

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 549/2000
T.A No.

(18)

Date of Decision 20-4-2001

Dr. R. N. Prasad

..Petitioner

Sh. M. M. Sudan

..Advocate for the petitioner(s)

Versus

Secretary
ICAR & OES.

..Respondent

Sh. G. S. Sangwan

..Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri Govindan S. Tampi, 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? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. 549/2000

(9)

New Delhi this the 20 th day of April, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Dr. R.N. Prasad,
S/o Shri Hari Har Garain,
R/o D-1/79, Satyamarg,
New Delhi-110021. Applicant.

(By Advocate Shri M.M. Sudan)

Versus

1. Indian Council of Agriculture
Research through
Secretary,
Krishi Bhawan,
New Delhi.
2. President,
Indian Council of Agriculture Research,
Krishi Bhawan,
New Delhi.
3. Shri Vikram Singh,
Under Secretary (Vig),
Indian Council of Agriculture Research,
Krishi Bhawan,
New Delhi. Respondents.

(By Advocate Shri G.S. Sangwan)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

In this application, the applicant has assailed the validity of the order passed by Respondent 3, that is the Under Secretary (Vigilance), Indian Council of Agricultural Research (ICAR) on behalf of Respondent 2, that is the President, ICAR dated 29.2.2000 placing him under suspension.

2. The applicant, who was working as Assistant Director General, ICAR has superannuated from service w.e.f. 29.2.2000. On the last date of his service, he

82

was served with the suspension order. In the impugned order, it is stated that the competent authority, in exercise of the powers conferred under Rule 10(1) (b) of the CCS (CCA) Rules, 1965, (hereinafter referred to as 'the Rules'), has placed the applicant under suspension with immediate effect as a case in respect of a criminal offence is under investigation against him.

20

3. The applicant has stated that he was posted as Director of Research Complex, for North East Hill Region, ICAR, situated at Umroi Road, Bora Pani, Meghalaya during the period from March, 1986 to May, 1994. At that time, certain casual labourers of the Institute had filed an application (OA) in the Tribunal which was decided in their favour by order dated 12.1.1998. He has stated that a meeting was held in the Chamber of Shri N.S. Randhawa, the then Director General, ICAR with regard to the Special Leave Petition against the order of the Tribunal in which several other officers, including the Legal Adviser Ms. Halida Khatoon, Advocate Supreme Court, was also present. The Legal Adviser had submitted fee bills for self and on behalf of her seniors. As the bills submitted by Ms. Halida Khatoon, Advocate were for a very heavy amount, the applicant states that he wrote to the Senior Counsel, who had denied having submitted such bills or having received such a large payment. Later, as per the advice of the ICAR Headquarters, a suit for recovery of Rs.8,27,215/- was filed against Ms. Halida Khatoon, Advocate which is pending in the Delhi High Court. The applicant states that he had also filed criminal complaint against the Advocate with the

Commissioner of Police, Delhi and also the Bar Council of India. According to him, since the excess payment to the Advocate was made when he was Director, NEH Complex, he had written on 30.12.1999 before his retirement requesting the Vigilance Department to obtain the CBI report. He has, therefore, submitted that in the circumstances, he was shocked to receive the order dated 29.2.1998 placing him under suspension.

(21)

4. Shri M.M. Sudan, learned counsel for the applicant, has submitted that the impugned order of suspension has been passed in a mala fide and arbitrary manner on the same date when the applicant was to superannuate from service. He has also submitted that although Respondent 3 has issued the order of suspension "for an on behalf of the President, ICAR", this is a false statement because no approval had been obtained from the Hon'ble Minister for Agriculture, who is the President of the ICAR. According to him, the approval had been obtained on the file for suspension of the applicant from the Minister of State for Agriculture, who is only the Vice President of the ICAR. According to the learned counsel, the authority competent to impose penalty on the applicant is the President, ICAR. The applicant was holding the post of Assistant Director General (Soils) in the revised pay scale of Rs.16400-22400/-. He has submitted that as Rule 10(1)(b) of the Rules gives a wide discretion to the appointing authority to place the Government servant under suspension, the discretion has to be exercised judiciously and in accordance with the Rules and guidelines. He has submitted that as the applicant has retired from service on 29.2.2000, he could not possibly interfere with the investigations, or tamper with the evidence in his official capacity. So he has submitted that the whole exercise of passing the suspension order has been done in a hurried, malafide and arbitrary

(22)

manner. He has submitted that in the circumstances of the case, as the pending investigation is against Ms. Halida Khatoon, Advocate, for false and excessive bills and the order of suspension has not been passed by the appointing authority, the same should be quashed and set aside as being illegal, null and void. He has also prayed that the respondents may be directed to release the retiral benefits to the applicant, including full Pension, Gratuity and Commutation of Pension.

(22)

5. We have seen the reply filed by the respondents and heard Dr. G.S. Sangwan, learned counsel. The respondents have also produced the relevant files. Learned counsel has also submitted written submissions which are placed on record.

6. The respondents have submitted that with regard to the bills submitted by Ms. Halida Khatoon, Advocate, referred to above, they had submitted the case to the CBI in 1994-95. They have also submitted that as the applicant had not sent the original documents required for taking up the case with the CBI for their investigation, it took considerable time to procure the same from the ICAR NEH Region, Shillong. They have submitted that the CBI had registered a case against the applicant as well as the Advocate Ms. Halida Khatoon. In the written submissions, learned counsel for the respondents has submitted that the Department was compelled to suspend the applicant on the instructions from the CBI which is clear from the letter dated 11.2.2000. They have submitted that since the CBI investigations were in the final stage and the applicant

YBZ

23

was to retire on 29.2.2000, they had issued the impugned order of suspension under the provisions of Rule 10(1)(b) of the Rules. According to the learned counsel, this Rule empowers, even an authority lower than the appointing authority, to place a person under suspension which has been done in the present case. According to him, initially, the Vice-President of the ICAR, that is the Minister of State had passed the order of suspension on 29.2.2000, which was got confirmed from the President, ICAR, that is, the Agriculture Minister who approved the decision on 25.3.2000. Learned counsel has, therefore, submitted that the approval by the President of the ICAR had been given within one month of the order being passed initially by the Vice-President of the ICAR. Therefore, he has submitted that there is no legal infirmity in the suspension order, as alleged by the learned counsel for the applicant. According to him, in the present case since the applicant was involved in a corruption case involving a large amount of money, this has to be kept in view while viewing the legal necessity of the President to pass the order against the applicant. He has very vehemently submitted that the applicant should not be allowed to take advantage of mere technicalities as the decision of the respondents was wholly proper and justified, considering that the applicant was alleged to be involved in the corruption matter along with Ms. Halida Khatoon, Advocate. He has relied on the judgement of the Tribunal in Bani Singh Vs. Union of India & Ors., (2000(1) AISLJ 61). He has also relied on the recommendations of the Administrative Reforms Commission as reproduced in Swamy's Compilation of the Rules, Chapter 3, Clause 8 (copy placed on record). According

13

to him, the Headquarters of the ICAR being at Delhi, initially the decision to suspend the applicant was taken by the Vice-President of the ICAR and within one month that decision was ratified by the Agriculture Minister/President, ICAR on 25.3.2000. He has, therefore, submitted that this is legally valid under Rule 10 of the Rules.

2A

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties as well as the relevant records submitted by the respondents.

8. We note that on 28.2.2000, sanction had been obtained from the Minister of State/ Vice-President, ICAR to place the applicant under suspension following which the impugned order dated 29.2.2000 has been issued. At that time, admittedly, the approval of the Hon'ble Agriculture Minister had not been obtained which was subsequently obtained by order dated 25.3.2000.

9. Rule 10(1)(b) of the Rules, reads as follows:

"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) x x x x x x x x

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial".

Yours

10. By Tribunal's order dated 15.2.2001, a direction was given to the respondents to bring on record any general or special order issued by the President of the Society, ICAR, namely, the Agriculture Minister or any other authority, empowering the Vice-President of the Society to act on his behalf in his absence while on tour or otherwise. In pursuance of this order, Shri G.S. Sangwan, learned counsel for the respondents had submitted the relevant departmental file and referred to the Note dated 5.3.2001 in which the reason has been recorded, after our previous order dated 15.2.2001. He has also relied on the Govt. of India, CS Department of Personnel O.M. dated 9.8.1974. In this O.M., it has been provided, inter alia, that "supervisory officers in field offices located outside the Headquarters may, wherever necessary, be empowered to place officers subordinate to them under suspension, subject to the conditions mentioned in paragraphs (2) above, by issuing special orders in the name of the President". The respondents have not brought on record any general or special order issued by the President of the ICAR empowering any other authority on his behalf to place an employee under suspension, as required under Rule 10(1)(b) of the Rules. In the present case, the impugned order has been issued from the Headquarters Office of the ICAR at Delhi and, therefore, the provisions relating to supervisory officers in field offices located outside the Headquarters are not relevant in the present case. The contention of Shri G.S. Sangwan, learned counsel that because of the gravity of the charges levelled against the applicant and, therefore, in public interest to curb corruption, the order, even if passed by an incompetent

(25)

authority should be allowed to stand cannot be agreed to as it will be in contravention of the provisions of law, as contained in Rule 10 of the Rules. Similarly, his contention that as the President of the ICAR had approved the decision taken by the Vice President within one month, will also not have the effect of nullifying the provisions of law because there is no reason why the respondents could not have strictly complied with the relevant provisions which are applicable to the facts of this case. They were well aware that the applicant was to retire from service on superannuation on 29.2.2000 and why they had to delay the whole matter till the last date, to take an appropriate decision is neither explained or reasonable. In other words, they could have taken the appropriate decision in the matter with the approval of the competent authority, well in time and in accordance with law. The contention of the learned counsel for the respondents that the approval of the President of the ICAR for suspension of the applicant is a mere technicality and non-compliance of the Rules is not a legal flaw, is an argument which is stated only to be rejected. Such an argument is totally contrary to the provisions of Rule 10(1)(b) of the Rules, wherein the appointing authority or a subordinate authority or any other authority so empowered by the competent authority by general or special order can place a Government servant under suspension. It is not disputed by the respondents that these Rules are applicable to the present case. Therefore, the subsequent ratification of the decision by the President, ICAR, who is the competent authority, cannot cure the

26

flaw. In this view of the matter, we agree with the submissions made by Shri M.M. Sudan, learned counsel that the suspension order passed against the applicant has been passed rather lightly/without regard to the relevant provisions of the Rules. Therefore, as the impugned suspension order dated 29.2.2000, stated to be passed on behalf of the President, ICAR had not, in fact, got the approval of the competent authority on that date, it is liable to be quashed and set aside. This action of the respondents ~~not only~~ ^{by} ~~still~~ shows that they were well aware, even on 29.2.2000 that to pass the suspension order against the applicant, the approval of the President, ICAR was necessary, which they have obtained much later. The submission of the learned counsel for the respondents that because the investigation against the applicant was for corruption, the non-compliance of the Rules should be condoned cannot be agreed to. Nobody is denying the fact that corruption in any form by any one should be dealt with severely but in accordance with law. However, in this case, the impugned order dated 29.2.2000 has not been passed by the competent authority in accordance with Rule 10(1)(b) of the Rules. We also see force in the submissions made by Shri M.M. Sudan, learned counsel, that as the applicant has retired from service on 29.2.2000, the relevant Instructions/guidelines issued by the Govt. of India, DOP&T for placing persons on suspension have not been followed, for example, applicant was not in a position to interfere with the criminal investigation or tamper with evidence in his official capacity after that date. He will also not be entitled to any suspension allowance after that date. The respondents have also stated that the charge-sheet

27

against the applicant has already been filed on 17.7.2000 in the competent criminal court which case is still pending.

11. In the result, for the reasons given above, the O.A. succeeds and is allowed. The impugned suspension order dated 29.2.2000 is quashed and set aside. The applicant shall be entitled to consequential benefits in accordance with law. However, it is open to the respondents to proceed in the matter in accordance with law, rules and instructions. No order as to costs.

(Govindan S. Tampi)
Member (A)

'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

28