CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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(A)

Regn. No. OA 1142/1991 Date of decision: 8.8.1991

Kamal-Ud-Din Applicant

vs.

Union of India Respondents

PRESENT

Shri D.R. Gupta, counsel for the applicant.

Shri R.S. Aggarwal, counsel for the respondents.

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Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri I.P. Gupta, Member (A).

(Orders of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

This judgment shall also govern the disposal of O.A. Nos. 1143/91, 1144/91, 1145/91 and 1146/91.

2. These O.As have been filed under Section 19 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act) by the applicants who are all employees in the Department of Income Tax and work in the office of the Deputy Commissioner, Range 5, Delhi-4.

3. The applicant was initially appointed as a peon, later on promoted to the post of L.D.C. and thereafter again promoted to the post of U.D.C. The applicant was placed under suspension with effect from 25.5.89 in respect of a criminal case reported to be under investigation by the C.B.I. The applicant was arrested and was detained in custody on 25.5.89 for a period of exceeding 48 hours. Therefore, he was suspended on 25.5.89 and remains suspended till this day. The prayer contained in the O.A. is for quashing of the order of suspension and also a direction to reinstate the applicant with consequential benefits,

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including the payment of arrears, with grant of increments etc.

3. The respondents have filed their return and were finally heard. The fact which is not in dispute is that the applicant filed his representation on 3.5.91 which was consequently rejected. The respondents further contended that the CBI is investigating the case and it is in the final stage. Respondents further contend that the applicant is being paid subsistence at the rate of 75% of the basic pay, plus D.A., H.R.A. and C.C.A. Shri D.R. Gupta, counsel for the applicant and Shri R.S. Aggarwal, counsel for the respondents are finally heard.

4. The allegation against the applicant is that he was involved in the issue of bogus income-tax refunds and was detained in custody after arrest for more than 48 hours. He was, therefore, placed under suspension under Rule 10(2) of the C.C.S.(CCA) Rules, 1965 and since then the suspension is continuing. Though the cases are being periodically reviewed as required under the rules, yet the suspension orders have not been revoked on the ground that the CBI is still investigating the cases. Clearly, from the record it can be gathered that in the course of periodical reviews of the suspension orders, the aspect of keeping the delinquent in another Section or office was not considered by the reviewing authority.

5. The Ministry of Home Affairs vide OM No. 221/18 65-AVD dated 7th September, 1965 has directed that in such cases:

> ".....the investigations should be completed and a charge-sheet filed in a court of competent jurisdiction in case of prosecution or served on the officer in cases of departmental proceedings within six months as a rule. If the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence etc. or if he is likely to tamper with the evidence,

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he may be transferred on revocation of the suspension order."

6. In a subsequent O.M. No. 39/39/70-Ests (A) dated 4th February, 1971, the Department of Personnel in partial modification of the order dated 7th September, 1965, conveyed the decision that:

> "every effort should be made to file the charge-sheet in court or serve the chargesheet 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 authority explaining the reasons for the delay."

This order was further amended vide O.M. No. 39/33/72-Ests (A) dated 16th Decemer, 1972 as under:

> "It would be observed that the Government have already reduced the period of suspension during investigation, barring exceptional cases which are to be reported to the higher authority, from six months to three months It has now been decided that while the above orders would continue to be operative in regard to cases pending in courts, in respect of the period of suspension pending investigation before the filing of a charge-sheet in the court as also in respect of serving of the charge-sheet on the Government servant in cases of departmental proceedings, in cases other than those pending in courts, 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."

Finally, on 14th September, 1978, the Department of Personnel and A.R. vide OM dated 11012/7/78-Est(A) dated 14th September, 1978 observed with dismay that:

> "In spite of the above instructions, instances have come to notice in which Government servants continued to be under suspension for unduly long period. Such unduly long period 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 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 exercise a strict check on cases in which delay has occurred and give appropriate directions to the disciplinary authorities keeping in view the provisions contained above."

The above instructions were reiterated vide DP & AR O.M. No. 42014/7/83-Est (A) dated the 18th February, 1984:

> ".....that the provisions of the aforesaid instructions in the matter of suspension of Government employees and the action to be taken thereafter should be followed strictly. Ministry of Finance etc. may, therefore, take appropriate action to bring the contents of the aforesaid instructions to the notice of all the authorities concerned under their control, directing them to follow those insturctions strictly."

7. In view of the above directions of the Department of Personnel & Administrative Reforms and in the absence of adequate reasons for continuing the applicant under suspension,

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without filing a charge-sheet in a court of law or serving a charge-sheet under CCS (CCA) Rules, 1965, we do not find any justification for the applicant's continued suspension. We do not also find any merit in the argument of the respondents that the applicant could not be taken back on duty as he would be able to tamper with the evidence.

8. Consequently, we direct that the respondents shall revoke the order of suspension Order No. CIT-IV/89-90/CB/382 dated 29/30.5.1989 within a period of two weeks commencing from the date of the communication of this order. Needless to say that on completion of the investigation by the CBI, if the continued suspension is not warranted, the applicant should not be suspended.

9. We have placed reliance upon the Division Bench of this Tribunal's judgment in the case of **V.K. Anand vs. U.O.I. (O.A. No. 1115/91)** decided on 2.8.91. The Bench consisted of one of us (Hon'ble Justice Ram Pal Singh).

10. This judgment, as ordered earlier, shall also govern the disposal of cases of S/Shri O.P. Mann, R.S. Rawat, Man Chand and Krishan Kumar. The parties shall bear their own costs.

(I.P. Gupta) 8/8/91
Member (A)

(Ram Pal Singh)
Vice-Chairman (J)