CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1315/87. DATE OF DECISION: 5.6.1992.

P.K. Biswas .... Applicant.

V/s.

Union of India .... Respondent.

CORAM: The Hon'ble Mr. P.C. Jain, Member (A).
The Hon'ble Mr. J.P. Sharma, Member (J).

Shri Raj Panjwani, counsel for the applicant.
Shri P.H. Ramchandani, Sr. Counsel for the respondents.

....

1) Whether to be referred to the Reporter? Yes

2) Whether Reporters of local newspapers may be allowed to see the judgment? Yes

3) Whether their Lordships wish to see the fair copy of the judgment? No

4) Whether to be circulated to other Benches? No

(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER(A)

5.6.1992.

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P. K. Biswas ... Applicant

-Versus-

Union of India ... Respondent

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)
THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri Raj Panjwani, Counsel for the Applicant
Shri P. H. Ramchandani, Sr. Counsel for Respondent

JUDGMENT

(Hon'ble Shri P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was Income Tax Officer Group 'B', West Bengal, has assailed the order dated 11.12.1986 by which he was placed under suspension with immediate effect on account of a disciplinary proceeding pending against him. He has prayed for quashing the aforesaid impugned order and for being deemed in service throughout the period of suspension and as a consequence entitled to his salary with all emoluments.

2. The respondents have contested the O.A. by filing a counter reply to which a rejoinder has been filed by the applicant. We have carefully perused the material on record and also heard the learned counsel for the parties.

3. Briefly, the facts of the case are that the applicant was served with a memorandum of charges by the Chief Income Tax Commissioner, Orissa on 4.7.1980. In connection with the inspection of documents in the first week of February, 1986 relating to the aforesaid memorandum, he is alleged to have committed serious misconduct by way of tampering/removal and

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destruction etc. of evidence in Government records and also on the allegation that he tried to bribe a departmental official with a view to persuading him not to report the matter to the higher authorities. A complaint was lodged with the police authorities who registered it as a complaint of theft under Section 380 of the Indian Penal Code. The police authorities submitted a final report under Section 173 of the Criminal Procedure Code with the following conclusion :-

> "As such, this is a case u/s 380 I.P.C. having no sufficient evidence for charge sheet and I returned the case as F.R.I. (Insufficient evidence for charge sheet) and submitted final report No.46 dt.28.2.86 under Sec.380 I.P.C. with a prayer to accept the case as such."

On the above report, the learned S.D.J.M., Bhubaneshwar passed the following order on 15.3.1986 :-

> "Seen the F.R.No.46 dated 28.2.86 u/s 380 I.P.C. The case is true u/s 380 I.P.C. Insufficient evidence for Charge-sheet, Property stolen - Some documents, property recovered - Nil, Final report is accepted."

In this respect the applicant had been placed under suspension vide order dated 18.2.1986 on account of a criminal offence pending investigation against him. When the investigation in the case under section 380 I.P.C. was closed as aforesaid, the suspension order dated 18.2.1986 was not revoked and the applicant had challenged the same in another case before the Tribunal and the Tribunal directed the suspension of the applicant to be revoked. The same was revoked vide order dated 10.12.1986. It has come on record that the applicant has been paid the arrears of salary etc. on this account. However, a fresh order of suspension dated 11.12.1986 was passed which is the subject matter of this O.A. While the earlier order of suspension passed on 18.2.1986 was on account of the pendency of investigation of a criminal case, the impugned order in this case has been passed due to the pendency of disciplinary

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proceedings which were initiated vide memorandum dated 15.9.1986 which was the subject matter of O.A.1639/87 which has since been disposed of vide judgment dated 22.5.1992.

4. The applicant has raised various contentions. It is his case that the action of the respondents is mala fide inasmuch as the order dated 10.12.1986 by which his suspension was revoked and the order dated 11.12.1986 by which he was again placed under suspension, were typed on the same day. He also contends that the impugned order of suspension dated 11.12.1986 has been passed by way of punishment and that after the final report in the case under Section 380 I.P.C. had been accepted there was no basis for again placing him under suspension on the same charges. It is further contended that the order of suspension is a judicial order and a show cause notice should have been issued to him before the order placing him under suspension was passed. The applicant also alleges violation of Article 21 of the Constitution and in that connection he has urged that the action of the respondents should stand the test of reasonableness, fairness and justness. It is also contended that the respondents have exercised the power under Rule 10(1) of the C.C.S. (C.C.A.) Rules with an ulterior motive and this amounts to colourable exercise of power. The respondents have controverted all the above contentions.

5. We have given careful consideration to the rival contentions of the parties. Sub-rule (1) of Rule 10 of the C.C.S. (C.C.A.) Rules, 1965, provides that the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Governmer

servant under suspension — (a) where a disciplinary proceeding against him is contemplated or is pending; or (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial. The impugned order has been passed in this case under the above provisions on account of the pendency of a disciplinary proceeding against the applicant. The above rule has not been specifically assailed by the applicant in this case. It is also not in dispute that the impugned order of suspension has been passed by the competent authority. It is also not in dispute that a memorandum of charges had been issued against him under Rule 14 of the C.C.S. (C.C.A.) Rules on 15.9.1986. Thus, all the requirements of the rule as aforesaid are fulfilled in this case and accordingly, the impugned order of suspension cannot be said either as without authority of law/rules or arbitrary.

6. The contention of the applicant that the order of suspension has been passed by way of punishment is, on the facts and in the circumstances of the case, not tenable. We have already noted above that Memorandum of Charges was issued to the applicant on 15.9.1986 and that the order of suspension has been passed under Sub-rule (1) of Rule 10 of the C.C.S. (CC&A) Rules. Moreover, suspension is not a punishment, either minor or major, as prescribed in Rule 11 of these Rules. Administrative instructions issued by the Government in the matter of suspension and which are contained in Appendix II of Swamy's Compilation of Central Civil Services (Classification, Control and Appeal Rules) - Sixteenth Edition - lay down that public interest should be the guiding factor in deciding to place a Government servant under suspension, and the disciplinary authority should have the discretion to decide this taking all factors into account. For guidance of disciplinary authority,

some circumstances have been illustrated in which the disciplinar authority may consider it appropriate to place a Government servant under suspension. These are:

(i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particulary corruption;

(iv) Where allegations have been made against the Government servant and the preliminary inquiry has revealed that a prima facie case is made out which would justify his presecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

We have already stated above the allegations of misconduct which are the subject-matter of the Memorandum of Charges dated 15.9.86, which relate to alleged tampering, removal, destruction etc. of evidence in Government records as also the allegation of trying to bribe a Government official. These allegations, if established, are grave enough to result in a major penalty and, as such, the decision of the disciplinary authority in placing the applicant under suspension cannot be said to be by way of punishment.

7. Another contention of the applicant is that once an F.I.R. lodged against him in connection with these very allegations resulted in submission of a final report by the police authorities which was accepted by the Sub-Divisional Magistrate (Judicial) who has jurisdiction to take cognizance of the matter, no charges subsisted against him and, as such, he should not have been placed under suspension due to pendency of disciplinary proceedings on those very charges. We have already dealt with this aspect in our judgment dated 22.5.1992 in O.A. No.1639/1987, which was filed by the applicant herein for quashing the charge-sheet dated 15.9.1986. We held therein that offence under Section 380 I.P.C. was not equivalent to the Articles of Charge which have been levelled against him in the aforesaid Memorandum of Chargesheet; that submission of final report under Section 173 of the Code of Criminal Procedure and its acceptance by the Magistrate neither amounted to prosecution nor acquittal of the accused and that the terms 'prosecution and trial' and 'acquittal or conviction' form part of the judicial proceedings which, as defined in Section 2(i) of the Code of Criminal Procedure, include any proceeding in the course of which evidence is or may be legally taken on oath. In view of our findings as above, it cannot be held that no disciplinary proceedings were pending against the applicant in pursuance of the Memorandum of Chargesheet dated 15.9.1986.

8. Another major contention of the learned counsel for the applicant was that the order of suspension is a judicial order and, therefore, a show cause notice should have been issued before placing the applicant under suspension. For this purpose, the applicant relied on the following observations of the Supreme Court in the case of MAQBOOL HUSSAIN v. THE STATE OF BOMBAY (1953) SCR p. 730, at page 739): -

> " The tests of a judicial tribunal were laid down by this Court in Bharat Bank Ltd., Delhi v. Employees

of the Bharat Bank Ltd., Delhi (1) in the following passage quoted with approval by Mahajan and Mukherjea J.J. from Cooper v. Wilson (2) at page 340: -

" A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites: - (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) If the dispute between them is a question of law, the submission of legal argument by the parties; and (4) A decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law."

Even a cursory perusal of the above observations of the Hon'ble Supreme Court would show that an order placing the applicant under suspension is not a judicial decision; it is only an executive order pending inquiry into the alleged charges of misconduct in the light of the provisions of the statutory rules and in the light of the administrative instructions relevant for this purpose. We are, therefore, unable to hold that the impugned order of suspension is even a judicial order what to say of a judicial decision.

9. Learned counsel for the applicant also submitted that even an executive order is required to be reasonable and fair. Such a proposition of law cannot be disputed. We have, therefore, to see whether the contention of the applicant that the impugned order of suspension is neither fair nor reasonable nor just has any force or not. On the facts and in the circumstances of the case, as already discussed above, it cannot be held that the impugned order of suspension is either unreasonable or unfair or unjust. The alleged charges of misconduct for which disciplinary inquiry has been ordered against the applicant are indeed grave. As the order has been passed by the competent authority and in

accordance with the rules which have statutory force, and which provisions have not been assailed, the burden of proving that the impugned order is not reasonable or fair or just lay on the applicant. We have no hesitation in stating that the applicant has miserably failed to discharge that burden.

10. The contention of the applicant about the impugned order being violative of Artilce 21 of the Constitution is also without any force. This contention has been dealt with at some length in our judgment dated 22.5.1992 in O.A. 2220/90 filed by the applicant herein, in which we, inter-alia, held that initiating the disciplinary proceedings against a Government servant in accordance with C.C.S. (C.C.&.A.) Rules, 1965 cannot, by any stretch of imagination or reasoning, be said as depriving such a Government servant of either of his life or his livelihood. We also noted therein that though the counsel appearing for both sides were not definite about the amount of subsistence allowance which the applicant was drawing at present, yet they submitted that the subsistence allowance being drawn by the applicant, may be around 90 to 95% and that even during suspension, the Government servant continues to be entitled to occupy residential accommodation which might have been allotted to him before his suspension or to the house rent allowance in lieu thereof in accordance with the rules, if no Government accommodation is allotted, and that he also continues to be entitled to avail all medical facilities and Children Education Allowance, if otherwise admissible to him. We ,therefore, held that it was not at all possible to take a view that the applicant has either been deprived of his livelihood or he has suffered any unreasonable deprivation by his being placed under suspension.

11. In support of his contention that a show cause notice should have been given to the applicant before placing him under suspension, learned counsel for the applicant cited the judgment of the Bombay High Court (Aurangabad Bench) in the case of

RAJESHWAR SAYANNA v. THE STATE OF MAHARASHTRA AND ANOTHER (SLJ 1983 (1) 484). In that case, the petitioner was working as Police Patil and a crime under Sections 323, 448, 504 and 506 IPC was registered against him. During the stage of investigation, he was arrested on 27th July, 1982 and was released on bail. A charge-sheet against him was also filed in the relevant court. Intimation regarding the registration of offence was sent to the Sub-Divisional Magistrate by the P.S.I. and vide order dated 14.9.1982, the petitioner therein came to be suspended as the complaint was filed against him. Relying on the judgment of a Division Bench of the Bombay High Court in Writ Petition No. 203-A of 1982 decided on 5.7.1982, in which case it was held "that in cases of this kind suspension works as a penalty and the rules of natural justice require that the petitioner must be heard before any such order of suspension is passed", the order of suspension in the cited case was also set aside. Liberty was, however, given to respondent No.2 therein to pass a fresh order according to law after giving an opportunity to the petitioner of being heard in the matter in the light of the judgment of the Division Bench referred to therein. There is no discussion in this judgment as to which rule was applicable in that case. What was the status of the petitioner therein is also not clear. Further, the observations that "in cases of this kind suspension works as a penalty" speak for themselves inasmuch as a decision can be relevant to those types of cases. Therefore, the authority in the cited case is not of much help to the applicant in this case. It may also be stated that under Rule 23 of the C.C.S. (C.C.&.A.) Rules, 1965, an appeal can be filed against an order of suspension passed under Rule 10 of those Rules. Thus, even if an opportunity before passing a suspension order is not available under these rules, an opportunity of being heard on an appeal filed by the applicant lies with the applicant and it was available to him. We have not been shown that any such appeal was filed; the only averment in para 7 of the O.A. is that "The applicant sent a letter dated 13th December, 1986 to the Respondents seeking the relief". Even a copy of

that letter has not been filed. What is filed and that too with the rejoinder is a copy of letter dated 1.6.1987 addressed to the Chief Commissioner and Commissioner of Income Tax, West Bengal-I, Calcutta, seeking review of the impugned order dated 11.12.1986 on the ground that as the period during which he had been under suspension has exceeded six months, his suspension order deserves to be revoked. For this purpose, he referred to certain orders of the Government of India, according to which, the total period of suspension should not ordinarily exceed six months. None of the pleas which he has taken in the O.A. were taken by him in the aforesaid letter dated 1.6.1987. In accordance with Rule 25 of the C.C.S. (C.C.&.A.) Rules, 1965, no appeal preferred under Part VII (which deals with appeals against orders which are appealable under these rules) shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant. It is not in dispute that the impugned order of suspension was served on the applicant on 11.12.1986. It is, thus, clear that no appeal was filed by the applicant against the impugned order of suspension within the period prescribed under the rules.

12. In the light of the above discussion, we are of the considered view that the relief prayed for by the applicant for quashing the impugned order of suspension cannot be granted to him. Having said so, we would also like to say that the Administrative Instructions issued by the Goverrment from time to time emphasise the need for limiting the number of officials placed under suspension and also for reducing the period of suspension. The competent authority is expected to consider while placing an official under suspension as to whether the purpose cannot be served by transferring the official from his post to a place where he may not repeat the misconduct or influence the investigations, if any, in progres. If the competent authority finds that the purpose cannot be served by transferring the official from his post to another post then he is required to record reasons therefor before placing the official under suspension

It is also emphasised that even though suspension may not be considered as a punishment, it does constitute a very great hardship for a Government servant and in all fairness to him, it is essential to ensure that this period is reduced to the barest minimum. It is also laid down that the total period of suspension should not ordinarily exceed six months and where it is not possible to adhere to this time-limit, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay. It has also been emphasised that unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Government and, therefore, the competent authority should review cases of suspension to see whether continued suspension in all cases is really necessary and the authority superior to the disciplinary authority should also give appropriate directions to the disciplinary authority keeping in view the relevant provisions. The above authorities should scrupulously examine each case and see whether the continued suspension of an official is absolutely necessary or the suspension should be revoked by transferring the official to another post or office. With a view to ensuring compliance of the above instructions by the concerned authorities, all cases of suspension are required to be reviewed regularly, particularly those where officials are under suspension for more than six months and wherever it is found that an official can be allowed to resume duty by transferring him from his post to another post, the order should be issued by revoking the suspension and allowing the official to resume duties with further direction as may be considered desirable in each individual case. From these instructions, it is very clear that a judicious balance has to be struck between the requirements of the public interest on the one hand and the hardship which may occur to a Government servant by keeping him under suspension for an unduly long period, on the other hand. When we drew the attention of the learned counsel for the respondents to these aspects of the matter, he submitted that the case of the applicant

for reviewing his suspension has been taken up periodically but in view of his conduct and in the light of the charges levelled against him, it has not been found possible to revoke the suspension of the applicant. He attempted to substantiate this conclusion by the alleged misconduct on the part of the applicant in the course of inspection of documents in connection with the charge-sheet issued to him in the year 1980 and as a result of which, another charge-sheet had been issued to him on 15.9.1986. We would not like to repeat our observations made in our judgment dated 22.5.1992 in O.A. 2220/90 filed by the applicant herein in regard to the charge-sheet dated 4.7.1980, in which the history of the case has also been mentioned. In that case, we impressed upon both parties to do everything within their control to see that the inquiry is not unduly and unreasonably delayed further. Keeping in view the administrative instructions issued, as briefly discussed above, as also the relief prayed for by the applicant in sub-para (iv) of para 9 of the O.A., viz., "Pass any order that Hon'ble Tribunal may deem just and proper", we dispose of this O.A. with the following direction: -

> The relief prayed for by the applicant for quashing the impugned order of suspension passed on 11.12.1986 and for treating him on duty throughout since then cannot be granted to him. However, in view of the fact that the suspension has now continued for over five years, the disciplinary authority, i.e., respondent No.2 as also the Union of India, i.e., respondent No.1, should carefully review the case of the applicant with a view to deciding as to whether it is possible to post the applicant to a totally nonsensitive post where it may not be possible for him to adversely affect the process of disciplinary proceedings and, if so, consider, revoking the suspension order. We

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make it clear that we are not issuing directions to the respondents to revoke the impugned order of suspension, but we are certainly directing them to carefully review the suspension of the applicant both in the public interest as well as in fairness to the applicant, who has been under suspension for more than five years.

13. In the facts and circumstances of the case, we leave the parties to bear their own costs.

(J.P. SHARMA) 5/6/92
MEMBER(J)

5/6/1992
(P.C. JAIN)
MEMBER(A)