

10

Central Administrative Tribunal
Principal Bench

O.A. 171/98

New Delhi this the 14 th day of September, 1998.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

R.B.S. Tyagi,
S/o Shri Ram Avtar Tyagi,
R/o 47/20, Delhi Administrative Flats,
Rajouri Garden,
Delhi.

... Applicant.

By Advocate Shri A.K. Behera.

Versus

1. Union of India through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Chief Secretary,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi-110054.
3. DCO (Anti-Corruption),
Old Secretariat,
Delhi-110054.

... Respondents.

By Advocate Shri N.S. Mehta, Gr. Counsel.

O R D E R

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

The applicant is aggrieved by the action of the respondents which he states is arbitrary and illegal in placing him under suspension by order dated 15.1.1996 and continuing him under suspension for this length of time.

2. The brief facts of the case are that the applicant while working as Joint Director Employment was arrested on 17.11.1995 and released on bail on 22.11.1995 which resulted in the suspension order being passed on 15.1.1996 under Rule 10(2) of the CCS (CCA) Rules, 1965 w.e.f. 17.11.1995. The applicant submits that the allegation on the basis of which he

was arrested was not under the Prevention of Corruption Act. He has also submitted that the main accused in the case, which dealt with permitting a LDC of the department to draw his salary for 17 months on production of medical certificate, is one Shri Agrahari, who has not been placed under suspension till date. Shri A.K. Behera, learned counsel, has vehemently submitted that no review of the suspension order has been done by the respondents for revoking the same. He has submitted a list of cases on which he has relied upon. The learned counsel has submitted that continued suspension of the applicant for an indefinite period is unjustified and the respondents have not applied their mind to the impugned suspension order for all this time. At the time of hearing to a query put by us, both the learned counsel have submitted that they will have no objection if a direction is given to the respondents to consider the case of the applicants and review the suspension order dated 15.1.1996 in accordance with Rule 10(5) (c) of the CCS (CCA) Rules, 1965 read with the guidelines and Government of India Instructions.

3. From a perusal of the reply filed by the respondents, it is noted that while they have stated that the applicant had made a representation for revocation of his suspension order dated nil (Annexure R-1), they have stated that the competent authority have decided in the circumstances of the case to enhance the subsistence allowance by 50% and passed the order dated 21.6.1996 to this effect. It is, therefore, clear that the competent authority has not followed the relevant Rule 10 (5)(c) of the CCS (CCA) Rules, 1965 or the relevant Instructions (See Chapter 2 of Swamy's Compilation of the CCS (CCA) Rules, 20th Edition) issued by the Government in such cases. The Rule and the Instructions place a duty on the

12

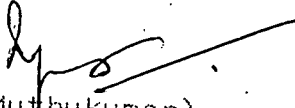
competent authority to consider the case of a person placed under suspension under Rule 10(2) and take a decision whether the continuation of the official under suspension is essential or not or whether it is in public interest and so on. This review has to be done where the period of suspension has exceeded the limit of three months and it is indeed unfortunate that these Rules and Instructions have not been complied with by the respondents. They are also required to pass a detailed order justifying the continuance of the suspension of the Government servant, in case they take such a decision. While it is settled law that suspension itself may not be a penalty but as held by the Supreme Court in O.P. Gupta Vs. Union of India & Ors. (AIR 1987 SC 2257), long continuation of suspension pending departmental inquiry is punitive and affects the means of livelihood of the suspended official. Disregarding any representation made by the applicant for expeditious disposal of the departmental proceeding and to continue to keep him under suspension was also held to be against the principles of natural justice. Under the relevant Rules and the guidelines issued by the Government of India on suspension, the competent authority is required to make periodical review whether it is necessary to continue the Government servant under suspension and pass specific orders, failing which the action of the respondents is subject to judicial review on the ground of arbitrariness.


(See. S.A. Khan Vs. Union of India & Ors. (1994 (26) ATC 642).

4. Therefore, in the facts and circumstances of the case, in the first instance, the respondents ought to have considered the applicant's suspension and whether it should be continued or revoked. In the result, the O.A. is disposed of with the following directions:

13

Respondents to consider the case whether the impugned suspension order dated 15.1.1996 should be revoked or not, taking into account the relevant facts and Government instructions. This action shall be taken within one month from the date of receipt of a copy of this order. In case the respondents do not revoke the suspension order, they shall do so giving reasons by a speaking order and communicate the same to the applicant. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swamianthan)
Member (J)

"SRD"