CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2340 OF 2000

New Delhi, this the 6th day of August, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

Shri G.P.Sewalia, IAS
S/o Late Shri G.S.Sewalia
R/O C-II/215, Satya Marg
Chankaya Puri
New Delhi. ... Applicant

(By Shri S.Sunil, proxy for Shri C.Hari Shankar, Advocate)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block
New Delhi.

2. Govt.of N.C.T.of Delhi
through its Chief Secretary
5, Sham Nath Marg
Delhi.

... Respondents

(None)

ORDER

JUSTICE V.S. AGGARWAL

The applicant is an officer of the Indian Administrative Service. He belongs to 1974 batch. On the assertion of amassing assets disproportionate to his known source of income, he was suspended on 7.2.1999. A case had been registered against him by the Central Bureau of Investigation. He had preferred OA No.2078/1999. Thereupon, the suspension order was quashed by this Tribunal on 28.7.2000 and the application had been allowed. He had again been placed under suspension vide the order of 13.9.2000

with reference to the same charge and another charge of deposits made in the nationalised banks. A charge-sheet had been issued on 23.8.1999.

2. The applicant preferred the present application and this Tribunal on 13.3.2001 while disposing of the present application and quashing the impugned order referred to the two arguments of the applicant's learned counsel which are as under:-

> "4. The suspension of the applicant is assailed by Shri M.Chandrasekharan, Senior Counsel for the applicant, on two main grounds that:-
>
> (a) the authority which placed the applicant under suspension i.e. JCA of the AGMU cadre of IAS, on whose behalf the impugned order has been issued was not authorised to do so.
>
> (b) the reason indicated in the impugned order that probity in public life demands that an officer charged with serious misconduct is not permitted to perform his official functions and responsibilities till he is cleared of these charges framed against him, was too general and vague a ground to be sustained."

With respect to the first plea, this Tribunal had quashed the impugned order holding that the authority which issued the order of suspension was not competent to do so. The Union of India had filed Civil Writ Petition No.4482/2001 in the Delhi High Court. The Delhi High Court had allowed the Writ Petition and set aside the order passed by this Tribunal. It was

followed by Civil Miscellaneous No.12996/2002. Resultantly, the Delhi High Court modified its earlier order and remitted the matter to this Tribunal for considering ground (b) already reproduced above. It is in this back -drop that we are required to consider the said question i.e. ground (b) already referred to above.

3. On the date fixed, there was no appearance on behalf of the respondents and, therefore, this Tribunal did not have the advantage of hearing the respondents' learned counsel.

4. As already pointed above, the grievance of the applicant is pertaining to the order of suspension that had been passed afresh on 13.9.2000. The relevant portion of the said order reads:-

"WHEREAS, Shri G.P.Sewalia, IAS (AGMU:74), was placed under suspension vide this Ministry's order of even number dated the 7th January, 1999.

2. AND WHEREAS, the Central Administrative Tribunal, Principal Bench, New Delhi vide its order dated the 28th July, 2000 in O.A. No.2078/99 filed by the said Shri Sewalia held that the said order of suspension dated the 7th January, 1999 stood revoked in terms of Rule 3(g) of the All India Services (Discipline & Appeal) Rules, 1969 on expiry of the period of ninety days as the Competent Authority had failed to extend it further within the stipulated period and accordingly quashed the orders under which the Competent Authority had extended the period of the suspension of Shri Sewalia beyond the period of 90 days. The Central Administrative Tribunal had further held that it was open to the respondents to take any

further action, if they so desired, as permissible under the law.

3. AND WHEREAS, in compliance of the aforesaid order dated the 28th July, 2000 of the CAT, Principal Bench, New Delhi, the suspension of Shri G.P.Sewalia, IAs (AGMU:74), was revoked vide this Ministry's order of even number dated the 12th September, 2000.

4. AND WHEREAS, the Competent Authority, after careful consideration, has come to the conclusion that the circumstances under which the said Shri G.P.Sewalia, IAS (AGMU:74). was initially placed under suspension not only continue to exist but have in fact further aggravated in as much as apart from the criminal proceedings instituted against him in connection with offences punishable u/s 13(2) r/w 13(1)(e) and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 which are pending in the Court of Law, he has been chargesheeted for imposition of a major penalty under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 in connection with yet another case involving gross misconduct vide this Ministry's Office Memorandum No.14033/19/97-UTS dated the 23rd August, 1999; and that the probity in public life demands that an officer charged with serious misconduct is not permitted to perform his official functions and responsibilities till he is cleared of these charges framed against him."

5. It has been pleaded that there is complete non-application of mind in passing the impugned order and there is no justification to pass the said order. The reason indicated that probity in public life demands that an officer charged with serious misconduct should not be permitted to perform his official functions and responsibilities is not correct and on the said ground, the order that had been so passed cannot stand legal scrutiny and, therefore, deserves to be quashed.

6. In the reply filed, some of the facts have been mentioned. According to the respondents, prima facie, it was shown that the applicant was in possession of disproportionate assets, both movable and immovable to the tune of Rs.29,07,006/- over and above his known sources of income. The investigation report furnished by the Central Bureau of Investigation had been carefully examined by the Government of India and it was found that there existed sufficient evidence to prima facie establish that the aforesaid offences were in fact committed by the applicant under the Prevention of Corruption Act, 1988 and public interest should be the guiding factor in deciding to place a Government servant under suspension. The disciplinary authority has the discretion to decide this, after taking all the factors into consideration. The guiding principles have been kept in view. The suspension of the applicant was reviewed in July 1999 and again in March 2000. The recommendations are accepted. It is denied that the plea raised by the applicant would be available.

7. As already pointed above, the short question that comes up for consideration is as to whether the ground (b) for quashing the impugned order is available to the applicant or not. Sub-rule (2) to Rule 10 of the Central Civil Services (Classification,

Control and Appeal) Rules, 1965 reads as under:-

"10. Suspension (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, may 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."

The Ministry of Home Affairs instructions dated 22.10.1964 provided the necessary guiding principles for placing a Government servant under suspension without being exhaustive. The guidance had been provided in the following words:-

It has been decided that public interest should be the guiding factor in deciding to place a Government servant under suspension, and the disciplinary authority should have the discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a disciplinary authority may consider it appropriate to place a Government servant under

suspension. They are only intended for guidance and should not be taken as mandatory:-

(i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where allegations have been made against the Government servant and the preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

NOTE (a).- In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a prima facie case is made out."

Therefore, ordinarily it is within the discretion of the concerned authority to take into account public interest which should be the guiding factor keeping in view the nature of the offence and surrounding circumstances before placing a Government servant under suspension or not. This question had been considered in a decision of the Kerala High Court in

the case of **Subramonian v. State of Kerala and Others**, 1973 (1) S.L.R. 521. It was pointed that utmost caution and circumspection should be exercised while suspending a Government servant. It results in a disastrous impact on the fair, name and good reputation of the concerned person. The Court observed:-

> "9. Although suspension is not one of the punishments narrated in Rule 11 of the Kerala Civil Services (Classification, Control and Appeal) Rules, an order of suspension is not to be lightly passed against a Government servant, for the reality cannot be ignored that an order of suspension brings to bear on the Government servant consequences far more serious in nature than several of the penalties made mention of Rule 11. It has a disastrous impact on the fair name and good reputation that may have been earned and built up by a Government servant in the course of many years of service. The damage suffered by the Government servant is largely irreversible because the denigration and disgrace visited on him by the order of suspension is seldom wiped out by his being subsequently exonerated from blame and reinstated in service. Hence it is imperative that the utmost caution and circumspection should be exercised in passing orders of suspension under Rule 10 resulting in such grave consequences to the Government servant concerned. It is also necessary to remember that the power of suspension is to be sparingly exercised and that is not meant to be used as a mode of giving expression to any displeasure felt by the appointing authority or the Government in respect of any act of commission or ommission on the part of the officer."

We have no hesitation in adhering to the aforesaid principle.

8. We are aware of a decision of the Supreme Court in the case of **State of Karnataka and Another** v. **T.Venkataramanappa**, (1996) 6 SCC 455. The departmental proceedings had been initiated for contracting a second marriage without requisite permission of the Government. He was being prosecuted in criminal court for alleged bigamy. It was in this back-drop that the Supreme Court held that although the departmental enquiry could be continued, still continued suspension during departmental enquiry was not warranted. It is obvious from the aforesaid that the cited decision was confined to the peculiar facts before the Supreme Court keeping in view the nature of proceedings. It was not the principle laid down that in all the cases, the suspension order should be revoked.

9. In the case of **U.P.Rajya Krishi Utpadan Mandi Parishad and Others** v. **Sanjiv Rajan**, 1994 SCC (L&S) 67, the Supreme Court concluded that there is no restriction on the competent authority to pass a suspension order for the second time. The Supreme Court further held:-

"Ordinarily, when there is an accusation of defalcation of the monies, the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question

and hence it is always advisable to allow disciplinary proceedings to continue unhindered. It is possible that in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is either to call for an explanation from the authorities in the matter, and if it is found unsatisfactory, to direct them to complete the inquiry within a stipulated period and to increase the suspension allowance adequately. It is true that in the present case, the charge-sheet was filed after almost a year of the order of suspension."

In other words, the Supreme Court concluded that in a case where there is an accusation of defalcation of the monies, the delinquent employee should be kept away from the establishment till the charges are finally disposed of. Similarly, in the case of **State of Orissa** v. **Bimal Kumar Mohanty**, (1994) 4 SCC 126, there were serious allegations of misconduct. The Tribunal had interfered with the order of suspension. The Supreme Court held that even the discretion that had been so exercised was not proper and required interference and the interim order so passed even was not approved.

10. Yet in another decision of the Supreme Court in the case of **Secretary to Government and Another** v. **K.Munniappan**, (1997) 4 SCC 255, the Tribunal had opined that the Government had no power to keep an employee under suspension pending enquiry or investigation. The Supreme Court had not approved of the same.

11. In the decision rendered in the case of **Union of India and Others** v. **Udai Narain**, (1998) 5 SCC 535, the Tribunal had quashed the order of suspension, but the Supreme Court did not approve of the same and held:-

> "4. A bare look at Rule 10 of CCS (Classification, Control and Appeal) Rules, 1965 would show that the interpretation placed by the Tribunal does not appear to be correct. An unduly narrow technical view has been taken by the Tribunal to quash the order of suspension. The view of the Tribunal that the expression "investigation, inquiry or trial" would not include the stage of filing of the charge-sheet in the Court and since investigation was over and the trial had not yet commenced, the respondent could not be placed under suspension, we are unable to accept. The delinquent cannot be considered to be any better off after the charge-sheet had been filed against him in the Court after completion of the investigation, than his position during the investigation of the case itself. It has been brought to our notice that sanction for prosecution has already been obtained and case has been fixed for framing of charges by the trial court. In this view of the matter we find that the view taken by the Tribunal in the impugned order is not sustainable and the order of suspension was not liable to be quashed on the ground that the case was neither at the stage of investigation or enquiry or trial."

Before drawing the necessary conclusions, we take advantage in referring to a decision of this Tribunal in the case of **Bani Singh** v. **Union of India and Ors.** in OA No.833/2000 rendered on 6.2.2001. This Tribunal concluded that since the matter is before the court, there is no likelihood of tampering of any evidence or

witnesses. The suspension order could not withstand scrutiny but as we know, each case has its own facts. Herein this Tribunal had earlier passed an order and a delay of 2 years had occurred during the investigation. It was noted further that it was only a case of disproportionate assets and did not involve any public scandal and in that back-drop, the discretion so exercised was held to be improper. It was confined to the peculiar facts of that case rather than a binding precedent where in case of difference of opinion, a Larger Bench may be constituted.

12. Aforesaid clearly shows that by and large, it is the administrative decision, but if it involves a matter where public interest is not required, it would be improper for this Tribunal to interfere. The probity in public life in the facts of particular case may demand that an officer charged with serious misconduct should not be allowed to discharge his official functions.

13. Reverting back to the facts of the present case, as already pointed above, the applicant had been dealt with in a matter of having assets disproportionate to the known sources of income. Even a challan had been presented in the court. There are no extraneous considerations or mala fides that had been imputed. Keeping in view the same, in the facts of the present case merely stating that it is not

likely to interfere in the matter will not be enough. It would be appropriate to keep the applicant away from the official work during the proceedings so that even if what is being alleged is true, he could not indulge in similar functions. We hasten to add that it is not a finding in this regard but only an observation for the purpose of disposal of the application. Taking stock of these facts herein, the public interest which is the guiding factor requires no interference in the present application.

14. Resultantly, the present application being without merit must fail and is dismissed. No costs.

(S.K.Naik)
MEMBER (A)

(V.S.Aggarwal)
CHAIRMAN

/sns/