

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2379/1996
T.A. No.

199

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DATE OF DECISION 9.9.1997

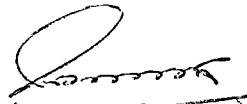
Shri N.N.S. Rana Petitioner
Shri B.S. Mainee Advocate for the Petitioner(s)
Versus
UOI Respondent
Shri E.X. Joseph with V.S.R. Krishna Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese, VC (J)

The Hon'ble Mr. S.P. Biswas, Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


(S.P. Biswas)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2379/1996

New Delhi, this 9th day of September, 1997

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

Shri N.N.S. Rana
s/o Shri Shamsher Singh
Chief Personnel Officer
Northern Railway
Baroda House, New Delhi
(By Advocate Shri B.S. Mainee)

.. Applicant

versus

Union of India, through
1. The Chairman
Railway Board
Ministry of Railways
Rail Bhavan, New Delhi
2. Secretary
Ministry of Railways
Rail Bhavan, New Delhi
3. General Manager
Northern Railway
Baroda House, New Delhi

.. Respondents

(By Shri E.X. Joseph, Sr. Counsel with Shri V.S.R.
Krishna, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a co-ordinating Chief Personnel Officer (CPO for short)/Northern Railway working since 4.9.1995, is aggrieved by the impugned Annexure A-1 order of suspension dated 30.10.96. Consequently, he has sought relief in terms of quashing and staying/revoking of the said order.

2. Shri B.S. Mainee, learned counsel argued that the applicant, a strict disciplinarian and hard task master, has become a victim of conspiracy following disciplinary action he took against his lady Secretary on account of dereliction of latter's duty. The said lady Secretary was placed under suspension by the applicant on 23.9.96 because of her lapses in preparing the brief for Principal Officers' meeting scheduled on 23.9.96.

Although revoked from suspension on 25.9.96, the lady Secretary, in collusion with several other disgruntled officials, managed to have a resolution passed by the Northern Railway Officers Association, throwing most stigmatic allegations against the applicant in a revengeful manner. The lady Secretary carried false, baseless and concocted stories right upto the Minister for Railways, who buckled in under the threat of direct action by the conspirators and the A-1 order is thus the outcome of malafide and extraneous considerations by the respondents, contended the counsel for the applicant.

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3. The applicant has chosen to challenge the said order of suspension on the following grounds;

- (i) That the order has been passed without giving an opportunity of hearing or enquiry in the matter and is the effect of malafide and colourable exercise of power;
- (ii) That the order is defamatory in nature since it has been issued unilaterally following the resolution passed by the so-called Officers' Union and was engineered by the lady Secretary in an attempt to save her skin from the consequences of disciplinary proceedings;
- (iii) That the order was the resultant efforts on the part of some officers who were looking out for some opportunity to embarrass the applicant, who has been a very successful personnel officer working with strict principles;
- (iv) That there has been no complaint whatsoever against the applicant from any quarter or even from the lady Secretary or from other female employees about mis-behaviour or sexual exploitation by the applicant. The only complaint said to have been made by her is dated 4.10.96 when the applicant had placed her under suspension and initiated disciplinary proceedings against her for a serious lapse;

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(v) That the suspension order amounts to penalty since it has been issued arbitrarily in violation of principles of natural justice because the honour and dignity of a very senior officer is at stake. The fact that the respondents had given a press notification dated 4.11.96 clearly proves the malafide intention on the part of respondents to defame the applicant and malign him without a show cause notice

(vi) In the background of the applicant's unblemished profile of integrity and well acclaimed services, the attempt of character assassination of the applicant by the subordinate officer in collusion with others, the impugned action amounts to penalty as well stigma.

4. While challenging the order of suspension on the grounds aforequoted, learned counsel relied heavily upon the decisions of the apex court as well as this Tribunal in the following cases:

- (a) R.C. Sud Vs. High Court of Rajasthan, SLJ 1995 (i) SC 163
- (b) K.Laxman Vs. Chief Secy. to Govt. of Kerala ATC 1992 (22) 172
- (c) Ashok Kumar Seth Vs. State of Bihar & Ors. ATC 1988(7) 461
- (e) In re: Ajay Kumar Pandey JT 1996(10) SC 179

5. The applicant's counsel would specifically draw support from the decision of the Hon'ble Supreme Court in Sud's case (supra). Apex court in that case quashed the suspension order because no opportunity was given to the charged officer therein before passing the order of suspension although the concerned officer was available at the headquarters. The applicant's case, as per the counsel, is fully covered by the above judgement of the Hon'ble Supreme Court.

6. In the counter, respondents have opposed vehemently all the claims of the applicant. Besides mentioning that the case of the applicant is not maintainable on account of non-joinder of necessary parties and that the said order has been issued by competent authority, i.e. the Railway Board, respondents argued that the order of suspension has not been issued as a measure of penalty. There was no necessity under the rules/principles of natural justice to give opportunity of being heard to the applicant before issuance of the impugned order. It was emphatically denied that the order was the outcome of respondents' buckling in under threats. The applicant has been placed under suspension pending enquiry into a serious complaint. Respondents have also argued that grant of interim relief will amount to grant of main relief and will be illegal without proper adjudication of the issues involved.

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7. In the light of the details aforesaid, the issues that fall for determination are as under:

- (1) Whether an official can be suspended in contemplation of disciplinary proceedings?
- (2) Have the respondents violated any rule/principle of natural justice by issuing the order of suspension without giving an opportunity of hearing?
- (3) Has the impugned order or the press note dated 4.11.96 been resorted to with a motive of casting stigma on the applicant?
- (4) Was the suspension absolutely necessary in the facts and circumstances of the case?
- (5) Is there any case for quashing the suspension order or revocation of the same?

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8. Before we examine the issues seriatim, the law regarding judicial review of such cases needs to be mentioned. As to whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the court should not interfere with the orders of the suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question (emphasis added). If any authority is needed for this proposition, it is available in U.P. Rajya Krishi Utpadan Mandi Parishad Vs. Sanjiv Rajan (1993 Supp(3) SCC 483). Primary principle is one of 'public interest'. If the public interest so demands, one may be suspended when a case has been made out prima facie against him. Also when the case is under investigation and continuation of delinquent in the office would prejudice the investigation or he may tamper with the documents or influence the witnesses, suspension can be resorted to. In the present case, before the preliminary report was received, it was felt by the respondents that the applicant could not be held to be innocent. Since this was the conclusion arrived at by the disciplinary authority on the basis of the material before them, no conclusion to the contrary could be drawn by this Tribunal at the interlocutory stage and accordingly no interim relief could be granted.

9. We shall examine the issues involved;

Under Rule 5(1)(a) of the Railway Servants (Disciplinary & Appeal) Rules, 1968, a railway servant may be placed under suspension where a disciplinary proceedings against him is contemplated. This stand gets well supported in the case of Pratap Singh Vs. State of Punjab, AIR 1964 SC 72. It has been held therein that orders of suspension can be passed if the authority concerned on getting a complaint of misconduct considers that alleged charge does not appear to be baseless. 22

10. An issue has been raised by the applicant that it was necessary to give a show cause to the employee before issuing suspension order. In our view, it will not be necessary to do so for the reasons that suspension is not a penalty and also because the suspension is an instantaneous remedy required to be used immediately to save any further damage being caused. As such, the principles of natural justice will not be attracted in case of orders of suspension. However, it may be advisable that where charge-sheet has not been issued or cannot be issued for a considerable period, say 3 months or so, the reasons for suspension may be supplied to the employee. In the present case, charge-memo was issued within two months. Applicant's claim, therefore, in this respect cannot be countenanced.

11. Applicant's reliance in Sood's case (supra) does not help him. That was the case where the petitioner was alleged to have committed a fraud with an ulterior motive by mentioning 1st January, 1955 instead of 1st January, 1954. The Apex court found that the High Court

of Rajasthan proceeded entirely on wrong presumption and when the latter declined to revoke its decision, the order of suspension was struck down. The Apex Court did not lay down any law. The same situation does not prevail here. It is really surprising that the protection of the very principles of natural justice (opportunity of hearing before suspension) the applicant is claiming seems to have been denied by him to his lady Secretary while suspending her on 23.9.96. 23

12. Regarding the press release dated 1/4.11.96, we ordered an independent enquiry to ascertain the correctness of facts. The enquiry report filed before us on 10.3.97 indicates that the so called news item was in the nature of clarification as regards respondents' stand on the same since the railways were criticised for its alleged inaction against the delinquent officer. It was not intended to cast any stigma. We find that earlier in July, 1996, a similar communique was issued when four railway officials were suspended. The report also mentions that the order of suspension was passed by the competent disciplinary authority namely Railway Board. Since applicant happens to be a very senior officer of the Railway, all relevant facts of the case were also discussed with MR/MOS(R) before taking recourse to the above action. For reasons recorded in the report, we are inclined to agree with the conclusions reached therein. Applicant's plea on this count, therefore, fails.

13. Now we come to the most important issue - was the suspension absolutely unavoidable? The principles/instructions laid down by the Railway Board

in their E(D&A) 95 RG 6-21 of 6.4.95 RBE 33/95 based on DoPT No.11012/7/78-Estt.(A) dated 14.9.78, 16.12.72 and 4.2.71 stipulate the circumstances where suspension is absolutely necessary. These are:

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- (i) continuance of the employee in work might endanger the safety of public; or
- (ii) his continuance might entail serious damage to railway property; or
- (iii) the grave moral turpitude is involved; or
- (iv) his continuance in work might prejudice into the charge or might lead to the loss of relevant records of evidence.

The applicant's case falls in category (iii) above. As per respondents, "The charges are serious involving sexual harassment at the place of work". Now, what is moral turpitude or sexual harassment?

14. The Hon'ble Supreme Court has recently examined these very issues in detail in the case of Allahabad Bank & Another Vs. Deepak Kumar Bhola 1997(4) SCC 1 decided on 13.3.97 and held that an offence involving "moral turpitude" must depend upon the facts of each case. The expression has been more elaborately explained in Baleshwara Singh V. Dt. Magistrate and Collector (AIR 1959 All 71) where it was observed as follows:

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general"

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15. In yet another very recent landmark judgement in the case of Vishaka & Ors. Vs. State of Rajasthan and Ors. JT 1997(7) SC 384 decided on 13.8.97, the issues regarding enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution were discussed. While working out suitable norms/guidelines to prevent such sexual harassment of working women in work places, their Lordships held that "Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right". Such harassment brings out violation of victim's fundamental rights under Article 19(1)(e) "to practice any profession or to carry out any occupation, trade or business". (emphasis added). It calls for remedy under Article 32 of the Constitution. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity envisaged in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.

16. In this judgement concerning protection of women's rights, it has been held that "sexual harassment" include such unwelcome sexually determined behaviour (whether directly or by implication) as:

- "a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

(emphasis added)

Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

17. If faced with any of the gestures aforesaid at a working place, the female employee can complaint of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer (emphasis added).

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

18. The Apex Court held that whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employers' organisation for

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redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

19. From the materials placed before us, it is apparent that official relationship between the lady Secretary and the applicant continued to be unusual since long. No Indian mother, unless she has taken leave of common sense, would write series of letters (dated 9.12.95, 27.2.96, 12.3.96 and 21.5.96) to her son in UK indicating tension and unhappy turn of events in her relationship with the boss in the next door. These communications are prior to explosion of the event on 23.9.96 and command acceptance. From a perusal of charge-sheet dated 16.12.96 and statement of imputations it is evident that allegations do have elements of what would constitute "Moral turpitude and sexual harassment" and deserve to be investigated. Under these circumstances, the order of suspension cannot be held to be arbitrary, vitiated by motive of imposing stigma or an exercise without application of mind, as claimed by the applicant. Such suspension for offences of moral turpitude has been upheld by apex court in the recent case of Allahad Bank Vs. D.K. Bhola (supra).

20. The last question to be considered is whether the suspension order be revoked and the officer be permitted to resume duty. The decision for continuing the official under suspension or its revokal should be taken after positive consideration of the following:

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(i) If the investigation is likely take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence etc. or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order; (emphasis supplied);

(ii) If the investigation, framing of charges and the disciplinary proceedings cannot be completed within six months and the total period of suspension exceeds six months, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay;

(iii) Since the unduly long suspension causes undue hardship and involves payment of subsistence allowance without the employees performing any useful service to the Government the authorities concerned should scrupulously observe the time limits set out above and review the cases of suspension to see whether continued suspension in all cases is really necessary. The authorities superior to the disciplinary authorities should also exercise a strict check on cases in which delay has occurred and give appropriate directions to the disciplinary authorities keeping in view the above provisions.

21. The respondents' case is that it is in the interest of the applicant himself that an enquiry is held and that he is placed under suspension so that he does not influence the witness in any way. Tampering of records has not been apprehended. We find that in the very circumstances of the case, the possibility of influencing the witnesses or pressurising them cannot be ruled out if the applicant is re-instated in the same post or office complex. We are of the firm view that this is not at all a fit case where suspension could be revoked by re-instating the applicant in the same office complex. This is because most of the members, as in

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RR-1 (page 119-120) are employees of the same building and many of them belong to personnel branch of which the applicant was in-charge. The applicant has sought to justify revocation (interim relief) of the order of suspension on the ground that guidelines/instructions issued by Railway Board and Ministry of Home Affairs (circular dated 16.12.72 and 14.9.78 by DoPT) relating to suspension, pending enquiry have been violated. These violations, uncontroverted by the respondents, are in respect of (i) failure to review cases of suspension continuing for more than six months as per DG,P&T letter No.201/43/76-Disc.II dated 15.7.96 adopted by Railways. In the instant case, more than nine months have passed without any review. (ii) Violation of instructions in Railway Board's letter dated 6.4.95 which says "the vital period of suspension viz. both in respect of investigation and disciplinary proceedings should not ordinarily exceed six months and (iii) examining the feasibility of transferring "the railway servant after revoking the suspension if the presence of the railway servant is detrimental to the D&AR proceedings/public cases" as stipulated in the aforementioned order. In this case, no such exercise has been made as is evident from records/pleadings. Applicant's claim is justifiably valid only in this respect. He deserves a consideration of respect of his claim for revocation of suspension.

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In view of the reasons aforesaid, the OA is partly allowed with the following directions:

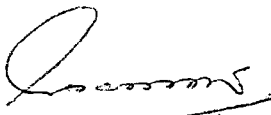
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(i) In the special circumstances of the case the order of suspension is revoked only with reference to applicant's place of posting other than Northern Railway Hqrs. at Baroda House, New Delhi. In other words, the respondents are at liberty to post him in accordance with rules at any other place. The impugned order of suspension dated 30.10.96 shall stand revoked only on and from the date the applicant joins the new post, if so ordered by the respondents.

(ii) The belated review of the order of suspension shall be carried out in eight weeks' time keeping in view the direction aforesaid as well as the need for conducting a proper enquiry in the case.

(iii) Our orders shall not stand in the way of continuing with the proceedings in a time bound programme as laid down by the apex court in its order dated 13.8.1997.

There shall be no order as to costs.


(S.P. Biswas),
Member(A)


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