

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1499/99

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T.A. No.

(7)

DATE OF DECISION. 21.1.2000

Narendra Verma

....Petitioner

Sh.K.C.Mittal

....Advocate for the
Petitioner(s)

VERSUS

VOI & Ors

....Respondent

Sh.V.S.R. Krishna

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble Smt.Shanta Shastry, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 1499/99

New Delhi this the 21th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Smt. Shanta Shastray, Member(A).

Narendra Verma,
S/o late Shri Keshav Prasadi,
R/o Sector IV, Flat No. 1135,
R.K. Puram,
New Delhi-110 066

Applicant.

By Advocate Shri K.C. Mittal.

Versus

1. Union of India through
Secretary,
Department of Personnel,
Ministry of Personnel, Public
Grievances and Pensions,
North Block,
New Delhi-110 001.
2. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 001.

Respondents.

By Advocate Shri V.S.R. Krishna.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has challenged the vires of the order dated 12.8.1998 (Annexure R-I) wherein the respondents have decided not to revoke his suspension order.

2. The applicant had filed an earlier O.A. 642/98 which was disposed of by Tribunal's order dated 6.5.1998. In this order, the respondents were directed to review the applicant's case in respect of his request for revocation of the same in the light of the relevant rules and guiding principles issued from time to time, including the averments made by the applicant's counsel during hearing and thereafter to pass a detailed, speaking and reasoned order.

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3. Shri K.C. Mittal, learned counsel, has submitted that the respondents have not passed a detailed and speaking order as per the directions of the Tribunal dated 5.6.1998. The applicant is under suspension w.e.f. 5.1.1992 and according to him, he has been falsely implicated in a trial of which is going to take a long time. He has submitted that it is not in public interest to continue the applicant under suspension for all this time and it is contrary to the guide-lines issued by the respondents themselves. He has submitted that it was sheer bad luck of the applicant that he was made to share a room with an officer named Mr. Jakhoo who had strained relations with his wife and both were trying to harm each other in whatever manner that came their way. It is stated that in order to malign the husband's reputation, his wife made certain allegations against him in the Crime Against Women (CAW) Cell for abusing their small child criminally. The applicant's wife had roped in other officers also from the same Ministry for reasons best known to her which, according to him, was not necessary. He has also submitted that because the matter invited large scale attention of the media as it involved sexual abuse of a child by her own father, the CBI was entrusted with the investigations. The CBI had arrested the applicant although in the initial complaint to the department as well as CAW Cell, his name had not figured. He has also reiterated the other facts which had been brought out in the application for bail and in the findings of the High Court. Shri K.C. Mittal, learned counsel, has submitted that as of now in the criminal case, there are 48 prosecution witnesses out of which only 2 witnesses have been examined. In any case, the delay has not been caused by the applicant and there is no justification to prolong the suspension

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indefinitely. He has also submitted that the applicant has his own daughter of marriageable age and unnecessarily the CBI has roped him in a personal fight between Mr. Jakhoo and his wife. He has also submitted that the applicant is being paid 75% of subsistence allowance without taking any work from him which again is against the public interest. In spite of all these facts, the respondents have passed the impugned order refusing to revoke the suspension only because the criminal case is pending. He has submitted that the impugned order shows that there has been non-compliance of the Tribunal's order dated 5.6.1998, non-application of mind as the principles which had to be applied for continuing the applicant under suspension have not been observed. According to the learned counsel, it is not sufficient merely to show that serious criminal case is pending against him as no allegation has been made that he is likely to tamper with any evidence or documents in the office functioning and so on, which may justify the decision. He has very vehemently submitted that merely because some allegations are made against the applicant by some individual, the applicant should not be continued for an indefinite period under suspension. Before the applicant's bail was allowed, he had also been an under-trial for 21 months. Learned counsel has, however, admitted that the applicant is one of the persons who has been charged as co-accused along with other persons for certain criminal offences against the prosecutrix u/s 109 read with Sec. 377 IPC. He has submitted that the continuance of the applicant's suspension is without any grounds and he has, therefore, prayed for quashing of the orders dated 5.1.1998 and 12.8.1998 and allowing the O.A. with a direction to the

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respondents to revoke the applicant's suspension and post him in some other Ministry as per Government of India's own instructions with costs.

4. As per Tribunal's order dated 5.1.2000, learned counsel for the applicant has submitted the relevant records, including the FIR as well as the charge-sheet filed in the criminal case. The respondents have also submitted the official records for our perusal.

5. We have seen the reply filed by the respondents and heard Shri V.S.R. Krishna, learned counsel. The respondents have narrated the relevant facts of the case. They have stated that the applicant was suspended under Rule 10 of the CCS (CCA) Rules, 1965 as he had been detained in custody on a criminal charge for more than 48 hours. They have stated that in compliance with the Tribunal's order dated 5.6.1998 in OA 642/98, they have reviewed the applicant's case and passed the necessary order dated 12.8.1998. They have submitted that they had taken into account the relevant rules and guiding principles on the question of revocation of suspension and the other averments made by the applicant's counsel during hearing of the earlier O.A. The reasons for continuance of suspension are given in the impugned order and according to them, the applicant is facing trial in a serious criminal case involving moral turpitude and it will not be in public interest to revoke the suspension when the criminal case is subjudice. Shri V.S.R. Krishna, learned counsel, has submitted that it will not be conducive to maintenance of discipline in the office if in such a case the applicant's suspension is revoked and he is reinstated as Under-Secretary in any office, when he is still facing trial along with other accused in a criminal

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case of sexual harassment of a minor girl child. The respondents have also stated that in case the suspension is revoked, there is every likelihood of misuse of his official position to tamper with the witnesses and evidence. They have also submitted that the decision has been taken after application of mind by the competent authority. In the reply, it has also been stated that as the applicant's petition challenging the framing of charge is yet to be decided by the High Court as the offence for which he is facing charge is of a serious nature, the revocation of the applicant's suspension at this stage will not be in a public interest. They have vehemently denied the applicant's submission that the respondents have passed the order in a mechanical or stereo-typed manner or it is not in accordance with the directions issued by the Tribunal on 5.6.1998.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. One of the main contentions of the applicant's counsel is that there is no justification to continue the applicant under suspension merely on the ground that a serious criminal case is pending against him. However, taking into account the facts and circumstances of the case, including that a charge has been framed by the competent criminal court against the applicant for abetment of an offence under the Indian Penal code, which involves sexual harassment against a minor girl, there is no doubt that this is a serious offence for which he is facing trial. There is also no doubt that the alleged offence involves moral turpitude. The contention of the applicant that there is no apprehension of his tampering with evidence or any interference with the trial in the

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criminal case in the event of reinstatement in any other Department of the Government of India cannot also be ruled out and hence it is rejected. The further contention that the impugned order dated 12.8.1998 has been passed without application of mind and taking into account the facts and circumstances of the case is also without any basis. We have also seen the relevant records submitted by the respondents and find that in compliance of the Tribunal's order dated 6.5.1998, the competent authority has indeed conducted a review of the situation to arrive at its conclusion.

8. Merely because the applicant states that he has also got a grown up daughter of marriageable age and the suspension is causing him tension for the past four years is not sufficient reasons to revoke the suspension order. The applicant has also submitted that the deision has been taken under the influence of CBI but this contention cannot also be accepted as nothing has been placed on record to substantiate this or is it borne out by the official records. The contention of the respondents that it would be against discipline to reinstate the applicant in service when an offence involving sexual harassment of a minor child and moral turpitude is pending against the applicant, cannot also be said to be either arbitrary or illegal to warrant any interference in the matter. The applicant's counsel had vehemently contended that he can be posted in any other Department as per the guidelines but considering the nature ~~of~~ ^{the} ~~of~~ criminal case, this again will not be conducive to ^{the} ~~to~~ maintain discipline in the offices of the Government of India. It is settled law that a decision in such matters will depend on the facts and circumstances of each case. In the present case, we are unable to agree with the contentions of the

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applicant's counsel that there is any violation of the rules or guidelines to continue the applicant under suspension as he is accused of a serious criminal offence involving moral turpitude. The impugned order has also referred to the reasons for the decision taken by the competent authority. We do not find any substance in the other arguments on behalf of the applicant to justify revoking the suspension order.

9. In the result, for the reasons given above, we find no merit in this application. O.A. is accordingly dismissed. Parties to bear their own costs.

Shanta

(Smt. Shanta Shastry)
Member (A)

SRD

Lakshmi

(Smt. Lakshmi Swaminathan)
Member (J)