

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./T.A. No. 2761 of 1997

Decided on: 30/11/98

Bani Singh Applicant(s)

(By Shri K.C. Mittal Advocate)

Versus

U.O.I. & Others Respondent(s)

(By Shri V.P. Uppal Advocate)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *yes* or not?
2. Whether to be circulated to the other *X* Benches of the Tribunal?

h
(K. MUTHUKUMAR)
MEMBER(A)

(X6)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2761 of 1997

New Delhi this the 30th day of November, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Bani Singh
R/o B-208 Anand Vihar,
Delhi.Applicant

By Advocate Shri K.C. Mittal with Shri Harvir Singh.

Versus

1. Union of India through:
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block,
New Delhi.
3. The Under Secretary to the
Government of India,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi. .. Respondents

By Advocate Shri V.P. Uppal.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

By the impugned order at Annexure A-I which is under challenge in this application the applicant was deemed to have been placed under suspension with effect from 29.8.1996. The deemed suspension followed the arrest of the applicant in a criminal case registered against him under Section 13(1)(e) of Prevention of Corruption Act, 1996 as per the FIR No. 71(A)/96/DLI dated 28.8.1996.

2. Applicant contests the impugned order on the ground that this was issued without application of mind and without

following the procedure and is, therefore, illegal, and the respondents had neither reviewed nor revoked the suspension as required under the rules. The respondents have continued to place him under suspension without a proper review not only of the subsistence allowance but of his suspension itself also which is required under the provisions of the rules. It is stated that the applicant has made representations but respondents have not passed any order on the representation. They have also reviewed the matter and issued appropriate orders in this behalf even justifying their action and have acted in an arbitrary and illegal manner by continuing to keep him under suspension. The applicant asserts that his suspension order has been issued at the behest of the investigating agencies. It was for the competent disciplinary authority who had passed the order of suspension to apply its own mind before issuing the order. He avers that neither a charge-sheet has been filed in his case nor the department has initiated any disciplinary proceedings. In view of this he submits that the order of suspension is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution.

3. In the short reply filed by the respondents they have submitted that the Central Bureau of Investigation (for short CBI) had registered an FIR No. RC 71(A)/96-DLI dated 28.8.1996 on the allegation that the applicant was in possession of assets disproportionate to his known sources of income and he was arrested by the CBI on 29.8.1996 and was kept in police custody till 3.9.1996. Accordingly, suspension order was issued on 15.10.1996 deeming the applicant to have been placed under suspension with effect from 29.8.1996 for having been detained in police custody for a period

18

exceeding 48 hours. Applicant's case for revision of subsistence allowance had already been considered and an order revising the subsistence allowance was issued on 12.1.1998. It is further stated by the respondents that action has already been taken for consulting the CBI and the review of the suspension will be done on receipt of necessary information. In the counter-reply filed by the respondents, they have further submitted, that the revocation of the applicant's suspension will be reviewed after receipt of the report by the CBI and as investigations are at crucial stage, the competent authority is of the view that the suspension shall be continued. According to the respondents, as the case of the applicant falls in the category of arrest and detention cases, the conditions specified for revocation are yet to be satisfied under rule 10(5)(c) of the CCS (CCA) Rules, 1965.

4. The learned counsel for the applicant argued strenuously that no criminal or departmental proceedings are initiated or pending against the applicant even though the suspension was ordered as early as in August, 1996 and more than 2 years had passed and, therefore, continued suspension is arbitrary and illegal. He relies on several decisions to support his contention that there was no bar for revocation of suspension even in cases of this nature. We shall revert to these decisions later in this order. The learned counsel has also asserted that there was total failure on the part of the respondents to take independent decision for the revocation of

W

suspension and the decision to revoke the suspension could be considered independently in the light of the relevant rules and instructions in this behalf irrespective of the stage of investigation of the matter.

5. The learned counsel for the applicant particularly referred to the fact that when the respondents have allowed him to continue for more than 21 months under suspension without a review, they cannot now say that they are continuing consultation with the CBI. If there had been no review so far, that itself would be an adequate ground for revoking the suspension. He argued vehemently that the very object of review was that the suspension was not continued unnecessarily and if the department had not cared to review the case, they should not be allowed on the plea that they are now consulting the CBI and that they would review the case after such consultation. He also argued that in such cases investigations do take long time. He also stressed that the charge under which he was arrested has nothing to do with his functioning as a Government servant pending the outcome of criminal case and, therefore, his revocation would not prejudice the interest of the respondents in any manner.

6. We have considered the submissions made by the learned counsel for the parties and have also perused the departmental files.

7. On a perusal of the departmental file it is seen that the then Finance Minister has ordered as follows:-

(20)

" Once investigation is complete without prejudice to the criminal proceedings departmental enquiry should also be commenced."

8. This order was passed on 10.12.1997. By an earlier order the respondent No.2 had decided that a report from the CBI should be called for and referring to this decision, it was reported that the SP, CBI had informed that the case was under investigation at a critical stage and, therefore, it was decided that there was no case for revoking the suspension at this stage and this position was reported to the Finance Minister who had approved the same on 27.3.98. It was pointed out that in a criminal offence, revocation could be done only after it was decided not to proceed against the Government servant by filing charge-sheet in the court and as investigation was at a crucial stage, the suspension order should not be revoked at this stage. Therefore, the proposal for continuance of the applicant on suspension was approved by the Finance Minister on 27.3.98. The aforesaid decision has been taken after issue of notice in the OA but before the filing of the counter-reply. By their latest letter of 25.3.98 the investigating agency, namely, CBI had informed that the investigation of this case was at crucial stage and some more time was required before taking any action.

9. From the facts as revealed from the departmental files as above, it is clear that the CBI has registered FIR against the applicant on the basis of the information received by them that the applicant had constructed huge building worth more than twenty five lakhs at D-208 Anand Vihar, New Delhi

6

and has acquired other properties by corrupt and illegal means and is thus in possession of assets disproportionate to his known source of income and these facts disclose the commission of offence under section 13(2) read with section 13(1)(e) of Prevention of Corruption Act, 1947 on the part of the applicant. Accordingly, the applicant was arrested and placed under deemed suspension with effect from 29th of August, 1996. It is stated by the investigating agency, namely, the CBI that the investigation in this case was at a crucial stage and some more time was required for taking further action. The applicant has prayed for a direction that the impugned order dated 15.10.1996 placing him under deemed suspension with effect from 29.8.96 should be declared as illegal and arbitrary. The learned counsel relied on **Ashok Kumar Sinha vs. U.O.I. & Another - O.A. No. 121 of 1991** decided by the Patna Bench of the Tribunal. In the aforesaid case we find that the respondents had contended that the application was premature and Government was legally entitled to keep the petitioner under suspension till he was exonerated of the charges by the disciplinary authority and the CBI inquiry completed. In the instant case, however, respondents have shown the departmental file and have averred that since the investigating agency, namely, the CBI has submitted that the investigations are at crucial stage and some more time was required, the applicant has to be continued under suspension. It is not as though the respondents have not reviewed the matter in regard to the revocation of the suspension order, but are awaiting a report of the investigating agency in this regard. Hon'ble Supreme Court in **U.O.I. and Another vs. G. Gamayutham, JT 1997 (7) SC 572** has held that while applying

(P)

the said test, the court cannot go into the correctness of the choice made by the administrator amongst the various alternatives open to him, and neither could the court substitute its own decision for that of the administration, unless it was illegal or suffered from procedural improprieties or was irrational in the sense that it was in outrageous defiance of logic or moral standards. In accordance with the O.M. dated 20.6.1986 seen in the respondents' file, it is provided that where on conducting a search it is found that a Government servant is in possession of assets disproportionate to his known sources of income and it appears, *prima facie*, that a charge under section 5(i)(c) of the relevant provisions of the Prevention of Corruption Act, 1947 could be laid against him, immediately after the *prima facie* conclusion has been reached. There may be adequate justification for placing the Government servant under suspension on receiving the request from the CBI. We find that such a request was sent by the CBI in pursuance of the FIR registered by their letter dated 4.9.1996. From the aforesaid it would be clear that, *prima facie*, the decision of the respondents to place him under suspension cannot be declared to be illegal or arbitrary, as prayed for in this application.

10. The learned counsel also placed strong reliance on the case of **Ms. Abha Tyagi Vs. Delhi Energy Development Agency in C.W. No. 1818 of 1997** before the Delhi High Court. We find that here is a case where the applicant was placed under suspension at the instance of the CBI. In that case the petitioner was not found to be one of the accused in the

69

criminal charges levelled against one Shri Kherwal and no charge-sheet was filed against the petitioner in that case nor any criminal case was registered and, therefore, it was felt that continuous suspension at the instance of CBI which is not her employer is against the mandate given by the Supreme Court in **Principal Secretary, Home Department Vs. Bimal Kumar Mohanty, JT 1994(2) SC 51**. It was, therefore, held that it was not the case of the respondents that her suspension for more than 14 months was a step in aid to the ultimate result of the investigation or enquiry instituted by the respondents and, therefore, held that continuing suspension will not serve any useful purpose particularly when no departmental action was taken by the respondents against the petitioner. We find that in this case the Hon'ble High Court had felt that the petitioner was an employee of the Delhi Energy Development Agency, an undertaking in the NCT of Delhi and could not be made to suffer because a criminal case had been registered by the CBI against Shri Kherwal, "Jt. Secretary, Ministry of Surface Transport and the petitioner cannot be made to suffer on this account. The Hon'ble High Court held that keeping her under suspension on account of some investigation being conducted against Mr. Kherwal has no nexus with her work in the department. The High Court observed that "a person can be kept under suspension if there is an apprehension that if she resumes the work she would tamper the record or influence the witnesses in the office. But that is not the position herein". We are of the considered view that the facts in the above case are not parimateria with those in the present case. In the present case, the applicant who is an officer of the Income Tax Department is found by the investigating agency to

24

be in possession of assets disproportionate to his known sources of income and the facts disclosed the commission of offence under the Prevention of Corruption Act, 1947 on the basis of which an FIR was registered. It cannot be said that the applicant had been placed under suspension illegally. The respondents have reviewed the case in consultation with the investigating agency who had stated that the investigation is at crucial stage and has asked for more time, during which period, the respondents have the discretion to continue him under suspension. The Hon'ble Supreme Court in **State of Orissa through Principal Secretary, Home Department Vs. Bimal Kumar Mohanty, JT 1994(2) SC 51** observed as follows:-

"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent office to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier,

each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by malafides, arbitrary or for ulterior purpose. 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 facing departmental enquiry or trial of a criminal charge.

14. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending enquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and the court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance".

11. We must observe that in this case also a criminal case was registered under the relevant provisions of the Prevent of Corruption Act, 1947 and further investigations were on and applicant was placed under suspension. It is very clear from the departmental file that the department proposed to complete the investigation by the CBI before proceeding departmentally as it was a case of assets disproportionate to his known source of income and the Finance Minister also had ordered that once the investigation is complete, without prejudice to the criminal proceedings, departmental enquiry should also be commenced. Therefore, there is no doubt that the departmental proceedings are contemplated in this case and, therefore, the impugned order of suspension cannot be said to be illegal. The learned counsel also relied on Apex Court's decision in **Nagaraj Shivarao Karjagi Vs. Syndicate Bank, Head Office, Manipal and Another, 1991 (3) SCC 219**. We

6
9

have seen this case and we find that this case is not parimateria with the present case. The aforesaid case was a case of bank officer compulsorily retired from service by mechanically accepting Central Vigilance Commission's recommendations without considering whether the punishment was commensurate with gravity of the misconduct or not in the fact situation of the case. We are of the view that the decision in the aforesaid case has no application to the present case.

12. The learned counsel for the respondents on the other hand relied on the decision of the Hon'ble Supreme Court in **Union of India Vs. Kewal Kumar, JT 1993(2) SC 705**. In this case the First Information Report was registered by the CBI and on that basis action was taken to initiate disciplinary proceedings for imposition of major penalty. The Apex Court had examined in the aforesaid case whether decision to initiate disciplinary action had been taken or steps for criminal prosecution had to be initiated on the date on which the DPC made the selection and came to the conclusion that FIR was registered by the CBI and on communication, a decision had been taken to initiate disciplinary proceedings which was well within the guidelines prescribed and relates to cases of Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress for purposes of invoking the Sealed Cover Procedure. In the instant case, however, the departmental proceedings themselves have to be initiated and, therefore, the decision in the aforesaid case is not of any help. The respondents also relied on the Apex Court decision in **Secretary to the Government and Another Vs. K. Munniappan**,

21

JT 1997(4) SCC 255, which relate to embezzlement of Government funds to the tune of Rs.7.82 crores. In that case the Tribunal had set aside the order of suspension. Hon'ble Supreme Court, however, held that the Tribunal erroneously proceeded on the premise that the Government has no power to keep an employee under suspension pending enquiry or investigation. Under these circumstances, it was held that the actual pendency is not a precondition to suspend an officer. Pending further investigation into the offences is one of the grounds. The Apex Court observed that "unless and until an in-depth investigation is done, there would be little scope to identify the persons involved in the crimes and to take follow-up action as per law. If the officer is allowed to retire, there would be no occasion to take effective steps to satisfactorily tackle the enormity of the crime. It is true that there is time gap, but in a case involving embezzlement of public funds by several persons in a concerted way, a threadbare investigation is required to be undertaken by the investigating officer and, therefore, in the nature of the situation, it would be difficult to find fault with the authorities for not completing investigation expeditiously. However, the appellant is directed to have the investigation completed as expeditiously as possible and take appropriate action on an urgent basis".

13. We are of the view that in this present case also placing the applicant under suspension pending the investigation by the CBI, cannot be interfered with by the Tribunal. Taking into account the complexity of the case regarding the investigation into the disproportionate assets

98

and the nexus of the officer's position as an Income-Tax Officer and the nature of the offence involving alleged corruption and moral turpitude, it cannot be said that the suspension is not a step in aid to the ultimate result of the enquiry. We are of the considered view that revocation of suspension at this stage when the investigating agency has reported that investigations are at the crucial stage and they require some more time to complete the same, could have an adverse impact on the administration.

14. In the light of the aforesaid facts and circumstances and taking into account the material placed before us in the departmental files, we are of the considered view that it will not be appropriate to interfere with the impugned order of suspension. We are also conscious of the fact that indefinite delays in investigation would also not be justified. The officer has been under suspension for over 2 years now and the investigating agency has to expedite the investigation to its conclusion at the earliest possible time. Therefore, while we do not find it appropriate to interfere with the impugned orders of suspension, we direct the respondents to review the case of the applicant for revocation of suspension ~~within~~ within a period of next six months, by which time the investigating agency should also be advised to complete the investigation.

15. The application is disposed of on the above lines.
No order as to costs.

K. MUTHUKUMAR
MEMBER (A)

Rakesh

Lakshmi
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)