

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2/90
~~T.A. No.~~
~~XXXXXX~~

199

DATE OF DECISION 3.4.1991

Shri Pramod Behari

Petitioner

Shri R.K. Kamal,

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri N.S. Mehta. Sr. Standing

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(AMITAV BANERJI)
CHAIRMAN

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PRINCIPAL BENCH: NEW DELHI

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SHRI PRAMOD BEHARI

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI R.K. KAMAL, COUNSEL

FOR THE RESPONDENTS

SHRI N.S. MEHTA, SENIOR
STANDING COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

The issue raised in this OA is whether a Government servant can be kept under suspension over a long period extending over 38 months.

The applicant, Shri Pramod Behari was working as Section Officer in the Union Public Service Commission (UPSC) when he was placed under suspension vide order dated 17th September, 1986 (Annexure A-1) on the ground that a case against him in respect of a criminal offence was under investigation. He continued to remain under suspension for over 38 months when he filed this application on 1.1.1990 under Section 19 of the Administrative Tribunals Act, 1985.

2. The undisputed facts of the case are that the Central Bureau of Investigation (CBI) received some information, that soon after the completion of Civil Services (Main) Examination, 1985, Shri Rati Pal Saroj, an Under Secretary in UPSC, who was a candidate in that examination, had substituted answer sheets of certain papers by removing the original answer sheets written by him in

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conspiracy with certain employees of UPSC, including Shri Pramod Behari. The substituted answer sheets were written in a clandestine manner after the examination. The CBI registered a case No. RC-4/86-CIU-II dated 7.9.1986 under Section 120-B read with 420, 468, 471 IPC Section 5(2) read with 5(i)(c) and (d) of Prevention of Corruption Act, 1947 against Shri R.P. Saroj, Under Secretary, Shri I.N. Uppal, Upper Division Clerk and Shri Radhey Shyam relating to the offences committed by them and others in connection with substitution of answer sheets in respect of civil Services (Main) Examination, 1985. Consequently, Shri Pramod Behari was placed under suspension with effect from 17.9.1986. He made a representation to the respondents against his continued suspension but the same was rejected in 1988.

The case of the applicant is that the main accused in the case, Shri Rati Pal Saroj has been reinstated as the suspension order in his case was held illegal and quashed by the Tribunal in **Rati Pal Saroj Vs. UOI & Ors. in OA No.278/88 decided on 1.5.1989**, while he is being continued under suspension even though his name does not figure in the CBI's F.I.R. dated 7.9.1986. His representations seeking revocation of suspension have not produced the desired response as he has neither been reinstated nor has been served any charge sheet. No-chargesheet has been filed in any Court of law either. He, therefore, contends that his case is on all fours with the case of Shri Rati Pal Saroj (Supra) and that his continued suspensions in absence of issue of charge-sheet should be declared illegal and quashed.

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To fortify his case he relies on the following judicial pronouncements:

- i) ATR 1986(2)CAT 144 - M. Rathinasabhapathy V. Sr. Divisional Manager & Anr.
- ii) 1988 (8) ATC CAT 489 P. Eswar Jitendra V. G.M. Indian Govt. Mint (Hyd).
- iii) 1988 (2) ATJ 326 CAT S. Venkata Ramaiah V. Govt. of A.P. & Ors.
- iv) 1988 (1) ATJ CAT 41 P. Subramani V. UOI & Anr.

By way of relief he has prayed that:

- a) the suspension order dated 17.9.1986 (Annexure-I) be quashed and set aside;
 - b) the respondents be directed to reinstate the applicant and assign him a post which is not related to the cause of suspension.
4. Before proceeding further we may examine the case law relied upon by the applicant.

- i) The delinquent in the case of **M. Rathinasabapathy** (supra) (para 3 (i)) was placed under suspension on 20.10.1982 and a memo of charges was issued to him on 16.10.1982. He, however, continued under suspension as he had first filed a writ petition in the High Court which was dismissed and thereafter he went to High Court in a writ appeal. During his suspension his subsistence allowance was not revised as required under the rules/guidelines.
- ii) In **P. Eswar Jitendra** (supra) paragraph 3(ii) the applicant was placed under suspension on 9.5.1987 and a charge-sheet was issued to him for submitting his defence statement on 11.5.1987. The case also involved the issue regarding competency of the authority

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other than the disciplinary authority to review continuance of suspension etc. Further the respondents had not taken a decision on the representation made by the applicant for revoking suspension even when a period of about twelve months had elapsed nor had his case been reviewed as required under the rules/relevant instructions issued by the department of Personnel (Page 59 and 60 of Swamy's Compilation on Suspension and Reinstatement 11th Edition).

iii)

The case of **S. Venkata Ramaiah** (supra) (paragraph 3(iv) relates to an officer of the Indian Administrative Service for possessing disproportionate assets to his income by the Anti-Corruption Bureau during the raid at the premises of the officer. The officer was asked to furnish certain particulars in the forms supplied to him showing the latest properties held or acquired by him. He did not do so. In the meantime he had been placed under suspension on 22.3.1984. The petitioner's representation seeking reinstatement in service vide letter dated 18.4.1984 was rejected on 11.5.1984. He furnished the information regarding his properties only on 28.11.1985. This caused delay in the investigation of the case. Further the case of the applicant had not been reviewed from time to time in accordance with the Department of Personnel OM No.221/18/65-AVD dated 7.9.1965 and further instructions on 4.2.1971 and 16.12.72 (Swamy's compilation on Suspension and Reinstatement 11th Edition) for continuation or otherwise of suspension/revision of subsistence allowance.

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iv) The case of **P. Subramani** (supra) relates to possession of disproportionate assets. The Tribunal's order revoking his suspension was based on two grounds; first, that the competent authority did not consider the question whether the continued suspension was necessary and secondly it did not consider whether the possibility of his presence being detrimental to the investigation could be eliminated by transferring the applicant to another place.

The facts and circumstances in all the above cases are distinguishable and the decisions given are relevant in the facts and circumstances of the particular case. They do not lay down any universal ratio or principle of law to be followed in all cases of suspension.

5. The respondents in their written statement have taken the preliminary objection that the order of suspension passed in 1986 is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985, as it is being challenged after a long period of three years. On merits the respondents submit that the applicant was arrested on 16.9.1986 by the CBI in connection with the criminal case under reference. As the charges in the said case against the applicant were grave and serious, he was placed under suspension with effect from 17.9.1986 under Rule 10(1) of CCS (CCA) Rules, 1965. The respondents deny that Shri R.P. Saroj was the main accused in the case. He was however, reinstated, in compliance of the judgement dated 1.5.1989 of the Tribunal in the case of R.P. Saroj Vs. UOI (supra). The investigation by the CBI

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in the case has been completed and a prima facie case against the applicant has been established. The Government after considering the report of the CBI has also communicated the approval of the President to the office of the respondents for initiating departmental proceedings against the applicant and, a charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 has been served on him on 6.12.1989. The case of suspension of the applicant was reviewed by the disciplinary authority at the end of three months but as the investigation by the CBI indicated that criminal offence alleged to have been committed by the applicant was grave enough to warrant continued suspension of the applicant, the revocation of his suspension was not considered in public interest. The subsistence allowance however was reviewed and enhanced by 50% which at the present rate amounts to Rs. 1837.50 p.m. excluding other allowances. Simultaneously with the departmental proceedings, the criminal prosecution has also been initiated. Briefly the charge against the applicant is that he assisted Shri R.P. Saroj, Under Secretary in substituting the original written answer sheets of General Study Paper-II after removing the original script of Civil Services (Main) Examination, 1985 by fresh written answer sheets; with the result that Shri Saroj obtained very high marks resulting in his receiving appointment letter from the Government for the post of Indian Administrative Group 'A' Service, for which he could not have been otherwise selected. The respondents, further submit that the judgement in the case of R.P. Saroj (supra) is not applicable to the applicant, as the prosecution as well as departmental proceedings against the applicant

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in this case have already been initiated, while that was not so in the case of R.P. Saroj (supra). Thus the situation in the present case is materially different. It is further submitted that the case besides the applicant involves six other officers of the Commission in a criminal conspiracy. The delay in initiating the departmental enquiry and prosecution was due to the CBI requiring a long time to examine the procedure followed in the UPSC office and to probe into criminal complicity of the official in the matter which necessitated the interrogation of about 50 witnesses and inspection of voluminous records. The respondents stress that revocation of the suspension order in this case would be against public interest.

6. In his rejoinder the applicant submits that the fact that the continued suspension for over three years indicates that the departmental instructions to review suspension order have not been followed in its true spirit. The applicant submits that he made a representation on 29.1.1988, seeking revocation of suspension but the same was rejected on 15.4.1988 stating that his request cannot be acceded to in view of the order of the Court of Shri S. Jaspal Singh, Sub-Judge, Delhi dated 20.9.1986. The applicant submits that the identical court order was also alleged to stand in the way of revoking suspension of Shri R.P. Saroj who, notwithstanding the identical order of the said Sub-Judge was ordered to be reinstated by the Tribunal. The applicant, therefore, submits that the ground for his continued suspension is no longer valid.

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He further submitted that the sole beneficiary of substitution of the answer sheets in General Studies paper is Shri R.P. Saroj and ironically he is back in his position as Under Secretary, but the applicant is being continued under suspension without any bona fide ground. In support of his case the learned counsel drew our attention to the case of **J.K. Varshneya Vs. UOI ATR 1989(1) CAT 215** and **Kamal Kishore Prasad Vs. UOI & Anr. 1990(1) ATJ 227**.

8. We observe that in the case of **J.K. Varshneya Vs. UOI** (supra) the official was working on deputation in the Delhi Development Authority (DDA) as Engineer Member when he was placed under suspension on 20.6.1986 under Rule 10(1) of the CCs (CCA) Rule, 1965. He was repatriated to his parent department vide order dated 15.12.1986. No charge sheet was served to him in the contemplated disciplinary proceedings. He, therefore, moved this Tribunal on 5.2.1988 requesting for issue of directions to the respondents to quash the order of suspension and to reinstate him in service with arrears of full pay and allowances. The Tribunal was of the view that once he was removed from DDA, the very purpose of keeping him under suspension ceased to exist. In these circumstances there was no valid reasons for his continued suspension.

In the latter case of **Kamal Kishore Prasad Vs. UOI** (supra) the delinquent official was placed under suspension under Rule 10(2) of the CCS (CCA) Rules, 1965 on 31.10.1986 and till 10.11.1989 the criminal case was stated to be under investigation by the investigating agency and no charge sheet had been issued or filed in a court.

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7. Shri R.K. Kamal, learned counsel for the applicant drew our attention to the instructions of the Government of India vide letters dated 7.9.1965, 4th February, 1971 and 16th December, 1972 and submitted that the continued suspension of the applicant is unjustified and illegal. The applicant is singled out for victimisation as the main accused Shri R.P. Saroj is already reinstated. The learned counsel submitted that this discriminatory treatment meted out to the applicant is in violation of the Article 14 of the Constitution. He further submits that suspension order in respect of the applicant was issued under Rule 10(1) of the CCS (CCA) Rules, 1965 and contended that his suspension under Rule 10(1) cannot be sustained, as a Government servant, under the said rule can be suspended only:-

"(a) where a disciplinary proceedings against him is contemplated or pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation. inquiry or trial.,

The learned counsel submitted that no prima facie case against the applicant has been established, as his name is not mentioned in the FIR, and as such he cannot be placed /continued under suspension under Rule 10(1)(a) and in terms of Department of Personnel & Training's OM No.22011/1/3/77-Estt(A) dated 14.7.1977.

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He further submitted that the sole beneficiary of substitution of the answer sheets in General Studies paper is Shri R.P. Saroj and ironically he is back in his position as Under Secretary, but the applicant is being continued under suspension without any bona fide ground. In support of his case the learned counsel drew our attention to the case of **J.K. Varshneya Vs. UOI ATR 1989(1) CAT 215** and **Kamal Kishore Prasad Vs. UOI & Anr. 1990(1) ATJ 227**.

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In the latter case of **Kamal Kishore Prasad Vs. UOI** (supra) the delinquent official was placed under suspension under Rule 10(2) of the CCS (CCA) Rules, 1965 on 31.10.1986 and till 10.11.1989 the criminal case was stated to be under investigation by the investigating agency and no charge sheet had been issued or filed in a court.

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9. Contesting the submissions of the learned counsel for the applicant, Shri N.S. Mehta, Senior Standing Counsel for the respondents drew our attention to the FIR which lists the following particulars of the concerned persons:

- " (i) Shri Rati Pal Saroj,
formerly Section Officer,
Examination Section-II,
now Under Secretary, UPSC,
New Delhi. (GO-I).
- (ii) Shri Inder Nath Uppal, UDC,
Union Public Service Commission,
New Delhi (NGO-III).
- (iii) Shri Radhey Shyam, LDC, Record Keeper,
Examination-I Branch,
Union Public Service Commission,
New Delhi (NGO-III)
- and others."

The learned Senior Standing Counsel submitted that in Item No.(iii) above, it is clarified that besides the three specifically named persons there are 'others' also who are suspected to be involved. It cannot, therefore, be contended that the applicant does not figure in the F.I.R.

With the completion of the investigation not only a charge-sheet for disciplinary proceedings has been issued to the applicant but the criminal proceedings have also been launched. A charge sheet has been filed in the criminal case on 15.11.1989. He submitted that the circumstances of the case have undergone a sea-change since the Tribunal decided the case of Rati Pal Saroj (supra). He further submitted that in the case of applicant the order of suspension had also been reviewed by the competent authority as per the rules and instructions and that continued suspension of the applicant under Rule 10(1) is fully justified and valid. The learned Senior Standing Counsel further asserted that the prayer for quashing of suspension is barred by limitation as he had been suspended on 17.9.1986 while the OA was filed only on 1.1.1990. He further contended that there is no decision of the Tribunal or Supreme Court directing revocation of the order of suspension where Criminal proceedings have been commenced and departmental proceedings initiated. In this connection he drew our attention to the Govt. of India OM NO.F.15/87-EIV/57 dated 28th March, 1959 as amended

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regarding revocation of suspension during pendency of criminal proceedings, arrest and detention appearing in Chapter 2, Suspension - General Principles which reads as under:-

"16(B) A Government servant against whom proceeding has been taken on criminal charge but who is not actually detained in custody (e.g. a person released on bail) may be placed under suspension by an order of the competent authority under clause (b) of Rule 10(1) of the Central Civil Services (Classification Control and Appeal) Rules, 1965. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course."

Having regard to the position of the applicant and the fact that the charge is connected with his official position and criminal proceedings have been started, the continued suspension of the applicant is valid and justified. He submitted that the conspiracy in substituting the answer sheets by officers of the UPSC has affected the credibility of the constitutional body like the UPSC and therefore it was in public interest to keep the applicant under suspension till the case is finally decided. There is no case law which supports revocation of suspension merely on the ground of prolonged suspension where a charge sheet in the criminal court is filed. The Tribunal has also accepted this position in the case of **D. Mangaleswaran v. CIT, Tamil Nadu 1987 (2) ATC CAT 828** decided by the Madras Bench. While setting aside the suspension order the Tribunal observed that:

"our order will not stand in the way of the continuance of the investigation by the Central Bureau of Investigation nor will it prejudice the same in any manner. Liberty is also given to the first respondent to pass a fresh order of suspension after the charge-sheet is filed before the criminal court, if the facts and circumstances so warrant..."



The learned Senior Standing Counsel further submitted that the decision given in the case of Rati Pal Saroj (supra) quashing the suspension order and ordering him to be reinstated as Under Secretary was bad in law and has adversely affected the public interest.

10. Shri R.K. Kamal, the learned counsel for the applicant submitted that longer the suspension greater is cause for coming to the court as the cause of action continues and the challenge to suspension order cannot be deemed to be barred by limitation. Regarding the submissions made by the learned Senior Standing Counsel regarding **D. Mangaleswaran Vs. UOI** (supra) the learned counsel submitted that this has been discussed at length in Rati Pal Saroj's case by the Tribunal.

11. We may now examine the case of **Rati Pal Saroj** (supra) decided by the Tribunal on 1.5.1989, heavily relied on by the applicant. Shri Rati Pal Saroj was deemed to have been placed under suspension w.e.f. 10.9.1986 in terms of sub-rule 2 of Rule 10 of the CCS (CCA) rules, 1965. His suspension continued for more than 30 months. No charge sheet was filed in the criminal court nor were any departmental proceedings initiated against him. He had also not been interrogated after his release on bail on 20.9.1986. In the circumstances the applicant challenged the validity of the continued suspension on the ground of inordinate delay.

The operative part of the judgement in the case of **Rati Pal Saroj** (supra) is as under:-

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"19. In the written submissions filed by the learned counsel of respondents after the conclusion of the hearing he has, however, submitted that in the event of our taking a view that the continued suspension of the applicant was not right and the order of suspension is to be set aside, liberty may be granted to the respondents to pass a fresh order of suspension after the chargesheet is filed before the Criminal court. In this context, he has relied upon the judgement of the Madras Bench of the Tribunal in D. Mangaleswaran Vs. C.I.T. Madras, 1987(2) A.T.C. 828. In that case, while setting aside the order of suspension, the Tribunal had given liberty to the respondents to pass a fresh order of suspension after the charge-sheet is filed before the criminal court, if the facts and circumstances so warrant.

20. We have carefully considered the aforesaid contention. As a result of the setting aside of the impugned order of suspension, the respondents will have to reinstate the applicant. In case the respondents issue a fresh order of suspension after the charge-sheet is filed before the Criminal-court, its validity would depend on the surrounding facts and circumstances. We refrain from making any specific directions in this regard.

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21. We, therefore, order and direct as follows:

(i) The impugned order of suspension dated 22nd September, 1986 is quashed. The respondents shall reinstate the applicant in service w.e.f. the date of the receipt of a copy of this order. The respondents are at liberty to post him in any office at Delhi.

(ii) The pay and allowances to which the applicant is entitled to from the date of suspension to the date of reinstatement, shall be released to him within a period of two months from the date of receipt of this order.

(iii) There will be no order as to costs."

The Tribunal left the matter of issuing a fresh order of suspension after the charge-sheet is filed before the criminal court open by observing that:

"Its validity would depend on the surrounding facts and circumstances. We refrain from giving any specific directions in this regard."

The Tribunal did not go into the powers of the respondents to issue fresh order of suspension under Rule 10(1) of the CCS (CCA) Rules, 1965. At the same time it quashed the impugned order of suspension dated 22.9.1986 as neither any disciplinary proceedings had been initiated against the delinquent nor was the charge sheet filed in a criminal court even after a lapse of 30 months from the date he was placed under suspension.

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12. It is apparent from the discussion in the preceding paragraphs that the facts of the present case are, distinguishable inasmuch as both the disciplinary proceedings and the criminal proceedings have been initiated against the applicant. The ratio of the Hon'ble Supreme Court's decision in the case of **Shri O.P. Gupta Vs. UOI AIR 1987 SC 2257 (at page 2264)** is also of no help to the applicant as in O.P. Gupta (supra) case even after issue of the charge sheet, the departmental inquiry was not progressed for a period of 20 years as the respondents had no material to substantiate the serious charges levelled against the delinquent meriting dismissal and for which he was kept under suspension for nearly 11 years.

We are of the view that although the initial suspension of the applicant was covered under Rule 10 (1) (a) of the CCS (CCA) Rules, 1965 his continued suspension falls under Rule 10 (1) (b) of the said rules which authorises the respondents to place a Government servant under suspension where a case in respect of a criminal offence is under 'investigation, inquiry or trial'. In the case before us the disciplinary proceedings have been initiated and the criminal case is also launched against the applicant.

While the respondents have submitted that the case of the applicant has been reviewed at the appropriate level in accordance with the instructions of the Government, no material has been brought to our notice where the competent authority had considered the transfer of the applicant who is a section officer belonging to Central Secretariat Service to another department within or outside his cadre - **P. Subramani** (supra).


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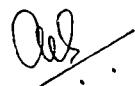
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Further the Department of Personnel & Training in OM No. 39/33/72-Estt(A) dated 16th December, 1972 has stressed that suspension beyond three months, where the cases are pending in courts, should be continued only in exceptional circumstances with the approval of the higher authority.

In the facts and circumstances of the case while we do not find any justification for judicial interference in the matter, we observe that after having completed the investigation, filed the charge sheet in the criminal court and initiated disciplinary proceedings, there is a case for reviewing the need for continuing the applicant under suspension in terms of the Department of Personnel and Training's Office Memoranda referred to above (Swamy's Compilation on Suspension and Reinstatement - Pages 60-61) and to pass appropriate orders having regard to the changed circumstances. While reviewing the case of continued suspension the respondents may also consider if the objective of the suspension can be achieved by transferring the applicant to any other office within the cadre to which the applicant belongs.

The OA is disposed of accordingly with no orders as to cost.


(I.K. Rasgotra)
Member (A) 3/4/91


(Amitav Banerji)
Chairman