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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI

Regn.No. OA-551/87
OA-608/87

Date. 1.7.1987.

Sh.
1. Rajinder Prasad Pandey
2. Shri R.P.Suri

.....Applicant.
(OA-551/87)
.....Applicant.
(OA-608/87)

Vs.

Union of India & Ors.

.....Respondents.

For Applicants.

.....Shri Jagjit Singh,
Advocate.

For respondents.

.....Shri M.L.Verma,
Advocate.

Coram: Hon'ble Shri S.P.Mukerji, Administrative Member
Hon'ble Shri Ch.Ramakrishna Rao, Judicial Member

JUDGEMENT

(Delivered by Shri Ch.Ramakrishna Rao)

These two applications involve common question of law and fact. Therefore, they are dealt with together and disposed of by a common order.

2. The applicant in OA-551/87 is hereinafter referred to as the first applicant and the applicant in OA-608/87 as the second applicant.

3. The first applicant was serving as Income-Tax Officer (Housing) while the second applicant was serving as Income-Tax Officer (Judl.V), New Delhi, when they were placed under suspension on 7.10.85 by the Chief Commissioner (Admn.), Commissioner of Income Tax, Delhi-1, who is impleaded as respondent No.1(R-2). Their houses were searched and according to them nothing incriminating was found as a result of the search conducted by the authorities. The respondents, however, denied the same in the reply filed on their behalf. More than 1½ years have elapsed since the date the applicants were placed under suspension without any response to the representations made by them to the Chief Commissioner. The representations made by them for lifting the suspension did not

meet with any favourable response from the authorities.

Aggrieved, the applicants have filed these applications.

4. Shri Jagjit Singh, learned Counsel for the applicants contends that the two orders of suspension dated 7.10.85 placing the applicants under suspension were made in the context of investigation of a criminal offence committed by them as is apparent from the orders themselves; that such orders cannot remain in force for an indefinite period; that the instructions issued by the Government of India from time to time make it abundantly clear that the investigation is to be completed within a reasonable period and no charge sheets having been issued against his clients so far, the order ceased to have any legal validity.

5. Shri K.C. Mittal, learned Counsel for the respondents submits that the representation made by the first applicant is still under consideration; that the criminal offence alleged against him is still being investigated by the CBI and the report is awaited. Regarding the second applicant,

Counsel submits that the report was received from CBI in October, 1986 but the matter was referred back to CBI for further investigation and the final report from CBI is still awaited. He also submits that the case of the second applicant for revoking his suspension was reviewed by the authorities in January, 1987 and it was decided to defer a decision thereon until the final report is received from the CBI.

6. The right of the Government to place a Government servant under suspension, when criminal/departmental proceedings/contemplated, is beyond the pale of controversy.

The effect of placing a Government servant under suspension has been enunciated by the Supreme Court in Khem Chand Vs. Union of India, AIR-1963-S.C.-687 as follows:

"An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension.. The real effect of the

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order of suspension is that though he continues to be a member of the Government service he is not permitted to work, and further during the period of his suspension he is paid only some allowance generally called "subsistence allowance", which is normally less than his salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a Government servant injuriously. There is no basis for thinking, however, that because of the order of suspension, he ceases to be a member of the service. (emphasis supplied)

It is significant to note that as long ago a quarter of a

century, the Supreme Court had occasion to advert to the

adverse impact of an order of suspension on the career of a

Government servant in the passage extracted from the decision cited supra.

7. Realising this position, the Ministry of Home Affairs

(MHA) in the Government of India have issued several office

memoranda during the period 1971 to 1984 which have been

copiously extracted in paragraph 6 of the application.

Reference may be made in this connection to the O.M. dated

14.9.1978 in which it is stated;

"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 the 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."

Thus MHA has emphasised the necessity to undertake periodical

review of cases of suspension so that a balance is maintained

between the interest of the Government servant on the one hand and public interest on the other.

8. Retention of a Government servant under suspension

continuously for a long period affects him injuriously as

pointed out by the Supreme Court in the decision cited supra.

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This view has been reiterated by the High Court in several decisions and we shall refer to a few of them.

In K. Subramanian Vs. State of Kerala, 1973 KLJ 31, it has been observed:

"The damage suffered by the Government servant is largely irreversible because the degeneration and disgrace visited on him by the order of suspension is seldom wiped out by his being subsequently exonerated from blame and reinstated in service. Hence, it is imperative that utmost caution and circumspection should be exercised in passing orders of suspension resulting in such grave consequences to the Government servant concerned. It is also necessary to remember that the power of suspension is to be sparingly exercised and that it is not meant to be used as a mode of giving expression to any displeasure felt by the appointing authority or the Government in respect of any act of commission or omission on the part of the officer."

The following observations in M. Chengaiah Vs. State of Tamil Nadu (1983) 2 MLJ 348, are apposite;

"If the Government servants are guilty they should be punished at the earliest point of time. If not, they should be restored to duty. The mere claim that the investigation is being carried on cannot be a valid ground for indefinite and prolonged suspension of Government servant."

To a like effect are the observations in Chauhan V. State of U.P., 1977 AIC 704:

"If a Government servant is placed under suspension in contemplation of an enquiry against him, public interest enjoins that the authority concerned shall frame charges and serve the same on the Government servant as expeditiously as possible. The Government may take time in collecting material to draw a formal charge-sheet but the time taken must be reasonable. It is desirable in public interest to serve charges along with the order of suspension. 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."

(Emphasis supplied)

9. Turning now to the decisions rendered by this Tribunal, we may refer to two of them. In Tarlechan Singh Vs. Union of India, A.T.R. 1986(2) C.A.T. 405, it has been laid down by

a Bench consisting of one of us (Shri S.P. Mukerji).;

"Where a bare perusal of the chronological events shows that there has been unconscionable delay

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in the disposal of the disciplinary proceedings - the delay of about 1½ years in framing the charge-sheet and the time of four years taken for the inquiry to be completed- then 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. This is more so where the delinquent employee did not contribute to the delay inasmuch as he had sent 22 reminders between 1963 and 1967." (Emphasis supplied)

In the decision in Danesh Kumar Sandila Vs. Union of India (A.P.-366/87 and OA-50/87) dated 1.4.87 to which the Hon'ble Chairman, K. Madhava Reddy, J., was a party, it was held;

"In the counter filed by the respondents, it is admitted that the report of the CBI has been received. The respondents have not stated what the CBI has opined. Even assuming that the action of the respondent was not malafide, the assertion of the applicants that so far no charge-Sheet has been filed in the criminal court, nor any issued in departmental proceedings, is not controverted.

The suspension order is, therefore, quashed."

10. Applying the law laid down in the decisions cited supra and the instructions contained in the office memoranda

issued by the WHA, we have no hesitation in quashing the order dated 7.10.85 passed by R-2 placing the applicants

under suspension. All emoluments due to the applicants for the period of suspension shall be determined by the respondents in accordance with the Rules and paid to them within a period of 2 months from the date of receipt of this order. The applicants shall be allowed to join duty forthwith.

11. In the result, the applications are allowed. No order as to costs.

S. P. Mukerji

Ch. Ramakrishna Rao (S. P. Mukerji)
Judicial Member Administrative Member