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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. No. 2427/2001

New Delhi this the 8th day of March 2002.

Hon'ble Shri Govindan S. Tampi, Member (a)

Prem Chand Sharma
S/o Sh. R K Sharma
Vill: Samalka, Gurgaon Road
New Delhi

.....Applicant

(By Sh. Yogesh Sharma, Advocate)

Versus

1. NCT of Delhi through
The Chief Secretary,
New Sectt. New Delhi
2. The Director,
Directorate of Education
Govt. of NCT of Delhi
Old Sectt. Delhi

.....Respondents

(By Shri Ashwani Bhardwaj and Shri Bimal Rathi,
Advocates)

O R D E R (ORAL)

The relief sought for in this OA is a declaration that the action of the respondents in not reviewing the suspension of the applicant is illegal and arbitrary as well as the direction for the revocation of suspension and re-instatement of the applicant with orders for his immediate re-instatement in service.

2. Heard Shri Yogesh Sharma, learned counsel for the applicant and Shri Ashwani Bhardwaj with Sh. Vimal Rathi learned counsel for the respondents.

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3. To state the brief facts, the applicant who has been working as a LDC since 23.7.74 in Govt. Boys Sr. Secondary School was placed under suspension on 30.10.94 without adducing any reason. On 17.12.94, a FIR was got registered against the applicant on the allegation that he had, while handling cash in the respondents' ^{office} had presented bogus bills and withdrawn amounts and was thus guilty of misappropriation. The applicant got anticipatory bail on 19.10.96 which was confirmed on 3.3.98. One more FIR was registered on 30.3.95, on the same allegation in which also, he got anticipatory bail on 6.8.99. Thus while two FIRs had been registered in 1994/95, no charge sheet ~~sheet~~ has been filed as yet and that on the day of his suspension on 13.10.94, no criminal case was pending against the applicant. Subsistence allowance was not granted to him till August 97. His applications for revocation from the suspension has not been heeded. While he was placed under suspension, contemplating disciplinary proceedings, nothing further has happened and he has been made to languish under suspension all these while. There is no indication also as to whether his suspension is being reviewed periodically, as is required under law. On account of the very long delay on the part of the respondents, keeping the applicant in tenterhooks, the application should succeed by revocation of suspension as well as abatement of the proceedings. The above pleas were forcefully reiterated by the applicant's learned counsel Sh. Yogesh Sharma, who also relied upon the decision of the Tribunal in OA No. 170/97, filed by Madan Gopal Goel, pronounced on 8.1.99 and OA No. 1240/2000, filed by Ishwar Singh pronounced on 5.1.01.

4. Opposing the pleas made on behalf of the applicant and re-iterating the points in the counter on behalf of the respondents Shri Ashwani Bhardwaj fervently pleads that applicant's case has no merit at all as proceedings had been initiated against him and he has been placed under suspension only on account of misappropriation of amounts which he was handling and as well as preparation of the bogus bills. It is averred that three persons including the applicant were involved in the case applicant was the main offender in the case. Therefore he had to be pre force placed under suspension. The suspension of applicant had continued all the while as the investigations were pending and therefore revoking the suspension along with reinstating him to return in between would have come in the way of successful investigation. He also states that the matter has been placed before the court and the charges have been framed and the case is coming up shortly for trial. It would therefore not be in order to interfere with the suspension at this stage. He also referred to the decision of the Hon'ble Supreme Court in the case of State of Orissa Vs Bimal Kumar Mohanti (AIR 1994 SC 2296) in support of his plea that no interference was warranted in this O.A.

5. During the oral submissions on 8.2.2002, it had been brought to the notice of the court that the Department of Education who are the disciplinary authority in this case had not conducted the periodical review as was necessary in this case. Therefore I had directed the respondents for production of the relevant records to see whether exercise as was required was being done.. Shri Bhardwaj also produced before me today the relevant record, which I had perused.

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6. I have carefully considered the matter. The reliefs sought by the applicant is the revocation of his long pending suspension. Facts are not in dispute. The applicant is found to have been placed under suspension, immediately followed by the filing of a FIR, pointing to criminal misappropriation of amounts, he was dealing with and preparation of bogus bills. Of the three persons, concerned, two individuals have retired on superannuation, leaving only the applicant in the service. In normal circumstances, whenever an individual is placed under suspension, real or deemed, the concerned authorities are expected to undertake periodical review of the matter, to ascertain and decide, as to whether the suspension should be continued or not. If the respondents do not perform the above task, such inaction would warrant the interference by the Tribunal. No doubt, the Tribunal is generally wary of such situation and care has to be taken before such an interference is ordered. It is in this context that the observations of the Hon'ble Supreme Court, expressed in the case of the State of Orissa Vs Bimal Kumar Mohanti, AIR 1994 SC 2296 relied upon by the Respondents germane. The relevant portion of the order is reproduced as below:

"Normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged

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misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one way of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of the service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or to investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. Each case must be considered depending on the nature of the allegations, gravity of the situation and the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

Evidently the Hon'ble Apex Court, has not ruled out, interference in Suspension, under any circumstances but has restricted it to very few deserving cases. The case on point has to be tested against this ^{standard} ~~exacting~~. No doubt, the charges against the applicant were serious enough to warrant his suspension, so that the investigation is not hampered or influenced in any manner. At the same time, it is seen that considerable time - as many as seven years - have gone by since the applicant has been placed under suspension and the respondents have not been able to show, in what way or manner, would the investigation be hampered by revoking the suspension. It is also clear from the perusal of the concerned file that the respondents have not undertaken the periodical review of the suspension, as called for in law. Evidently therefore the respondents have failed to indicate, as to why the applicant should be continued under suspension and

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not re-instated in service and placed some where away from the place where he was working prior to his suspension. Thus on account of the inordinate delay caused in the investigation of the case and the respondents failure to undertake the mandatory exercise of periodical review inspite of representation from the applicant. I am convinced that the applicant's case for revocation of suspension, merits acceptance. I also recall that in a similar case, (OA No. 1240/2000 filed by Ishwar Singh, decided on 5.1.2001). I had directed the reinstatement of the applicant, who was under long suspension, along with payment of salary to him at the minimum of the scale of pay, in which he would have drawn it had he not been under suspension. The above are also in consonance with Govt's instructions relating to review of suspensions as cited in Swamy's Compilation which read as below:

"1. It is in the inherent powers of the disciplinary authority and also mandatory to review periodically the case of a Government servant under suspension which charge-sheet has been served/filed to see what steps could be taken to expedite the progress of the court trial/departmental proceedings and revoke the order permitting the Government servant to resume duty at the same station at a different station, when in his view the continuance of suspension is not justified having regard to the circumstances of the case at any particular stage. The first review has been prescribed to be undertaken at the end of three months from the date of suspension.

2. Unduly long suspension while putting the employee concerned to undue hardship involves payment of subsistence allowance without the employee performing any useful service to the Government. The concerned authorities, therefore, should scrupulously observe the time - limits laid down and review the cases of suspension, in the interest of public service as well, to see whether continued suspension in each case is really necessary.

3. In appropriate cases, if the investigation is like to take more time, it should be considered whether the suspension order should be revoked and

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the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence, etc. or if he is likely to temper with the evidence, he may be transferred on revocation of the suspension order. When documentary and oral evidence has already been collected and the risk of tampering with evidence by the official no longer exists, the cancellation of suspension orders should be considered by the competent authority. When however, there is still such a risk, the question of his transfer should be considered keeping in view the nature and gravity of offence committed by him.

4. The order regarding the review of the subsistence allowance at the end of three months from the date of suspension, incidentally gives the concerned authority an opportunity to review not merely the subsistence allowance, but also the substantive question of suspension itself."

7. In the result, the OA succeeds and is accordingly allowed. The respondents are directed to revoke the suspension of the applicant, ordered on 30.10.94, and is continuing since then, reinstate him in service and post him in any school, under their administrative control. This shall be done within two months from the date of receipt of a copy of this order. He shall also be paid salary and allowances, at the minimum of the scale of pay of the post, in the revised scale of pay which he would have drawn salary, but for his being placed under suspension. This order does not place any embargo at all, on the respondents going ahead with the proceedings, they have initiated against him, either departmentally or in the Court of law. It is also left to the respondents to deal with the period between the applicant's date of suspension and date of reinstatement, in accordance with law, after the proceedings are completed and depending on their outcome.

No costs.

Patwal

Govindan S. Tampi
Member (A)