

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 154/91  
T.A. No.

199

DATE OF DECISION 15.2.1991.

<u>Shri B.B. Tarei</u>	<del>Petitioner</del>
<u>Shri V.S.R. Krishna</u>	Advocate for the <del>Petitioner(s)</del> Applicant
Versus	
<u>Union of India through Foreign Secy., Miny. of External Affairs</u>	Respondent
<u>Shri N.S. Mehta,</u>	Advocate for the Respondent(s)

### CORAM

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? */ No*
4. Whether it needs to be circulated to other Benches of the Tribunal? */ No*

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

The grievance of the applicant, who is a Grade III  
Officer of the Ministry of External Affairs, relates to  
his suspension by the impugned order dated 17.1.1991  
which reads as follows:-

### "ORDER"

Whereas a disciplinary proceeding against Shri B.B. Tarei, an Officer of Grade III of Indian Foreign Service is contemplated.

2. Now, therefore, the President, in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Shri B.B. Tarei under suspension with immediate effect.

3. It is further ordered that during the period that this Order shall remain in force, the Headquarters of Shri B.B. Tarei, an Officer of Grade III

of Indian Foreign Service should be New Delhi and the said Shri B.B. Tarei shall not leave the Headquarters without obtaining the previous permission of the undersigned.

By Order and in the name of the President."

2. The applicant, who had been posted at the Indian Embassy, Kabul, was transferred to the Ministry of External Affairs, <sup>New Delhi</sup> on 16.9.1990. He feels that the Ambassador of India in Kabul has a hand in placing him under suspension. He has stated that the impugned order was issued because of an alleged incident of misconduct that took place in Kabul, with regard to sale of a seven years old used flag car. He has alleged that he was forced to give some written statements against his will and these statements are now being used against him for punishing him without justification.
3. The applicant has contended that since the alleged incident of misconduct happened in Kabul, Afghanistan he will not be in a position to interfere with the investigation nor will he be able to tamper with material evidence, oral or documentary. Hence, the impugned order has been issued without application of mind.
4. We have carefully gone through the pleadings and have heard the learned counsel for both the parties. In our view, the applicant has not substantiated the allegation of mala fides against the Ambassador of India in Kabul, or of any other officer of the respondents. Shri N.S. Mehta,
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the learned counsel for the respondents, stated that a preliminary enquiry into the alleged misconduct was initiated in July, 1990 and the report of the said enquiry was submitted in October, 1990. The impugned order was passed after the competent authority had applied its mind to all the aspects of the case.

5. Rule 10 (1) of the C.S.S.(CCA) Rules, 1965 empowers the Competent Authority to place an officer under suspension when a disciplinary proceedings is contemplated against him. Whether the presence of the applicant would hamper the contemplated proceedings is a question to be considered and decided by the respondents. There is an element of public interest in matters of this kind. The legal position in regard to suspension is well settled. In State of Orissa Vs. Shiva Prashad Das, 1985 SCC (L and S) 397 at 399, the question arose whether an order of suspension from service passed against a Government Servant falls within the scope and purview of Article 311 of the Constitution. The Supreme Court observed that "an order of suspension passed against a Government Servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Article 311 of the Constitution." The provisions of Article 311 have no application to a situation where

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a Government Servant has been merely placed under suspension pending departmental inquiry since such action does not constitute either dismissal or removal from service.

6. The learned counsel for the applicant argued that the guidelines issued by the Government on the subject have not been followed by the respondents and that in the absence of any reasons given in the impugned order, the applicant has been prevented from making an effective appeal against the impugned order. We are not impressed by the above contention. The guidelines do not give rise to any enforceable right. The applicant is also not handicapped in preferring an appeal against the impugned order on the ground that no reasons have been mentioned therein.

7. In the light of the foregoing discussions, there is no merit in the application and the same is dismissed. There will be no order as to costs.

*D.K. Chakravorty* 15/2/99  
(D.K. Chakravorty)  
Administrative Member

*P.K. Kartha* 15/2/91  
(P.K. Kartha)  
Vice-Chairman(Judl.)