

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.346/1995

New Delhi: May 10, 1995.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr P.T.Thiruvengadam, Member (A)

S.M.Jain
R/o 101 Pratap Nagar
Mayur Vihar
Delhi - 110 092

...Applicant.

(By Advocate: Shri A.K.Behra)

Versus

1. Government of National Capital Territory of Delhi through The Lt. Governor
Raj Bhavan
Delhi-110 054.
2. Seceretary, Education Govt. of NCT of Delhi
Delhi - 110 054.
3. Director
Delhi Archives
Govt. of NCT of Delhi
Delhi- 110 054.

...Respondents.

(By Advocate:Shri Anoop Bagai)

JUDGEMENT (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The challenge in this application filed on 16.2.1995 is against validity of the order dated 18.2.1993 of the Respondent No. 3, placing the applicant Shri S.M. Jain who was working as an Assistant Archivist (Grade-I) in Delhi Archives, under suspension. The reason stated in the impugned order of suspension was that a disciplinary proceedings was under contemplation against him, in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the applicant was placed under suspension. The applicant had made several appeals against the order of suspension, seeking revocation of the order. Finding no response, the applicant filed this application.

The impugned order is assailed mainly on the ground that though a period of 2 years has elapsed since the applicant was placed under suspension, no disciplinary proceedings has yet been initiated against him, nor has any criminal charge been laid in any court of law. Therefore the impugned order is unsustainable, claims the applicant.

2. The respondents, in their reply statement, have contended that though the case of the applicant's suspension was reviewed periodically, the competent authority decided that it would be in the public interest to keep him under suspension. They have also referred to a report of the CBI who advised that it would not be in the public interest to reinstate the applicant as it would render evidence in the criminal case weak. The respondents, therefore, contend that the applicant is not entitled to the relief sought by him.

3. We have gone through the pleadings in detail. We heard Shri A.K.Behra, Counsel for the applicant and Shri Anoop Bagai, Counsel for the respondents at considerable length.

4. Since the facts are quite simple, an elaborate discussion on the facts of the case is not required, Suffice to say that the suspension of the applicant followed his arrest and detention by the CBI in connection with an offence under the Prevention of Corruption Act for alleged receipt of illegal gratification. Learned counsel for the applicant, with considerable tenacity, argued that the order of suspension was issued without due application of mind by the competent authority and that the case was not considered for review periodically in accordance with the government instructions in that regard, for, if it had been done so, the competent authority could not have extended the suspension of the applicant any further as the

applicant has been under suspension for more than a period of 2 years. Learned counsel for the applicant sought support from the following rulings:

(i) 1989 Vol.10 ATC Madras 88

M.H. Rahman Vs. Collector of Customs, Madras.

(ii) 1989 Vol.10 ATC 75 (Delhi)

C.L.Bakolia Vs UOI & Others.

(iii) 1987 Vol 2 ATC 828

D.Mangaleswaran Vs Commissioner of Income Tax & another.

(iv) 1987 Vol.3 SLJ 383

P.Subramani & UOI S.A.Khan Vs.UOI & Others (V.C)
and 1994 Vol. 26 ATC 642 in which one of us was the party.

5. We have carefully gone through these judgements. In all these judgements, various Benches of the Tribunal have considered as to what should be the guiding principle in determining while facing an officer under suspension and while deciding whether suspension should be revoked or continued. A scrutiny of the judgements as also the government instructions referred therein would clearly indicate that the paramount consideration should be public interest, though other aspects are also relevant. In this case, it is not merey that an investigation is pending against the applicant but the applicant was arrested and detained for some time for his alleged involvement in an offence under the Prevention of Corruption Act. Here it is worthwhile to mention that the Disciplinary Authority did not place the applicant under suspension for the reason that a criminal case/investigation is pending against him, but for contemplated disciplinary proceedings. Learned counsel for the applicant argued that since the applicant was placed under suspension by the impugned order for the reason that a disciplinary proceedings was under

contemplation against him, the respondents cannot be permitted to justify the same on any other grounds. Learned counsel has in his mind the contention in the reply statement that the competent authority decided to continue the suspension of the applicant, considering the advice given by the CBI. Learned counsel for the applicant sought support from the dictum of the rulings of the Supreme Court in Mohinder Singh Gill Vs. CEC reported in 1978 Vol.A CC 405. It has been held by the Supreme Court in that case that an order has to be sustained on the basis of the grounds stated therein and not on some other grounds put forwarded as an additional affidavit in court. Here, that is not the situation. In the impugned order, the reason stated was that a disciplinary proceeding is under contemplation against the applicant. The respondents do not say that they do not intend to initiate disciplinary proceedings. They have not said that they have dropped the disciplinary proceedings and decided to continue the suspension, on account of the pendency of the criminal investigation on the advice received from the CBI. The Disciplinary Authority may either drop the idea of initiating disciplinary proceedings or initiate the same. When a person is prosecuted for a criminal offence, and if the departmental proceeding for the misconduct is also to be taken on the same allegations, it would be prudent not to initiate disciplinary proceedings simultaneously, but to wait for the culmination of criminal investigation or trial. If the Disciplinary Authority had taken some time to decide as to whether to proceed departmentally or not under the circumstances of the case, we are of the considered view that this action cannot be faulted. There is no allegation of any malafides against the respondents. The applicant has no cause to that the impugned order was issued out of malafides or that the same was not revoked on account of any malafides. In S.A.Khan Vs. UOI (Supra), the circumstances under which judicial intervention in administrative matters like suspension have been fully discussed. Here we do not find any such reason for judicial intervention

because there is a complete lack of allegations of malafides and we are convinced that the action of the respondents in placing the applicant under suspension and not revoking the order of suspension so far has been supported by bonafide intention and due application of mind.

6. However, we find that the applicant has been placed under suspension for a period of 2 years. As the suspension was only in contemplation of disciplinary proceedings, it is high time that the Disciplinary Authority takes a decision whether to initiate disciplinary proceedings or not. The Disciplinary Authority cannot indefinitely prolong the suspension of the applicant without taking a decision. Therefore, we are of the considered view that the Disciplinary Authority should be directed to take a decision in regard to initiation of disciplinary proceedings within a definite time frame.

7. As the criminal investigation against the applicant for an offence under the Prevention of Corruption Act is nearing completion, it will be open for the Disciplinary Authority if it revokes the order of suspension to issue another order of suspension under Rule 10 (1)(b) of CCS Rule, if keeping the applicant under suspension is found unavoidable.

8. In the above facts and circumstances of the case, we are not inclined to strike down the impugned order, but we dispose of this application with the following directions:

(i) The Respondents shall, if they so choose, initiate disciplinary proceedings against the applicant by serving a charge-sheet on him within a period of 3 months.

(ii) If disciplinary proceedings is not initiated by service of charge-sheet within the aforesaid period of 3 months, the impugned order of suspension of the applicant shall stand revoked.

(iii) If the disciplinary proceedings are not being initiated as stated above, it may yet be open for the respondents if such an action is found necessary in public interest to keep the applicant under suspension by ^{Perh} an order invoking the present under clause B of Sub Rule (1) of Rule 10 of CCS (CCA) Rules.

There is no order as to costs.

P.T.Thiruvengadam

Member (A)

(A.V.Haridasan)

Vice Chairman(J)

aaa.