

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1335/97

New Delhi, this the 11th day of July, 1997

(A)

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

Dr. (Smt.) S.V. Dharan,
W/o Shri K. Vidya Dharan,
R/o B-228, Priyadarshani Vihar,
New Delhi.Applicant

(By Shri A.K.Behra, Advocate)

-Versus-

1. Union of India through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.Respondent

(By Advocate: Shri P.H.Ramchandani)

O R D E R
(Dr. Jose P. Verghese, Vice-Chairman (J))

The petitioner is challenging the suspension order passed against her on 27.5.1997 under sub rule (1) of Rule 10 of CCS(CCA) Rules, 1965 which is stated to have been issued for the reason that a criminal case is under investigation and disciplinary proceedings against her are contemplated.

2.. No representation has been filed against the said impugned order, instead this OA has been filed to quash and set aside the said order and to grant all consequential reliefs. The power of the respondents under Rule 10 to suspend a Government servant is to be exercised under the conditions stated in the Rule itself. Rule 10(1) is reproduced herebelow:-

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, place a Government servant under suspension--

(a) Where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the comptroller and Auditor-General in regard to a member of the Indian Audit, and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the

3. Learned counsel for the petitioner argued that the power under Rule 10 is a discretionary power. Even if the condition stated in the said rule is fulfilled, the word "may" denotes that the power is substantially a discretionary power, and the respondents before passing the order, will have to apply their mind to the facts and circumstances of the case. He also alleged that the order impugned is a routine order and respondents have not applied their mind to the facts and circumstances of the case.

4. One of the circumstances referred to by the learned counsel appearing on behalf of the petitioner, is that the evidence required for the disciplinary proceedings as well as criminal proceedings are already in the custody

of the respondents and nothing more is required to be collected by keeping the petitioner under suspension nor it is necessary to keep the petitioner under suspension, since she is no more working in the original office in which said offence is stated to have been committed, rather she has superannuated on 31.5.1997. (b)

5. On the other hand, learned counsel appearing on behalf of the respondents submitted that the respondents have applied their mind in accordance with the rules as well as the guidelines prescribed for the purpose and one of the guidelines indicates that in the event of a public scandal respondents are bound to show the action taken at their instance. It was further stated that in view of a public interest litigation filed in the High Court and in view of some of the orders passed by the Hon'ble High Court, a Committee under Mr. Chandermauli was constituted. It is on the basis of the Report of the said Committee, after having been found that both criminal as well as disciplinary proceedings are to be initiated, petitioner has been suspended. As such, the order passed on the face of it has stated these facts and that is sufficient to show that the respondents have applied their mind before passing the order and in the circumstances this OA may be dismissed at this stage.

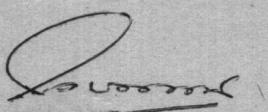
6. We have considered the rival contentions of both the parties and we are of the opinion that in view of the fact that after three days of the issuance of the impugned order of suspension, the said order has now become infructuous due to superannuation of the petitioner. We are of the opinion that the order of suspension issued in this

case cannot be supported by any legal ground nor by the grounds or occasions referred to by the respondents. We are satisfied that the impugned order dated 27.5.1997 is issued not for the purpose stated therein since the object of the Rule will not be achieved by keeping the petitioner under suspension just for three days. We have no hesitation to conclude that this order has been passed on an extraneous consideration that is to say some consideration other than what is stated to be on the face of the order. In the circumstances and especially in view of the fact that the impugned order dated 27.5.1997 has become infructuous after three days of its issuance, we quash the order and direct the respondents to treat the petitioner that she was never been under suspension and the retiral benefits be calculated as if the petitioner was not under suspension, and the same may be granted to her in accordance with the rules.

(1)

7. All the same, this order shall not preclude the respondents to proceed with the inquiry in accordance with the chargesheet contemplated to be issued as well as the investigation in the criminal proceedings.

8. In view of the facts and circumstances of the case, this OA is allowed with no order as to costs.



(S.P.Biswas)
Member (A)



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

Naresh