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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.1937/1998

New Delhi: this the 15th day of January 1998

HON'BLE MR.S.R.ADIGE, MEMBER(A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

Shri M.C.Sharma,
Commissioner of Central Excise,
Central Revenue Building,

ITD

New Delhi. Applicant.

(By Advocate: Shri C.Hari Shankar)

Versus

Union of India
through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

..... Respondents.

(By Advocate: Shri R.R.Sharti).

JUDGMENT

BY HON'BLE MR.S.R.ADIGE, MEMBER(A).

The applicant seeks quashing of the impugned order dated 6.4.95 (Annexure-A1) and release of full pay and allowances for the suspension period from 27.2.89 to 24.1.94 with interest thereon.

2. While working as Collector of Customs and Central Excise, the applicant was suspended vide order dated 27.2.89 (Annexure-A2) under Rule 10(1) CCS(CCA) Rules, 1965 on the ground that the disciplinary proceedings were contemplated against him. Although the said order dated 27.2.89 did not state so, as

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(b)

per respondents' reply, the misconduct alleged against the applicant was ^{that he was found in} possession of assets assessed by the CBI at Rs. 61.27 lakhs during the check for the period 1.1.85 to 15.2.89 which were disproportionate to the known sources of his income. The applicant was allowed subsistence allowance at the rate of 50% from the date of his suspension which was subsequently enhanced to 75% w.e.f. 11.9.89.

3. Furthermore, ~~as~~^{the} the CBI had launched prosecution proceedings against the applicant under Prevention of Corruption Act and that case is presently pending in the Court of 1st. Addl. Sessions Judge, Trichy, and meanwhile the respondents had decided to keep the disciplinary proceeding in abeyance awaiting the outcome of the prosecution proceeding.

4. It is not denied that the applicant had approached the Madras High Court against the initiation of criminal proceedings through Writ Petition No. 3279/90 which was dismissed and the SLP against the same was also dismissed by the Hon'ble Supreme Court. Thereafter, he moved the CAT Madras Bench through O.A.No. 203/90 challenging the suspension order which was rejected with a direction that the investigation by the CBI should be expedited and concluded, and thereafter the department should review the decision either to continue the placement of the applicant under suspension or of its revocation.

5. In 1992, the applicant filed a fresh application bearing OA No. 467/92 before the CAT Bangalore Bench which was disposed of by order dated 17.8.93 (Annexure-RI) directing the department to take fresh decision regarding continuance or otherwise of the suspension order. After

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review, the suspension of the applicant was revoked by order dated 25.1.94 (Annexure-A4) and he was thereupon given posting as Joint Chief Departmental Representative, CERAT, New Delhi. He made a representation for payment of full pay and allowances for the period of suspension. He was informed vide letter dated 28.9.94 (Annexure-A9) that his request was premature owing to the pendency of criminal case against him, upon which he filed O.A.No.2391/94 impugning the said letter but during the pendency of that OA the respondents issued the impugned order dated 6.4.95 (Annexure-A1) stating that the President after taking into consideration all the facts and circumstances of the case, was pleased to pass order under FR -54 B(1) that the applicant's pay and allowances during his suspension period from 27.2.89 to 24.1.94 would be restricted to the subsistence allowance already paid to him during the period, and his pay and allowance for the said period would further be reviewed after the conclusion of disciplinary proceedings/ criminal proceedings, when order regarding treatment of the suspension period as duty or otherwise would also be issued. Thereupon, the applicant was allowed to withdraw the OA No.2391/94 with liberty to file a fresh OA impugning the order dated 6.4.95. Hence the present O.A.

6. The main ground taken by the applicant is that he was placed under suspension on the ground of contemplated disciplinary proceeding under Rule 10(1)(a) CCS(CCA) Rules and not under Rule 10(1)(c) of these rules, and these contemplated disciplinary proceedings ~~were~~ never materialised. The applicant had also averred that the respondents had stated before

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the CAT Bangalore Bench in O.A.No.467/92 that they were not intending to initiate disciplinary proceedings against the applicant. The Bangalore Bench had accordingly granted 3 months' time to decide whether to revoke the applicant's suspension or not, and the suspension was duly revoked. In those circumstances, he was entitled to full pay and allowances for the suspension period. It has been contended that the respondents cannot avoid their liability to release the applicant's full pay and allowances for the period he was under suspension, on the plea that the disciplinary proceedings were kept in abeyance, because in that case the Govt. would have a carte-blanche to suspend an employee on the ground of contemplated disciplinary proceedings without specifying the ground, and then, even after revoking the suspension without initiating the disciplinary proceedings, retain the liberty to withhold the pay and allowances on the ground that the disciplinary proceedings were contemplated on the same charge on which the criminal case was filed, which was not the intention of any of the provisions of FR 54-B.

7. In this connection, applicant's counsel Shri C. Hari Sankar has cited various rulings including Netai Chandra Das Vs. UOI -1989(11)ATC 801; B.R. Jaidev Vs. Area Manager(North) MTL, Bombay (O.A.No.704/87) reported in 571 Swamy's CL Digest, 1993; Girchar Lal Vs. Delhi Admn (O.A. No.1508/91 and Mohan Raj Sunderam Vs. UOI(O.A.NO.426/92 Madras Bench) reported in 573 Swamy's CL Digest, 1993 CAT, Madras Bench.

8. We have given the matter our careful consideration.

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9. FR-548(1) lays down that when a Govt. servant who has been suspended is reinstated, the competent authority shall consider and make a specific order:

- (a) regarding the pay and allowances to be paid to the Govt. servant for the suspension period; and
- (b) whether or not the said period would be treated as a period spent on duty.

FR-548 (3) provides that where the competent authority is of the opinion that the suspension was wholly unjustified, the Govt. servant shall, subject to the provisions of sub-rule (8) be paid full pay and allowances to which he would have been entitled had he not been suspended.

FR-548(6) provides that where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Govt. servant, shall be reviewed at its own motion after the conclusion of the proceedings by the competent authority, who shall make an order according to sub-rule (3) or sub-rule (5), as the case may be.

10. From the above, it is clear that the applicant would be entitled to the full pay and allowances for the suspension period only if the competent authority comes to the conclusion that the suspension was wholly unjustified. At the present juncture, when the criminal case against the applicant is still pending, and the disciplinary proceedings against him are said to have been kept in abeyance, it would be premature for the competent authority to conclude that the suspension was wholly unjustified.

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11. In this connection, the following finding in the CAT Bangalore judgment in OA No. 467/92 as contained in para 5 thereof is extremely relevant:

" Although the decision to place the applicant under suspension was taken in view of a contemplated disciplinary proceeding, it was obviously for the reason that commission of a criminal case was suspected and the matter entrusted for investigation by the CBI. On the aforesaid ground our sister Bench at Madras was not inclined to accept the submission made before us asserting that the order of suspension was made without the application of mind."

12. In other words, although the CAT Bangalore Bench was aware that the suspension order dated 27.2.89 stated that the applicant was being suspended because departmental proceedings were contemplated against him, they noted that the obvious reason was the commission of a criminal case, which had been entrusted to CBI for investigation, and in that background noted that the CAT Madras Bench had not been inclined to hold that the suspension order had been passed without application of mind. Having regard to the same, the CAT Bangalore Bench did not consider it necessary to go into that question again. In this background when it has been conclusively held that the impugned order dated 6.4.83 was not passed without application of mind, the question whether the suspension was wholly unjustified, such that the period of suspension has to be treated as on duty and thus qualify for full pay and allowances, can be considered, even initially, only after knowing the outcome of the prosecution proceedings presently underway against the applicant, which was the obvious

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cause of his suspension, as noticed by CAT Madras Bench and again by CAT Bangalore Bench above.

13. In this background, the impugned order cannot be said to suffer from any legal infirmity which would require our judicial interference, and the cases cited by Shri Hari Shankar do not cover the particular facts and circumstances of the case before us.

14. The OA fails and is dismissed. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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(S. R. ADIGE)
MEMBER (A).

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