IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 397/86 198 6
T.A. No.

DATE OF DECISION 21.7.87

Shri Hari Dev Pillai Petitioner

Shri Raju Ramachandran Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri N.S. Mehta Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. S.P. Mukerji, Administrative 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

(S.P. Mukerji)
Administrative Member

(K. Madhava Reddy) 21.7.87
Chairman

Central Administrative Tribunal
Principal Bench, Delhi

Regn. No.O.A.-397/86 Dated: 21.7.87

Shri Hari Dev Pillai .... Applicant

Versus

Union of India .... Respondents

For Applicant .... Shri Raju Ramachandran, Advocate.

For Respondents .... Shri N.S. Mehta, Advocate.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. S.P. Mukerji, Administrative Member.

(Judgement of the Bench delivered by Hon'ble Member, Shri S.P. Mukerji)

The applicant who is an officer belonging to the U.P. Cadre of the Indian Police Service moved the Tribunal on 27.5.1986 with an application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order dated 7.11.1984 placing the applicant under suspension (Annexure 'B' to the application) may be set aside and he should be reinstated and posted under the Central Government. He has also prayed that the entire period of suspension till the date of his reinstatement may be treated as period spent on duty with full pay and allowances. He has also prayed for an interim stay of the order of suspension and consequential reinstatement. By the detailed order dated 9.1.1987 the applicant's prayer for interim relief by way of staying the order of the suspension was rejected.

2. The material facts of the case which are not in dispute can be recounted as follows. The applicant has been working as Additional Commissioner of Police (Security & Traffic) in the Delhi Police on deputation from the U.P. Cadre of the I.P.S. w.e.f. 26.8.1982. He was in overall

....2.

charge of the security arrangements of the Prime Minister's house also. It was during his tenure that the late Prime Minister Smt. Indira Gandhi was assassinated on 31st October, 1984. It was considered to be the result of clearly grave lapses in the security arrangements and the respondents found a prima facie case to proceed against the officer. His services were placed at the disposal of the Home Ministry on 5.11.1984 and by the impugned order of 7th November, 1984, he was placed under suspension with immediate effect on the ground that "disciplinary proceedings are contemplated" against him. Shortly after this, the Government appointed a Commission of inquiry under the Commissions of Inquiry Act presided over by Justice M.P. Thakkar of the Supreme Court of India for inquiring into, inter alia, whether there had been any lapse in the security arrangements for the Prime Minister and if so, the persons who are responsible for the same. The petitioner submitted a memorial to the President of India on 30.7.1985 against the order of suspension pointing out that after the order of suspension, there had not been any further development in the disciplinary proceedings and, therefore, it could be assumed that no disciplinary proceedings were contemplated at the time of issue of the order of suspension or were still under contemplation and prayed that he should be reinstated with full pay and allowances for the entire period of suspension. Though the respondents aver that the memorial was rejected, the applicant avers that he has not received any communication to that effect. The petitioner has argued in the application that since no charge-sheet had been served on him, the order of suspension was without any basis and it should be quashed. The

.....3.

respondents have averred that there was sufficient ground to proceed against the applicant who was in overall charge of the security arrangements at the Prime Minister's residence, but since some of the relevant documents were in the custody of the Thakkar Commission and were not available for framing the charges, the charge-sheet could not be served upon the applicant. After the application had been admitted by us, the respondents through the Senior Standing Counsel on 18.11.1986 filed an application stating that a charge-sheet as enclosed with that application had been served on the applicant and that the enquiry would be concluded soon if the petitioner cooperates. It was indicated that in view of this development, the main application filed by the petitioner might be dismissed as infructuous.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. During the course of arguments the learned counsel for the applicant repeatedly averred that when the impugned order of suspension was passed there was no material to prove that it had been decided on the basis of any 'Fact Finding Preliminary Enquiry Committee's' report to proceed against the applicant. Such a presumption was made by him because no charge-sheet could be served on him for 22 months after suspension. He, therefore, pleaded that relevant documents leading to the issuance of the impugned order dated 7.11.1984 may be called for his inspection. The learned counsel for respondents claimed privilege against the disclosure of the documents but showed the relevant file to us in 'camera'. Having gone through the documents on 20.5.1987, we allowed the privilege claimed by the respondents under sections

....4.

123 and 124 of the Indian Evidence Act, 1872 on the ground that their disclosure would cause injury to public interest and public interest would suffer thereby, as discussed below.

4. After going through the documents, we were fully convinced that it will not be in the public interest to allow disclosure of these documents at this stage. It is now public knowledge that the assassination of the late Prime Minister within her own premises by members of her own security staff, has wide ramifications in time and space even beyond the shores of this country. The tragic assassination was one in a series of concatenation of violent incidents preceding and following the same. These incidents are deeply tangled and woven in the fabric of law and order and the vital elements of internal security of a very vulnerable and sizeable portion of our country. The responsibility and the degree of negligence on the part of the local police, including the applicant who was holding a key position were directly related to the security of the then Prime Minister, and had been the subject matter of the Thakkar Commission, the report of which has not so far been made public under the Commissions of Inquiry (Amendment) Act of 1986. This Act exempts in the interests of the sovereignty and integrity of India, security of the State, friendly relations with foreign States, or in the public interest, reports of commissions notified, from being placed before the Lok Sabha or State Assemblies. The documents for which the privilege is claimed being intimately connected with the entire conspectus of sensitive and inflammable events and facts which still have direct and indirect nexus with the continuing post-assassination under-currents of social tension and problems of internal security, we feel that the balance of public interest of

internal security lies in granting the privilege claimed by the respondents. We are also satisfied that by granting the privilege, the applicants' case does not suffer in law or equity. The celebrated ruling of the Supreme Court in S.P.Gupta Vs. Union of India 1981 (supp) SCC 87 cited by the learned Counsel for the applicant clearly lays down that privilege can be claimed only in relation to security of State (and friendly relations with other countries), as in this case. In a recent judgement in State of Bihar & Ors Vs. Kripalu Shankar and Others, (1987) 3 SCC 34, it has been held by the Supreme Court that 'in our considered view the internal notes file of the Government, maintained according to rules of business is a privileged document'. The Court went on to clarify that'what is to be borne in mind is that the notings in the departmental files by the hierarchy of officials are meant for the independent discharge of official duties and not for exposure outside.'

5. The main burden of the arguments propounded by the learned Counsel for the applicant against the impugned order of suspension is on the word 'contemplated' occurring in Rule 3 of the All India Services (Discipline and appeal) Rules,1969. The relevant extracts from this rule are as follows:

> "3. Suspension-(1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the service, against whom disciplinary proceedings are contemplated or are pending, that Government may -
>
> (a) if the member of the service serving under that Government, pass an order placing him under suspension, or
>
> (b) if the member of the service is serving under another Government, request that Government to place him under suspension,
>
> pending the conclusion of the disciplinary proceedings and the passing of the final order in the case."

Based on the aforesaid provision the impugned order was

passed as follows :

> " Whereas disciplinary proceedings are contemplated against Shri H.D.Pillai,IPS (UP : 1960)
>
> " Now therefore the Central Government in exercise of the powers conferred under Rule 3 of the All India Services(Discipline and Appeal) Rules 1969 hereby places Shri H.D. Pillai under suspension with immediate effect."

Reading the two (that is the rule and the order) together it appears to us that the impugned order was in consonance with the provisions of the rule. The learned Counsel for the petitioner seems to have challenged the veracity of the order passed, by arguing that the Government has lied in the impugned order by stating that the disciplinary proceedings are contemplated ("while no such proceedings were actually contemplated") when the impugned order was passed." The applicant however, has not indicated any ground to convince us why the Government should have gone on record by making a mendacious statement. The applicant has not alleged any vindictiveness or malice which might have prompted the Government to place the applicant under suspension. On the other hand, the fact that the Government actually served the chargesheet on the petitioner on 8.8.1986 proves to the hilt the factum of disciplinary proceedings being contemplated at the time of passing of the impugned order.

7. The learned Counsel for the applicant repeatedly referred to the ruling of the Allahabad High Court in Arya Vir Saxena Vs. State of UP (Allahabad) 1979 (1) SLR 52 the relevant portion of which reads as follows :

> "There are various stages in the conduct of disciplinary proceedings against an employee. The first stage is of suspicion, the second is of enquiry to find out if the suspicion has any basis: after the fact finding enquiry ends, and the suspicion is prima facie found to be not without basis, the stage comes for contemplating actual disciplinary proceedings.'Contemplation is a stage in the mental process leading to a particular stage which according to Webster's Third International Dictionary is the act of intention or considering a future event.'

The disciplinary enquiry is initiated by giving a charge-sheet to the employee. When the process of pure suspicion is finished the stage of contemplating the giving of the charge-sheet arrives. The processing of events may take no time or a long time, but the processing is essential for the charge of contemplation has not been reached. No disciplinary proceedings can be contemplated unless the authority has completed the preliminary fact enquiry and come to the prima facie conclusion that the suspicion has a foundation. The fact that suspension has lasted for more than three years without the charge-sheet being served is by itself sufficient to prove that disciplinary enquiry was not in contemplation on the date the suspension order was passed."

The learned counsel for the applicant has further referred to the Ruling of the Delhi High Court in Kulbhushan Vs. Punjab National Bank 1979 (1) SLR 436 (Delhi), The relevant para 12 of the judgement may be quoted as follows:

"12. In determining the true import of the expression "contemplated" in clause 12(1)(a) of the Regulation, it is necessary to bear in mind that suspension may be of two kinds, in the first instance, it may be punitive in nature, therefore, by itself constituting a punishment. Secondly,it is of a non-punitive nature and purely for the purpose of a departmental proceedings or disciplinary proceedings as a measure of security until the guilt of the delinquent officer has either been determined or he has been vindicated. Such suspension is not intended to punish the officer for any misconduct of which he may have been guilty or may eventually be found guilty. By its very nature, therefore, such suspension is ordinarily resorted to either when the disciplinary proceedings commence with the service of the formal charge-sheet or accusation on the officer or when such proceedings are about to commence. Such suspension being for the limited purpose of the proceedings, must be confined to the absolute minimum limits. In construing the expression "contemplated" it is also necessary to examine the setting in which the expression is used in the Regulation even though in the context of the ordinary or the judicially determined meaning of the expression. The regulation empowers the competent authority to suspend where a disciplinary proceeding against an officer is contemplated or is pending. The Regulation does not empower suspension where disciplinary proceedings are merely under contemplation. Disciplinary proceedings commence with the framing of the charge-sheet and culminate in the final order punishing of vindicating the officer. Disciplinary proceedings could not be contemplated unless a decision to initiate the proceedings had already been taken. The expression "is pending" also lends colour to the true meaning of the expression "contemplated", so that an officer may be suspended either where the proceedings are pending or if not pending,the decision to the initiate proceedings having been

taken, such proceedings are imminent and would follow as a matter of course. There would, therefore, be no power to suspend if the decision to initiate proceedings is yet to be taken where for example, the matter is at the preliminary enquiry or confidential enquiry or some sort of departmental investigation stages. The reason for this is obvious. Until the investigation or preliminary enquiry or confidential enquiry concludes, there can be no application of mind by the competent authority if the case was fit one for initiation of disciplinary proceedings and until such application of mind, it could not be said that the proceedings are contemplated. The mere possibility of disciplinary proceedings is outside the expression "contemplation". An extended meaning was sought to be given to the expression with reference to the language used in sub-clause (b) of clause 12(1) of the Regulations which provides for the eventuality where in respect of any criminal offence, a case was under investigation, enquiry or trial. True, pendency of investigation into an offence would justify a suspension under sub clause (b), but not so under sub clause (a), ~~xxx xxx so xxxxx~~ ~~xxxxxxxxx (a)~~. Investigation by the police stands on a different footing. The moment the conduct of an officer is subject matter of an investigation by the police, it would justify suspension because such investigation is a matter of public record. That is not so in the case of a preliminary enquiry by an employer or a confidential enquiry by him to determine if there was a prima facie case for proceedings. Moreover, the course of investigation by the police is regulated by law but not so where investigation is carried out by an employer on his own. I am, therefore, of the view that while suspension under the Regulation would be justified even though a formal charge-sheet or an accusation has not been made against the delinquent officer, mere pendency of the preliminary enquiry or a confidential enquiry or a departmental investigation would not justify an order of suspension and such an order could be made only if on an application of the mind to the material, the competent authority has taken a decision to initiate disciplinary proceedings even though the decision may not yet have been carried out."

We are afraid that the two cases cannot be of much avail to the applicant. The facts of the case before us are unique in the sense that the then Prime Minister of India was assassinated in broad day light by members of her own security staff, at her own premises. One of the assassins was shot dead shortly after the assassination and the other having been grievously injured has been sentenced to death

after a fullfledged criminal trial and the sentence has been confirmed by the High Court though the appeal is pending before the Supreme Court. There is no denying the fact that any reasonable man would have presumed that there had been serious lapse in the security arrangement and the applicant being admittedly in charge of security arrangement of the then Prime Minister at her residence there was a prima facie case of grave dereliction of duties on the part of the applicant. It would have seemed infructuous and perhaps ritualistic at that stage to launch a 'fact finding preliminary enquiry' in a formal way. The fact that the assassination took place on 31st October,1984 and the impugned order was passed on 7.11.1984 goes to show that whatever facts had to be gathered confidentially or otherwise a conscious decision was taken by proper application of mind to subject the applicant to disciplinary proceedings and disciplinary proceedings can be said to have been contemplated at the stage when the impugned order was passed. The facts in the aforesaid two rulings cannot be any stretch of imagination be said to be analogous to the instant case before us. We also would respectfully differ with the aforesaid two rulings to the extent of stating that contemplation of disciplinary proceedings need not always have to be preceded by a formal fact finding enquiry in a case like this where the facts are self-evident and the principle of 'res ipsa loquitur' is applicable. We are satisfied that at the time of passing of the impugned order there was sufficient circumstantial and factual material before the competent authority to justify an immediate suspension of the applicant in contemplation of disciplinary proceedings. The two main points of facts in respect of the applicant were firstly that the assassination was by the security staff within the residence

of the then Prime Minister and secondly that the applicant was responsible and accountable for making proper, adequate and foolproof security arrangements for the then Prime Minister. To our mind, these two irrefutable facts would have been sufficient for contemplating disciplinary proceedings and no formality of fact finding enquiry was necessary.

8. Further, unlike in the two rulings mentioned above the delay in the instant case in the serving of the charge-sheet on 8.8.1986 has been amply and satisfactorily explained by the respondents. It is admitted that Thakkar Commission was appointed by the Notification of 20.11.84 to enquire into the sequence of the event leading to the assassination of the late Prime Minister and to report "whether the crime could have been averted and whether there were any lapse or dereliction of duties in this regard on the part of any of the individual on security duty at the time of the crime and other individuals responsible for the security of the late Prime Minister....." Naturally all relevant documents had to be made available to the Commission which submitted its final report in February 1986. The ordinance to withhold such reports was issued on 14.5.86 and the Bill thereon was introduced on 18.7.86 and passed in July, 1986. It was for these reasons that the relevant documents for framing of the charge-sheet were not available. Soon after they were made available, the petitioner was served with charge-sheet on 8.8.1986. Under the peculiar circumstances of this case again, it cannot be stated unlike the cases cited by the learned counsel for the applicant that the charge sheet was so culpably delayed that the order of suspension in contemplation of the disciplinary proceedings assumed the character of a punitive order.

9. In State of Tamil Nadu Vs. P.M.Belliappa 1984(3)SLR 534,

cited by the learned counsel for the respondents, the Madras High Court has held as follows :

> "Rule 3 of Rules of course, leaves the matter of suspension to the objective satisfaction of the Government. The rule Contemplates two contingencies one prior to the drawing up of the articles of charges and the other posterior to the drawing up of the articles of charges. Where articles of charges have been drawn up, regard must be had to the nature of the charges: but where articles of charges have not yet been drawn up, it would suffice the purpose if regard is had to the circumstances of the case. In either way, the Government must be satisfied that it is necessary or desirable to place the member of a service under suspension. When the matter of suspension is left to the objective satisfaction of the Government, the normal rule is that it is not necessarily justifiable before this High Court and the Court cannot look into the question as to whether the materials are adequate or inadequate from its points of view. But the factum of satisfaction can always be questioned before this Court and the party challenging the order of suspension can always show before this Court that the professed satisfaction is no satisfaction at all either because it was formed on extraneous or irrelevant circumstances or that there was a total lack of application of mind to the question as to whether it is necessary or desirable to suspend the officer. Before us, the primay attempt on the part of the respondent was to demonstrate that there were enough materials before the respondent to arrive at the objective satisfaction on the question of suspension. The position that only those materials which were available on the date when the impugned order came to be passed alone are relevant and they alone could be taken into consideration for the purpose of arriving at the objective satisfaction was not disputed by the learned Advocate General appearing for the respondent. The facts and circumstances to be considered must be those which existed on the date of the conclusion of the opinion or arriving at the satisfaction and actually weighed with the authority while passing the impugned order and facts which have come to transpire subsequently or which have been subsequently unearthed as existing even at the time of the conclusion or formation of opinion though not considered and taken into account cannot at all be relied on to support the impugned order. <u>While this Court can examine as to whether the opinion or satisfaction was formed at all, this court cannot substitute its own satisfaction for that of the authority. Though the materials placed may not satisfy this Court, the task of the Court is only limited to an investigation as to whether there was any foundation of fact at all or whether irrelevant and extraneous circumstances have weighed with the authority while passing the impugned order. The fact that different formation of opinion or satis-</u>

faction is possible for this Court on the very same facts and circumstances is not a ground to quash the order in question." (emphasis supplied)

In Government of India Vs. T.N.Gosh 1971 SCC 734 it was held that "ordinarily when serious imputations are made against the conduct of an officer the disciplinary authority cannot immediately draw up the charge....." and "whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned."

10. The learned Counsel for the applicant during the course of the arguments questioned the wisdom and even bonafides of the Government in suspending the applicant even after he had been shifted from the Delhi police and placed at the disposal of Ministry of Home Affairs. In Dr.B.M.Rane Gowda Vs. State of Karnataka and another 1980(2) SLR 823 three Doctors were suspended for mis-utilising government money in a Government hospital, after they had been transferred from that hospital and the order of suspension was passed because disciplinary proceedings were under contemplation but this fact was not mentioned in the order of suspension. It was held by Karnataka High Court, that the circumstances of the case justified the placing the doctors under suspension pending enquiry and that it was not for the courts to decide whether there was any nexus between the suspension and the objectives sought to be achieved by keeping the officer under suspension. With respect, we accept the ruling of the Karnataka High Court and leave it to the respondents to decide about the desirability of the officer being placed under suspension even after he has been transferred from the Delhi Police. It has been held in R.P.Kapoor Vs. Union of India, AIR 1964 SC 787

that the Government has inherent right to suspend an officer pending enquiry. It has also been held in Registrar of Orissa High Court Vs. Shri Barkat Mishra 1973(1) CWR 237 that the suspension pending or in contemplation of disciplinary proceedings does not amount to temporary removal from service and does not attract Article 311 of the Constitution.

11. In the conspectus of facts and circumstances and various judicial pronouncements discussed above we see no reason at this stage to intervene in so far as the impugned order of suspension is concerned and uphold the same. However considering that the applicant did not in any manner contributed to the delay in the service of the charge sheet we feel that he should not suffer undue financial damage due to prolongation of the period of suspension. We understand that the applicant has been allowed subsistence allowance in accordance with rules but on the basis of his unrevised pay. If he had not been suspended and had exercised option, his pay would have been increased with effect from 1.1.86 on the basis of the recommendations of the 4th Pay Commission. In the circumstances of the case, we direct that with effect from 1.1.86 he should be paid subsistence allowance on the basis of his notional revised pay as from 1.1.86 as if he had exercised the necessary option, that is, with effect from that date his revised subsistence allowance should bear the same proportion to the revised emoluments as the unrevised subsistence allowance bore to the unrevised notional emoluments on 1.1.86. The order sanctioning the revised subsistence allowance should be issued and payment of arrears as from 1.1.86 should be made good to him within a period

of three months. The application is dismissed on the above lines. There will be no order as to costs.

21.7.87

(S.P. Mukerji)
Administrative Member

21.7.87

(K. Madhava Reddy)
Chairman