

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...
O.A. No. 1599 of 1995

(12)

New Delhi, this 15th day of March, 1999.

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

Shib Lal
S/o Shri Pani Ram Arya
R/o D-II/171 Kaka Nagar
New Delhi - 110003.

... Applicant

By Advocate: Shri M.K. Gupta

versus

1. Union of India, through
The Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi.
2. Central Board of Direct Taxes
Through its
Chairman
Ministry of Finance
North Block
New Delhi.

... Respondents

By Advocate: Shri V.P. Uppal

O R D E R (ORAL)

HON'BLE MR. S. VENKATRAMAN, VC(J)

The applicant who was working as Deputy Commissioner of Income Tax Range-21 was kept under suspension by order dated 8.11.1994 with effect from 7.9.1994 on the ground that a criminal case was under investigation against the applicant. It is stated that on the complaint given by one Chhabil Dass, the CBI laid a trap and caught the applicant for accepting illegal gratification of rupees one lakh from the said complainant, through his assistant. A criminal case has already been



registered against the applicant. The Government has granted the necessary sanction to prosecute the applicant and it is stated that a chargesheet had been filed and the trial has already commenced.

2. Though the applicant in this application has sought for quashing the order of suspension, the learned counsel for the applicant submitted that the applicant is now challenging only the continuance of the suspension even after a period of four years without the same being reviewed. He has referred to various instructions issued by the Government for periodical review of the suspension and further submitted that respondents have not even raised the subsistence allowance which is being paid to the applicant at 50% of the pay.

3. The learned counsel for the respondents strenuously contended that as serious charge of corruption is alleged against the applicant and as the chargesheet has already been filed against him, there can be no question of revoking the suspension merely because the criminal case has been pending for more than two years. He cited some authorities to contend that in a case of this type, the suspension can be continued.

4. The only point that requires to be considered is whether in a case of this type where the employee is kept under suspension under Rule 10(2)(a) of CCS(CCA) Rules the authority concerned has to review the necessity of continuing the suspension order or not. There can be no

doubt that the suspension can be continued even after the filing of the chargesheet. The only point that we have to consider is whether the competent authority should consider whether the suspension should be continued or not taking into consideration various facts of the case and other relevant circumstances.

5. The Government has issued several instructions with regard to the period for which an employee can be kept under suspension pending decision of the criminal case. In O.M. dated 7.9.1965, it is stated that where an official is deemed to have been placed under suspension under Rule 10(2) of the CCS(CCA) Rules, as soon as the officer is released from police custody the competent authority should consider the case to decide whether the continuance of the officer under suspension is absolutely necessary or not. It is further indicated that in order to keep the period of suspension to the barest minimum the competent authority should take all positive steps to file a chargesheet in Court of Law, within three months from the date of suspension. It is also provided that if the investigation was likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. Rule 10(5)(C) stipulates that an order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is

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subordinate. This provision shows that a competent authority has got the power to revoke the suspension in case it finds it necessary to do so in the light of the facts and circumstances of the case.

6. In the instant case, the learned counsel for the applicant contended that the applicant has been under suspension from nearly four years and the question as to whether the applicant can be reinstated and posted to some other post ought to have been considered by the competent authority especially in view of the circumstances that the investigation has already been completed and there is no likelihood of the applicant tampering with the evidence.

7. The learned counsel for the respondents relied on the judgment of the Supreme Court in UOI Vs Uday Narain 1991(1) SCSLJ p.93 to contend that the suspension in the case of this type can be continued even after the completion of the investigation. That was a case where the Tribunal had revoked the suspension on the ground that the investigation had been completed, but the trial had not commenced. The Supreme Court held that the view taken by the Tribunal was not sustainable and that an order of suspension was not liable to be quashed on the ground that the case was neither at the stage of investigation nor trial. We are not dealing with the question whether the order of suspension will have to be revoked on the ground on which the Tribunal in that case had revoked it.

8. In Allahabad Bank & Anr. Vs. Deepak Kumar Bhola 1997(4)SCC.1 also cited by the learned counsel for the respondents the question as to whether the suspension pending criminal trial requires to be quashed on the ground of long pendency of the criminal case. The Apex Court referred to the relevant clauses dealing with the question of suspension and after pointing out that the charge against the applicant was grave, held that the mere fact that nearly ten years had elapsed since the chargesheet was filed can be no ground for allowing the respondent to come back to duty on a sensitive post in the Bank unless he is exonerated of the charges.

9. In this case the applicant has been kept under suspension under CCS(CCA) Rules and the relevant Government instructions require the competent authority to review the necessity of continuing the suspension periodically. We are not going into the question at this stage as to whether the suspension needs to be revoked merely on the ground that the chargesheet was filed more than two years back and the criminal case is pending. In State of Tamil Nadu Vs. Thiru G.A. Ethiraj 1999(1) AISLJ 112 which was also cited by learned counsel for respondents, the Tribunal had set aside the suspension on the ground that once the chargesheet was filed the cause for continuing suspension was over. The Supreme Court did not agree with that view of the Tribunal and held that the cause still continued even after filing of the chargesheet. Here again we must point out that there can be no dispute about the question that the suspension can be continued even after the filing

of the chargesheet. All that we want to point out is that under Rule 10 the competent authority has got the power to revoke the suspension and the relevant Government instructions require the competent authority to apply its mind and decide whether the revocation should be made or not. It is for the competent authority concerned to take into consideration all relevant facts such as the gravity of the offence, the period of suspension, the stage at which the proceedings are pending in the Criminal Court and the desirability of continuing the suspension further to pass appropriate order. This does not appear to have been done in this case. The learned counsel for the respondents submitted that when the sanction was granted in 1996, the matter might have been reviewed. But, he is also not sure of the same.

10. The prayer of the applicant that the suspension should be straightaway quashed by this Tribunal, at this stage, cannot be accepted. All that we can do is to direct the competent authority to review the matter and take a decision in that regard.

11. For the above reasons, this application is disposed of by directing the applicant to give a representation highlighting the circumstances under which he claims revocation of the suspension and also seeking enhancement of the subsistence allowance, if it has not already been done, within a period of fifteen days from this date. If such a representation is given, the competent

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✓ authority shall consider the same and after taking into consideration all relevant facts and circumstances as well as legal position, pass an appropriate order within two months thereafter.

No costs.



(K. Muthukumar)

Member (A)



(S. Venkatraman)

Vice Chairman (J)

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