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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.908/96
MA No.1575/96

New Delhi this the 20th Day of August, 1996.
Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr K.Muthukumar, Member (A)

Avdhesh Shukla
S/o Deosharan Shukla
R/o 407 Tagore Road Hostel
Minto Road, New Delhi. ...Applicant..

Employed as Assistant Director
in the Office of the Directorate General
of Inspection, Customs & Central Excise
IP Bhawan. IP Estate, New Delhi.

(By Sh. B.B.Raval, advocate)

Versus

Union of India through

1. The Secretary
Ministry of Finance
Dept. of Revenue
North Block
New Delhi.

2. The Chairman
Central Board of Excise & Customs
Dept. of Revenue
Ministry of Finance
North Block
New Delhi.

3. The Director
Central Bureau of Investigation
CGO Complex
Lodhi Road, New Delhi. ...Respondents.

(By Sh. R.R.Bharati, Advocate)

O R D E R (Oral)

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

The applicant Mr Avdhesh Shukla, Assistant Collector, Central Excise & Customs under suspension, has filed this application under Section 19 of the Administrative Tribunals Act impugning the order dated 10th September 1993 (Annexure-A) by which the President, in exercise of

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the powers conferred on sub Rule 1 of Rule 10 of the Central Services (Classification, Control & Appeal) Rules 1965, placed him under suspension as a criminal offence was under investigation, and the order dated 17th September 1993 whereby his request for permission to resign from service w.e.f. 16.9.93 was not acceded to on the ground that the CBI was investigating a case in which the applicant was to be examined/investigated by them. The applicant has alleged in the application that there could not have been any criminal case in which he was an accused and the case registered as RC-18(A)93-ABD was on the basis of a seizure made by him of cement illegally imported, and, therefore, he could have figured only as a prosecution witness and not as an accused. The applicant has also alleged that he having sought permission to resign from service w.e.f. 16.9.93 and having had given 3 months' notice, there was no justification in not accepting his resignation. The CBI, according to the applicant, has colluded with the Collectorate of Central Excise & Customs which was in charge of the Preventive Collectorate of which the applicant was a member at the relevant time. Stating that the impugned orders are wholly unjustified in the backdrop of what is stated in the application, the applicant has prayed for the following reliefs:

[i] To quash the impugned orders at Annexures 'A' and 'B' as being bad in law, illegal, arbitrary and violative of the Rules and also issued out of malice by the vested interests in the Department.

[ii] Consequent to relief at (i) being granted, direct the respondents to treat the period from suspension till the disposal of the case as period spent on duty and direct the respondents to pay the applicant the pay and allowances etc. till that date and also treat him as relieved of his duties by accepting the resignation being co-terminus with the delivery of the judgement of this Hon'ble Tribunal.

[iii] Award exemplary cost for this application with a further request to pass any other order/orders or directions or grant any other relief(s) as deemed fit and proper in the light of the facts and circumstances of the case.

2. The applicant had, apart from the Union of India, Secretary, Ministry of Defence and the Chairman of the Central Board of Excise & Customs, impleaded the Director, CBI also, in the light of the averments made in the application.

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3. Notices on admission having been issued to the respondents, they entered appearance. Shri M.M.Sudan appeared for respondent No.3 while Shri R.R.Bharti for respondents 1 & 2.

4. The respondents 1 & 3 in their reply have sought to justify the impugned orders on the ground that the applicant was placed under suspension only because he is an accused in a case initiated by the CBI bearing No. RC-18(A)93-ABD in which he is an accused. Investigation in the case having been almost complete, the case is awaiting filing of the final report on receipt of requisite sanction from the competent authority, state respondents 1 & 2.

5. The third respondent, Director, CBI has in the reply statement made it clear that the applicant is an accused in RC-18(A)93-ABD and not a prosecution witness as contended by him. It has been stated that the investigation is almost complete and a final report under Rule 173 of Cr.PC would be filed without delay. However, it has been contended that no period of limitation is prescribed for filing such a final report.

6. The applicant has filed an elaborate rejoinder in which various rivalries between the Collectorate of Customs & Central Excise, Rajkot and Collectorate of Preventive Customs, Ahmedabad are mentioned. It has been stated that the applicant had only safeguarded public interest as an upright officer while the Collectorate of

Central Excise & Customs, Rajkot have acted in a corrupt manner and the CBI in collusion with the said Collectorate is roping in the applicant as an accused while he should have figured as a prosecution witness. The applicant states that in any event, his prolonged suspension is totally unjustified.

7. The applicant has also filed an MAA seeking interim relief, namely, a direction to the respondents to revoke the suspension of the applicant, as an interim measure.

8. As pleadings in this case are complete and as the issue involved is simple and needs expeditious disposal, we heard learned counsel for the parties at length. *for a final disposal of the case.*

9. The basis on which the applicant has sought to have the impugned order (Annexure-A) quashed is that there is no criminal case either under investigation or trial in which he figures as an accused and that he being a prosecution witness should not be a ground for keeping him under suspension. The reply statement of the 3rd respondent, the Director, CBI makes it clear that the status of the applicant is not of a witness of the prosecution but an accused. According to Clause B of Sub Rule 1 of Rule 10 of the CCA(CCS) Rules, a

Government servant against whom a criminal offence is under investigation, enquiry or trial, can be placed under suspension by the competent authority. It is exactly what is contemplated in this Rule that has been done in the case of the applicant by the impugned order at Annexure-A dated 10th September 1993. Therefore, we do not find any reason to interfere with the impugned order at Annexure-A. Regarding the impugned order at Annexure-B, it is true that the applicant had applied seeking permission for resigning from service w.e.f. 16.9.93. The permission was refused for reason that while a criminal case is under investigation against the applicant, the competent authority did not find it either appropriate or necessary to grant him such permission. We do not find any reason to interfere with that either.

10. The case of the applicant that in the face of what was actually done by him, he should have been made only a prosecution witness and not an accused is something which this Tribunal is not expected to go into. If registering of a criminal case against the applicant was motivated by malafides or vitiated for any other reason, the applicant is at liberty to seek appropriate relief before appropriate forum. This Forum created under ^athe Statute specifically for certain purpose and expected to perform within the ambit of the Act will not embark on an enquiry which is beyond the field of jurisdiction of the Tribunal.

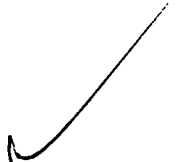
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Conference

11. To satisfy ^{our} the judicial ~~conscious~~ ^{Conference} as to why the applicant is being continued under suspension even after a period of 3 years, we requested the counsel for the respondents 1 & 3 to indicate to us whether the question of revocation of suspension was ever considered in the circumstances of the case. Shri R.R.Bharti, counsel for the respondents brought to our notice a letter written by the DIG of Police, CBI dated 30.1.96 indicating that as sanction for prosecution of the applicant is awaited, it would not be appropriate to revoke his suspension. Sh. Bharati states that it was because of this reason that revocation of the suspension could not be made in this case.

12. The applicant has stated that he is not being paid subsistence allowance and keeping him under suspension and not paying subsistence allowance is totally unjustified. Sh. R.R.Bharati, learned counsel for the respondents states that the applicant had in writing refused to accept the subsistence allowance tendered to him, and therefore, it was not possible to make payment. We make it clear that it is obligatory on the part of the department to pay to the applicant subsistence allowance due to him and, therefore, they may again tender to him the subsistence allowance and continue to pay him till he is continued under suspension.



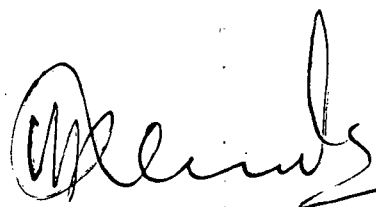
13. In the light of what is stated above, finding no reason to interfere with the impugned orders at Annexure A & B, we do not find it necessary to grant the reliefs sought for by the applicant. However, respondents 1 & 2 are directed to pay to the applicant arrears of subsistence allowance due to him and continue to pay to him subsistence allowance so long as he is kept under suspension. At appropriate occasion, the respondents may also consider the feasibility of revoking the suspension of the applicant if investigation is further protracted.

The application is disposed of as above without any order as to costs.

MA also stands disposed of.



(K.Muthukumar)
Member (A)



(A.V. Haridasan)
Vice Chairman (J)

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