

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No.1342/97

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

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

Dr. K.K.Jain,
S/o late Shri M.L. Jain,
R/o C-II-35, Bapa Nagar,
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.
2. Chief Secretary,
Govt. of N.C. T. of Delhi,
5, Shamnath Marg,
Delhi.
3. The Secretary (Medical),
Govt. of N.C.T. of Delhi,
5, Shamnath Marg,
Delhi.Respondents

(By Advocate: Shri P.H.Ramchandani)

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

1. The petitioner in this OA is challenging the suspension order passed against him 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 him 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 order was made"

3. It is found that the said order on the face of it, seems to have been correctly issued as the condition stated in the Rule itself has been complied with.

4. 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.

5. 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 he is no more working in the original office in which said offence is stated to have been committed.

6. On the other hand, learned counsel appearing on behalf of the respondents submitted that the criminal offence into which the investigation is going on, does not confine to evidence being collected from the concerned department alone rather it extends to various private organisations and the evidence of private persons are also involved in the existing investigation of the case. Moreover, it was stated 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

(OA)

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 especially because no malafide has been alleged against the respondents, this OA may be dismissed at this stage.

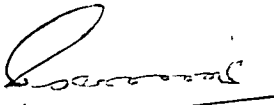
7. We have considered the rival contentions of both the parties and we are satisfied that the impugned order dated 27.5.1997 has been passed in accordance with the power given to the respondents under sub rule (1) of Rule 10 of CCS(CCA) Rules, 1965. No substantial ground has been shown nor any malafide is alleged against the respondents by the petitioner that requires our intervention to quash the impugned order, except certain circumstances referred to in the OA itself. We are afraid, none of the circumstances mentioned by the petitioner can be construed to be sufficient ground to quash the order of suspension, nor the various allegations and occasions referred to by the respondents are sufficient to show that the respondents have not applied their mind before passing the impugned order. All other submissions made with reference to the merit of the case such as that the petitioner was given only four days time to reply to the show cause notice issued prior to the order of suspension and that the petitioner is not likely to influence the would be witnesses etc. are still available to the petitioner to defend his case in the disciplinary proceedings, as and when the occasion arises. It also goes without saying that these can be some of the

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factors that respondents would bear in mind while reviewing the order of suspension.

8. In the circumstances, this OA is dismissed with no order as to costs.


(S.P. Biswas)
Member (A)


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

Naresh