

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.



O.A. 570/88

Date of decision 20.1.1989

Dr. Kanwarpal SinghPetitioner

Vs.

Union of India & OthersRespondents.

For the petitionerShri B.S. Mainee,
Counsel

For the respondentsShri Inderjit
Sharma, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN(A)

1. Whether Reporters of local paper may be allowed to see the judgment? *yes*
2. To be referred to the Reporter or not? *yes*

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who has been working as Assistant Divisional Medical Officer in the Western Railway, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order of suspension dated 23.7.1986 be quashed.

2. The facts of the case which are undisputed, are as follows. The applicant was appointed to his present post on ad hoc basis with effect from 31.1.1977 and he was regularised in that post with effect from 24.12.82. While working at Bharatpur, he was implicated in a case of accepting illegal gratification on 25.9.86. Thereafter,

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he was placed under suspension by the impugned order dated 23.7.86., which reads as follows:-

" ORDER

Whereas a case against Dr. K.P. Singh, Assistant Divisional Medical Officer, Western Railway, in respect of a Criminal offence is under investigation.

Now, therefore, the Railway Board in exercise of the powers conferred by Rule 5(1)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968, hereby place the said Dr. K.P. Singh under suspension with immediate effect.

It is further ordered that during the period this order shall remain in force, the said Dr. K. P. Singh shall not leave the Headquarters without obtaining the previous permission of the competent authority.

Shri K.P. Singh will be paid subsistence allowance as admissible to him under Rule 2043-RII during the period of suspension.

(T.N. Vijn)
Joint Secretary (E) Railway
Board."

(vide Annexure A-I, page 13 of the
Paper-Book)

3. On 27.4.87, a memorandum, together with the Articles of charge, was issued to him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. This was nearly 9 months after his suspension.
4. The applicant submitted his statement of defence on 7.8.87. On 22.12.87, respondent No.2 nominated an Inquiry Officer and a Presenting Officer. It has been alleged that there had been no headway in the conduct of the Departmental Proceedings and, therefore, the applicant made representations to the respondents, one after the other, requesting for revoking the order of suspension. On 2.3.88, the respondents enhanced the Subsistence

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Allowance from 50% to 66²%. The respondents did not, however, revoke the order of suspension.

5. The respondents, who have filed their counter affidavit, have stated that while working as Assistant Divisional Medical Officer, Western Railway Health Unit, Bharatpur, the applicant was caught red handed by a team of C.B.I. on 29.5.86 while accepting illegal gratification of Rs.30/- from a railway Government servant for issuing to him a fitness certificate. The respondents have further stated that the first hearing of the proceedings was held on 22.7.88.

6. We have gone through the records of the case carefully and have heard the learned counsel of both parties. Admittedly, a period of more than 2 years have elapsed after the applicant was placed under suspension. The disciplinary enquiry has not yet been concluded and final orders have not yet been passed. In view of this, the learned counsel of the applicant vehemently contended that this is a fit case in which the impugned order of suspension should be quashed as the delay involved in finalising the proceedings is inordinate. He also relied upon the decision of this Tribunal in Shurvir Singh Vs. Delhi Administration, 1988 (1) SLJ 127 and of the decision of this Tribunal in J.K. Varshneya Vs. U.O.I. (OA 228/88) dated 18.7.88.

7. The learned counsel of the respondents contended that the applicant was placed under suspension keeping in view the instructions issued by the Department of

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Personnel & Administrative Reforms in their O.M. dated 16.2.85. According to this O.M., suspension may be resorted to in very serious cases of corruption/ moral turpitude or in cases where direct and specific evidence to implicate Government servants in corruption cases is already available. Suspension in such cases will tone up the integrity in the Administration by acting as a deterrent to corrupt employees indulging in such practice. One such instance ^{is} "where there is direct evidence of corruption is where a Government servant is caught red-handed while accepting bribe in a trap arranged by a ^{Police or} ~~Public~~ Organisation. After a trap is successfully laid, a criminal case is filed against the Government servant which generally ends in his conviction. Subsequently, on the ground of conduct which had led to his conviction on a criminal charge, the Government servant is generally dismissed ~~or~~ removed from Service. Thus there is a strong justification for placing under suspension a Government servant who has been caught accepting illegal gratification in a trap case. Invariably, in such cases, the Government servant should, therefore, be placed under suspension with a view to making the anti-corruption measures more effective. Such an action would also create the desired impact in the mind of the public that the Government is serious in dealing with cases of corruption".

8. The learned counsel for the respondents, therefore, contended that no lenient view could be taken in such cases. As regards the delay in the conclusion of the proceedings, he submitted that the departmental enquiry has been concluded on 22.12.88 and the final order will be passed soon. He also wondered as to what purpose would be served by revoking the impugned order of suspension, in case the Competent Authority were to impose a penalty of dismissal from service on the applicant.

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9. The sole ground on which the suspension of the applicant has been challenged in the present proceedings is undue delay on the part of the respondents in initiating and concluding the departmental proceedings. There was a gap of about 9 months from the date of suspension to the date of the serving of the charge-sheet on the applicant. If, as submitted by the learned counsel of the respondents, the inquiry has concluded by 22nd December, 1988, the delay involved in the conduct of the departmental proceedings is about 1½ years. The question arises whether this can be considered as undue or unreasonable delay.

10. The authorities relied upon by the learned counsel of the applicant in support of his contention that there was undue delay in the instant case, are not strictly relevant. The learned counsel for the applicant has relied upon the decisions of this Tribunal in some cases in which the order of suspension had been revoked on the ground of delay as well as on consideration that there was no apprehension of the applicant being in a position of influencing ^{or} ~~the~~ the witnesses or tampering with the records. In the case of J.K. Varshneya Vs. Union of India dated 18.7.88 decided by the Principal Bench of the Tribunal headed by the Chairman, Chief Engineer of Central Public Works Department had been placed under suspension in June, 1986 and ^{for} nearly 2 years.

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the charge-sheet had not been issued to him. He filed an application before the Tribunal in February, 1988, when the Tribunal directed the respondents to serve the applicant with a charge-sheet, if so advised, within a period of 3 months from 21.3.88. Pursuant to this, a charge-sheet was issued to the applicant in June, 1988. The applicant was to retire in January, 1989. The enquiry had not concluded by the time the Tribunal delivered its judgment. Therefore, the facts of Varshneya's case are not on all fours with the facts of the instant case. In Varshneya's case, the Tribunal referred to the previous decisions on the subject including the decision of the Supreme Court in O.P. Gupta Vs. U.O.I., AIR 1987 SC 2257. In Gupta's case, the period of suspension without inquiry was nearly 11 years and the inquiry had not been completed for nearly 20 years.

11. The other decisions/referred to in the case of Varshneya also involved inordinate delay in either serving the charge-sheet on the Charged Officer or in concluding the departmental proceedings.

12. Therefore, we are of the opinion that the decisions relied upon by the learned counsel of the applicant would not entirely support the plea of the applicant that there had been inordinate delay in initiating the departmental proceedings (about 7 months) or in concluding the proceedings (nearly 1½ years).

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13. There is, however, another aspect of the matter to be considered. The learned counsel of the respondents have submitted during the hearing that the inquiry is now complete and it has reached the stage where Competent Authority has to pass appropriate orders. Therefore, there could be no apprehension that the applicant would influence the witnesses or tamper with the records, if he were to be reinstated in service. Though the applicant was placed under suspension on 23.7.86., the question whether suspension should be continued or not and whether the Subsistence Allowance should be increased on account of delay in conclusion of the proceedings, was not reviewed until 11.2.88, as has been admitted in the counter affidavit filed by the respondents.

14. In the conspectus of the facts and circumstances of the present case, we are of the opinion that there is no justification in placing the applicant under suspension any longer. The respondents would no doubt be entitled to pass appropriate orders in the disciplinary case initiated against the applicant and it will also be open to the applicant to move the Tribunal with a fresh application in accordance with law, if he is aggrieved by the orders passed by the Competent Authority.

15. We, therefore, order and direct as follows:-

(i) The impugned order of suspension dated 23.7.86 is quashed. The respondents shall reinstate the applicant

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in service with effect from the date of receipt of a copy of this order.

(ii) The pay and allowances payable to the applicant from the date of suspension to the date of reinstatement, shall be decided by the respondents in accordance with the relevant rules within a period of 2 months from the date of receipt of this order.

(iii) The respondents shall pass final orders in the disciplinary case pending against the applicant as expeditiously as possible, but in any event not later than 31st March, 1989.

(iv) In case the applicant is aggrieved by the final orders passed by the Competent Authority, he will be at liberty to file a fresh application before the Tribunal after exhausting the departmental remedies available to him by way of appeal, revision, etc., in accordance with law.

(v) There will be no order as to costs.


20.1.89
(S.P. MUKERJI)
VICE CHAIRMAN(A)


(P.K. KARTHA)
VICE CHAIRMAN(J)