

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1495/98
T.A.No.

199

(3)

DATE OF DECISION 27-1-99

Sh.A.R.SainiPetitioner

Sh.Shyam BabuAdvocate for the
Petitioner(s)

VERSUS

UOI & OrsRespondent

Sh.D.S. MahendruAdvocate for the
Respondents.

CORAM

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

The Hon'ble Shri N. Sahu, 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. 1495/98

JK

New Delhi this the 27 th day of January, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member (J).
Hon'ble Shri N. Sahu, Member(A).

Shri A.R. Saini,
S/o Shri Ram Kishan,
R/o T-41, Atul Grove Road,
New Delhi. ... Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Union of India.
Ministry of Communications,
Department of Telecommunications,
West Block I, Wing 2, R.K. Puram,
New Delhi 110 066
through its Secretary.
2. Shri M.L. Malik,
Senior D.D.G. (Vigilance),
West Block I, Wing 2, R.K. Puram,
New Delhi-110 066.
3. Shri K. Nagarajan.
Assistant Director General (Vigilance-A),
Ministry of Communication,
Department of Telecommunication,
West Block I, Wing 2, R.K. Puram,
New Delhi. ... Respondents.

By Advocate Shri D.S. Mahendru.

O R D E R

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

The applicant is aggrieved by the order passed by the respondents dated 27.5.1998 rejecting his request to revoke the suspension order dated 21.8.1996 passed against him. He claims that this order has been passed on extraneous reasons in a mala fide and capricious manner and by deliberately suppressing material facts and observations and directions contained in the Tribunal's order dated 10.3.1998 in O.A. 1715/97.

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6

2. The applicant was placed under suspension under Rule 10(1) of the CCS (CCA) Rules, 1965 by order dated 21.8.1996 on the ground that a criminal offence is under investigation against the applicant by the Director (V&T). The applicant was formerly General Manager (West-I), MTNL, New Delhi and later transferred as G.M. ALTTC, Ghaziabad. Shri Shyam Babu, learned counsel, has referred to Para 5 of the Tribunal's order dated 10.3.1998 in O.A. 1715/97 in which it has been stated that "despite the CBI in its letter sent as far back as 8.9.1997 having stated that the case was in the final stage of investigation, during hearing on 23.2.1998 we were not informed that the investigations had been completed". Learned counsel has submitted that even now the respondents are not stating that the investigation has been completed and according to him, they are unnecessarily delaying the matter. He has, therefore, submitted that there was no valid reason to keep the applicant under suspension any longer. He has impugned the memorandum dated 27.5.1998 in which he states that no tangible reasons have been given in the light of the observations of the Tribunal in order dated 10.3.1998 but on the contrary it is based on totally extraneous consideration and not supported by the provisions of Rule 10 or any other Rules or Govt. of India instructions/circulars. He has submitted that the investigation of the case is complete and the statements of the applicant and other concerned persons have already been recorded. According to him, in the absence of specific details to the contrary, the impugned memorandum dated 27.5.1998 should be quashed and set aside as it cannot be stated that the investigation is still in progress. He has

8/

(b)

submitted that nothing new has been stated by the respondents regarding the three cases they have referred to against the applicant. He has also submitted that no proper review has been held in accordance with the instructions issued by the Govt. of India, in particular, paragraphs 2 and 3 of Chapter 2 of Swamy's Compilation of the CCS (CCA) Rules, 1965 20th Edition, P-184. He has submitted that the impugned order dated 27.5.1998 has been passed which is an empty formality. He relies on the judgements in **K. Rajasekaran Vs. Chairman, Central Board of Direct Taxes, New Delhi and Anr.** (1988 (7) ATC 727), **C.L. Bakolia Vs. Union of India & Ors.** (1989 (10) ATC 75), **A.W.S. Reddy Vs. State of Andhra Pradesh & Anr.** (1988 (7) ATC 119 and **J.D. Varshney Vs. Union of India** (SLJ 1989(1) CAT 71.

3. The respondents have filed their reply and we have also heard Shri D.S. Mahendru, learned counsel. He has submitted that the memorandum dated 21.8.1996 is valid. The respondents have submitted that the investigation into allegations for which the applicant has been placed under suspension is still continuing and they have reviewed his suspension from time to time. They have also submitted that they have conducted a further review in accordance with the Tribunal's order dated 10.3.1998 but the competent authority has not found any justification for revocation of the applicant's suspension and he was accordingly intimated by the impugned order. They have also denied the other allegations made by the learned counsel for the applicant that there is no tangible reason and that they have acted on purely extraneous grounds, etc. They have further submitted that

3/

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the competent authority has carefully considered the facts and circumstances of the case before passing the impugned order to continue his suspension in the public interest. They have submitted that it would not be in the public interest to take the applicant back in service in view of the many irregularities noticed against him. Another ground taken by them is that the investigation into the allegations against the applicant has been conducted by the CBI which is an independent agency. Apart from the applicant, five more gazetted officers and two non-gazetted officers have also been placed under suspension in the same case in which the applicant is alleged to be involved and the irregularities are of a serious nature and till the CBI submits its detailed report of the investigation, they have submitted that the case has to be deemed to be pending at the investigation stage. They have also submitted that the CBI has recently informed them that they are about to finalise their report which they will submit to them and until the report is received by the Department, they are not in a position to revoke the suspension order. They have also given in detail the position of the various cases in which the applicant is involved in page 6 of their reply. Shri Shyam Babu, learned counsel, has very vehemently submitted that in the case of "drop wire" the same was closed on 5.5.1998 but this has not been taken into account by the competent authority before passing the impugned order. On the other hand, the respondents have submitted that all the relevant facts have been brought to the knowledge of the competent authority at the time of review of the applicant's suspension. In the reply filed on 16.10.1998, they have also submitted that after issue of the impugned

(9)

order on 27.5.1998, one more case of a serious nature involving the applicant which was under investigation departmentally has now been finalised, in which the competent authority has decided to initiate departmental action for major penalty against the applicant. Shri D.S. Mahendru, learned counsel, has, therefore, very vehemently submitted that taking into account all the relevant facts and circumstances, the competent authority has taken a decision to continue the applicant under suspension which is in the public interest and he has, therefore, prayed that the O.A. may be dismissed. He has also relied on the judgement of the Supreme Court in Union of India & Ors. Vs. Udai Narain (1998 (5) SCC 535) and Lohara Steel Industries Ltd. Vs. State of AP (1997(2) SCC 39 (this case does not appear to be relevant on the issue raised here regarding continuation/revocation of suspension).

4. We have carefully considered the pleadings, including the rejoinder filed by the applicant and the submissions made by the learned counsel for the parties.

5. One of the main contentions raised by the learned counsel for the applicant is that at the time of Tribunal's order dated 10.3.98 in OA-1715/97 the investigation of the alleged criminal case/offence was already stated before the Tribunal. According to him, after passing this order no fresh grounds or reasons have been given by the respondents while keeping the applicant in continued suspension which is, therefore, illegal and ~~illegal law~~ also been closed by the CBI. However, on a perusal of the impugned order dated 27.5.1998, particularly para 4, we note that reference has been made to a number of cases of

(19)

alleged irregularities against the applicant. Therefore, even if, as submitted by Shri Shyam Babu, learned counsel, that the "drop wire" case has been closed by the CBI, it cannot be stated that there are no other cases being investigated by the CBI and pending against the applicant. In paragraph 5 of the impugned order, the competent authority i.e. the President has concluded that in view of the numerous cases of serious nature in which the applicant is allegedly involved, it is not in the public interest to revoke the suspension of the applicant. Hence, it was ordered that the suspension may be continued. This order is a reasoned order.

6. We have seen the judgements relied upon by the learned counsel for the applicant. While we agree that the competent authority is bound by the Govt. of India Instructions regarding the conduct of review of suspension of the applicant which indicates that normally that should not be continued indefinitely, at the same time this has also to be considered in the light of the facts and circumstances of each case (See. K. Rajasekaran's case (*supra*). Learned counsel relying on C.L. Bakolia's case (*supra*) submitted that in that case the applicant was kept under suspension for only two years without serving chargesheet which was held to be against the Govt. of India, DP&AR O.M. dated 14.9.1978. Hence, the suspension order was quashed by the Tribunal. However, in that case, we notice that the Tribunal had hastened to add that if at a later stage, either a chargesheet is filed in a criminal court or a chargesheet is served on the applicant in any departmental proceedings depending on the gravity of the charges, the respondents

were not precluded from taking any such action which they may deem fit in the circumstances of the case. The judgement in that case will not assist the applicant in the present case because in this case the respondents have reviewed the suspension from time to time and again in pursuance of the Tribunal's order dated 10.3.1998 in OA 1715/97 but they have found that due to number of cases of serious nature against him it would not be in the public interest to revoke the suspension. In A.V.S. Reddy's case (*supra*), the Tribunal had held that there was no justification to keep the applicant under suspension as they found that the evidence relied on against the applicant was based on such documents, viz. press cuttings, recorded short-hand notes of his speeches and tape recordings, etc. which cannot be tampered with. Those facts again are not applicable to the present case where the allegations against the applicant, and other officials, on which he had been suspended are of a serious nature and under investigation by the CBI. In J.D. Varshney's case (*supra*), the Tribunal has taken into account the fact that the entire record of the case is in the possession of the Delhi Development Authority and none of the witnesses is under the control of the applicant and as such there can be no apprehension of the witnesses being in any way influenced and any evidence being tampered. In the circumstances, the Tribunal had come to the conclusion that the applicant's suspension was not necessary to facilitate the enquiry into the charge levelled against him with regard to allotment of a Flat to his own wife. It has also been stated that the applicant's house was raided by the CBI and the respondents had also admitted in their counter reply that

the CBI has sent an investigation report to the Ministry stating that nothing incriminating was found against the applicant. Taking into account these facts and the nature of the charges, the Tribunal, therefore, came to the conclusion that there was no need to continue the applicant under suspension and hence quashed the suspension order with immediate effect. These facts again are distinguishable from the facts in the present case as regards the nature of the allegations in respect of the criminal offence which is under investigation by the CBI and the other factors mentioned in the impugned order dated 27.5.1998. In the circumstances of the case, we are of the considered view that none of these cases relied upon by the applicant will assist him and we are not persuaded to come to the conclusion that in the facts of the present case, it would be proper to direct revocation of the suspension order. We are fortified in the view we have taken by the judgement of the Supreme Court in Udai Maran's case (supra). In this case, the Supreme Court has held as follows:

"4. A bare look at Rule 10 of CCS (Classification, Control and Appeal) Rules, 1965 would show that the interpretation placed by the Tribunal does not appear to be correct. An unduly narrow technical view has been taken by the Tribunal to quash the order of suspension. The view of the Tribunal that the expression "investigation, inquiry or trial" would not include the stage of filing of the chargesheet in the Court and since investigation was over and the trial had not yet commenced, the respondent could not be placed under suspension, we are unable to accept. The delinquent cannot be considered to be any better off after the chargesheet had been filed against him in the Court after completion of the investigation, than his position during the investigation of the case itself. It has been brought to our notice that sanction for prosecution has already been obtained and case has been fixed for framing of charges by the trial court. In this view of the matter we find that the view taken by the Tribunal in the impugned order is not

(22)

sustainable and the order of suspension was not liable to be quashed on the ground that the case was neither at the stage of investigation or enquiry or trial". (emphasis added)

However, the Supreme Court taking into account the fact that in pursuance of the Tribunal's order dated 16.4.1996, the respondent had joined duty on 28.5.1996, did not interfere with the impugned order, but gave a further clarification that "should the appellants, at any stage of the trial, find it necessary, for reasons to be recorded in writing, to place the respondent under suspension, they shall be at liberty to proceed under the Rules and this order shall not come in their way".

7. Therefore, having carefully considered the facts and circumstances of the case and the circumstances mentioned in the impugned order, we do not find sufficient material to contradict the decision of the competent authority not to revoke the suspension order in public interest, as it is seen that the CBI is investigating a number of cases against the applicant and other departmental officials. However, we would like to state that since the applicant has already been under suspension for nearly two and half years from 21.8.1996, the respondents should take whatever steps they can to get the CBI to complete the necessary investigations as expeditiously as possible. In any case, they shall also continue to undertake the review of the suspension order as required under Govt. of India Instructions from time to time.

8. For the reasons given above, we find no merit in this application. The same is accordingly dismissed. No order as to costs.

Haranshah
(N. Sahu)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)