

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 617/96

New Delhi, this the 2nd day of April, 1997

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

Shri O.S. Chauhan, IAS (AGMU:67)
presently Home Commissioner to the
Govt. of Mizoram, Aizwal-796 001.
R/o B-17, Ram Prasāth,
PO Chander Nagar,
Delhi - UP Boarder,
Ghaziabad - 201 011.Applicant
(Through Sh. S.C.Luthra &
Shri O.P.Khokha, Advocates)

Versus

Union of India through

1. Secretary,
Ministry of Personnel, Public
Grievances & Pensions,
Central Secretariat (North Block),
New Delhi.
2. Secretary,
Ministry of Home Affairs,
Central Secretariat (North Block),
New Delhi.Respondents
(By Shri S.N. Singh Deptt. representative)

O R D E R

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

In this application relief sought for is that the period of suspension shall now be treated as period on duty and the payment accordingly shall be paid to the petitioner. The petitioner also has prayed that since no disciplinary proceedings or criminal case is pending against the petitioner, sealed cover may be opened and in case he is found fit for promotion he may be given promotion and other consequential benefits from the due date. The facts of the case are as under:-

2. The Central Bureau of Investigation (in short CBI) had registered an RC against against the applicant on 19.9.1985 under the P.C. Act, 1947. CBI completed their investigation into the RC registered against the applicant in August 1987 and gave recommendations that the applicant should be prosecuted under the P.C. Act for being in possession of assets disproportionate to his known sources of income. CBI also recommended departmental action for major penalty against the applicant on account of various violations of certain conduct rules.

3. In acceptance of the recommendations of the CBI, the Ministry examined the proposals and decided to grant sanction for prosecution of the applicant under P.C. Act. The competent authority also decided to proceed against applicant departmentally for major penalty proceedings under the provisions of All India Service (Discipline & Appeal) Rules, 1969.

4. After obtaining sanction for prosecution, the Bureau filed a charge-sheet in the court of the Special Judge, Delhi, for prosecution of the applicant. The sanction for prosecution was granted by the Ministry of Home Affairs and that was challenged by the applicant. During the arguments on charge before the designated court it was contended by the petitioner that it is the Central Government, who is competent for sanctioning prosecution of the IAS officers under the P.C. Act and the Central Government with respect to the IAS officers, is the department of Personnel & Training, and not the Ministry of Home Affairs. The Special Judge accepting the contention of the petitioner dismissed the petition for want of sanction from the appropriate authority.

5. It was observed by the Special Judge in his judgement dated 19.5.95 that since the sanction is invalid, there is no need to discuss the merits of this case. Hence the accused is hereby discharged and his surety and bail bond stand cancelled. However, the court did not debar the CBI to initiate fresh prosecution, if any, against the accused after obtaining legal and valid sanction required in accordance with the provisions of law.

6. Even though after the judgement of the Special Judge dated 29.5.95, court had afforded liberty to the respondents to initiate fresh prosecution after obtaining sanction from the appropriate authority, till today no prosecution has been initiated against the petitioner. In view of the matter, we are of the view that as on todate no criminal case is pending against the petitioner.

7. The petitioner who was placed under suspension vide order dated 5.3.86 which was subsequently revoked. During the pendency of the criminal proceedings and the suspension order, the applicant was considered for appointment to additional Secretary's Grade (Rs.7300-7600) along with other officers. Since major penalty proceedings were pending against the petitioner, the recommendations of the Select Committee in his case were kept in the sealed cover. As per the orders, the recommendations of the Select Committee kept in the sealed cover could be acted upon only after complete exoneration of the applicant. The sealed cover procedure is now goverened by a notification of the Government of India, Ministry of Personnel, Public Grievances asnd Pension,

Department of Personnel & Training (DOP&T) dated 8.11.93 by which the promotion to various grades/scales of pay, cannot be effected only when (i) Government servants under suspension, (ii) Govt. servants in respect of whom a chargesheet has been issued and disciplinary proceedings are pending, (iii) government servants in respect of whom prosecution of criminal charge is pending.

8. It is an admitted case of both the parties that as on today the government has revoked suspension of the petitioner, the chargesheet filed against the petitioner for initiation of disciplinary proceedings has been finalised and thereafter the petitioner was reinstated, and the criminal prosecution going on in the court of Special Judge has resulted in discharge for warrant of sanction. As such, all the three conditions prescribed under the rules are not in existence to retain the result of the selection committee with regard to the petitioner still under sealed cover is contrary to rules. It is to be noted that these rules dated 8.11.93 have been finalised reviewing of the past [redacted] on the subject and also taking note of the judgement dated 27.8.91 of the Supreme Court in the matter of Union of India and Ors. Vs. K.V. Janakiraman (AIR 1991 SC p.2010).

9. In view of these facts that there is no justification for the respondents to retain the result of the selection committee with regard to the promotion to the next grade of the petitioner is concerned, still in the sealed cover, which shall be opened forthwith as no other justifying reason has been shown by the respondents for its retention. In their reply, the respondents have

shown that the suspension has been revoked and the petitioner has been reinstated, "pending finalisation of cases against him". In our view such an order cannot stop the reopening of the sealed cover since that was not one of the conditions spelt out in the OM dated 8.11.93 quoted above. Since all the three conditions stated therein do not exist in the case of the petitioner as on today respondents will have to open the sealed cover and in case the result retained in the sealed cover is found in favour of the petitioner and the petitioner is found fit for promotion to the next grade, it shall be granted to him forthwith with all consequential benefits w.e.f. the date on which the select committee has recommended his name in accordance with rules. The next question that is to be considered is whether the respondents are justified in passing an order that all further benefits arising out of the order of revocation of suspension and reinstatement shall be deferred to a date till the "finalisation of cases against him". It is pertinent to note that the petitioner has been suspended by an order dated 5.3.86, thereafter the Departmental proceedings continued ex parte as the petitioner did not attend the departmental proceedings on the ground that his defence in the criminal case would be exposed and accordingly the decision of the department to proceed ex parte against the petitioner remained unchallenged. Even though the Department took more than eight years to finalise the departmental proceedings, in an affidavit filed in this court on 17.4.96 it was shown that the report of the inquiry officer is being processed in the Ministry and the case records of the proceedings have been transferred to the UPSC and appropriate action will be taken after the advice of the Commission became available and keeping in view the

totality of the circumstances. Thereafter on 9.8.96, the respondents filed another affidavit wherein it was stated that the advice of the UPSC has since become available and further action in the matter is being taken for passing final orders as per the provisions of the All India Services (Discipline and Appeal) Rules 1969. It was also shown in the said reply that the competent authority decided to reinstate the petitioner in service "pending finalisation of the case against him" and the petitioner was in fact reinstated awaiting further orders. It is further pertinent to mention that the petitioner was kept under suspension vide order of the Ministry of Home Affairs dated 5.3.86. The applicant had filed an OA No.2340/94 praying for quashing of the above said order. This court by an order dated 28.4.95 disposed of the OA with the following observations:-

"In the circumstances, we find that there is no merit in the case. However, since the government alone is the proper authority to review the order of suspension, we permit the applicant to make a representation to the government within 15 days from the date of receipt of a copy of this order and the respondents will dispose it off within four months from the date of such receipt."

10- As per the above orders of this court, the suspension of the applicant was reviewed and it was decided by the competent authority to reinstate the applicant as stated above, but even though the suspension against the petitioner was revoked, the respondents passed an order dated 1.4.96 under rule 5(b)(1) of the All India Service (Discipline and Appeal) Rules 1969, but it was stated by the respondents in their reply dated 9.8.96 that

the order revoking suspension of the applicant will be reviewed after conclusion of the proceedings under rule 5(B)(6) of the AIS (D&A) Rules 1969.

11. When this matter came up for hearing on 23.9.96, the petitioner claimed that the respondents should pass an appropriate order treating his period of suspension in the light of the judgement of this court in Girdhari Lal Vs. Delhi Administration and Ors. (OA No.1508/91 decided on 11.5.93). Thereafter, the matter again came up on 4.11.96 and in the presence of the parties, it was observed that after hearing the 1d. counsel for some time, we find that the respondents are yet to pass an appropriate order under rule 5(B)(1) read with sub-rule 6 and it was therefore directed as follows:-

"We deem it proper to give a direction to respondents that they should pass an appropriate order under rule 5(B)(1) of the AIS (D&A) Rules 1969 within a period of two months from the date of receipt of this order."

12. On the other hand, even though the above said order was passed by this court on 4.11.96, we see in the paper book, an order passed by the respondents on 4.11.96 under rule 5(B)(1) of the AIS (D&A) Rules 1969 which was not brought to the notice of this Court. Thereafter again when the matter came up on 6.1.97, the 1d. counsel for the respondents stated that the order has not yet been passed for lack of communication and seeks further opportunity and has prayed for another two months to have such an order passed and this court had considered it reasonable to give the respondents three weeks further

(19)

time to pass an appropriate order under rule 5(B)(1) of the AIS (D&A) Rules 1969, yet the order already passed under the said rule on 4.11.96 did not see the light of the day. The matter again came up for hearing on 21.1.97, the counsel for both the parties appeared and sought extension of time to pass an order under rule 5(B)(1) and the said extension sought on behalf of the counsel for respondents, was further granted till 6.3.97 and the parties requested to have a copy of this order given to them for further compliance. It is surprising that all along when these orders were passed by this court, and extension of time sought on behalf of the respondents, the order passed under rule 5(B)(1) on 4.11.96 was still with the respondents and we would fail in our duty if we do not take serious note of the fact that the respondents did not give appropriate instructions to the counsel appearing for them in this case and wrong orders have been passed and valuable judicial time has been wasted by this court.

13. As stated above, the respondents have revoked the suspension order issued against the petitioner on 5.3.86 and decided to reinstate the petitioner in service allegedly with a rider "pending finalisation of case against him" and the respondents by this order passed under rule 5B(1) of the AIS(D&A)Rules reserved the right for reviewing the order revoking the suspension order of the applicant after conclusion of the proceedings under rule 5B(6) of the AIS (D & A) Rules, 1969:

14. Rule 5 (B) of All India Service (Discipline & Appeal) Rules, 1969 is reproduced herebelow:

"5B -Admissibility of pay and allowances and treatment of Service on reinstatement after suspension.

(1) when a member of the service under suspension is reinstated or would have been so reinstated but for his retirement under All India Services (Death-cum-retirement benefits) Rules, 1958 while under suspension the authority competent to order reinstatement shall consider and make a specific order:

(a) Regarding the pay & allowances to be paid to the member of the service for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be: and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 4, where a member of the service under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended subject to adjustment in respect subsistence allowance and other allowances already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the member of the service shall subject to the provisions of sub rule (8), be paid the full pay & allowances to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowances and other allowances already paid:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the member of the service had been delayed due to reasons directly attributable to the member of the service, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the member of the service shall be paid for the period of such delay only such proportion of such pay and allowances as it may determine.

(4) In case falling under sub rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub rules (2) and (3), the member of the service shall subject to the provisions of sub rules (8) & (9) be paid such proportion of the full pay and allowance to which he would have been entitled had he not been suspended, as the authority competent to order reinstatement may determine, after giving notice to the member of the service of the quantum proposed and after considering the representation, if any, submitted by him in that connection (60 days from the date on which the notice aforesaid is serviced on the member of the service) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary proceeding or proceedings in a court any order passed under sub rule (1) before the conclusion of the proceedings against the member of the service shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order in accordance with the provisions contained in sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub rule (5) the period of suspension shall not be treated as a period spent on duty. Unless the authority competent to order reinstatement specifically directs that it shall be so treated for any specified purpose:

Provided that if the member of the service so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the member of the service.

(8) The payment of allowances under sub-rule (2), sub rule (3) or sub rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The proportion of the full pay and allowances determined under the proviso to sub rule (3) or under sub rule (5) shall neither be equal to full pay and allowances nor shall it be less than the subsistence allowances and other allowances admissible under rule 4."

15. It is to be noted that under 5(B) (1) when a member of the service under suspension is reinstated the authority competent to order re-instatement shall consider and make specific order regarding the pay and allowance to be paid to the member of service for the period of suspension ending with reinstatement, and whether or not the said period shall be treated as a period spent on duty. Under sub rule 6 where the suspension is revoked pending finalisation of the disciplinary proceedings, any order passed under sub rule 1 shall be reviewed on its own motion after conclusion of the proceedings.

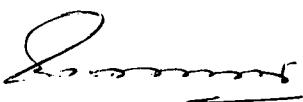
16. We are of the considered view that unless an order is passed under 5B(1) in terms of the said sub rule, the question of review of that order does not arise. The order now said to have been passed under sub rule 1 is not an order passed in accordance with the requirement of the said sub rule. It only differs to comply with the requirements of sub rule to a future date. Therefore, in the absence of an order passed under sub rule (1) as required by the said sub rule, the question of review under sub rule (6) does not arise.

17. We understand as referred in para ¹⁶ ~~quoted~~ the respondents have been time and again seeking extension of time from this Court to pass an order under sub rule (1) in terms of the said sub rule, themselves probably finding that their own order dated 4.11.96 was not in compliance with the sub rule (1) at all and since there is no order in compliance with sub rule (1) in terms of the said sub rule, the question of review under sub rule (6) does not arise. The applicant has rightly relied upon the decision of this Court in Girdhari Lal vs. Delhi Admn. & Ors,

cited above, which had already considered this issue and stated that sub rule (6) posits that where suspension is revoked pending finalisation of the disciplinary proceedings or court proceedings, any order passed under sub rule (1) before the conclusion of the proceedings against the Govt. servant, shall be reviewed on its own motion after conclusion by the authroity mentioned in sub rule (1) who shall make an order according to sub rule (3) or sub rule (5), as the case may be, it was stated therein that under sub rule (6) the power is given to review the order passed earlier, i.e., under sub rule (1). The question of reviewing the order arises only if the order exists.

18. We are in respectful agreement with the findings of this Tribunal in the aforesaid case. We would have in the normal circumstances again directed the respondents to pass an appropriate order under rule 5 (B) (i) in terms of the said sub rule and since the respondents have not availed the opportunities all these days nor have they cared to pass the orders in accordance with the powers given to them under rule 5 (B)(i) nor have they produced the purported order issued on 4.11.1996 under rule 5 (b)(i) before this Court, we are now constrained to pass an order in terms of Rule 5 (B)(i)' and direct the respondents that the orders passed by the respondents revoking suspension and reinstating him shall be given full effect to by paying the petitioner all the pay and allowances due to him, deducting the subsistence allowance already paid during the suspension period and also treating the period of suspension as period spent on duty.

19. The respondents shall comply with these directions within 4 weeks from today and give benefits, including consequential benefits to the applicant and inform him by registered post the fact of passing such an order and in the event no such order is communicated and complied with, the petitioner will be entitled to receive @ 18% per annum interest from the expiry of the time granted by this Court for compliance. The respondents are at liberty to pass any appropriate order with regard to "pending finalisation of the case against him". The direction would also be issued to the respondents to finally decide the matter within 4 weeks from today since already 12 years have passed and petitioner cannot be kept in suspense for want of a proper order at their instance. The respondents shall also pay a cost of Rs.1,000/- (Rupees one thousand only) to the Legal Aid Cell of the C.A.T. Bar Association at Principal Bench. We are not sure if such legal aid cell exists in the C.A.T. We direct the President of the C.A.T. Bar Association to accept the amount from the respondents and constitute a Legal Aid Cell forthwith to primarily cater the needs of those Govt. employees who are out of employment and belonging to Group 'D' and below. With these observations the above O.A. is disposed of.



(S.P.Biswas)

Member(A)



(Dr. Jose P. Verghese)

Vice-Chairman(J)

AHUJA