

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2340/1994

New Delhi this the 28th Day of April 1995.

Hon'ble Mr. S.R. Adige, Member (A)

Hon'ble Mr. P. Suryaprakasam, Member (J)

Shri O.S. Chauhan,
B-17 Ram Prastha Colony,
P.O. Chander Nagar,
Delhi-U.P. Border,
Ghaziabad-201 011.

... Applicant

(By Advocate: Shri O.P. Khokha
and S.C. Luthra)

Vs.

Union of India, through

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 001.

2. Secretary,
Ministry of Personnel, Public
Grievances & Pensions,
North Block,
New Delhi-110 001.

... Respondents

(By Advocate: Shri N.S. Mehta)

ORDER

Hon'ble Mr. P. Suryaprakasam, Member (J)

The applicant approached this Tribunal under the present Original Application for the following reliefs:

- i) To quash the impugned order (Annexure-I) placing the applicant under suspension by the Ministry of Home Affairs by order and in the name of the President, as being illegal, malafide and passed without justification or jurisdiction.
- ii) To further declare that even otherwise the order dated 5.3.86 (Annex. I) lapsed after a period of 45 days and in any case it cannot survive after 4.1.1988 when the Challan in criminal case was presented in the competent court of law and in any case it cannot continue for an indefinite period.

(b)

2. The applicant's case is that the applicant belongs to IAS (AGMU) erstwhile (U.T. Cadre) having joined in the year 1967 as a direct recruit. The applicant was placed under suspension on 5.3.1986 under Annexure I and the suspension order was issued by the Central Government (Ministry of Home Affairs) in exercise of the powers conferred under Rule 3 of All India Services(Discipline and Appeal) Rules 1969 and his headquarters was fixed at Itanagar which was later changed to Delhi at his request by an order dated 9.7.1986. The applicant has been charged under section 5(2)(d) under the Prevention and Corruption Act having in possession of disproportionate income to the known source of income.

3. The CBI put up the challenge of the case against the applicant in the proper court on 4.1.1988, almost after a delay of about three years from the date of the suspension. The respondents has submitted that the suspension order has been issued by the competent authority after taking into consideration all the factors and with due application of mind. The suspension order has been issued by the Ministry of Home Affairs in exercise of powers of the State Government and the order dated 5.3.1986 has been marked to the Department of Personnel and Training. Further, it has been stated that placing of the applicant under suspension is very much legal and valid under Rule 3(iii) of All India Services (Discipline and Appeal) Rules 1969. Therefore, the petition is liable to be dismissed.

4. The applicant's argument is two-fold viz., (i) that the Ministry of Home affairs do not have the power to issue the suspension order since under the Allocation of Business Rules, 1961 it is only Department of Personnel, Public Grievances and Pensions has been allowed to deal with the Service Conditions (Item 21) which reads as under:

"General questions (other than those which have a financial bearing) including conduct rules relating to All India and Union Public Service Commission" as such the Central Government for IAS officers serving in the Union Territories or officers in All India Service is a Ministry of Personnel, Public Grievances and Pensions and not the Ministry of Home Affairs.

Even if it is accepted that the Home Ministry has the power to issue the impugned order viz., the order of suspension dated 5.3.1986, it could be only valid for a period of 45 days and if it is to be extended it ought to have been extended only by the Department of Personnel and Public Grievances and Pensions under Rule 3(1)(b) of the All India Services (Discipline and Appeal) Rules 1969 and for the same the learned counsel for the applicant relied upon the case of S.P. Singh Vs. Union of India rendered by the Principal Bench dated 8.1.1993 1994 (2) AT 235.

5. The order of suspension dated 5.3.1986 has been issued admittedly by the Ministry of Home Affairs and in the reply statement the respondents have specifically

admitted that Ministry of Home Affairs in exercise of the powers of the State Government. The word 'Government' has been defined under Rule 2 as follows:

"Government means -

In the case of a member of the service serving in connection with the affairs of a state, or who is deputed for service in any company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a Local authority set up by an Act of the Legislature of a State, the Government of that State:

Therefore, the Ministry of Home Affairs is well within their right to issue the impugned order of suspension dated 5.3.1986. In this case the applicant has been charged for a criminal offence under the Prevention of Corruption Act and Rule 3(3) of the All India Services (Discipline and Appeal) Rules 1969 which is extracted under as follows:

"3(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a (member of the Service) or is likely to embarrass him in the discharge of his duties or involves moral turpitude."

6. The above said rules gives total discretion to the Government to place under suspension of a Member of the Service until the termination of all proceedings relating to the charge, if charge is connected with his position as a Member of his service or is likely to embarrass in the discharge of his duties or involves moral turpitude. Therefore, the Government alone is the proper authority to review its own decision and in this case admittedly the criminal case is pending before the

(a)

competent court for a long time. It is for the Government to decide whether to continue the suspension or to cancel the suspension at this stage. However, we hope that the Government while considering his representation for the revocation of his suspension, may take into account the long delay (9 years) of the pending criminal proceedings against the applicant.

7. The arguments that have been advanced by the learned counsel for the applicant is that under 3(1)(b), the suspension could be made only after a period of 45 days by the State Government and further extension has to be made by the competent government, on the basis of the S.P. Singh's case. Admittedly, in this case there was no extension of the original order of suspension dated 5.3.1986 either by the Department of Personnel, Public Grievances and Pensions Rule 3(1)(a) is as follows:

"Suspension - (1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may -

3(1)(a) If the member of the Service is serving under that Government, pass an order placing him under suspension, or ..."

On a perusal of the Rule 3(1) clearly shows that this will be applicable to a person against whom disciplinary

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proceedings are contemplated or pending. In this case the criminal investigation has been started even earlier to the suspension dated 5.3.1986 and as such only 3(3) of the All India Services (Discipline & Appeal) Rules, 1969 will be applicable in this case and therefore either Rule 3(1)(a) or the S.P. Singh's case will not be applicable to the present facts of the case. Furthermore, there is a long delay on the part of the applicant himself in approaching this court from the date of the original suspension viz., 5.3.1986.

8. In the circumstances we find that there is no merit in the case. However, since the Government alone is the proper authority to review the order of suspension, we permit the applicant to make a representation to the Government within 15 days from the date of receipt of this order and the respondents will dispose it off within four months from the date of the said receipt.

9. With the above said direction, the application is disposed of. In the circumstances there will be no order as to costs.

P. S. R. Adige
P. S. R. Adige
(S.R. Adige)
Member (A)

P. Suryaprakasam
(P. Suryaprakasam)
Member (J)