

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No.1437/97

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New Delhi this the 24th day of October, 1997.

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

C.S. Khairwal,
S/o Shri (late) Birbal Khairwal,
R/o D-1/78, Ravinder Nagar,
New Delhi.

...Petitioner

(By Advocate Shri K.C. Mittal alongwith Shri Harvir Singh,
Advocate)

-Versus-

1. Union of India through:
the Secretary,
Department of Personnel,
Ministry of Personnel, Public
Grievances & Pensions,
North Block,
New Delhi.
2. Union of India through
the Secretary,
Ministry of Surface Transport,
Transport Bhawan,
New Delhi.
3. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

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

The petitioner who is a Joint Secretary in the Ministry of Surface Transport was placed under deemed suspension by an order dated 19.3.96 following his detention in custody for a period of exceeding 48 hours on 19.2.96 and also in connection with the investigation into criminal offences. FIR was registered on 17.2.96 itself on various allegations of serious nature. The petitioner submitted a memorial on 20.6.96 seeking revocation of order of deemed suspension passed against him on 16.3.96. He also stated in the said memorial that he was a victim of deep rooted conspiracy. The petitioner has challenged the order of

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suspension passed against him and sought relief in this regard from this Tribunal and has filed this application under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents, after notice, have filed a reply stating that the suspension order passed against the petitioner may not be revoked especially because the CBI had informed them that at the stage of investigation there was strong evidence against the petitioner as well against one Ms. Abha Tyagi in the above cases. It was also stated that the CBI had informed that as the investigation was yet in a critical stage, it would not be in its interest to reveal the details. The CBI had also reported that the judicial court has found it fit to keep the petitioner, Ms. Abha Tyagi and her father Shri K.C. Sharma in judicial custody for a period of 45 days.

3. The respondents also stated that the memorial filed by the applicant has now been disposed of by an order dated 22.10.96 and on the same day the respondents have enhanced the subsistence allowance of the petitioner w.e.f. 19.5.96 by 50%. By another order of the same date, the respondents also considered it necessary and desirable to continue the petitioner under suspension.

4. We have perused the record and heard the arguments of both sides. We find that the suspension order passed on 19.3.96 is in accordance with the rules and the memorial filed against the said suspension order has also been

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duly considered by the respondents and the same has been rejected by an order dated 22.10.96, although without specifying therein any reason for rejection of the same.

5. The contention of the learned counsel for the petitioner is that the continued suspension of the petitioner is unjustified and in the absence of any reasons given in the order dated 22.10.96 by which the deemed suspension of the petitioner has been continued as the said order has to be held illegal and contrary to the Rule³(7)(b) of the All India Services (Discipline & Appeal) Rules, 1969. According to the said rules, where a Member of the Service is deemed to have been suspended the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Member of the service shall continue to be under suspension with the termination of all or any such proceedings. To quote Rule 3 (7) (b) :

"(b) Where a member of the Service is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the member of the Service shall continue to be under suspension with the termination of all or any of such proceedings;"

The contention of the counsel of the petitioner was that the order passed on 22.10.96 stating that the deemed suspension of the petitioner was continued by the respondents, is illegal and contrary to the said rule, so-much-so, the authority that issued the order has not recorded any reason while the suspension of the petitioner was continued. The order dated 22.10.96 only has stated "and whereas it has been

considered necessary and desirable to continue to Shri C.S. Kherwal, I.A.S. "under suspension". It is well settled in law that administrative authorities issuing quasi judicial orders, having civil consequences, is required to record the reasons for its decision (see S.N. Mukherjee V. Union of India, 1990 (4) SCC 594).

6. We do find substance in the submission of the petitioner that the order by which the suspension of the petitioner has been continued has not been in compliance with Rule³(7)(b) of the All India Services (Discipline & Appeal) Rules, 1969.

7. The requirement of reasons to be recorded in writing by the competent authority is not an empty formality. In the absence of which a presumption would arise that the authority has continued the suspension of the petitioner in an arbitrary manner and without any application of mind. A perusal of the reply filed by the respondents also indicate in not less than 10 places of a four-page counter-affidavit, only what the CBI had reported and does not at all indicate whether the respondents have applied their mind independently, as a competent authority, while passing the order by which the suspension of the petitioner has been continued. Effecting suspension or continuing further with it has to be based arising out of the need for the same felt by the competent controlling authorities. Executive authorities are at liberty to accept recommendations of CBI or any other organisation but the decision to keep an employee under suspension has to be invariably of his employer based on reasons recorded by it supplementing or adding its own views. A close scrutiny of counter reply will reveal that it does not really satisfy the above legal requirement.

8. That apart, as per rule there has to be a specific finding, based on reasons, as to why suspension could not be avoided. What to speak of reasons, we do not find even a whisper about this fundamental requirement.

9. We are, therefore, satisfied that the order dated 22.10.96 by which the suspension of the petitioner has been continued, is illegal and contrary to Rule³(7)(b) of the AIS (Disciplinary & Appeal) Rules, 1969 and as such this also is violative of principles of natural justice. We find that the said order is arbitrary, for want of reasons even though statutorily required to be given, and the same is an order passed without an application of mind.

10. The Hon'ble Supreme Court in the case of Member Secretary Home Department V. Vimal Kumar Mohanty (JT 1994 (2) SC 51 has observed as follows:-

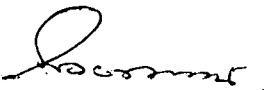
"The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while passing departmental enquiry or trial of a criminal charge."


11. The requirement laid down by the Hon'ble Supreme Court has been met by the respondents by sheer non-application of mind and by non-compliance of the statutory requirement of giving reasons in writing by the competent authority when the deemed suspension was continued in the case of the petitioner and the same has highly prejudiced the petitioner in so far as the petitioner continues to be under suspension without any reason forthcoming from the competent authority.

12. It is also relevant to mention that the continued suspension of the co-accused Ms. Abha Tyagi, referred to hereinabove, has also been revoked by the High Court by order dated 25.7.97, though the same is far different reasons.

13. In the circumstances, the continued suspension in the case of the petitioner is hereby declared as illegal, arbitrary and the order by which the suspension of the petitioner has been continued is declared contrary to Rule³(7) (b) of the All India Services (Discipline & Appeal) Rules, 1969 and quashed on the ground that the same is arbitrary and one passed without application of mind.

14. O.A. is allowed to the extent stated above.
No order as to costs.


(S.P. Biswas)
Member (A)


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

Mittal