

CAT/11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 280/97
T.A. No.

199

(15)

DATE OF DECISION 19.5.98

Shri S.C.Sharma

Petitioner

Sh.D.S.Garg

Advocate for the Petitioner(s)

UOI & Ors

Versus

Respondent

Sh.R.P.Agarwal

Advocate for the Respondent

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K.Muthukumar, Member (A)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the ~~TRIBUNAL~~
Tribunal No

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 280/97

New Delhi this the 19 th day of May, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Subhash Chander Sharma,
7575, Old Ice Factory, Gali No. 1,
Ram Nagar, New Delhi. Applicant.

By Advocate Shri D.S. Garg.

Versus

Union of India through

1. The Secretary,
Staff Selection Commission,
Block No. 12, CGO Complex,
Lodhi Road, New Delhi.
2. The Chairman,
Staff Selection Commission,
Block No. 12, CGO Complex,
Lodhi Road, New Delhi.
3. The Secretary to the Govt. of India,
Department of Personnel and Training,
Ministry of Home Affairs,
North Block, New Delhi. Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. The applicant who was placed under suspension w.e.f. 6.7.1996 is aggrieved by his continued suspension over a number of years. He has sought a direction to the respondents to revoke his suspension and reinstate him in service in the post of Puncher-cum-Verifier (PCV) (redesignated as Data Entry Operator Group 'A') with pay and allowances and all consequential benefits.

2. The brief facts of the case are that the applicant while working in the post as PCV in the office of the

17

respondents, was suspended under Section 10(1)(b) of the CCS (CCA) Rules, 1965 w.e.f. 6.7.1986 (Annexure A-1) since a criminal case was being investigated against him. Simultaneously, a disciplinary action was initiated against him under Rule 14 of the CCS (CCA) Rules, 1965 vide order dated 19.12.1987 (Annexure A-2). The charge against the applicant was that he had failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of public servant inasmuch as he on 3.7.1986 demanded and accepted a sum of Rs.10,000/- as illegal gratification from one Shri Virender Singh on the pretext of getting him employed in Government service through the Staff Selection Commission (SSC). Later, on receipt of the Inquiry Officer's report who found that the charge against the applicant is not proved, the disciplinary authority also exonerated the applicant from the charge vide order dated 15.10.1987. Criminal case was also filed against the applicant by the CBI in RC 48/86. In this case, the criminal court had also exonerated the applicant vide order dated 20.4.1995. According to the applicant, since he has been exonerated both by the criminal court as well as in the departmental proceedings and he has been under suspension for more than 10 years, his suspension should be revoked and reinstated in service and allowed to join his duties.

3. Shri D.S. Garg, learned counsel for the applicant has relied on the judgements of the Supreme Court in P.L. Shah Vs. Union of India (1989 (1) SLC 546 and A. Palawswamy and Ors. Vs. Union of India (1991 (3) SLR 288). He submits that unduly long suspension period while putting the employee concerned to undue hardship involving payment of subsistence allowance without the employee performing any useful service

(18)

to the Government is not in the interest of the parties and, therefore, the applicant's suspension should be revoked immediately. He has also relied on **R.K. Gupta, Development Officer Vs. Union of India & Ors.** (1971 (1) SLR 477), **The Chairman and Managing Director, Punjab National Bank Vs. Dilip Kumar** (1988(1) SLR (Calcutta High Court), **M. Rathinasabapathy Vs. Sr. Div. Manager, S. Rly and Ors.** (1986(3) SLR 350 (Madras Bench-CAT)). He has distinguished the judgement in **Allahabad Bank and Anr. Vs. D.K. Bholu** (1997(4) SCC 1) relied upon by the respondents, on the ground that in his case there was no question of moral turpitude.

4. The respondents in their reply have submitted that the relief prayed for cannot be given in this case as three other cases, namely, RCs 43/86, 44/86 and 45/86 are pending in the criminal courts against the applicant. They have submitted that the applicant is a co-accused with 2 other Government officials in these cases along with other private persons. They have, however, not denied that both the departmental proceedings initiated against the applicant and another criminal case (RC 48/86) instituted by the CBI have been dropped against him, but their contention is that criminal proceedings are pending in the other three cases mentioned above. Shri R.P. Aggarwal, learned counsel, has submitted that in all these cases the chargesheet has also been filed by the CBI. The respondents have submitted that the applicant was suspended in RCs 43, 44 and 45 of 1986 in which he along with two other Government officials were involved, whereas departmental inquiry was conducted in RC 48/86 in which only the applicant was involved. They have, therefore, submitted that the three cases pending against the applicant are entirely different and pertain to the nomination

82

of the candidates to different offices of the Government of India for the post of Clerks by dubious/questionable ways, and involvement of the applicant along with 2 other employees who worked in the SSC at the relevant point of time. In RC 48/86, they have stated that only the applicant was involved in which the allegations were that he had received illegal gratification from one person on the pretext of getting him employed in Government service through the SSC. They have, therefore, submitted that the suspension of the applicant in RCs 43, 44 and 45 of 1986 is independent of the court order in RC 48/86. The trial proceedings in the other three cases are at different stages in the competent court. As regards the other two persons who were involved with the applicant in these cases, they have stated that one Shri Shakti Kapur, SO continues to be under suspension as he is being tried in the court of law by the CBI and the other, namely, Shri S.P. Aggarwal, Assistant, has been dismissed from service w.e.f. 7.4.1988 under the CCS (CCA) Rules, 1965. The respondents have stated that the CBI had sought sanction of the competent authority to prosecute the applicant in RCs 43-45/86 which had been given by the Chairman, SSC.

5. In the circumstances, the respondents have submitted that since involvement of the applicant in RC 48/86 is separate from the other three cases in which criminal proceedings are still pending, they have not considered it proper to revoke his suspension. The applicant had submitted a representation dated 25.7.1996 regarding revocation of his suspension which the respondents had submitted at the time of filing their reply that it was under consideration with the competent authority. During hearing of the case Shri R.P. Aggarwal, learned counsel, has submitted a letter dated

(20)

1.5.1998 from the Government of India, Staff Selection Commission, Department of Personnel and Training which reads as follows:

.....that the case of suspension of Shri. S.C. Sharma, DEO Grade 'A' has been reviewed by the Commission on 30.4.1998 and the Commission has decided that since Commission is a sensitive organisation, whose credibility as an objective and impartial recruiting body, has to be maintained in the eyes of the public and as such, it would not be in public interest to allow such individuals/officers, who are suspected of having indulged in malpractices such as demanding illegal gratification from candidates, to continue to work in the Commission, till they are all exonerated, honourably.

2. Hence, the suspension of Shri Sharma can't be revoked under the present circumstances".

Certain other letters dated 23.12.1987 and 25.2.1988 (copies placed on record) have also been submitted to show that the respondents had considered the question of revocation of suspension of the applicant and a decision had been taken by the competent authority in 1987 and 1988 that since criminal cases are pending trial, it was not desirable to do so. The learned counsel relies on Allahabad Bank and Anr. Vs. Deepak Kumar Bholu (1997(4) SCC 1), State of Orissa through its Principal Secretary, Home Dept. Vs. Bimal Kumar Mohanty (JT 1994(2) SC 51) UP Rajya Krishi Utpadan Mandi Parishad & Ors. Vs. Sanjiv Rajan (1994(1) SLJ 28). The learned counsel, therefore, submits that in the circumstances of the case, the decision of the respondents not to revoke the suspension pending the decision in three criminal cases is neither **illegal or against the rules or instructions**. He has prayed that the O.A. should be dismissed.

6. The applicant has also filed rejoinder. Shri D.S. Garg, learned counsel, has submitted that the respondents have failed to follow the Government of India instructions which

(2)

prohibits prolonged period of suspension in such cases as subsistence allowance has to be paid to the employee without taking any work from him and he is also harassed by the suspension. He has also contended that during the intervening period from 1987 to 1998 the respondents have failed to conduct the review for revoking the suspension of the applicant, as required under the Government of India instructions but have only reviewed the question of enhancement of subsistence allowance. He has also submitted that as there is no threat of tampering with documents/information and he could also be transferred to another post in the SSC, a direction may be given to the respondents to revoke the applicant's suspension immediately despite the pending criminal proceedings.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. From the facts narrated above, it is clear that apart from RC 48/86 in which the applicant has been exonerated from the charge levelled against him, admittedly three other cases filed by the CBI are pending trial before the competent courts. The question relating to suspension pending criminal cases involving moral turpitude or corruption and other related issues have been dealt with by the Tribunal recently in a Full Bench Judgement in **J.S. Goel Vs. Union of India & Ors.** (OA 2119/97), decided on 5.11.1997. The Government of India instructions provide for periodical review to be conducted by the competent authority. From the letters submitted by the respondents, there appears to be some force in the contention of the learned counsel for the applicant that the respondents have failed to conduct the periodical

(22)

review of the applicant's suspension between 1988 and 1998 and they have merely addressed themselves to the question of revision of subsistence allowance. However, it is also clear from the recent letter dated 1.5.1998 that the respondents have applied their mind on the question of revocation of the applicant's suspension and have taken a decision not to do so on the grounds mentioned in the letter reproduced in para 5 above. The reasons given in the letter cannot be considered to be either arbitrary, irrational or unreasonable taking into account the relevant facts and circumstances of the case.

9. The Supreme Court in **Allahabad Bank's case (supra)** which was also a case of suspension pending criminal trial has, disagreeing with the observations of the Allahabad High Court, held as follows:

"11. We are unable to agree with the contention of the learned counsel for the respondents that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted, by the CBI which resulted in filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the Bank, unless he is exonerated of the charge".

(8)

In Sanjiv Rajan's case (supra), the Supreme Court has held that the High Court should not have interfered with the order of suspension passed by the authorities. The Court further held that in matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question.

10. In the facts and circumstances of the case and having regard to the observations of the Supreme Court in the aforesaid cases, we find no good ground justifying any interference in the matter. In the facts of this case, the contention of Shri D.S. Garg, learned counsel, that the criminal cases pending against the applicant do not involve moral turpitude cannot also be accepted. We are also unable to agree with his contention of that merely because he has been exonerated in one criminal case and departmental proceedings have also been dropped in the same case, this should automatically lead to the conclusion that he should be reinstated in service. Considering the nature of the duties and function of the SSC and the circumstances leading to the filing of three other cases by the CBI against the applicant which are pending trial in the competent criminal courts, there is no justification to direct the respondents to reverse their recent decision and revoke the suspension to reinstate

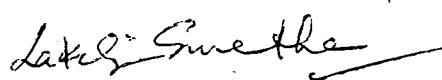
23

the applicant in service as PCV/Data Entry Operator. The reasons given in the letter issued by the respondents dated 1.5.1998 by which they have taken a decision to continue the applicant under suspension to keep him out of 'mischief's range' cannot be termed to be either malicious, unreasonable, arbitrary or without application of mind which justifies any interference in the matter.

11. In the result, for the reasons given above, we find no merit in this application and it is accordingly dismissed. No order as to costs.


(K. Muthukumar)

Member (A)


(Smt. Lakshmi Swaminathan)

Member (J)

SRD