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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 228 1988
T.A. No.

DATE OF DECISION 18.7.1988

Shri J.K.Varshneya **Petitioner**

Shri Jagjit Singh, **Advocate for the Petitioner(s)**

Versus

Union of India **Respondents**

Shri P.P.Khurana, **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches? No


(KAUSHAL KUMAR)
MEMBER


(K. MADHAVA REDDY)
CHAIRMAN

18.7.88

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI. 8

REGN.NO.CA 228/88

Date of decision: 18.7.1988

Shri J.K.Varshneya Applicant

Vs.

Union of India Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant Shri Jagjit Singh,
Counsel.

For the Respondents Shri P.P. Khurana,
Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy, Chairman)

The applicant is a Chief Engineer of Central Public Works Department. He was on deputation to the Delhi Development Authority. He is due to retire on 31.1.1989. While he was working as Engineer Member with the Delhi Development Authority, he was placed under suspension on 20.6.1986. The order of suspension reads as under:-

" WHEREAS a disciplinary proceeding against Shri J.K. Varshneya, Chief Engineer(Civil), Central Public Works Department and now on deputation to the Delhi Development Authority as Engineer Member, is contemplated.

NOW, THEREFORE, the President, in exercise of the powers conferred by

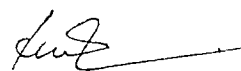


sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Shri J.K. Varshneya under suspension with immediate effect.

It is further ordered that during the period this order shall remain in force the headquarters of Shri J.K. Varshneya, Chief Engineer (Civil), Central Public Works Department and now on deputation to the Delhi Development Authority as Engineer Member shall be New Delhi and the said Shri J.K. Varshneya shall not leave the headquarters without obtaining the previous permission of the undersigned.

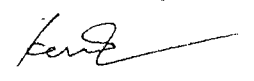
By order and in the name of the President."

2. Thereafter the applicant was repatriated to his parent department vide order dated 15.12.1986, but no chargesheet was served in the contemplated disciplinary proceedings. He, therefore, moved this Tribunal on 5.2.1988 for appropriate directions to quash the order of suspension and to reinstate him in service with arrears of full pay and allowances and to grant him other consequential benefits. This application was admitted on 9.2.1988. The Respondents entered appearance and opposed any interim direction ordering reinstatement in service xx prayed for by the applicant pending disposal of the application. On 21.3.1988 another Bench of this Tribunal directed the Respondents to serve the applicant with chargesheet, if so advised within a period of three months from that day. It



was also made clear that " otherwise the question of reinstatement of the applicant will be taken up by the Tribunal pending decision of the main application which is already fixed for further direction on 18th April, 1988." On 22.6.1988 a chargesheet, along with articles of charge was served on the applicant and his suspension was continued pending inquiry into the said charges. As the interim relief prayed for and the relief claimed in the main application were the same and as the applicant is to retire on 31.1.1989, this application was posted for final hearing. At the hearing of the case for one reason or the other the record required to be produced has not been produced. In the circumstances, we have no option but to proceed to hear and dispose of the case on the basis of the present material, the authenticity of which is not in dispute.

3. From the above narration of facts, it is clear that while the applicant belongs to the Central Public Works Department and has a lien on a post in the Central Public Works Department, he was on deputation with the Delhi Development



Authority for a period of three years. Though he was placed under suspension on 20.6.1986 no disciplinary proceedings were initiated against him even by the date of the filing of this application. The suspension itself was in contemplation of initiation of disciplinary proceedings. But no disciplinary proceedings were initiated by serving any chargesheet for well over one year and 8 months.

4. In O.P.Gupta Vs. Union of India(1) the Supreme Court observed as under:-

"..... It is clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the Executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. It is fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case."

5. In D.Mangaleswaran Vs. Commissioner of Income Tax Tamil Nadu & another(2) in the circumstances

(1) 1987(4) SCC 328 = AIR 1987 SC 2257

(2) (1987)² ATC 828

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of that case where the petitioner was not in any way responsible for delay in initiating the disciplinary proceedings, the Madras Bench of the Central Administrative Tribunal after discussing the purport of the circular issued in this behalf emphasising the expeditious disposal of the disciplinary proceedings and laying down the guidelines in the matter of extended suspension order held that the suspension order was not valid even where the delay was only of 10 months and accordingly quashed the same.

6. In Abullais Khan Vs. the State of West Bengal & others (3) the Calcutta Bench of the Central Administrative Tribunal quashed the suspension order where the charged officer was placed under suspension for two years. The Bench also observed that since the investigation has been completed and the relevant documents are already in the possession of the Respondents, there was no scope for tampering the same.

7. In Syed Jameluddin Ali Vs. Union of India & others⁽⁴⁾ the Guwahati Bench of the Central Administrative Tribunal observed that the period of suspension should not exceed 6 months except in

(3) A.T.R.1986(2) C.A.T.97.

(4) A.T.R.1987(1) C.A.T.640

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exceptional cases and in cases where suspension is ordered pending Court cases. Discussing the guidelines issued in this behalf, the Bench observed that after the expiry of six months the concerned authority should have considered whether continuous suspension was absolutely necessary. The Bench accordingly revoked the suspension and directed reinstatement of the applicant without prejudice to the departmental enquiry.

8. In P.Chandra Manoharam Vs.Union of India(5) the Hyderabad Bench of the Tribunal directed reinstatement where chargesheet was not filed for a long time. Referring to the instructions issued by the Central Government in this behalf, the Bench observed:-

" Even though these instructions are applicable to Central Government employees and not specifically made applicable to the All India Services, we are of the view that the procedures laid down in those guidelines enshrine salutary principles which safeguard the interest of the Government employees against arbitrary and inequitable action by Government and must, therefore, be kept in view by the State Government/ Central Government while considering the appeals, representations, etc. by the affected All India Service Officers."

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The Bench also observed:-

"Though suspension in itself is not a form of penalty, it definitely constitutes a great hardship to an affected servant in that apart from not being allowed to perform legitimate duties and earn salary and he is paid at reduced rate during the period and it causes lasting damage to his reputation."

9. In Andayil Rajakrishnan Vs. Union of India & others (6) the New Bombay Bench of the Tribunal held that it is true that the competent authority has power to keep an employee under suspension pending enquiry, but that power has to be exercised judiciously and the suspension for a period of 4 years was quashed.

10. In C.L. Bakolia Vs. Union of India (7) to which both of us are parties the order of suspension was quashed where the chargesheet was not served even after a lapse of two years.

11. In Denesh Kumar Sandila Vs. Union of India (8) another Bench of this Tribunal by judgement dated 1.4.1987 to which one of us (Chairman) was a party, taking into account the fact that no chargesheet was filed in the Criminal Court nor issued in the departmental proceedings, quashed the suspension order.

(6) (1987) 6 ATC 597
(7) MP No. 1080 in CA No. 648/87
(8) MP No. 366/87 in CA 50/87

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12. Another Bench of the Tribunal in Rajinder Prasad Pandey & R.P.Suri Vs. Union of India & others(9) by judgement dated 1.7.1987 applying the law laid down in some of the earlier decisions, quashed the order continuing the applicants therein under suspension for the reason that there was a delay of more than 1½ years in serving the chargesheet.

13. The Supreme Court in Chauhan Vs. State of U.P.(10) laid down as under:-

" If a Government servant is placed under suspension for an indefinite period of time, it would certainly be against public interest and is liable to be struck down."

14. Having regard to these clear decisions and the law laid down by the Supreme Court, the suspension of the applicant for an indefinite period especially without serving the chargesheet would itself render the order of suspension untenable and unsustainable . On the date when this application was filed, no chargesheet was served on the applicant. No chargesheet was served for nearly two years after the applicant was placed under suspension. This prolonged delay itself is sufficient to quash the suspension order.

(9) CA 551/87 & CA 608/87
(10) 1977 AWC 704

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15. We also find that there are no valid reasons for the continued suspension of the applicant.

16. As already noticed above, the applicant is a Chief Engineer in the Central Public Works Department. He was only on deputation to the Delhi Development Authority as Member Engineer. The charge-sheet now served is in respect of the advice given by him as Member Engineer to a Committee in the matter of allotment of flats, one of which was allotted to his own wife. The allegation is that certain flats were withdrawn from the pool of draw of flats and on his advice at a meeting the serial numbers of the flats were altered. It is also alleged that he strongly recommended allotment of flat No.2 renumbered as 571 to his wife Smt. Veerbala Varshneya. Accordingly, a decision was taken at this meeting to renumber the flats from the opposite direction. After renumbering, the Commissioner(Housing) put up a note for withdrawing 8 flats, including the flat allotted to applicant's wife Smt. Veerbala from the general draw of lots on 31.12.1984. It is not denied that his wife was entitled to allotment. How far this allegation which has yet to be inquired into would be established, it is premature to say. The fact remains that this allegation relates to an act or omission of the



applicant while he was serving the Delhi Development Authority. He has since been repatriated to his parent department. From the chargesheet, it is evident that the entire record which forms the basis of the charge is in the custody of the Delhi Development Authority. That record is of the Delhi Development Authority. Witnesses who may be examined in support of these charges are the servants of the Delhi Development Authority. The applicant having been repatriated to the Central Public Works Department, his parent department, ^{the} witnesses who are the servants of the Delhi Development Authority would not be under his control or influence. He has been under suspension now for more than 2 years. The suspension is neither intended to be by way of punishment nor should it operate as such. It is only intended to facilitate the enquiry. Now that the entire record is in the possession of the Delhi Development Authority and none of the witnesses is under the control of the applicant, there can be no apprehension of the witnesses being in any way influenced and any evidence being tampered; his suspension is not necessary for facilitating the enquiry into the charge levelled against him.

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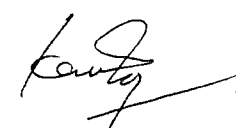
Except this charge, there is no other allegation. His house was raided by the Central Bureau of Investigation on 18.6.86 and even as admitted in the counter filed by the Respondents the Central Bureau of Investigation sent an investigation report to the Ministry stating that nothing incriminating was found against the applicant. The nature of the charges also do not warrant his continued suspension. The suspension order is quashed with immediate effect and the applicant shall be reinstated in service forthwith.

17. This order shall be complied with within a period of two weeks from the date of its receipt by the Respondents.

18. It is however, made clear that if the enquiry is proceeded with, how the period of suspension already undergone shall be treated will be decided by the competent authority in accordance with law.

19. This application is accordingly allowed with no order as to costs.


(KAUSHAL KUMAR)
MEMBER


(K. MADHAVA REDDY)
CHAIRMAN

18.7.88