case involved moral turpitude and in case he is convicted, there is doubt that the applicant at all be retained in Government service or not so it is submitted that there is no case for revocation of suspension.

11. Rejoinder to this was also filed wherein the applicant named various other officials whose suspension had been revoked and it is submitted that in this case also suspension be revoked. The department also filed a sur-rejoinder to this reply.

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

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13. The learned counsel for the respondents has also placed on record a recent judgment given by court No.1 on 31.10.2001 entitled as P.C. Misra Vs. U.O.I. wherein one of us (Hon'ble Mr. S.A.T. Rizvi) was a party, wherein the court had observed as under:-

"Moreover, the Tribunal cannot function as an appellate forum insofar as suspension and its continuance are concerned. Those are matter which are best decided by the competent departmental authority having regard to the facts and circumstances of each case."

14. The counsel for the respondents also referred to a judgment of the Hon'ble Supreme court in the case of Allahabad Bank and Another Vs. Deepak Kumar Bhola reported in 1997 (4) SCC 1 where the term "moral turpitude" was defined by the Hon'ble Supreme Court. So relying upon both these judgments the counsel for the respondents submitted that since in this case also the applicant himself had initiated an enquiry against the LDC and was subsequently instrumental for release of 17 months salary to Banarsi Lal and that too by forging record and by entering into conspiracy with other officials, so the commissions/omissions on the part of the applicant are fully covered by the definition of "moral turpitude" as given by the Hon'ble Supreme Court, so the suspension of the applicant cannot be revoked.

15. However, on going through the impugned order we find that the order passed by the authorities in the name of the President of India and as conveyed to the applicant reproduces only the allegations against the applicant but does not show whether there is any justification for continuing the applicant under suspension or not or why revocation of suspension cannot

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be ordered. So in these circumstances we find that this OA can be disposed of with a direction to the respondents that the case of the applicant be again reviewed, otherwise also after 8.6.2001 since it has also matured for periodical review as well and while reviewing the order the respondents shall keep in mind the rules and instructions on the subject and also the pleas of the applicant for revocation of the suspension order.

16. For this purpose we further direct that the applicant shall make a consolidated representation within 15 days from the date of receipt of a copy of this order and thereupon the respondents shall consider his representation and review the suspension order keeping in view the relevant rules, instructions and judicial pronouncements on the subject and an opportunity of hearing shall also be provided to the applicant. If any grievance survives thereafter, the applicant may approach the Tribunal again.

17. OA is disposed of with the above directions.

No costs.

(S.A.T. RIZVI)
MEMBER (A)

(KULDIP SINGH)
MEMBER (JUDL)

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