

Central Administrative Tribunal
Principal Bench

(27)

O.A. No. 2598 of 2000
C.P. No. 477 of 2000

New Delhi, dated this the 15 MARCH, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. Anoop Kumar Srivastava,
S/o Shri V.S. Srivastava,
Presently posted as
Joint Commissioner (Central Excise), Delhi-II,
C.R. Building,
New Delhi-110002. .. Applicant

(By Advocate: Shri G.D. Gupta with
Shri Arvind Nayyar)

Versus

1. Union of India through
the Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block,
New Delhi-110001.
2. Chairman,
Central Board of Excise & Customs,
Ministry of Finance,
North Block,
New Delhi-110001. .. Respondents

(By Advocate: Shri R.V. Sinha and
Shri R.N. Singh)

ORDER

S.R. ADIGE, VC (A)

O.A. No. 2598/2000 together with C.P. No.
477/2000 are being disposed of by this common order.

O.A. No. 2598/2000

2. In O.A. No. 2598/2000 applicant seeks a direction to respondents that the findings of the DPC held to consider his case for promotion should not be kept in the sealed cover, and in the event DPC finds him fit for promotion he should be granted ad hoc

2

promotion to the post of Additional Commissioner (Excise & Customs) and be posted/deputed on posts that are commensurate with the seniority and record. He also seeks a direction that pendency of the case against him will not come in the way for regular promotions if he is otherwise found fit for promotion in his turn, or for his posting on deputation or to any other sensitive post, and furthermore that suspension proceedings should not be initiated against him during the pendency of the case.

3. Applicant who is presently posted as Joint Commissioner, Central Excise, Delhi II himself avers that an FIR was registered against him on 9.7.96 (Annexure A-3) u/s 120-B/420 IPC read with Sections 8, 9, 10 of Prevention of Corruption Act. That FIR states that applicant ^{and} certain other persons entered into a criminal conspiracy with the objective of obtaining illegal gratification as a motive/reward for showing favour to the M/s Jagjiwan Coop. House Building Society Ltd. in the matter of issuing N.O.C. by influencing the then Union Minister for Urban Development. It is alleged that pursuant to the aforesaid conspiracy, applicant in collusion with one Shri S.M. Batra demanded Rs.5 lakhs on 24.2.94 from the Society and as per his directions, an office bearer of the Society handed over the bag containing Rs.5 lakhs to Shri Rattan Kaul in the presence of applicant as well ^{as the} co-accused Shri S.M. Batra.

2

sheet dated 9.7.96 in regard to the aforesaid criminal case (Annexure A-4).

5. It is not denied that the DPC met on 10.8.2000 to consider the case of eligible candidates for promotion to the post of Additional Commissioner (Customs & Excise) but in view of the aforesaid criminal case instituted against applicant, in which CBI had submitted a Charge Sheet, applicant's case was kept in a sealed cover, in the background of DOPT O.M. dated 14.9.92 (Annexure A-11).

6. Meanwhile as per applicant's own averments contained in Para 25 of his O.A., he on 6.9.2000 filed a petition u/s 482 Cr. PC before the Delhi High Court seeking appropriate orders/ directions for quashing of the investigation report u/s 173 Cr. PC/FIR and all other consequent proceedings in the aforesaid criminal case instituted u/s 120-B, Section 109 IPC read with Section 9 P.C. Act. The High Court by its order dated 26.9.2000 (Annexure A-9) granted time to CBI to file their reply and adjourned the case, and meanwhile stayed further proceedings qua applicant.

7. Applicant's counsel Shri Gupta has invited our attention to Para (iii) of D.P.&T O.M. dated 14.9.92 which was issued in the background of the Hon'ble Supreme Court judgment in Union of India

7

Vs. K.V. Janakiraman AIR 1991 SC 2010. This Para 2(iii) provides that sealed cover procedure will be applicable in respect of Government servants ~~for~~ whom prosecution for a criminal charge is pending. Shri Gupta has argued that the meaning of this sub-para is that sealed cover procedure will be applicable only in those cases where specific and ~~definite~~ charges have been framed by a competent Court of Law vide Sec. 228 Cr. PC after application of the judicial mind, and not merely on the filing of a police investigation report u/s 173 Cr. PC as in the present case. He seeks to draw his support for this argument by relying upon an earlier O.M. dated 30.1.82 in which sealed cover procedure was applicable against whom prosecution has been launched in a Court of Law or sanction of prosecution has been issued.

8. He has contended that while under the 1982 O.M. it was sufficient for prosecution to be launched in a Court of Law or sanction for prosecution to be issued ; for the sealed cover procedure to come into operation, the DOPT in its O.M. dated 14.9.92 had specifically changed the provision to provide for applicability of sealed cover procedure in only ^{those cases} where the charges had actually been framed under Sec. 228 Cr. PC, to bring it into conformity with the issue of charge sheet in a departmental proceeding, because according to him it was only at that stage did the charges attain finality. He also seeks to draw support from Para 5.3 of the aforesaid O.M. dated 14.9.92 which speaks

of acquittal in the criminal prosecution on the merits of the case and full exoneration in the departmental proceedings, to contend that just as in Disciplinary Proceedings, sealed cover procedure is to be adopted upon issue of charge sheet, so also in criminal proceedings only if charges are actually framed u/s 228 Cr. PC does the sealed cover procedure become applicable, and not merely upon submission of the charge sheet by the police authorities.

9. Written submissions have also been filed to this effect.

10. We have considered these contentions carefully.

11. In P. Ramnath Iyer's Law Lexicon 2nd Edition the term "Prosecution has been defined on the institution or commencement of criminal proceedings; the process of exhibiting formal charges against an offender before a legal tribunal and pursuing them to final judgment on behalf of the state or by government or by indictment or information. In that very Lexicon it has also been stated that prosecution implies every prosecution for an offence, whether it is initiated on a private complaint or on a police report. If indeed the DOPT O.M. dated 14.9.92 provides that in respect of criminal cases, the sealed cover procedure would be applicable only when formal charges have been framed u/s 228 Cr. PC, as contended by Sri Gupta, surely they would have stated so

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clearly in para 2(iii) of the aforesaid O.M. The fact that they have specifically stated that the sealed cover procedure will be applicable in case of Government servants in respect of whom prosecution (emphasis supplied) for criminal charge is pending, and prosecution can be said to ~~be~~ commence~~d~~ upon the submission of the charge sheet, by the police authorities, is in our view sufficient to hold that once the charge sheet is submitted by the police in a criminal case, sealed cover procedure will be attracted and one does not have to wait till charges are actually framed by ^{the} competent Court of Law under Section 228 Cr. PC for the sealed cover procedure to be made applicable. Furthermore Sec. 228 Cr. PC refers to the framing of charges in sessions cases which are certainly not the only type of criminal cases in which Government employees can be prosecuted and hence DP&T in its O.M. of 14.9.92 could not have intended that para (iii) thereof relates to sessions cases alone. Hence Shri Gupta's contention that applicant's case should not have been kept in a sealed cover because formal charges have not been framed against him u/s Sec. 228 Cr. PC (although charge sheet has admittedly been submitted in the criminal case pending against applicant by the police authorities), is rejected.

12. We find support for the above conclusion from also the provisions of Rule 9 CCS (Pension) Rules which deals with the right of the President to withdraw pension or gratuity of a person. Under these rules the President has the right to withhold or withdraw

2

gratuity/pension in full or in part, whether permanently or for a specified period and/or ~~or~~ order recovery of the same in the whole or ⁱⁿ part if in a departmental or judicial proceedings the pensioner is found guilty of a grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. Under Rule 9(6) of the aforesaid Rules, Disciplinary Proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date on such date; and ~~or~~ criminal proceedings, shall be deemed to have been instituted on the date on which the complaint or report of a police officer upon which the Magistrate takes cognizance is made. As the Magistrate takes cognizance on the basis of the chargesheet submitted by police (i.e. other than complaint) cases, it is clear that submission of the charge sheet by the police authorities, is the relevant date under Rule 9 CCS (Pension) Rules, and no cogent reasons have been advanced as to why the same reasoning is not applicable in regard to Para 2(iii) of DP&T's O.M. dated 14.9.92.

13. The next point is applicant's prayer that he should not be suspended during the pendency of the criminal case.

14. This O.A. was filed in the Registry on 8.12.2000 prior to the issue of respondents' order dated 12.12.2000 (Annexure R-III) placing applicant under suspension. In this connection applicant has subsequently filed M.A. No. 184/2000 seeking to amend the prayer clause so as to impugn the suspension order dated 12.12.2000 on the ground that the same is malafide or arbitrary and had been issued ^{to} to victimize him and in fact ~~never reaches~~ the Delhi High Court's order dated 26.9.2000 (Annexure A-9).

15. It is contended that the allegations against applicant relates to 1994; the FIR was filed on 9.7.96; and the charge sheet was submitted by the CBI before the Special Court on 14.12.99, and on 23.12.99 the CBI sent a communication to respondents that applicant should be placed under suspension, but despite the passage of nearly one year applicant was not placed under suspension. It is only when he approached the Tribunal in the present O.A. for relief pertaining to his promotion that respondents, upon ~~dictates~~ ^{dictates} of CBI, malafidely and maliciously issued order dated 12.12.2000 placing applicant under suspension. It is contended that applicant has been suspended on the basis of the criminal proceedings instituted against him which stand stayed by the Delhi High Court and it was not necessary to suspend applicant, as police investigation in the case was complete and there was no danger of applicant interfering with the same. It is contended that applicant has been suspended not because of the independent application of mind by respondents but at

the dictat^s of CBI because of certain disputes which had broken out between applicant's service and CBI in the past.

16. DP&T's O.M. dated 20.6.86 (copy on record) deals with suspension of suspect officers in corruption cases. Para (iii) of the aforesaid O.M. provides that on the request of CBI or otherwise there may be adequate justification for placing the concerned Government servant under suspension, immediately a charge sheet accusing a Government servant of corruption or any other offence involving moral turpitude has been filed in the criminal court. In the present case, admittedly a charge sheet has been filed in the criminal case against applicant. It is true that further proceedings in that criminal case has been stayed qua applicant by orders of the Delhi High Court, but filing of the charge sheet against applicant accusing him of corruption cannot be denied. Hence the ingredients of Para (iii) of O.M. dated 20.6.86 are fully satisfied, and merely because respondents took nearly one year to suspend applicant by order dated 12.12.2000, does not ~~disprove~~ the fact that the ingredients of Para (iii) of O.M. dated 20.6.86 are satisfied in this case. The orders dated 12.12.2000 suspending applicant have been passed by the competent authority in accordance with the provisions of the CCS (CCA) Rules, and the allegation against applicant are indeed serious. In U.P. Rajya Krishi Utpadan Mandi Parishad & Others Vs. Sanjay Rajan 1993 Supp. (3) SCC 483, the Hon'ble Supreme Court has held that Courts should not

ordinarily interfere with suspension orders, unless passed malafide and without there being even prima facie evidence connecting the delinquent with the misconduct in question. Again in State of Orissa Vs. B.K. Mohanty AIR 1994 SC 2296 the Hon'ble Supreme Court held that in the light of the serious allegation of misconduct made against the delinquent the orders suspending him had been wrongly interfered into by the Tribunal.

17. In our view it is not possible at this stage to hold conclusively that the order dated 12.12.2000 suspending applicant has been passed malafide or that there is not even prima facie evidence connecting applicant with the misconduct alleged. It is true that the Delhi High Court has stayed further proceedings before the Special Court of C.B.I. where the prosecution of applicant is pending, but as pointed out by respondents it is wrong to conclude that the effect of the stay on further proceedings in the application u/s 482 Cr. PC by applicant amounts to his discharge from the charges, and/or or that pendency of that prosecution against applicant by virtue of the challan filed by C.B.I. also goes. Applicant can be treated as not facing criminal proceedings only when the charge against him in the criminal case are dropped/quashed, or he is acquitted on merits. That has not happened till date.

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18. In the result the impugned suspension orders dated 12.12.2000 warrant no interference at this stage.

C.P. No. 477/2000

19. In this C.P. it has been contended that after the passing of the interim order dated 13.12.2000 in O.A. No. 2598/2000, restraining respondents from suspending applicant, the action of respondents in serving the suspension order purportedly issued on 12.12.2000 attested on 13.12.2000 and pasted at applicant's residence on 14.12.2000 (when he himself had applied for C.L. for three days from 12th to 14th December, 2000 on grounds of being unwell) despite communication of the Tribunal's interim order dated 13.12.2000 to them constitutes contempt of the Tribunal's order dated 13.12.2000.

20. In State of Punjab Vs. Khemi Ram AIR 1970 SC 214 the Hon'ble Supreme Court, while determining as to when an order of suspension passed against a Government took effect, has held that once the suspension order is sent out to the concerned Government servant, it must be deemed to have been communicated to him and taken effect, no matter when he actually received it, for otherwise the delinquent

2

could effectively thwart an order by avoiding receipt of it by one mean or another. This view has been reiterated by the Calcutta High Court in U.S. Chatterjee Vs. U.O.I. & Others (1982) 2 SLR 724.

21. Admittedly the order suspending applicant is dated 12.12.2000 (Annexure 3 to C.P.). Applicant relies upon the attestation of that order by one Shri Gautam Ray, Addl. Commissioner, Customs & Excise (Respondent No. 4) on 13.12.2000 to contend that by that time, the order dated 13.12.2000 restraining respondents from suspending applicant was in force.

22. This contention is baseless, because as pointed out by official respondents, the orders of suspension was issued by the U.S. ~~to~~ ^{was} Finance Ministry on 12.12.2000 and sent to applicant through the Commissioner of Central Excise for service. Thus the suspension order dated 12.12.2000 was sent out by the Ministry and came into operation on 12.12.2000 itself, prior to the Tribunal's restraint order dated 13.12.2000. In fact Shri Gautam Ray has himself in his reply affidavit given the chronology of events, stating that the Fax copy of the suspension order dated 12.12.2000 was received by him at 4.30 p.m. that evening itself for service upon applicant, and attested copy of the same was despatched to Shri Dinesh Kochhar, Commissioner Delhi II for service upon applicant on 12.12.2000 itself at 5.30 p.m., well

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29

before the Tribunal's orders dated 13.12.2000.

23. Applying the rulings in Khemi Ram's case (supra) and U.S. Chatterjee's case (supra) we are satisfied that the orders dated 12.12.2000 suspending applicant was sent out well before the Tribunal's restraint order dated 13.12.2000 and hence no cause for initiating contempt proceedings are made out.

24. It is true that during hearing of the O.A. itself, a Single (Vacation) Bench of the Tribunal in its order dated 26.12.2000 has observed that the suspension order dated 12.12.2000 was communicated to applicant on 13.12.2000, which was not before the Tribunal restraint order dated 13.12.2000, but that Single Bench did not have the advantage of the detailed chronology of events supplied during the course of the pleadings, or indeed the peon book and other materials which we have perused to satisfy ourselves is that the suspension order dated 12.12.2000 had gone out before the Tribunal passed the restraint order on 13.12.2000.

25. During the course of hearing Shri G.D. Gupta relied upon certain rulings which include CAT Full (Madras) Bench's order dated 2.3.87 in T.A. No. 849/86 K.C.H. Venkata Reddy & Others Vs. Union of India & Others (Full Bench Judgments of CAT 1986-89 Bahri Bros.) in which it has been held that pending

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departmental enquiry, an employee was entitled to be considered for promotion. It is not denied that applicant has been considered for promotion but his case has been kept in sealed cover in the light of the contents of DOPT's O.M. dated 14.9.92 which itself is based upon the Hon'ble Supreme Court's ruling in Janakiraman's case AIR 1991 SC 2010. Under the circumstances, neither Venkata Reddy's case (supra) nor Janakiraman's case (supra) which was also cited by Shri G.D. Gupta does not advance applicant's claims. Another ruling cited by him was AIR 1962 SC 1089 but a perusal of the same makes it clear that in the particular facts and circumstances of this case, it does not assist the applicant.

26. In the result the O.A. No. 2598/2000 is dismissed and C.P. No. 477/2000 is rejected. Notices discharged. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

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S. R. Adige

(S. R. Adige)
Vice Chairman (A)