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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 775/87. 198
T.A. No.

DATE OF DECISION 3.12.1987.

Shri Gunjit Singh Petitioner

Shri R. Kapur with Shri N.L. Duggal. Advocate for the Petitioner(s)

Versus

Union of India Respondent

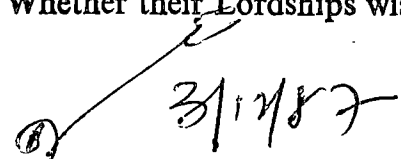
Shri S.K. Sibal. Advocate for the Respondent(s)

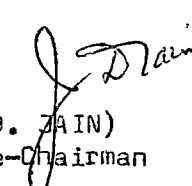
CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(BIRBAL NATH)
Member (A)


(J.D. JAIN)
Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.
....

DATE OF DECISION: 3.12.1987.

Regn. No. O.A. 775/87.

Shri Gunjit Singh ... Applicant

Vs.

Union of India ... Respondent.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: S/Shri R. Kapoor with N.L. Duggal
counsel.

For the respondent: Shri S.K. Sibal, Counsel.

J U D G M E N T.

(delivered by Hon'ble Mr. Birbal Nath, AM).

The applicant, Shri Gunjit Singh, a member of the Indian Revenue Service, who was holding the post of Assistant Commissioner of Income-tax, at New Delhi since 2nd March, 1985, and was placed under suspension on 7th October, 1985, has filed this application before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying that he may be reinstated with full pay and allowances since the he was placed under suspension on a wrong and illegal premise.

2. The facts leading to the application are that on 4th October, 1985, while the applicant and his family were away to Patiala, the Central Bureau ^{of} Investigation officers

raided the premises J-208, Saket, New Delhi, wherein the applicant had been living with his brother, in pursuance of the first information report filed under Section 5(1)(e) read with Section 5 (2) of the Prevention of Corruption Act, 1947. In this report, it was written that the applicant had by dubious and corrupt means acquired immovable and movable assets in his own name, in the name of his wife or relations and had made huge investments. He had acquired assets, through ~~the~~ corrupt and dubious means, disproportionate to the known sources of his income. The search at the above residence of the applicant led to the recovery of nine cartridges of 38 bore, two cartridges of .42 bore, 14 cartridges of .32 bore, 70 cartridges of .315 bore and 20 cartridges of .32 bore, whereas, the applicant was authorised to keep 50 cartridges of .315 bore and 25 cartridges of .32 bore against the licensed weapons. Thus, he was found in excess of 20 cartridges of .315 bore etc.

Accordingly, a case under Section ^{3/}25 of the Arms Act, 1959 was got registered against the applicant. He was also found in possession of two gold 'passas' weighing 20 gms each bearing a marking of 9999 Suissi and a case under Section 85 of the Gold (Control) Act, 1968 was registered. It is also allged that cash over Rs. seven lakhs was seized during this search from the premises of the applicant. Besides, 43 bottles of imported liquor were also seized during the course of the search.

The office of the applicant in Central Revenue Building was searched on 8.10.1985 after he had returned to the station.

It is also allged that his house J-208, Saket was again searched for the second time on 10.10.1985. The applicant was placed under suspension on 7th October, 1985 by the President

of India (Annexure I). The order of suspension was made under sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The said order gave the following reason for suspension of the applicant:

"Where a case against Shri Gunjit Singh, Inspector Assistant Commissioner of Income-tax (Audit), Delhi, New Delhi in respect of a criminal offence is under investigation."

3. The applicant has sought the relief for reinstatement on the ground that the entire case against him was motivated to cause harassment to him and was prompted by bias. He further maintained that he has been under suspension now for more than two years and the investigations have not been completed. No order for grant of subsistence allowance was issued for over two months. He was allowed subsistence allowance vide order dated 12th December, 1985 (Annexure II) under the provisions of F.R. 53(1) read with F.R. 53(2). In February, 1987, the applicant requested for upward revision of subsistence allowance (Annexure III). It was averred on behalf of the applicant that the instructions of the Government of India make it mandatory that rate of subsistence allowance should be reviewed but the same had not been done in this case. The Ministry of Finance, Government of India, ^{had} rejected the representation made by the applicant seeking revocation of his suspension and upward revision of his subsistence allowance vide Memorandum dated 10th June, 1987 (Annexure R-4), without proper application of mind and in contravention of the instructions on the subject.

4. At the bar, the learned counsel for the respondent resisted the reliefs sought by the applicant on the ground that recovery of an amount of more than Rs. seven lakhs from the premises occupied by the applicant was not a minor matter. According to him, if an officer from whose residence this huge amount is recovered, is reinstated and allowed to function as Assistant Income-tax Commissioner, this will bring the Government into disrepute and in such an environment, the probity and high standard expected from Government officers could not be obtained. He further stated that so far as the recoveries pertaining to excise, ammunition and gold were concerned, charge-sheets in respect of criminal offences had been filed in the appropriate courts under the Arms Act, Excise Act and the Gold (Control) Act/ in the period July to November, 1986. He further argued that so far as the prosecution regarding the possession of disproportionate assets was concerned, the investigation was impeded by the applicant himself who had deliberately obstructed the investigation and not provided certain information which he was called upon to furnish. It was further argued that the applicant was trying to deflect the course of investigation and if he was reinstated, he would have acquired the status and means to frustrate the course of law and investigation of the charges against him. The learned counsel for the respondent further argued that the case of the applicant for suspension was reviewed by the competent authority in accordance with the Office Memorandum dated 7.9.1965 which provides that after every six months, the cases of the suspended officers should be reviewed. Relying on the judgment of the Hon'ble Punjab and Haryana High Court

in the case of Ramesh Chander Chug, Assistant Engineer (Civil)
vs. The Haryana State Electricity Board,¹ the learned counsel for the
respondent contended that the use of the word 'shall' is only
directory and it was not mandatory and that it did not provide
for any consequence for non-compliance thereof. However, in the
case of the applicant, his case was reviewed by the Ministry of
Finance on receipt of his application for revision of subsistence
allowance and revocation of his suspension order. He further
argued that there is no provision in the rules that after certain
period, the competent authority must revoke an order of suspension.
According to him, no such time-limit was contemplated by any law or
rules. Even where such a limit is prescribed, the same cannot be
applied rigidly. In this connection, he pointed out that under the
Punjab Civil Service (Punishment & Appeal) Rules, 1970 and the
administrative instructions dated 16th May, 1978, maximum period
of suspension is provided as one year but the Punjab and Haryana
High Court in the case of the State of Punjab and another Vs.
Mewa Singh Sonar² has held that prescribing maximum period of suspension
as one year has no statutory force. According to this judgment, these
are only guidelines of policy within the parameters of statutory rules and
suspension beyond the period prescribed under the guidelines was not
illegal.

5. The foregoing arguments advanced by the learned counsel for the
respondent were vehemently resisted by the learned counsel for the
applicant. According to him, the recoveries made by the Central
Bureau of Investigation of certain cartridges, a few bottles of foreign
liquor and a few grams of gold could not be used to thwart and destroy

1. 1986 (3) SLR 1.
2. 1982(2) SLR 286.

the career of an officer. He further argued that the C.B.I. had not completed the investigation as they have no evidence to prove the charges levelled against the applicant. According to him, the applicant was in possession of cash because he had received the same towards the sale of some property. He further argued that the charge that the applicant was not co-operating with the investigating officers was not true inasmuch as the applicant was under no legal obligation to furnish evidence against himself. The applicant had the constitutional safeguards against any attempt to compel him to self-implicate himself. The learned counsel for the applicant further argued that the delay of more than two years in completing the investigation of the charge relating to possession of disproportionate assets by the applicant was a singular failure on the part of the investigating agency and this delay was deliberate with a motive to cause harassment to the applicant. He further argued that the F.I.R. on which the applicant's residence was searched had not mentioned anything about arms or liquor. As such, the respondents cannot try to improve their case by saying that charge-sheet had been filed against the applicant under the Arms Act, Excise Act etc. In this connection, he relied on the judgment of the Hon'ble Supreme Court in the case of Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi & Ors.¹ wherein it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise in an attempt to validate an original action by subsequent events. He further argued that the Finance Ministry was duty-bound to consider

1. AIR 1978 SC 851.

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the request of the applicant for revocation of his suspension order independent of what the C.B.I. has to say. In this connection, he relied on the ratio in the case of Commissioner of Police, Bombay v. Gordhandas Bhanji¹, wherein it has been held that every public authority, which enjoys certain powers has to exercise the same in his own discretion and decide the matter in a definite and unambiguous manner without depending on what the other authorities have to say. The learned counsel for the applicant also relied on the judgment of the Tribunal in the case of C.L. Bakolia Vs. UOI & Ors. (M.P. No. 1080 in O.A. No. 648/87) delivered by the Hon'ble Mr. Justice K. Madhava Reddy, Chairman, in which the order of suspension was quashed because even though the order of suspension had been in operation for more than two years, neither any charge-sheet had been filed in a criminal court nor any charge-sheet was served on the applicant in disciplinary proceedings in that case. He also relied on the judgment delivered by Hon'ble Mr. Justice K. Madhava Reddy, Chairman in the case of Danesh Kumar Sandila Vs. UOI & Anr. (M.P. No. 366/87 in OA No. 50/87) wherein the applicant, who was also working as Income-tax Officer and was placed under suspension on 7.10.1965 was directed to be reinstated because no charge-sheet was filed in the criminal court or issued to him in departmental proceedings. However, this judgment has to be distinguished because in that case, the C.B.I. was stated to have found no material for criminal prosecution and only disciplinary proceedings had been started against the applicant. He also relied on the judgment of the Tribunal in the cases of Rajender Prasad Pandey (O.A. No. 551/87) and R.P. Suri Vs. Union of India & Ors. (O.A. No. 608/87),

1. AIR (3) 1952 SC 16.

wherein the suspension of the applicants, who were also working as Income-tax Officers and had been under suspension for one and a half year, was quashed on grounds adverted to in the judgment of the Tribunal in Danesh Kumar Sandila v. UOI (supra). He invited our attention to the Government of India Memoranda of 17th September, 1965 and 4th February, 1971 which lay down that a charge-sheet in criminal proceedings against a Government servant should be filed within six months, as a rule and where more time is likely to be taken, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. In the Memorandum of 4th February, 1971, it is reiterated that the period of suspension both in respect of investigation and disciplinary proceedings should not ordinarily exceed six months. He also relied on the contents of the Office Memorandum dated 14th September, 1978, issued by the Ministry of Home Affairs which decries undue long suspension periods and directs that the cases of the officers under suspension should be reviewed and suspension should be continued only in cases where necessary. The relevant portion of this Office Memorandum is reproduced below so as to bring out the Government policy in this regard:-

"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."

So far as the contents of these Office Memoranda, referred to above, are concerned, they are directory and they cannot be held to be mandatory which should automatically result in revocation of the applicant's suspension order. Again, the period of six months laid is provided ordinarily."

6. We have to examine if in the facts and circumstances of the case, the continued suspension of the applicant even when a period of two years has elapsed, is justified or otherwise. It is well settled that an order of suspension should not be

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lightly passed. It is mandatory for the competent authority to apply its mind and come to a bona fide conclusion that it was not desirable to keep the delinquent officer in service in the interest of purity and probity of administration or his continuing in service would render the investigation against him difficult or embarrassing.¹ This power to place an officer under suspension is to be used sparingly and is not meant to be used as a mode of punishment or expression of displeasure. The Hon'ble Supreme Court in the case of

B.R. Patel v. State of Maharashtra², has held as follows:-

"...On general principles, therefore, the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit...."

Similarly, in the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and another v. Ramchandra G. Modak and others³, the Hon'ble Supreme Court has held as under:-

"4. It is thus now settled by this Court that the term 'control' is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. In the aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word 'control'...."

Again, the Hon'ble Supreme Court in the case of P.R. Nayak v. Union of India⁴ has held that initiation of disciplinary proceedings is a condition precedent for suspension. of the case In the facts and circumstances of the applicant, we find that the competent authority had applied its mind to the case and passed a bona fide order of suspension. It cannot be challenged on the

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1. 1973 (1) SLR 521.
 2. AIR 1968 SC 800
 3. AIR 1984 SC 626.
 4. AIR 1972 SC 554.

ground of any mala fides, as sought to be made out by the learned counsel for the applicant. It is not possible to hold that the order of suspension was issued only to cause harassment to the applicant or thwart progress of his career.

7. The main issue to be determined is as to how long the suspension of the applicant should be permitted to continue pending completion of investigation by the C.B.I. In the case of Manasaranjan Das vs. State of Orissa and ors.¹, the Orissa High Court has observed as follows:-

"4. It is conceded that once such criminal proceedings were taken the petitioner became liable to be suspended. But we see no justification in the order of suspension made in 1964 to have been kept alive until 1972. It was vexatious and inexpedient and had a demoralising effect on a public officer...."

Similarly, the Hon'ble Madras High Court in the case of State of Madras v. K.A. Joseph² has held that in case of a prolonged suspension where charges are not framed, the Court can order Government to allow the official to resume duties. The court has observed that it was natural for an officer placed under suspension to ask that the alleged misconduct for which he is charged be investigated with reasonable diligence and the charges should be framed against him within a reasonable period of time. It went on to observe as follows during the course of this brief judgment:-

"....If such a principle were not to be recognised, it would imply that the Executive is being vested with a total, arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration...."

8. In view of the foregoing position of law as well as the facts of the instant case, wherein a large sum has been recovered from the applicant's residence, to meet the ends of justice, we direct the respondents to complete the investigation definitely

1. 1973 (2) SLR 553.
2. 1969 SLR 691.

within three months from the date of receipt of this order.

If they succeed in collection of evidence and presenting a charge-sheet in the court, the suspension of the applicant may be continued. However, if no charge-sheet is preferred against the applicant or departmental proceedings are started, it will be unjust to keep him under suspension and in such case, the order of suspension shall be deemed to be revoked with effect from the date on which the period of three months expires since he has already been under suspension for more than two years by now.

9. The next relief sought by the applicant is that his subsistence allowance should be increased. We find that the applicant has a very reasonable case on this issue. If the respondents want to continue the suspension of the applicant over this extended period, that is beyond the ordinary period of six months as laid down per Government of India Office Memoranda of 1965 and 1971 etc., he should be entitled to the maximum subsistence allowance admissible under the Rules and not merely 50 per cent, the minimum subsistence allowance admissible under the Rules. It is, therefore, directed that the applicant will be granted the maximum subsistence allowance as permissible under the rules and instructions from the date his suspension has been in existence beyond six months.

10. With the above directions, the application would stand disposed of, with no order as to costs.

31/12/77
(BIRBAL NATH)
Member (A)

J. D. Jain
(J.D. JAIN)
Vice-Chairman.