

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1016/90
T.A. No.

199

DATE OF DECISION 19.9.1990.

Shri S.R. Arya

Petitioner Applicant

Shri S.S. Tewari

Advocate for the Petitioner(s) & Applicant

Versus

Union of India through Secy.
 (Ind. Dev.) & Another

Respondent

Shri P.H. Ramchandani

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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? *Not*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Not*

(Judgement of the Bench delivered by Hon'ble
 Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is a Development Officer in the Directorate General of Technical Development under the Department of Industrial Development, Ministry of Industry, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing and setting aside the impugned order of suspension dated 19.2.1986 passed by the respondents, to direct them to revoke the suspension and reinstate him with immediate effect, to direct them to treat the period of suspension as on duty with full pay and allowances, and to direct them to pay him the arrears of pay and allowances as he would have been paid had he been on duty. The pleadings in this case are complete. The application has not been admitted. We feel that the application could be disposed of at the admission stage itself and we proceed to do so.

2. The applicant was placed under suspension by the impugned order dated 19th February, 1988, as a case against him in respect of a criminal offence was under investigation/trial. The subsistence allowance payable to him has been increased upto 75 per cent w.e.f. 20.5.1988. His contention is that the criminal case was registered in February, 1988 and the charge-sheet filed in October, 1988 and yet there has been no headway in the trial for no fault of his. According to him, all the documents are in the custody of the Department and there is no danger of his tampering with them. There is also no scope for him to tutor or influence anyone else. He has prayed for revocation of the order of suspension on the ground that it is unduly prolonged.

3. The respondents have stated in their counter-affidavit that his presence in the office would hamper the proceedings and that the investigating agency has advised or also ~~suggested~~ that he be continued on suspension. The criminal case pertains to the applicant attempting to bribe the Director, Central Vigilance Commission, New Delhi. The respondents have drawn our attention to the Office Memorandum dated 20.6.1986 issued by the Deptt. of Personnel which deals with suspension of suspect officials in corruption cases. The said O.M. clarifies that in the following cases, there may be adequate justification for placing the concerned Government servant under suspension on the request received from C.B.I. or otherwise at the stage indicated against each

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type of case:-

- (i) In a case where a trap has been laid to apprehend a government servant while committing an act of corruption (usually receiving illegal gratification) and the Govt. servant has been so apprehended, immediately after the Govt. servant has been so apprehended.
- (ii) In a case where, on conducting a search, it is found that a Govt. servant is in possession of assets disproportionate to his known sources of income and it appears, prima facie that a charge under Section 5(i) (c) of the Prevention of Corruption Act could be laid against him, immediately after the prima facie conclusion has been reached.
- (iii) In a case where a charge-sheet accusing a Govt. servant of specific acts of corruption or any other offence involving moral turpitude has been filed in a criminal court, immediately after the filing of the charge-sheet.
- (iv) In a case where, after investigation by the CBI a prima facie case is made out and pursuant thereto Regular Departmental action for imposition of a major penalty has been instituted against a Government servant and a charge-sheet has been served upon him alleging specific acts of corruption or gross misconduct involving moral turpitude; immediately after the charge-sheet has been served upon the Government servant."

4. We have gone through the records of the case carefully and have considered the rival contentions. The learned counsel for the applicant relied upon the decision of the Calcutta Bench of this Tribunal in Dinesh Singh Vs. Union of India, 1986 (2) SLJ (CAT) 266 and the Principal Bench of this Tribunal in Kamal Kishore Prasad vs. Union of India & Another, 1990 (1) ATJ 227. In Dinesh Singh's case, the Tribunal observed that the main idea for suspension of a person is to safeguard against any kind of tampering of evidence. Such a situation

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could not arise in a case where all the evidence was in the hands of the respondents. In Kamal Kishore Prasad's case, to which one of us (P.K. Kertha) was a party, it was observed that as the investigation was complete, there could be no apprehension that the applicant would influence witnesses or tamper with the records if he were to be reinstated in service. The Tribunal also took note of the fact of prolonged period of suspension and came to the conclusion that there was no justification in continuing the suspension in that case. The impugned order of suspension was quashed and the respondents were directed to reinstate him in service. They were given opportunity to post him in any of the offices in India and to assign him any duty which they considered appropriate. In that case also, the criminal case related to the alleged demand and acceptance of illegal gratification by the applicant, who was an Executive Engineer in the C.P.W.D., of Rs. 200/- from a contractor.

5. In our opinion, the question whether an order of suspension is legally sustainable or not, would depend on the facts and circumstances of each case. Rule 10(1) of the C.C.S.(CCA) Rules empowers the competent authority to place an officer under suspension when a case against him in respect of a criminal offence is under investigation. Whether the presence of the applicant would hamper the pending proceedings in the criminal court, is a question primarily to be decided by the respondents. There is an element of public interest involved in matters of this kind.

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6. The respondents have stated in their counter-affidavit that the C.B.I. had registered a case against the applicant in January, 1986 under Section 5 (2) read with Section 5 (1) (e) of the Prevention of Corruption Act. During the course of the investigation, the resale of one Bajaj scooter by him to Shri Anil Kumar Jain in contravention of the rules, came to the notice of the C.B.I. The C.B.I. filed / criminal proceedings against him and Shri Jain in the Court of Metropolitan Magistrate, Delhi. In view of this criminal case, the applicant was placed under suspension on 4.3.1986. Disciplinary proceedings were initiated against him. The order of suspension was revoked on 2.6.1987. The penalty of withholding of increments for two years without cumulative effect was imposed on him vide order dated 16.10.1987. The proceedings before the Metropolitan Magistrate, Delhi were concluded in January, 1989 and the applicant and Shri Jain were declared guilty of the charges framed against them and convicted. They were, however, released on probation on furnishing a personal bond for a period of one year.

7. The applicant has not denied the above averments in his rejoinder affidavit.

8. In February, 1988, the Delhi Special Police Establishment, Anti-Corruption Branch, Delhi, forwarded an F.I.R. to the respondents in respect of a case registered against the applicant under Section 165-A, IPC. The complaint related to his attempt to bribe the Director, Central Vigilance Commission.

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9. The respondents have also pointed out that in one case relating to possession of assets disproportionate to the known sources of income, major penalty proceedings are in progress against the applicant.

10. The respondents have contended that the applicant's continuance in Office would not be in public interest. The learned counsel for the respondents also submitted that the Directorate General of Technical Development in which the applicant was working as Development Officer, is a sensitive department. He also stated that the respondents will not be in a position to post him in any other Ministry or Department as he is not a generalist officer. Keeping in view the aforesaid facts and circumstances of the case, we are of the opinion that this is not a fit case in which the ~~suspension~~ ^{order} of suspension ^{quashed} ~~should be~~ ^{or} ~~merely~~ on the ground of ~~a~~ prolonged suspension. We do not consider it appropriate to direct the respondents to revoke the order of suspension and reinstate him in the post of Development Officer in the Directorate General of Technical Development or in any other post. In case the applicant is exonerated in the criminal proceedings against him, he would be entitled to all consequential benefits. We, therefore, hold that the applicant is not entitled to the relief sought in the present application and the same is dismissed at the admission stage itself.

The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

19/9/90

P. K. Kartha
19/9/90
(P. K. Kartha)
Vice-Chairman (Judi.)