

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2081 of 1998

New Delhi, this the 19th day of May, 1999

HON'BLE MR. T.N.BHAT, MEMBER (J)
HON'BLE MR. S.P.BISWAS, MEMBER (A)

Sh. N.S.Kain, S/O Late Sh. B.Singh,
DANI Civil Service Officer (Under
Suspension) 15, Delhi Administration
Officers Flat, Greater Kailash Part.I,
New Delhi - 48.

--APPLICANT.

(By Advocate Sh. S.K.Sinha)

Versus

1. Union of India, through the
Secretary (Home Affairs), Govt. of
India, North Block, New Delhi.
2. National Capital Territory of Delhi,
through the Chief Secretary, Govt.
of N.C.T. of Delhi, Sham Nath Marg,
Delhi.
3. Municipal Corporation of Delhi,
through the Commissioner, MCD, Town
Hall, Chandni Chowk, Delhi.

--RESPONDENTS.

(By Advocate -Sh. V.S.R.Krishna)

O R D E R

By Mr. S.P.Biswas, Member (A) -

The applicant, a JAG level officer of the UTCS,
working as Director (JJ & Slum)/ MCD, seeks to challenge
Annexure A-1, dated 2.6.97 by which he has been placed
under suspension with effect from 26.4.1997 on grounds
that the order, inter alia, is illegal, arbitrary and
dehors the rules and has an affect of keeping him
illegally under suspension for a prolonged period of more
than one and half years without any charge having been
filed/ issued against him in a Criminal Court/
Departmental Enquiry. He also alleges that his
suspension order has not been reviewed at all in
gross-violation of directions/ instructions issued in

this regard by the Govt. of India and the law declared by the Courts. Consequently, he seeks reliefs in terms of issuance of directions to the respondents for (i) revoking the deemed suspension and (ii) setting aside the order dated 19.5.97 placing him under deemed suspension.

2. The applicant was detained in Police/ Judicial custody for forty-eight hours. Therefore, he is deemed to be under suspension under Rule 10 (2) (a) of CCS (CCA) Rules, 1965. The applicant has chosen to assail the aforesaid order of suspension on a large number of grounds. We, however, bring out for sharp focus only the relevant points. Thus, the applicant would argue that more than a year has elapsed since he made his representation against the continued illegal suspension. No charge-sheet has been issued in the Criminal Case nor have any charges been framed against him in any domestic enquiry so far. Such a prolonged suspension is not only unjustified but illegal in terms of the law decided by the Apex Court in the case of State of H.P. Vs. B.C.Thakur, (1994) 27 ATC 567. In that case, the decision of the Tribunal setting aside the order of suspension was upheld.

3. The applicant drew our attention to the decision of Rajasthan High Court in the case of Amitava Mukherji Vs. State of Rajasthan and Others, 1995 (1) SLR 575 to highlight that suspension cannot be utilized as a measure of punishment. It should usually be made to facilitate a fair enquiry or investigation and cannot be allowed to be used as a tool to harass a Government servant or to punish him for his acts of indiscretion if at all it may

2

prove out to be. In that case, the appellant was kept under suspension for 5 years, no charge-sheet was filed nor charges were framed. Neither the departmental enquiry started and their Lordships held that the case of the petitioner under suspension deserves to be considered forthwith because of the reasons recorded in paras 7, 8 and 9 of the order.

4. To buttress his contentions further, the learned counsel for the applicant also brought our notice to the judicial pronouncement of the Madras High Court in the case of The State of Madras Vs. K.A. Joseph, AIR 1970 Madras 155 (V 57 C 41). That was the case where the Hon'ble High Court felt that an officer cannot be placed under suspension for indefinite period. That if an officer is suspended from his office because of grave charges or reports of misconduct, then the matter should be investigated with reasonable diligence, and charges should be framed against him within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a total, arbitrary and unfettered power of placing its officers under disability and distress, for an indefinite duration. Learned counsel for the applicant drew our attention also to the judicial pronouncement of the Apex Court in the case of O.P. Gupta Vs. Union of India & Others, AIR 1987 SC 2257. Details of para 7 therein, as summarised in the head-notes, have been cited by the applicant. We reproduce the same below:-

24/11
"There is no presumption that the Government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental

inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. AIR 1958 SC 300. Foll."

5. As per learned counsel for applicant, the latter has been subjected to the conspiracy by some disgruntled persons, officers and employees at the lower rung. He had ordered demolition of unauthorised constructions on public land following the complaint of some genuinely aggrieved persons. FIRs, registered by the CBI, are baseless which the applicant claims to have established in his representation addressed to respondent No. 1.

6. In the counter, the respondents have submitted that the applicant was arrested by the CBI on 26.4.97 while accepting the illegal gratification of Rs. 15,000/- and was detained in judicial custody from 26.4.97 to 12.5.97. The instructions of the Govt. of India in its OM dated 22.10.1964 have been adhered to while initiating action against the applicant. Instructions under the aforesaid OM stipulate that the disciplinary authority may consider it appropriate to place a Government servant under suspension on the allegations of corruption. The allegation against the applicant is that he accepted illegal gratification.

Probity in public life demands that an official charged with a criminal offence of the nature of corruption is not permitted to discharge his official functions and responsibilities till he is cleared and that if this is not done, it will send a wrong signal that the Government is not serious about the need to curb "corrupt practices". The CBI has filed a charge-sheet for commission of offences punishable under Section 7 and 13(1)(d) of the P.C. Act, 1988 against the applicant in the appropriate court on 13.11.1998. The applicant's allegation is that he has been subjected to a conspiracy and undue harassment has been denied. The respondents have also submitted that there are sufficient materials to prove the allegations against the applicant. The case of Sh. C.S.Khairwal cited by the applicant is distinguishable on facts. In view of the clear evidence against the applicant, he is likely to tamper with the evidence and is also likely to influence the witnesses in case his suspension is revoked.

7. In the background of the aforementioned ~~Orival~~ ~~full~~ contentions of both the parties, the issue that for determination is whether the respondents ~~have~~ have committed any illegality in not revoking the order of suspension.

8. The position of law in respect of the order of suspension, the prevalent rules/ instructions in respect of revocation of suspension and the periodicity to be adhered to for the purpose of carrying out reviews of such suspension orders stand examined in substantial details in paras 8 and 9 - A to E in the case of Ms.

2/3

18

✓ Runu Ghosh Vs. Union of India and Others in OA 1277/98 decided by this Tribunal on 13th May, 1999. That was a case where the applicant therein had been seeking revocation of the order of suspension as in the present case, citing almost the similar case laws as in the present case. Having scrutinized and examined the facts and circumstances of the present case, we are of the firm view that the position of the law on this very issue of suspension and revocation, as elaborated in paras 8 and 9 - A to E in our aforesaid order, are applicable on all fours.

9. The case laws cited by the applicant are not germane to the issues involved herein. In the case of B.S.Thakur, the respondents was kept under suspension for more than four years. In the case of Amitava Mukherji, the suspension continued for more than 5 years and in the case of O.P.Gupta, the appellant was under suspension for a period of nearly 11 years and the departmental proceedings was kept alive for almost 20 years. The other two case laws cited, are not applicable to the facts and circumstances of the present case. In the case of Sh. C.S.Khairwal, the suspension order was issued by the respondents on ^{the} advice of the CBI and the respondents did not [^] ~~apply~~ ^{bring} their mind in effecting suspension. Such a situation does not prevail herein. In the background of the aforesaid details, the reliefs prayed for by the applicant herein deserve to be rejected.

2/11

10. In this connection, we would also like to refer to the details in para 13 of our aforementioned order as regards the provision under Rules [Clause C of Sub-rule 5 and Rule 10(v) 9(a)] of CCS (COA) Rules, 1965. This relates to the consideration of the competent authority as to whether the order of suspension should be continued or the purpose of keeping the delinquent official under suspension could be served by transferring the charged official to a different station and that too in non-sensitive post. Details therein are also squarely applicable to the facts and circumstances of the present case.

11. To satisfy our conscience, we have since scrutinized the records/ files handed over to us and we find that the orders of suspension are in conformity with the legal requirements set out in our order in OA 1277/98 decided on 13.5.1999. We, however, find that the respondents have not undertaken any review ever since the officer was placed under suspension w.e.f. 26.4.97. This was required to be done interms of DOPT's OM dated 7.9.1965. The executive authority is required to take up reviews of suspension orders in terms of instructions of DP & AR dated 14.9.1978 and give reasons if it decides not to revoke the order of suspension. However, failure to conduct such reviews shall not ~~invalidate~~ suspension orders in terms of the law laid down by the Apex Court in the case of Government of A.P. Vs. Sivaraman, AIR 1990 SC 1157. It was held therein that:-

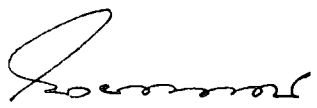
"Where the rules provide for suspending a civil servant and require thereof to report the matter to the Government giving

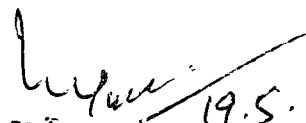
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20

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."

12. 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)


19.5.99.
(T.N. BHAT)
MEMBER (J)

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