

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.833/2000

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 6th day of February, 2001

Bani Singh, IRS
Deputy Commissioner - Income Tax
(Under Suspension)
D-208, Anand Vihar
Delhi - 110 092.

⑫ ... Applicant

(By Shri K.C.Mittal with Shri Harvir Singh, Advocates)

Vs.

1. Union of India through
Secretary to the
Government of India
Ministry of Finance
Department of Revenue
North Block
New Delhi.
2. The Chairman
Central Board of Direct Taxes
Ministry of Finance
North Block
New Delhi.
3. The Under Secretary to the
Government of India
Department of Revenue
Ministry of Finance
North Block
New Delhi.

... Respondents

(By Shri V.P.Uppal, Advocate)

O R D E R (Oral)

By Shri V.K.Majotra, Member(A):

The applicant has challenged the order dated 6.8.1999, Annexure-A2 whereby on review of suspension of the applicant the competent authority, taking into account the stage of investigation of the case by the CBI and considering all relevant facts and circumstances, including the nature and gravity of the alleged offence concluded that the suspension should be continued and there was no case for revocation of suspension of the applicant.

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2. The applicant was an Assistant Commissioner of Income Tax, when he was deemed to have been suspended w.e.f. 29.8.1996 following his arrest in a criminal case against him under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1996 as per FIR No.71(A)/96/DLI dated 28.8.1996. It was alleged that he had acquired properties by illegal means and thus was in possession of assets disproportionate to his known sources of income. The applicant has filed OA No.2761/97 before this Tribunal against the order of suspension dated 15.10.1996 and vide order dated 30.11.1998 the Tribunal passed the following orders:

"13. We are of the view that in this present case also placing the applicant under suspension pending the investigation by the CBI, cannot be interfered with by the Tribunal. Taking into account the complexity of the case regarding the investigation into the disproportionate assets and the nexus of the officer's position as an Income-Tax Officer and the nature of the offence involving alleged corruption and moral turpitude, it cannot be said that the suspension is not a step in aid to the ultimate result of the enquiry. We are of the considered view that revocation of suspension at this stage when the investigating agency has reported that investigations are at the crucial stage and they require some more time to complete the same, could have an adverse impact on the administration.

14. In the light of the aforesaid facts and circumstances and taking into account the material placed before us in the departmental files, we are of the considered view that it will not be appropriate to interfere with the impugned order of suspension. We are also conscious of the fact that indefinite delays in investigation would also not be justified. The officer has been under suspension for over 2 years now and the investigating agency has to expedite the investigation to its conclusion at the earliest possible time. Therefore, while we do not find it appropriate to interfere with the impugned orders of suspension, we direct the respondents to review the case of the applicant for revocation of suspension within a period of next six months, by which time the investigating agency should also be advised to complete the investigation.

15. The application is disposed of on the above lines. No order as to costs."

3. According to the applicant, the respondents have not reviewed applicant's case of suspension in terms of the above directions of the Tribunal. Whereas the respondents did not review applicant's suspension within the stipulated period of six months from the order dated 30.11.1998, the stage of investigation by CBI has also passed now that charge sheet has been filed on 25.2.2000 in the court of Spl. Judge, Tis Hazari Court, Delhi. The applicant has sought quashing and setting aside of the order dated 15.10.1996 whereby he was initially placed under suspension and also of the order dated 6.8.1999 whereby his suspension has been continued. He has also sought consequential benefits from the date from which the suspension order was deemed to have been passed by the respondents. He has further sought for quashing of departmental/ disciplinary proceedings.

4. In their counter the respondents have stated that the respondents have undertaken review of suspension and after taking into account relevant facts and circumstances of the case including the fact of the stage of investigation by the CBI and the nature and gravity of the alleged offences, it was decided that there was no case for revocation of suspension and that suspension should continue. This decision was communicated to the applicant vide order dated 6.8.1999. The respondents have stated that a charge sheet has been filed by the CBI now in the court of Special Judge, Tis Hazari Court on 25.2.2000 and the trial is in progress. According to the respondents, the continuance of *****

suspension is fully justified and the reasons for the same has been described in the review order dated 6.8.1999.

(V)

5. We have heard the learned counsel on both sides and perused the material on record. The learned counsel of the applicant drew our attention to the observations of the Court made in order dated 30.11.1998 in OA No.2761/97 wherein it was stated by the Court that an indefinite delay in investigation has taken place which was not justified. The officer had been under suspension for over two years and the investigating agency has to expedite the investigation to its conclusion at the earliest possible time and the respondents were directed to review the case of the applicant for revocation of suspension within a period of six months by which time the investigating agency was advised to complete the investigation. The Tribunal's order was passed on 30.11.1998. Now the officer has been under suspension for much beyond the period of four years even. The investigation was not completed within six months of the directions of the Court. However, ultimately the investigation has been completed and the charge sheet has been filed. The learned counsel contended that a person can be kept under suspension only if there is an apprehension that if he resumes the work he will tamper the record and influence the witnesses in the office. But that is not the position in the present case. In a case of disproportionate assets, according to the learned counsel, an entirely different approach has to be adopted for suspension of the concerned officer than the one adopted in cases of forgery, bribes,

embezzlement, etc. In case of disproportionate assets, only an individual is involved and suspension in such cases is not necessarily in public interest or public purpose. The learned counsel relied on the case of Hon'ble Supreme Court in Raj Kishore Parija Vs. Union of India and Others, 1995 Supp(4) SCC 235. In that case the concerned employee was suspended pending enquiry. There was a delay in completing enquiry, a chargesheet was served four years after suspension and the enquiry could not be completed even five years later. It was held that whereas the charges and disciplinary proceedings could not have been quashed by the Tribunal. Order related to reinstatement of the applicant was quite in order. He also relied on 1994 SCC (L&S) 835, State of H.P. Vs. B.C.Thakur. In that case the Divisional Forest Officer in the State of H.P. remained under suspension for nearly two years without substantial progress in the departmental enquiry. Whereas decision of the Tribunal to set aside suspension was upheld, however, the decision to set aside chargesheet was declared invalid.

6. The learned counsel for the respondents drew our attention to Rule 10(1)(b) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 which reads as follows:

"(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)

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

(b)

7. He further referred to Guiding principles relating to Suspension (Chapter-2), summarised in Swamy's Compilation of CCS (CCA) Rules which reads as follows:

"6. Guiding principles:

1. While public interest is to be the guiding factor in deciding to place a Government servant under suspension, the competent authority should take all factors into account and exercise his discretion with due care while taking such action even when the matter is under investigation and before a *prima facie* case is established. The following circumstances may be considered appropriate to place a Government servant under suspension:-

- (i) where his continuance in office will prejudice investigation, trial or any enquiry (e.g., apprehended tampering with witnesses or documents);
- (ii) where his continuance in office is likely to seriously subvert discipline in the office in which he is working;
- (iii) where his continuance in office will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal with officers involved in such scandals, particularly corruption;
- (iv) where a preliminary enquiry revealed a *prima facie* case justifying criminal or departmental proceedings, which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service; and
- (v) where he is suspected to have engaged himself in activities pre-judicial to the interest of the security of the State."

8. He particularly referred to Guiding principle 6.1(iii) above, contending that in the present case wider public interest is involved and it has been considered necessary to place the applicant

under suspension to demonstrate the policy of the Government to deal with the officers involved in scandals, particularly corruption. He further referred to the circumstances mentioned in Swamy's Compilation of CCS (CCA) Rules when suspension can be revoked by the competent authority, this can be done in the following circumstances in criminal offence.

(b)

"14. Revoking of suspension

1.

(a)

(b) Criminal Offence:-

(i) In arrest and detention cases, it is decided not to proceed further against the Government servant by filing a charge-sheet in the court.

(ii) If appeal/revision against acquittal in higher court fails.

(iii) If acquitted in trial court or if an appeal/revision in higher court against the conviction succeeds and he is ultimately acquitted and when it is not proposed to continue him under suspension, even though departmental proceedings may be initiated against him."

9. According to the learned counsel for the

respondents, in a criminal case, where trial has begun

~~as~~ ⁱⁿ ~~per~~ the circumstances stated above, the suspension

cannot be revoked at all. He relied on 1998(5) SCC

535, Union of India and Others Vs. Udai Narain,

suspension of an Additional Commissioner of Central

Excise was continued during the period between the

completion of investigation and beginning of a trial

although investigation was completed, trial was yet to

begin. The Court had held that during the intervening

period grounds for suspension no longer survived and

therefore the respondents should be reinstated. His

reinstatement however was not disturbed because the

suspension had already been continued for two years and SLP was delayed by 295 days. The Tribunal had taken the view that in Rule 10 of CCS (CCA) Rules the expression "investigation enquiry or trial" would not include the stage of filing of the charge sheet in the court and since investigation is over and the trial had yet not been commenced the respondent could not be placed under suspension. This view was not accepted by the Hon'ble Supreme Court.

(9)

10. The learned counsel for the respondents further referred to JT 1997(7) SC 572, Union of India & Another Vs. G.Ganayutham, it was held that the court would not interfere with the administrators decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic and moral standards.

11. The learned counsel for the respondents further relied on 1995(6) SCC 749, B.C.Chaturvedi Vs. Union of India & Others. The court decided the question whether the delay in initiating the disciplinary proceedings is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. It was held as follows:

"..... Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardy journey, as the Government has to do a lot to collect necessary material in this regard.

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In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in these type of cases. It is seen that the CBI had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution." (20)

12. The learned counsel for the applicant referring to the case of Udainarain supra distinguished the facts of that case with the present, contending that in the case of Udainarain the investigation was complete but trial had not commenced. In the present case the investigation having been completed the trial has also commenced.

13. Whereas when this Tribunal passed the earlier order dated 30.11.1998 a delay of two years had already taken place in the investigations by the CBI. Not only that the court desired the investigation to be completed most expeditiously a review was also directed to be held within a period of six months from 30.11.1998. At that point of time the investigations were said to be at crucial stage. A period of more than two years has elapsed since then. The respondents took much longer period than six months in reviewing the suspension of the applicant and passed orders dated 6.8.1999 at which point of time the same facts obtained as on 30.11.1998, when OA 2761/97 was disposed of, that is the stage of investigation had yet not been concluded. The spirit of order dated 30.11.1998 is that basically the reason

for continuing the suspension was that investigation by CBI had not completed. In the present case now that the investigation by the CBI is completed and all the evidence, records have been taken into possession by them and the charge sheet has ultimately been filed with the Court on 25.2.2000. we are in agreement with the learned counsel for the applicant that the question of any tampering of the evidence and influencing witnesses in the event of revocation of the suspension of the applicant would not arise. The contention of the learned counsel for the respondents is that in view of the principle described in Swamy's Compilation of CCS (CCA) Rules, if a criminal trial against an official is in progress the suspension has to continue. In our considered view under Rule 10 of CCS (CCA) Rules, it is not obligatory that when a criminal offence is under investigation, enquiry or trial, an official has necessarily to be placed under suspension. It will depend on the facts and circumstances of each case whether suspension is to be continued or not, when a criminal offence is under investigation, enquiry or trial. In the present case in our view, it is a case of alleged disproportionate assets of an individual official which does not amount to involve wider public interest or a public scandal requiring continuation of the suspension of the applicant indefinitely. Whereas the Guiding principles have to be kept in view while suspending or continuing suspension of an official the authorities have to exercise their discretion with care and caution and it has to be kept in view by them as to what purpose would be achieved by continuing with suspension. In the present case, when by the

(21)

reinstatement of the applicant there is no likelihood of tampering of any evidence or witnesses during the criminal trial, there should be no reason for continuance of the suspension of the applicant. 62

14. Now that the investigation by the CBI in the matter against the applicant has been completed and criminal trial is in progress against the applicant in the court, in our view, no ground is available with the respondents to continue the suspension order of the applicant any longer. Consequently we quash and set aside the orders dated 15.10.1996 and 6.8.1999, ~~Annexure A1 and A2~~ respectively and direct the respondents to reinstate the applicant with immediate effect by posting him in a proper position. However, the respondents shall have the liberty to decide about the period of suspension of the applicant separately within three months, after the conclusion of the criminal proceedings pending against him. The OA is accordingly disposed of. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)

/RAO/