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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

REGN.NO. OA. 485/89 DATE OF DECISION: 17.12.1991.

B.S.Kasana ... Applicant.

Versus

Delhi Administration & Ors. ... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. D.K.CHAKRAVORTY, MEMBER (A).

For the Applicant ;;; Shri Shyam Babu Counsel.

For the Respondents. ;;; Ms.Meera Chhiber Counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice V.S.Malimath, Chairman)

The applicant before us was given an ad hoc promotion as Superintendent in the Delhi Administration by an order dated 21.10.1987 for a period of six months or till the post is filled up on regular basis, whichever occurred first. Having regard to the exigencies of service the ad hoc appointment came to be renewed from time to time and the last ad hoc appointment on the same terms came to be made on 27.10.1988. But before the expiry of the term of ad hoc appointment, the applicant was reverted by the impugned order dated 8.2.1989 (Annexure P-4). It says that his reversion to the post of Deputy Superintendent will be with immediate effect, and he was directed to report to Joint Director (Administration) for further orders. By another order made on the next date i.e. 9.2.1989 by the Director (Social Welfare) under Rule 10(1) of the CCS (CC&A) Rules, 1965, he was kept under suspension from the post of Deputy Superintendent pending investigation of Criminal charges levelled against the applicant. The applicant invoked the jurisdiction of this Tribunal under Section 19 of the Act and filed this Original Application on 2.3.1989. If we look at the prayers, it becomes clear that what he has prayed is for calling of the records both in regard

to his reversion and in regard to his suspension. He has prayed for quashing of the order of reversion dated 8.2.1989. But, there is no specific prayer in the Application challenging the order of suspension as such. After the Original Application was filed, the applicant, relying upon a subsequent event, requested the Tribunal for an early hearing of the Application. While doing so, he relied upon the communication from the Inspector VII Crime Branch to the Director, Directorate of Social Welfare, Delhi Administration, whereby it was informed that the case against the applicant was investigated and it was found during the investigation that there was not sufficient evidence to prosecute the concerned official. It is in this back ground that the case has been treated as untraced. There is however a suggestion that departmental action may be taken against the official concerned. Though this subsequent event has been relied upon, it is only for the purpose of securing early hearing of the Original Application and not seeking amendment of the Original Application, to challenge the order of suspension or for praying that the order of suspension may be deemed to have been vacated requiring the authorities to reinstate the applicant. The position, that emerges therefore is that there is no prayer of the applicant questioning the correctness of the order of suspension or praying for a direction to treat the order of suspension as having lapsed and to restore him to the position which he held before his suspension.

The learned counsel for the applicant Shri Shyam Babu did, however, challenge the order of suspension during the course of the arguments in addition to advancing arguments on the validity of the order of reversion. Even though, there is no prayer in regard to the suspension of the applicant. We shall deal with his contentions.

The principal argument of the learned counsel for the applicant is that the applicant having been suspended solely on the ground that a Criminal case against him is under investigation by the police, the police authorities themselves having reported that there is no evidence to prosecute the concerned official, the order of suspension automatically stood vacated and the applicant became entitled to be reinstated in service. In support of this contention, reliance was placed on two decisions, one of the Orissa High Court and the other of Rajasthan High Court, 1976 Labour and Industrial Cases, 1503 and SLR 1980(3) 220 respectively. The observations made in these two judgments prima facie support the stand taken by the learned counsel for the applicant that once the Criminal investigation resulted in a finding that there is no case for prosecuting there is automatic termination of suspension. With great respect we find it extremely difficult to accept this view. Firstly, we must bear in mind that the position, so far as, the applicant is concerned is governed by the statutory provision contained in Rule 10(5)(a) of the CCS (CC&A) Rules, which reads:

> "10(5)(a). An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so".

The clear effect of this statutory provision is against the proposition advanced by the applicant relying upon the two judgements aforesaid about automatic revocation of the order of suspension. The statutory provision requires the competent authority to modify or revoke the order of suspension. It says that the order of suspension shall continue to remain in force until it is modified or revoked. There is no scope under the rules, in question, for automatic revocation of the order of suspension. An express order for

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modifying or revoking the order of suspension has to be made by the competent authority. That the police authorities came to the conclusion that it is not possible to prosecute the person concerned for want of evidence does not mean that the competent authority is bound to revoke the order of suspension. It has to apply its mind to the question as to whether the order of suspension should be revoked or not. It is also necessary to point out that the terms of the order of suspension do not warrant the inference that it provides for automatic revocation of the order of suspension on the police authorities coming to the conclusion that it is not possible to prosecute the applicant for want of evidence. The order of suspension does not state that it will remain in force upto a particular time such as the date when the police authorities report that it is not possible to prosecute. The order of suspension adverts to the criminal investigation as a reason for keeping the applicant under suspension. It is not a terminus for the orderof termination. Therefore it is not possible to hold that there was automatic termination or suspension when it was found that it is not possible to prosecute the applicant for want of evidence.

Another argument of the learned counsel for the applicant is that the suspension having been made in the light of the criminal investigation against the applicant the police authorities having reported that it is not possible to prosecute the applicant for want of evidence, the competent authority was required to apply its mind as to whether the order of suspension should be modified or revoked by the competent authority under Rule 10(5)(a) of the Rules. This is a valid contention and we should accept the same. As the order of suspension was made pending investigation, it was the duty of the competent authority to apply its mind within a reasonable time as to whether it is necessary in public

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interest to continue the order of suspension or as to whether it should be modified or revoked. It was explained to us by the learned counsel for the respondents that the matter is being looked into having regard to the suggestion made by the Crime Branch that the departmental action may be taken against theofficial concerned and also having regard to the views expressed in the files by the superior authorities. The communication from the police authorities having been received in October, 1990, it is not possible to take the view that there is undue delay on the part of the authorities in taking appropriate decision on the question of revocation or modification of the order of suspension. Having regard to the circumstances, we consider it appropriate to call upon the concerned authority to apply its mind one way or the other in regard to continuance or otherwise of the suspension order. Learned counsel for the respondents submitted that reasonable time be granted for the respondents to look into the matter. In our opinion it is enough if we grant six weeks to take the decision in this regard.

We shall now examine the contentions raised with regard to the validity of the order of reversion. It is necessary to bear in mind that the applicant was not regularly promoted to the cadre of Superintendents. It was only an ad hoc appointment for a period of six months pending filling up of the vacancy on regular basis. Hence, it is obvious that the applicant cannot claim status or privilege of a Government servant, who has been regularly promoted to the post. The contention of the learned counsel forthe applicant is that though the language employed in the order is innocuous and does not cast stigma on the applicant, if we lift the veil, it will be seen that it is only a device to conceal punitive action. It cannot be disputed that the fact that the language employed is innocuous one. The learned counsel for the applicant submitted that the stand taken by the respondents in the counter

affidavit establishes that the real reason why the applicant was reverted to the lower post is that the authorities have taken the view that the applicant is guilty of serious misconduct such as misappropriation of public funds. If the applicant was able to satisfy us that the order is really punitive in character, there would have been scope for interference. The relevant files were produced before us for our perusal during the course of the arguments. On a perusal of the same, we notice that several charges levelled against the applicant were examined and it was felt that the matter was so serious that a thorough criminal investigation was essential and that disciplinary inquiry will not meet the ends of justice. It was felt that the applicant should be prosecuted for criminal offences. It had also been noticed that the applicant was holding only an ad hoc promotion and not a regular promotion and that his term would have expired within about two months.

The reply given by the respondents as also the records clearly indicate that no decision was taken holding the applicant guilty of misconduct. The decision was taken only to the effect that there is prima-facie case made out for being inquired into both in disciplinary proceedings as also in criminal proceedings. In other words, the decision taken was to hold an inquiry. As there was option for them to hold a disciplinary inquiry or to hold a criminal inquiry, they preferred to hold a criminal inquiry. This is, therefore, not a case where it can be said that the applicant was held guilty of misconduct. The basis of reversion is not a finding of guilt against the applicant but a finding that there is a prima facie case for investigation as to whether the applicant was guilty of misconduct or not. We have, therefore, no hesitation in taking the view that the order of reversion is not really punitive in character.

Even if the order of reversion is not punitive in character, as the applicant was entitled to continue as an adhoc appointee for the rest of the period of the order of appointment, there should be a valid reason justifying the termination of the same and reverting him to the lower post. The Supreme Court has in AIR 1978 SC 1979 held that the authority cannot act arbitrarily and there should be a valid reason to support their action. We find on a perusal of the records and the stand taken by the parties that the order of reversion was made in the context of the material which came before the authorities that there are serious allegations of misconduct, which require to be looked into and inquired. At that time, the applicant was holding the appointment only on an ad hoc basis. A decision was taken to have the case examined if he could be prosecuted for criminal offences. Though the question of disciplinary inquiry had come up for consideration, it is obvious that it was felt having regard to the gravity of the misconduct, the holding of disciplinary inquiry was not found to be better alternative. As the remaining term of ad hoc appointmentwas a short one and as the continuance of the applicant was not found to be in public interest, it felt that it was more appropriate that the applicant is reverted to a substantive post and then suspended from that position pending investigation by the criminal court. The reasons assigned in the circumstances are valid reasons and are in public interest. Therefore, it is not possible to declare the action of reverting the applicant as arbitrary. The order of reversion in the circumstances is not liable for interference.

This Application is partly allowed. The respondents are directed to take a decision on the question of revoking or modifying the order of suspension within a period of six weeks from this date. It is made clear that if the authorities decide to hold the disciplinary inquiry against the applicant,

they are entitled to take all factors into account while taking the decision in regard to continuance of the order of suspension. Let a copy of this order be sent to the Respondents. No costs.

(D.K.CHAKRAVORTY)
MEMBER(A)

(V.S.MALIMATH)
CHAIRMAN

SRD