(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Pronounced on:

Dated: This 20th day of November 2020

Present:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

HON'BLE MR ANAND MATHUR , MEMBER – A

O.A. No.61/564/2020

Mohd Akram s/o Fazal Hussain r/o Village Nadian, Tehsil Darhal, Rajouri

…..... Applicant

By Advocate: Mr. Sudershan Sharma

Versus

1. Union Territory of Jammu & Kashmir through Principal Secretary to Govt., Public Works (R&B) Department, Civil Secretariat, Srinagar.
2. Chief Engineer, Pradhan Mantri Gram Sadak Yojana (PMGSY), Jammu
3. Executive Engineer, Pradhan Mantri Gram Sadak Yojana (PMGSY), Budhal

……Respondents

By Advocate: Shri Amit Gupta, AAG

O R D E R

Per Rakesh Sagar Jain, Member (J)

1) Applicant Mohd Akram has filed the present O.A. under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:

"Prayer seeking quashing of the Government Order bearing no. 223-PW (R&B) of 2020 dated 05.08.2020 passed by respondent No. 1

whereby the applicant has been placed under suspension in terms of Rule 31 (1) of J&K Civil Services (Classification, Control & Appeal) Rules, 1956. The said order is patently illegal, arbitrary, without proper application of mind and has been passed on the dictates of the family of the estranged wife of the applicant"

2) Applicant has challenged the impugned order of suspension on number of grounds as delineated in the O.A. It is the case of applicant that he had matrimonial dispute with his divorced wife Dr. Qamar-ul-Nisa and on 19.08.2018, applicant was attacked by the relatives of his ex-wife and admitted in the hospital. However, Dr. Javaid Iqbal, real brother of his ex-wife got a false FIR registered against the applicant for assaulting said brother even though on the said date of occurrence, applicant stood admitted in the hospital. It is the case of applicant that the suspension is patently illegal and passed without application of mind.

3) On the other hand, respondents in their counter affidavit have taken the pleas that O.A. is meritless and deserves to be dismissed on following grounds:

I. Impugned suspension order has been passed after being arrested and being in police custody for more than 48 hours in a FIR registered against the applicant for assaulting a Government employee namely Dr.Javaid Iqbal in the year 2018 and thereby prevented the said Government servant from discharging his public duties.

II. Suspension order has been passed, as per, Rule 31 (1) of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 read with Government Employees (Conduct) Rules, 1971 which enjoins upon a Government

employee to maintain absolute integrity and do nothing which is unbecoming of a Government employee. Therefore, the conduct of the applicant being in violation of J&K Civil Services (Classification, Control and Appeal) Rules, 1956 read with Government Employees (Conduct) Rules, 1971 has been rightly placed under suspension.

4) Before going into the merits/demerits of the present case, the scope and effect of a suspension order may be considered. Suspension is not a substantive punishment, and is an interim order pending enquiry/criminal proceedings. Suspension of this kind is not a punishment, but only forbids or disables the petitioner from discharging the duties of his office or the post held by him. In other words it is to restrain him from availing further opportunities of perpetrating the alleged misconduct, or to remove the impression among members of the service that dereliction of duty would pay and the offending employee can get away pending inquiry without any impediment, or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses, or affording the delinquent the opportunity in office to impede the progress of the investigation or inquiry etc.

5) Regarding the scope of a suspension order, the Hon'ble Apex Court held in following cases:

A. State of Orissa vs. Bimal Kumar Mohanty AIR 1994 SC 2296 that:
"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of

omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

B. Civil Appeal No. 9454 of 2013 titled Union of India v/s Ashok Kumar Aggarwal, decided on 22nd November, 2013:

"9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry."

"10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc."

> "Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review."

6) It is also a settled principle of law that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene.

7) We have heard and considered the arguments of the learned counsel for applicant and learned AAG for respondents and gone through the material on record.

8) It would be pertinent to note the contents of the impugned suspension order. It reads as below:

> "Government of Jammu and Kashmir
> Public Works (R&B) Department
> Civil Secretariat, Srinagar
>
> Subject: Suspension of Er. Mohammad Akram, I/c Assistant Engineer (Civil)
>
> i. FIR No. 110/2018 u/s 341, 353, 333, 147, RPC police station,
> Bakshi Nagar, Jammu
> ii. Letter No. CRB/2020/3318-21-DPOJ dated 11.01.2020 from Sr. Superintendent of police, Jammu.
> Government Order No. 223-PW (R&B) of 2020
> Dated : 05-08.2020
>
> Pending enquiry into his conduct, Er. Mohammad Akram, I/c Assistant Engineer (Civil), presently posted in PMGSY Division Budhal, is hereby placed under suspension in terms of Rule -31 (1) of J&K Civil Services (Classification, Control & Appeal) Rules, 1956.
> During the period of his suspension he shall remain attached with the office of Chief Engineer, PMGSY Jammu.
> By Order of the Government of Jammu and Kashmir.

9) Learned counsel for applicant argued that no details of the 'conduct' have been given in the order for placing the applicant under suspension which disable him from demonstrating to the Tribunal, the unreasonableness and the arbitrariness of the impugned order. Learned counsel argued that

thedetails of charges need not be specified in the suspension order, because they may be given later on in the charge-sheet, but at least some indication of the nature of misconduct proposed to be charged should be given even in the suspension order in contemplation of departmental enquiry which is lacking in the present case and therefore, the impugned order was passed without application of mind andat the dictates of applicant's divorced wife and show the lack of application of mind.

10) Learned counsel argued that it is a settled law that some reasons, at least in brief, must be disclosed in anadministrative order since it visits him with adverse, even if it is an order of affirmation. What are the particular of his 'conduct', whether it is in connection with his public life or private life is nowhere spelt out in the impugned order. The unreasoned order of suspension visits him with adverse and stigmatic consequences since he is unable to explain the reason for his suspension to his relatives, friends, parents who seem to think that he has been suspended for indulging in corrupt practices and he and his family has been socially boycotted in his village. Learned counsel placing reliance upon Chairman, Disciplinary Authority Vs. Jagdish Sharan, (2009) 4 SCC 240, Kranti Associates Private Limited Vs. Masood Ahmed, (2010) 9 SCC 496 and Mohinder Singh Gill v/s The Chief Election Commissioner, AIR 1978 SC 851 argued that it is incumbent to record reasons even in administrative decisions, if such decisions affects anyone prejudicially, and also operates as a restraint on arbitrary exercise of administrative power. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision-making process and therefore the impugned order in present

case does not fulfil the legal requirement of being a reasoned order as laid down by the Hon'ble Apex Court. The authority has not given the reasons less it exposes the administration to the charge of arbitrariness and non-application of mind. Therefore, the impugned order deserves to be set aside with heavy costs.

11) Be that as it may, the impugned order mentions that pending enquiry into the conduct of the applicant, he is placed under suspension under Rule 31 (1) of J&K Civil Services (Classification, Control & Appeal) Rules, 1956 (hereinafter referred to as the 'Rules'). Rule 31 (1) reads as:

> "The appointing authority or any authority to which it is subordinate or any other authority to which it is subordinate or any other authority empowered by the Government in this behalf, may place a Government servant under suspension where:
> (a) An inquiry into his conduct is contemplated or is pending; or
> (b) A complaint against him of any criminal is under investigation or trial.
> xx xx xx xx

12) Reiterating the pleas taken in the objections, learned AAG argued that the applicant has been placed under suspension since he was arrested by the police in criminal case and detained in custody for a period longer than 48 hours and his conduct was unbecoming of a Government servant and a criminal case is pending against the applicant.

13) Counter the arguments of learned AAG, learned counsel for applicant submitted that the respondents have advanced reasons in their objections

to justify the validity of the impugned order which reasons, however, are lacking in the impugned order and so, the absence of reasons in the impugned order cannot be supplied by the pleadings and placed reliance upon T.P. Senkumar v. Union of India, (2017) 6 SCC 801.

14) The Hon'ble Apex Court in T.P. Senkumar v. Union of India, (2017) 6 SCC 801, ruled that the law has been well settled that when an order is passed in exercise of a statutory power on certain grounds, its validity must be judged by the reasons mentioned in the order. Those reasons cannot be supplemented by other reasons through an affidavit or otherwise. It has been held that:

> "84. The law has been well-settled for many years now that when an order is passed in exercise of a statutory power on certain grounds, its validity must be judged by the reasons mentioned in the order. Those reasons cannot be supplemented by other reasons through an affidavit or otherwise. Were this not so, an order otherwise bad in law at the very outset may get validated through additional grounds later brought out in the form of an affidavit.
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> 85. In this context it is worth referring to Commissioner of Police v. GordhandasBhanjiin which it was said:
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> "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." This view was affirmed by the Constitution

Bench of this Court in Mohinder Singh Gill v. Chief Election Commissioner.

15) So, whatever, may be the stand of the respondents in the present O.A., the impugned order contains no reason and cannot be supplemented by reasons in the pleadings. The additional pleas taken by the respondents in their objections to validate the impugned order cannot be accepted and deserve outright rejection.

16) During the course of arguments, learned counsel for the applicant had reiterated the pleas raised by him in the O.A. to challenge the validity of the impugned order of suspension of applicant. It was vehemently argued by learned counsel for applicant that criminal offence (Rule 31 (1) (b) or detention (Rule 31 (2) is now sought to be made the basis for the issuance of the impugned order, which is impermissible under law.

17) It was also submitted by the learned counsel that the timing of the impugned order also gives substance to his plea that his client has been suspended due to the influence of his divorced wife who is on inimical terms with the applicant. The alleged occurrence covered by the FIR registered against the applicant allegedly took place in 2018 and after investigation, the police challan against the applicant is pending in the Court of law. It is after two years of inactivity when much water had flown under the bridge that the police and the administration has awoken up from its slumber like‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’to initiate the suspension proceedings against the applicant which reflects the

lack of application of mind of the respondents to the facts of the entire case.

18) Apart from the pleas taken by the learned counsel for applicant in his arguments, the impugned order as discussed above deserves to be quashed on the ground that no reasons have been assigned in the suspension order and there has been total non-application of mind while ordering the suspension of the applicant.

19) It is a settled law that the power of suspension should, however, not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. A suspension order cannot be actuated by mala fides, arbitrariness, or be passed for an ulterior purpose. An order of suspension should not be passed in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account. It should be made after consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The authority should also take into account all available material as to whether, in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry. Ordinarily, an order of suspension is passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated, and the nature of the evidence placed before it, on application of mind by the disciplinary authority.

20) In this regard, it would be fruitful to refer to Government Instruction inserted vide SRO – 6i6 dated 20.09.1978, placed on record by applicant which lays down that:

> "It may be appreciated that frequent resort to suspensions even at slightest provocation is not only unwarranted but also counter productive. Besides affecting morale in the services it puts avoidable stain on the public exchequer by way of subsistence allowance for non-work done. Public interest should be the guiding factor in deciding whether or not a Government servant should be placed under suspension or whether such action should be taken even while the matter is investigation and before a prima facie case has been established. It is, therefore, imperative that the discretion vested in the authorities should be exercised with due care and caution after taking all the factors into account.
>
> For example where continuance in office of a Government servant is considered likely to prejudice, investigation, trial or enquiry or his continuance is considered likely to subvert the discipline in the office in which he works, the purpose can be achieved if he is transferred to some other station or office as the case may be rather than to place him under suspension."

21) Looking to the facts of the case and impugned order as well as the settled principles of law laid down by the Hon'ble Apex Court, we are of the view that the respondents have failed to show public interest is being served by the suspension of the applicant. Applicant is being paid subsistence allowance without any work. Applicant is not only deprived of the full salary but also has to suffer in the society, as suspension definitely casts stigma.

22) In view of the factual and legal analysis as discussed above, we are of the considered opinion that the suspension of the applicant is totally illegal and unjustified. This Application is accordingly allowed. The impugned suspension order No. 223-PW(R&B) of 2020 dated 05.08.2020 is arbitrary and is hereby declared as illegal and unlawful and set aside. The respondents are directed to reinstate the applicant forthwith. The period of suspension shall be decided by the respondents in accordance with Rules and Regulation. However, the respondents to do the needful to initiate fresh action to place the applicant under suspension, as per, the provisions of J&K Civil Services (CCA) Rules, 1956, if it is deemed appropriate, by the respondents. No costs.

ANAND MATHUR
(Member- A)

RAKESH SAGAR JAIN
(Member-J)

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