CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1277/1998

New Delhi, this 13th day of May, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member(A)

Ms. Runu Ghosh
w/o B.K. Ghosh
1/3 Mall Road, New Delhi .. Applicant

(By Shri K.C. Mittal, Advocate)

versus

Union of India, through

1. Secretary
Deptt. of Telecommunications
Sanchar Bhavan, New Delhi

2. Assistant Director General (Vig.A)
Department of Telecommunications
West Block 1, Wing 2, Ground Floor
R.K. Puram, New Delhi-66 .. Respondents

(By Shri A.K. Bhardwaj, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Applicant, a Deputy Director General(LF) working in the Department of Telecommunications in the headquarters at New Delhi, seeks to challenge A-I and A-III orders dated 19.8.96 and 6.12.96 respectively. By A-I order she has been placed under suspension with specific orders for not leaving the headquarters without previous permission of the appropriate authority and by A-III order, her request for revocation of suspension has been rejected. Consequently, applicant has sought reliefs in terms of revocation of the order of suspension and allowing her to resume duty in the department in any post the department would consider appropriate.

2. Applicant was placed under suspension by an order dated 19.8.96 in exercise of powers under sub-rule 1 of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as RULES). The said order of suspension was issued when a criminal offence was under investigation against the applicant.

3. Shri K.C. Mittal, learned counsel for the applicant has assailed the impugned orders on several grounds. We, however, bring out for sharp focus only the most important ones. It has been contended that the respondents have adopted a callous attitude towards the applicant in not taking any decision for revocation of applicant's suspension as required under law after a lapse of 3/6 months from the date of suspension.

4 It is also case of the applicant that the order of suspension was issued for the reasons of pendency of investigation and the same ought to have come to an end when investigations were over and serving of the charge-sheets was complete. The charge-sheets having been served on 17.3.97, respondents were under a legal obligation to review the matter and take a decision as to whether the continued suspension of the applicant was warranted either in wider public interest or for analogous reasons. The learned counsel would further argue that continued suspension of an employee for a longer period is violative of Article 21 of the Constitution and that being subjected to

departmental enquiry or criminal case does not dis-entitle a person to earn his/her livelihood guaranteed under the aforesaid article. In other words, keeping an employee under suspension for unreasonably long duration pending departmental enquiry or criminal case is bound to result in depriving his/her right to earn a livelihood if such an employee is ultimately removed from service. Under these circumstances, the continued suspension of the applicant is illegal and deserves to be quashed for the reasons of the same having not been reviewed by the respondents after the expiry of 3/6 months from the date of suspension.

5. The learned counsel then took us through the details of the charge-sheets served upon the applicant by the CBI only to highlight that the case of CBI against the applicant is based on conjectures and presumptions. There are no allegations of involvement of the applicant in the much publicised scandal. CBI has no case against the applicant since no irregularity has been pinpointed either by the respondents or by CBI in so far as the applicant is concerned. Simply because the charge-sheet has been filed in the court of competent jurisdiction, it does not give the respondents any power to continue the applicant under prolonged suspension during the pendency of the trial. It has been further submitted that the Hon'ble High Court of Delhi while granting bail to the applicant had categorically observed that since the entire case is based on documents, there is no

apprehension of tampering of evidence by the applicant which principle would apply for the purpose of revocation of suspension and therefore the respondents ought to have revoked applicant's suspension. In support of his contentions, Shri Mittal cited the orders in the cases of A.K. Sinha Vs. UOI (OA No.121/95) decided by the Patna Bench of this Tribunal on 19.5.95 and C.S.Khairwal V. UOI (OA No.1437/97) decided by the Principal Bench on 24.10.97. He also made strenuous efforts to distinguish all the case-laws, including those of Hon'ble Supreme Court, cited by the respondents in an attempt to buttress his contentions that none of those are applicable in the facts and circumstances of the present case.

6. Shri A.K.Bhardwaj, learned counsel for the respondents has opposed the claims and contended that reliefs claimed are misconceived. He argued that in view of the judicial pronouncements by the apex court in the case of **Allahabad Bank & Anr. V. D.K.Bhola 1997(4) SCC 1**, suspension order during the investigation may be continued till pendency of the trial which may even take ten years. Citing the decision of the apex court in yet another case of **Secretary to Govt. & Anr. Vs. K. Muniappan (1997) 4 SCC 255**, the learned counsel contended that suspension could be continued even after the date of superannuation. Learned counsel would also submit that applicant's requests for revocation of suspension have been reviewed. Since the applicant has been found involved in two serious cases of

criminal offence, for which the competent authority has issued prosecution sanction and charge-sheets have also been filed in the appropriate court, there is no case for revocation of suspension at this stage.

7. In the background of aforementioned rival contentions of both parties, the issue that falls for determination is whether responcents have committed any illegality in considering appl.cant's case for revocation of suspension.

8. The propositions of law in respect of order of suspenion are as under: (see **State of Madras V. P.M.Belliappa, 1985 Lab IC 51)**

(a) Factss and materials must exist

(b) The authority must have taken them into account, or in other words, the authority must direct himself to the facts and materials before him

(c) The decision must have been made on a proper direction as to those facts or materials,or in other words, the authority must call his own attention to the facts and the materrials

(d) The authority must exclude from consideration irrelevant and extraneous matters

(e) The decision must be a reasonable one. It must be a decision which a reasonable person might reasonably reach. In other words, the decision should not be tainted with patent unreasonableness or arbitrariness.

(f) It is not for the Courts to substitute its own views for those of the authorities. The task of the courts is only to decide as to whether there is any foundation of relevant fract, even though it maymake a view different from that of the authority on the same facts

(g) If reasons are given in general terms, the court need not exclude reasons which could fairly fall within the reasons already expressed concession to be fairly made for difficulties in expression

To satisfy our conscience we have scrutinised the records/files handed over to us and we find that the A-I orders of suspension are in confirmity with the legal requirements set out above.

9. The position of law/instructions in respect of revocation of suspension and reviews of such orders are as hereunder:

(A) In terms of law laid down by the apex court in the case of **State of Orissa Vs. B.K. Mohanty (1994) 4 SCC 126**, it has been held that "The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated inquiry 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 inquiry. The authority should also keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge". In the said order, their Lordships held that authorities are to exercise discretionary

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powers with curcumspection after weigning pros and cons to subserve the ultimate result of pending adjudication. Since serious allegations of misconduct were alleged against the respondent in Mohanty's case, the apex court held that interference by the Tribunal with the orders of suspension of the respondent therein pending enquiry was unjustified.

(B) In terms of instructions in DP&AR's OM No.16012/1/79-Lu dated 23.8.79, the first review of an order of suspension shall be made after 90 days which requires that before the revision of subsistence allowance is allowed, the substantive question of revoking the suspension order should be considered. In terms of FR 53(1)(ii)(a) subsistence allowance is required to be reviewed after a period of 90 days from the date of suspension instead of 6 months. It has now been stipulated that review of subsistence allowance would be made at the end of 3 months from the date of suspension instead of present practice of varying the subsistence allowance after six months. That should give an opportunity to the concerned authority to review not merely subsistence allowance but also substantive question of suspension.

(C) The competent authority is under an obligation to take up second review of the order of suspension on the expiry of 3 months in the case of investigation for prosecution and six months for

completion of departmental proceedings. In addition to these reviews, a constant watch should be kept and further reviews taken up at suitable intervels so that the case of suspension does not get prolonged unduly. Executive authorities are bound to take up reviews as aforementioned in terms of instructions of DP&AR OM No.11012/2/78-Estt(A) dated 14.9.78 and give reasons if it decides not to revoke the order of suspension.

(D) It would be apposite to mention here that failure to conduct review as aforesaid will not invalidate suspension. Thus, in the case of **Govt. of AP Vs. Sivaraman AIR 1990 SC 1157 and DG of Police Vs. K.Ratnagiri AIR 1990 SC 1423,** it has been held that "where the rules provide for suspending a civil servant and require thereof to report the matter to the Government giving out reasons for not completing the investigation or enquiry within six months, it would be for the Government to review the case but it does not mean that the suspension beyond six months becomes automatically invalid or non-est".

(E) There are specific guidelines for revocation of suspension. If the disciplinary authority feels that there is undue delay in the conclusion of the disciplinary proceedings or a long-time is taken in the conclusion of criminal investigation coupled with likelihood of evidence being tampered with or no enquiry is undertaken at all for a very long period or not even a charge-sheet was issued after

suspension, then a suspension is revoked. Revocation is an act of judicially considering the various facts and circumstances of a particular case.

10. In the instant case, we find that there are two criminal offences under trial in the court of law against the applicant. That apart, there is also Rule 14 charge of major penalty having been served against her. Applicant has been found to be involved "in serious criminal conspiracy in connivance with senior politicians and private parties in placing purchase orders fraudulently at exhorbitant rates purposely and with malafide intention and thus causing heavy financial loss to the department in crores of rupees and corresponding wrongful gain to the private party and for themselves". Respondents have conducted the first review on 6.11.96 and came to the conclusion that since a second case of disproportionate assets against her is contemplated, there is no justification at this stage to revoke order of suspension. Second review took place on 26.2.97 and it was felt that, for reasons recorded on file, the officer may be continued to be kept under suspension till a report of the second case becomes available and the case 'for the purpose of revocation of suspension' would be reviewed thereafter. The third review took place on 18.4.98 and the respondents, for reasons recorded on file, concluded that the possibility of influencing the witnesses could not be ruled out in the instant

case and therefore decided not to revoke the order of suspension. In these circumstances, applicant's contention that respondents have indulged in a callous attitude in not deciding applicant's case for revocation cannot be sustained.

11. In this connection, it will be appropriate to mention that as per orders of Government of India, Ministry of Home Affairs in OM No.221/18/65-AVD dated 7.9.65, if the presence of officer is considered detrimental to the collection of evidence etc. or if he is likely to tamper with the evidence or may influence witnesses, he may be transferred on revocation of the suspension order. The circular also mentions that "Even though suspension may not be considered as a punishment, it does constitute a very great hardship for a Government servant. In fairness to him, it is essential to ensure that this period is reduced to the barest minimum".

12. The learned counsel for the applicant strongly relied on a decision of the Hon'ble Supreme Court in the case of **R.C. Sood V. High Court of Rajasthan 1994 Supp (3) SCC 711**, wherein it was held that the suspension pending enquiry was arbitrary, unwarranted and violative of Articles 14 and 16 of the Constitution. However, that view was taken after the disciplinary enquiry had been concluded and on merits their Lordships found that the same could not be sustained. Eventually, their Lordships were pleased to quash the entire

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disciplinary proceeding held against the petitioner in that case as also the order of suspension. The ratio that follows from this decision is that where an order of suspension pending enquiry is found to be the product of arbitrariness or where there is absence of material on record to justify the same it cannot be sustained and would be violative of Articles 14 and 16 of the Constitution. As discussed so far, we are not satisifed that in the instant case on facts it can be held that exercise of powers under Rule 10(1) has been arbitrary or without absence of any material. Since the suspension was ordered in contemplation of enquiry in two criminal cases, it follows that the materials referred to in the charge-memo were available for consideration of the President of India when the order of suspension was passed. We do not think that it is our function to assess or evaluate the said materials at this stage to find out the veracity of the complaint. It is the function of the disciplinary authority and suffice it to say that it is not a case where it can be said that there was no material at all and the suspension order could not have been passed. The counter also refers to material facts. We are not supposed to go into truth or otherwise of those facts at this stage as was being attempted strenuously by learned counsel for the applicant. Eventually, therefore, it is the decision of the competent authority who has after three reviews of the suspension decided to continue the same. Simply because all the representations of the applicant have not allegedly

been examined or attended to with the help of several judgements cited by the applicant does not vitiate the decision taken to continue the suspension. Therefore, we find it difficult to interfere with the order of suspension at this stage.

The other two case-laws cited are not germane to the issues involved herein. This is because the case of A.K. Sinha did not have any implications of public scandal. Again, in the case of Khairwal the suspension order was issued by the respondents solely on the advice of CBI and the respondents did not apply their mind in effecting suspension. Such a situation does not prevail herein. In the background of the aforesaid details, the reliefs prayed for deserve to be rejected.

13. Rule 10(5)9(a) provides that an order of suspension continues to remain in force until it is modified or revoked by the authority competent to do so. Clause (c) of sub-rule (5) provides that the order can be modified or revoked by the authority which made it. It is ultimately for the competent authority to consider whether the order of suspension which has continued since 19.8.96 till today should be continued further or the purpose of keeping the applicant under suspension could be served by transferring her to a different station and that too in a non-sensitive post. The respondents are required to enter into a finding on this aspect in terms of DoPT/s OM dated 7.9.65.

This is because suspension entails a burden on National Exchequer and that too without getting any services from the employee under suspension. The three reviews undertaken by the respondents do not touch upon this point. We are inclined to make this observation because the grievance of the applicant is that several of her representations have not been dealt with properly and rejected. The applicant shall be informed of the decision in the matter. And for this the respondents are not required to wait till the next review of the suspension is undertaken.

14. In the result, the OA fails on merits and is accordingly dismissed, leaving the parties to bear their own costs.

(S.P. Biswas)
Member(A)

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(T.N. Bhat)
Member(J)

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