

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2066/96
with
O.A. No. 1973/96

New Delhi this the 21st Day of March 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Niranjan Ghose, IAS
C/o Shri A.P. Singh, IAS
Resident Commissioner,
Government of Assam,
Assam Bhawan
Sardar Patel Marg,
New Delhi-110 021.

(By Advocate: Shri R. Venkataramani, Sr. Advocate
Shri S.M. Garg, Advocate
Shri R.K. Shukla, Advocate with
Shri K.B.S. Rajan, Advocate

1. The Union of India

Through the Secretary
Ministry of Personnel
Government of India
North Block
New Delhi

2. The State of Assam

Through the Chief Secretary,
Assam Sachivalaya
Dispur, Guwahati 781 006

3. The Secretary Personnel
Assam Sachivalaya
Dispur, Guwahati 781 006

Respondents

4. The Government of Meghalaya
Through the Chief Secretary
Shillong.

Proforma
Respondents

(By Advocate: Shri N.S. Mehta, for Resp. No. 1
Shri Raju Ramchandran, Sr. Advocate
with Shri Ravinder Bhatt and
Shri P.K. Goswami, Counsels for
respondents No. 2 & 3.

ORDER

Hon'ble Dr. Jose P Verghese, Vice Chairman (J)

These petitions arises out of substantial allegations from the respondents that the petitioner has adopted a strategy of initially seeking casual leave on the ground of sickness and has run away to Delhi from where he was seeking casual leave on security reasons. The stand of the petitioner was that he has done so not as a strategem nor did he run away to Delhi rather he was on the run.

2. It is an admitted fact that on 10.5.1996 the petitioner who was the Secretary to the Government of Assam, Personnel, Finance, Excise, Science, Technology & Environment, General Administration and Secretariat Administration Departments made an application for leave on the ground that he has been feeling extremely unwell quite for sometime requiring immediate medical treatment at All India Institute of Medical Sciences for identification of his ailment if any, as, inspite of treatment at Guwahati, no perceptible improvement could be achieved. He sought headquarter leave on this ground from 11.5.1996 onwards. After reaching Delhi he wrote a letter addressed to the Secretary to the Government of India, Ministry of Personnel/Ministry of Home Affairs with a copy to the Chief Secretary to the Government of Assam, on 20.5.1996 stating therein that the petitioner had to leave Assam on 12.5.1996 on leave on security ground

(11)

as he had been receiving on telephone frequent threats to his life and to the lives of the members of his family and property. It is clear from the statement of facts by the petitioner that he admits these facts even in this petition and the same are not controverted by the respondents either.

3. In view of these facts, the respondents issued an order of suspension on 9.8.1996 stating therein that the grounds stated in his leave application is false and this has come to light that his illness and that he required to take treatment at All India Institute of Medical Sciences at Delhi, from the letter addressed to the Central Government, copy to the State Government on 20.5.1996, wherein the petitioner himself has stated that the circumstances in which he had to leave Assam was not for medical check up but on security grounds. This according to them amounted to an act on his part misleading the Government of Assam reflecting seriously on the conduct and integrity of the petitioner. The recital part of the said order is reproduced herebelow:

Whereas, in his casual leave application dated 10.5.1996 Shri Niranjan Ghose, IAS, the then Secretary to the Government of Assam, Personnel, Finance, Excise, Science, Technology and Environment, General Administration and Secretariat Administration Departments stated the following:

(12)

"I have been feeling extremely unwell quite for sometime requiring immediate medical treatment at All India Institute of Medical Sciences for identification of the disease, if any as inspite of treatment here at Guwahati no perceptible improvement could be achieved.

I propose to go on casual leave from 13.5.96 (FN) for a period of ten days. This may kindly be approved with permission for headquarter leave on 11.5.96 accordingly.

And whereas, in his letter dated 20.5.1996, addressed to the Secretary to the Government of India, Ministry of Personnel/Ministry of Home Affairs with a copy to Chief Secretary to the Government of Assam, Shri Niranjan Ghose, Camp New Delhi has interalia stated the following:

"I have the honour to state that I had to leave Assam on 12.5.1996 on leave on security ground as I had been receiving frequent threats to my life and lives of members of my family and property."

And whereas, it is evident that when Shri Niranjan Ghose, IAS stated in his casual leave application dated 10.5.96 that he wanted to proceed immediately to Delhi for medical check up at All India Institute of Medical Sciences it was not based on fact and it was an act on his part misleading the Government.

And whereas, any such action on the part of an IAS officer is a serious reflection against his conduct and integrity."

4. After receipt of the said suspension order while at Delhi, he made an appeal under Rule 16 of the All India Service (Discipline and Appeal) Rules 1969 and the respondents rejected the said appeal summarily on 25.8.1996. Before the said appeal against the suspension order was disposed of, the respondents issued a chargesheet against the petitioner on 17.9.1996. The petitioner in OA No. 1973/96 is challenging the legality of the suspension order dated 9.8.1996 and the order rejecting his appeal dated 25.5.1996 while in OA No. 2066/96 the petitioner is challenging the chargesheet issued against him on 17.9.1996 itself. We have heard both the OAs together.

5. Before dealing with the grounds in this OA the broad facts as perceived by the petitioner and stated by him in his OA as statement of facts are as follows:

During 1993-95 the applicant was posted as Secretray, Finance, Personnel, General Administration, Secretariat Admininitration, Excise, Science Technology & Environment Departments. Prior to this he was Joint Secretary, Finance with effect from 30.6.1991. It is during the period when Shri Hiteshwar Saikia was the Chief Minister of Assam that the petitioner had a peaceful career and his illegally withdrawn promotions were rectified. By a coincidence, the suspension order and some criminal cases filed on certain allegations against the petioner, were all quashed at the instance of the Hon'ble High Court/Tribunal as the case may be, and the table was clear for Chief Minister Saikia to rectify the mistake. Unfortunately the Chief Minister expired in April 1996 ;and thereafter the petitioner started receiving telephone calls threatening his life , lives of his family members at the instance of the third parties.

On 8.5.1996 the Joint Secretary to the Government of Assam intimated the petitioner in writing that on the basis of the report received from Inspector General of Police (SB), Assam the security of certain top bureaucrats has been stepped up and they are considered to be vulnerable and the letter directly addressed to the petitioner mentions four other officers of similar rank as well with a note appended thereto that they are advised to take all care and precautions as are required to be taken by them individually to facilitate their security for which the DGP have been asked to take necessary

action. It is also worth mentioning that three other officers who have been referred to in the said letter have also run away from Assam alongwith the petitioner and one has retired since then the other two are under suspension. It is also worth mentioning that IGP who is said to have given the said report has also been killed subsequently on 21.9.96. The letter to the Joint Secretary to the Government of Assam dated 8.5.1996 is available at page 34 of the paper book.

7. On 9.5.1996 the acting Chief Minister of Assam advised the petitioner verbally to proceed on leave because of the security threat and "there is some report that you, Ghosh will be kidnapped for a ransom of Rs. 2 crores; collect prescribed leave application forms for submission of regular leave." This fact that the petitioner had collected, the leave application form and that he was proceeding on leave was known to the third parties and there were threatening calls over the phones and on 10.5.1996 again the petitioner had conversation with the said Acting Chief Minister of Assam and he communicated these facts to the Chief Secretary as well as the Additional Chief Secretary. (The then Additional Chief Secretary is the present Chief Secretary in Assam). The petitioner submits that it is under these circumstances that he made an application for leave not on the ground of security but on the ground of illness with effect from 13.5.1996. (It is pertinent to note that 10th and 11th May 1996 were holidays). On 11.5.1996 the applicant's son, daughter and daughter-in-law alongwith their grand child left to

Calcutta, and thereafter on 12.5.1996 he despatched his wife to Calcutta surreptitiously and on 13.5.1996 himself went to Delhi via Bombay apprehending danger in case he left for Delhi directly. According to the petitioner the new Chief Minister took over on 14.5.1996 and it was reported that there were series of untowards incidence that took place thereafter including the murder of four important personalities (Shri S.K. Deb, IPS, IGP included as mentioned above). The petitioner further alleges that as apprehended the miscreants attacked his house at Guwahati on 18.9.1996 and again on 20.9.1996 indicating thereby his apprehensions were nothing but real.

8. The respondents filed a short reply, both the Central Government as well as the State Government. None of the respondents have denied these facts. On the contrary on behalf of the State of Assam it was stated that, had there been any serious threat to his security he should have intimated the Government who would have made proper arrangement to safeguard his security and that of his family members and protect his property, as admittedly the security for the petitioner had been stepped up; Instead, the petitioner sought to mislead the Government and went away to Delhi on the pretext that he is leaving for medical check up.

(17)

9. Since we are considering both these OAs together on facts, we will have to deal with the grounds separately as the orders challenged in both the OAs are different.

As stated above in the OA No. 1973/96 the petitioner is challenging the suspension order as well as the Order of the Central Government rejecting his appeal which he preferred under Rule 16 of the All India Services (Discipline and Appeal) Rules 1969.

The first ground that the petitioner has submitted to this Court was that the petitioner has a justifiable reason to leave Assam and it is unfortunate that his perception arising out of the total circumstances which he found clearly that his and his family members lives and property was not safe, was not shared by the respondents. He bonafide believed that he could not stay in Assam and in accordance with the warnings given by the Joint Secretary against his stay in Assam, on the basis of the reports by IGP as well as DGP, he had no option but to get out of the place and that in no way constitute a misconduct. The learned counsel for the petitioner has also stated that services under the respondents does not automatically make the petitioner surrender the fundamental rights guaranteed to every citizen under the Constitution of India. The fundamental rights such as Right to Equality and Right to Life are the least surrendered rights just because

the petitioner had subjected himself to the pleasure of the President under Article 310 of the Constitution of India.

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10. Hon'ble Supreme Court in Kameshwar Vs. State of Bihar reported in AIR 1962 SC 1166 at 1170 stated that after entering service, he does not cease to be a citizen of India nor disentitles himself to the rights conferred in Article 19 though the nature of the duties which governments servants have to discharge might necessarily involved restrictions on some of these within the purview of Clause 2 to 6.

It is worth remembering that it was only during emergency by an Order under Article 358, suspend the operation of Article 19. But Article 359 prohibits that a Presidential order cannot suspend the rights given under Article 21 and 20. This was added by the 44th Amendment Act of 1978 superseding the view the Supreme Court had taken in case of Administration Vs. Shukla AIR 1976 SC 1207 wherein it was held that Article 21 is superseded once an order under Article 359 is passed and the detainee loose its locus standi to regain his liberty on any ground. Hon'ble Supreme Court has clearly asserted the view that it can hardly be contended that government servants while, entering into a contract of employment under the State have waived their Fundamental Rights; vide Ghosh Vs. George AIR 1963 SC 913. Thus, Article 21 is available to not only to citizens but also to all persons.

The Right to Life now enunciated by Hon'ble Supreme Court, primarily means survival, yet it has also been interpreted to mean something more than survival or animal existence (vide Ray Sant Ram AIR 1960 SC 932; State of Maharashtra Vs. Chander Bhan AIR 1983 P 803 at Page 1 & 20). Thus Right under Article 21 would include Right to live with dignity, so has been held in Frances Vs. Union Territory (AIR 1981 SC 746 at Para 3). It has further been held to include all those aspects of life which go to make a man's life meaningful complete and worth living. This positive aspect of Article 21 has been elaborately dealt with in the concurring judgement of Mohan J in J.P. Unnikrishnan Vs. State of Andhra Pradesh reported in (1993) 4 SCC 111. It is therefore beyond any doubt that a Government employee can still keep to his bosom the rights contained in Article 21 of the Constitution of India even on an occasion when he has to decide between the call of the duty and the Right to Survival.

11. In the circumstances of the case we have no hesitation to hold that the petitioner had sufficient justification as stated in his application to acted; in the way the petitioner had actually act; we may also consider that there may not be a misconduct in the circumstances and we are also inclined to hold that the petitioner had not surrendered all his fundamental rights especially those available to him under Article 14 and 21 of the Constitution of India. Yet we are of the view that these grounds are not legitimately available to the petitioner for the

(20)

purpose of setting aside a suspension order. Admittedly the suspension orders have been issued contemplating a departmental inquiry in accordance with the rules. All these grounds are available to the petitioner as a defence in the ensuing inquiry. Therefore, we are of the considered opinion that the impugned orders dated 9.8.1996, and 5.9.1996 cannot be quashed on these grounds.

12. The petitioner next advanced the arguments that the suspension order on the face of it is punitive and the order rejecting his appeal does not state any reason and for that reason the appellate order also needs to be quashed since the respondents have a statutory duty to deal with the appeal of the petitioner under Rule 19 and pass a speaking order.

The respondents on the other hand submitted that it is well settled principle that a Court or a Tribunal would interfere with an order of suspension in limited circumstances. They were relying on the decision of the Hon'ble Supreme Court in UP Rajya Krishi Utpadan Mandi Parishad Vs. Sanjiv Rajan 1993 Supp (3) SCC 483 and stated the circumstances in which a suspension order can validly be challenged as 1) where it is passed mala fide, 2) where it is passed by an authority not competent to suspend 3) where the pre-conditions prescribed by the relevant rules are ex facie not shown to be satisfied and 4) where the order of the suspension is punitive on the face of it or become punitive in course of time because the purpose of making it viz. to conduct disciplinary proceeding

is not achieved on account of failure to serve a chargesheet or on account of inordinate delay in completing the proceedings. In the reply filed by the respondents does not deny the allegations and statement of facts made by the petitioner, rather in the said affidavit it is stated that the suspension order contains facts "prima facie" establishing a misconduct. But the suspension order on the face of it, it is abundantly clear, that it is punitive; the narrative part of the suspension order is crystal clear that the respondents are making imputations and conclusions. Nowhere on the face of the suspension order it is stated that findings recorded therein are only a "prima facie" finding. The notion that it is only a "prima facie", is finding supplemented by the respondents now by their affidavits and arguments. There is nothing to show on the face of the order that the findings recorded therein are only 'prima facie'.

13. It is well settled law that when a public authority passes an order, it shall be understood as to what is stated on the face of the order and it shall not be permissible for the respondents to submit or change the import of the same by subsequent affidavits or by arguments.

14. Our attention is drawn to the rulling of a Division Bench of this Court in A. Vedasohala Mudaliar V. The Central Road Traffic Board, Madras and another (1948) I M L J 322). It was held in that case that the impugned order therein could not be supported

as one passed in the exercise of powers conferred by Rule 149 of the Rules framed under the Motor Vehicles Act, as it did not appear on the face of the record that the Central Road Traffic Board was purporting to exercise a power conferred by the said Rule. The Bench observed thus:-

"....It does not appear on the face of the record that the Central Road Traffic Board was purporting to exercise a power conferred on it by rule 149. The order was both in form and substance an order allowing an appeal by the second respondent. It is well established that it is not a good return to a rule nisi for the issue of a writ of certiorari "to state that the order is justified on fact not contained in the order. This court cannot take notice of any fact which does not appear upon the face of the order (vide Halsbury, Hailsham Editor, Volume IX Page 889 and The Ring V. Lictor (101 E.R. 189)."

15. Reliance is also placed on the dictum of the Supreme Court in Mohinder Singh Gill V. The Chief Election Commissioner, New Delhi (AIR 1978 SC 851) wherein it was held that when a statutory functionary wakes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of

affidavit or otherwise. The Supreme Court pointed out that an order and in the beginning, may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out, if such a course is permitted.

16. In view of these facts we are of the firm opinion that the facts stated in the narrative portion of the suspension order clearly indicates that the order is punitive. These narrations have already been reproduced above. The respondents themselves have stated that this Court can set aside a suspension order if it finds that the said order is punitive on the face of it. It is true that the suspension order has been issued stating therein the departmental proceedings are yet to be drawn up. That does not mean the findings recorded on the face of the order is only 'prima facie' finding; in our view the impugned order is nothing but punitive. The respondents could not have passed such an order without holding a departmental inquiry and after his being found guilty; an order of suspension could have been passed then, if the rule so permits. That was so held by the Supreme Court in the case of R.P. Kapur vs U.O.I (AIR 1964 SC 787).

17. The petitioner has submitted an appeal against the said order on 17.8.1996 substantially stating therein almost all the allegations recorded in paras 5 to 7 and 9 to 11 above and justifying the reasons and circumstances for which he had to leave the State of Assam. The said appeal is preferred

under Rule 16 of the All India Services (Discipline and Appeal) Rules 1969. In accordance with sub clause (i) of Rule 16, an order of suspension made or deemed to have been made under Rule 3 is an appealable order. Rule 19 gives details as to how to consider an appeal. Clause (i) of Rule 19 refers to the consideration of appeal, in case of an appeal against the order of the State Government itself imposes any penalty specified in Rule 6, while clause (ii) refers to an appeal against any other order specified in Rule 16; and in accordance with the said sub rule, "the Central Government shall consider all the circumstances of the case and make such orders as it may deem just and equitable." It is under this provision that the respondents have rejected the appeal of the petitioner on 25.9.1996. The submission of the petitioner is that the said rejection order is not in accordance with the rules in as much as it does not state any reason to show that the Central Government has considered the appeal keeping in view of all the circumstances of the case. The order on the face of it does not indicate any reason why the appeal has been rejected except that it only refers to the fact that they have received parawise comments from the State Government of Assam and the Central Government has carefully considered the same. The "comments" referred to by the Central Government in the above said rejection order, is given at page 75 of the paper book. In the internal page 5 of the said comments deals with the present issue at hand. In the said comments dated 10.9.1996, the Government of Assam had stated "..... in this connection, it is to be stated

that the ground of suspension has been clearly stated in the suspension order itself. Shri Ghosh has deliberately mislead the Government in his statement contained in his casual leave application dated 10.5.96 and there was no justification for him to do so..... On the other hand he misled the Government. It is totally unbecoming on the part of the All India Services Officer and particularly an officer of his seniority and experience inasmuch as he was Secretary to the State Government, holding charge of many departments of the Government. He has proved himself to be totally unreliable and to be lacking in integrity....."

Thus it is seen that comments sent by the Government of Assam is again an imputation of misconduct and unequivocal. It has been stated that these imputations are the grounds of suspension and therefore the order of suspension cannot be revoked. Under Rule 19(ii), the Central Government has to dispose of the appeal filed under Rule 16 and the order passed under Rule 19, the Central Government has stated no reason for rejection of the appeal except that they have received comments from the State Government and they have gone through the same. In the absence of any specific reason by the Central Government on the face of the order, in the circumstances, the reasons stated by the State Governments in its comments should be taken as the reasons for rejection of the appeal by the Central Government and since the comments of the State Government indicate that the suspension order has been

issued for committing a misconduct, the rejection of the appeal shall also be considered that the order of suspension was issued due to commission of a misconduct. By adopting the comments stated by the State Government, the Central Government has rendered the order rejecting the appeal as well punitive.

In the circumstances we have no hesitation to quash both the orders viz. the order of suspension dated 9.8.1996 and the order rejecting the appeal dated 25.9.1996, holding that they are punitive in substance.

18. The main ground of challenge, in the application challenging the chargesheet dated 17.9.1996 is that the petitioner has justifiable reasons to tell the State Government that he is proceeding on leave for treatment at Delhi instead of telling the State Government that he is proceeding to Delhi due to his real apprehension of security being in danger not only of himself but also of his family and property. For the reasons stated above in para 5 - 7 and 9 - 10 while dealing with the challenge to the suspension order, we have dealt with this ground at length. For the same reason viz. that these justifications which the petitioner would advance and the ground that there is no misconduct involved in this case and that his fundamental rights contains in Article 14 and 21 of the Constitution of India, are all still available to him. Petitioner can still set up those defences which are available to him to be advanced during the disciplinary proceedings. We

(27)

cannot presume at this stage that the petitioner is unlikely to get a fair opportunity to advance these defences, once the inquiry starts, at any place other than within the State of Assam.

In view of these findings, we are inclined to dismiss the application in OA NO. 2066/96 for the reasons that no valid ground has been raised by the petitioner to quash the disciplinary proceedings at this stage of issuance of the chargesheet.

19. We would like to clarify what would be the combined effect of our acceptance of O.A. No. 1973/96 and rejection of the OA 2066/96. The following directions are therefore, issued:

- 1) In OA 1973/96 is allowed subject to the following directions, that follows hereinbelow:
- 2) OA 2066/96 is rejected to the directions given herein below:
- 3) Directions are issued to the respondents to pay the subsistence allowance admissible to the petitioner during the pendency of the suspension order viz. between 9.8.1996 till to date and also a direction is issued to the respondents to pay the salary for any other period not paid to the petitioner, after the incidence referred to in this petition

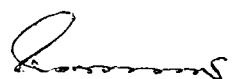
had arisen. This shall be done forthwith in view of the serious ailment the petitioner is suffering now, resulting in hospitalisation.

- 4) since the disciplinary proceedings are allowed to be continued and in view of the fact that the petitioner is to be superannuated on 31.5.1997, a direction is also being issued that, the respondents shall complete the disciplinary proceedings within eight weeks from today i.e. at least two weeks prior to his superannuation and pass appropriate orders and communicate the same to the petitioner. In the event the disciplinary proceedings are not complete within the stipulated period, the pending proceedings shall stand abated. The petitioner shall fully cooperate with the respondents for the timely completion of the pending proceedings.
5. The respondents are also directed to consider the facts and circumstances of the case and the findings recorded in this case and in view of the present incapacity and hospitalisation of the petitioner in Delhi and pass an order forthwith that the headquarters for the

29

purpose of pending inquiry shall be anywhere other than North East and preferably at Delhi.

With these directions these OAs are disposed of and no order as to costs.



(S.P. Biswas)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal