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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1) OA-1479/87 198
T.A. No. 2) OA-1623/87

DATE OF DECISION January 4, 1988.

1) Shri K.C. Sharma

2) Shri J.S. Yadav & others **Petitioner s**

Shri R.L. Sethi **Advocate for the Petitioner(s)**

Versus

Union of India **Respondent**


Mrs. Raj Kumari Chopra **Advocate for the Respondent(s)**

CORAM :

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

The Hon'ble Mr. Kaushal Kumar, Member (A).

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 other Benches ? No


(KAUSHAL KUMAR)
Member (A)
4.1.1988.


(K. MADHAVA REDDY)
Chairman
4.1.1988.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

DATE OF DECISION: 4.1.1988.

(1) Regn. No. OA-1479/87.

Shri K.C. Sharma ... Applicant.

V/s.

Union of India ... Respondents.

(2) Regn. No. OA-1623/87.

Shri J.S. Yadav & ... Applicants.
others

V/s.

Union of India ... Respondents.

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

For the applicants ... Shri R.L. Sethi,
Advocate.

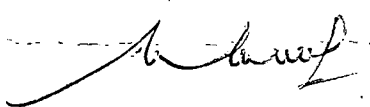
For the respondents ... Mrs. Raj Kumari Chopra,
Advocate.

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

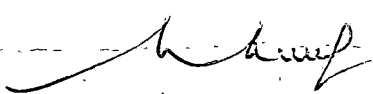
In application No. OA-1479/87, the applicant who is a Superintendent in the office of the Collector of Customs and Central Excise, New Delhi, has challenged the order dated 10th April, 1985 placing him under suspension pending initiation of disciplinary proceedings against him. In the other application No. OA-1623/87, the four applicants who have also challenged the same order dated 10th April, 1985 are Inspectors in the said office. Since in both the applications the impugned order namely, the order dated 10th April, 1985 placing the applicants under suspension, is the same, it will be convenient to dispose of both the applications through this common judgment.

2. In the order dated 10th April, 1985 which was issued by the Collector of Customs and Central Excise, New Delhi



in exercise of the powers conferred upon him under Rule 10(1) of the C.C.S. (C.C.&A.) Rules, 1965, it is stated that suspension is being ordered since the disciplinary proceeding against the applicants "is contemplated / pending". It is admitted that so far no charge-sheet has been served on the applicants. The suspension order is being questioned on the ground that since there has been unconscionable delay in the initiation of the disciplinary proceedings, it cannot be justified on any count much less in a case where the public servant was under suspension and was being paid subsistence allowance while doing no work. It is also contended that the delinquent officials did not contribute to the delay in the initiation of the disciplinary proceedings.

3. The contention of the respondents is that the delay has been caused as the CBI have not yet completed their investigation and the suspension order was made on the basis of a preliminary report furnished by the CBI. The respondents have also taken a preliminary objection that the present applications are not maintainable since the applicants were required to file an appeal before the President before approaching this Tribunal. In this case the impugned order of suspension was made by the Collector of Customs & Central Excise, New Delhi, who is the disciplinary authority. The learned Counsel for the respondents Mrs. Raj Kumari Chopra states that the appeals by the applicants against the order of suspension before the Chairman of Central Board of Excise & Customs have already been rejected and that the order of suspension is being reviewed from time to time by the competent authority. She has also pointed out that no revision or review petition has been addressed by the applicants




to the President as provided for in the Disciplinary Rules. In this case it is not as if the original suspension order itself is challenged as bad. It is the continuation of the suspension order and the inordinate delay in initiation of the disciplinary proceedings while keeping the applicants under suspension, that is challenged and, therefore, since the merits of the initial suspension order are not in question, the preliminary objection raised by the respondents will not stand in the way of the maintainability of these applications.

4. Our attention has been drawn to the various orders issued by the Department of Personnel and Administrative Reforms, Government of India, which emphasise that there should not be any undue delay in initiation of disciplinary proceedings after the official has been suspended. The Government of India, Department of Personnel O.M. No.39/39/70-Ests.(A) dated 4th February, 1971 filed as Annexure A-9 to the application in OA-1479/87 lays down that:

"it has been decided that every effort should be made to file the charge-sheet in court or serve the charge-sheet on the Government servant as the case may be, within three months of the date of suspension, and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher explaining the reasons for the delay."

O.M. No.39/33/72-Ests.(A) dated 16th December, 1972, Annexure A-10 to the application, also lays down that "the total period of suspension viz., both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases 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."

5. In O.M. dated 14.9.1978 issued by the Government of India, Ministry of Home Affairs, the following instructions were issued:

"In spite of the instructions referred to above, instances have come to notice in which Government servants continued to be under suspension for unduly long periods. Such 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. It is, therefore, impressed on all the authorities concerned that they should scrupulously observe time limits laid down in the preceding paragraph and review the cases of suspension to see whether continued suspension in all cases is really necessary. The authorities superior to the disciplinary authorities should also give appropriate directions to the disciplinary authorities keeping in view the provisions contained above."

6. In Chauhan Vs. State of U.P. (1977-AWC-704), the Supreme Court held as follows:


"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."


7. In OA No.648/87 (C.L. Bakolia v. Union of India and others), this Bench pronounced the judgment on 29th September, 1987 in which case, since the suspension order was made on 7th October, 1985 pending investigation of a



criminal offence and the charge-sheet had not been served, we quashed the suspension order. In the present case, the suspension order was made in April, 1985 and so far no charge-sheet has been issued to the applicants.

8. In view of the above discussion, the order of suspension dated 10th April, 1985 is hereby quashed. All emoluments due to the applicants for the period of suspension until reinstatement in pursuance of this order shall be determined by the respondents in accordance with the rules within a period of two weeks from the date of receipt of this order by the respondents. The applicants shall be allowed to join their duties immediately. However, we hasten to clarify that if at a later stage, either a charge-sheet is filed in a criminal court or a charge-sheet is served on the applicants in any departmental proceedings and if the gravity of charges levelled against the applicants warrant any action to be taken, nothing said herein will preclude the respondents from taking such action as they may deem fit in the then circumstances and it will also be open to the applicants to question any order passed against them.
9. The applications are accordingly allowed in terms of the above directions with no order as to costs.


(KAUSHAL KUMAR)
Member (A)
4.1.1988.


(K. MADHAVA REDDY)
Chairman
4.1.1988