

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. NO.2790/92

DATE OF DECISION:

11/11/92

SHRI G.S. GOPALA

...APPLICANT

versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

Shri P.P. Khurana

....for the applicant.

Shri R.S. Aggarwal

....for the respondents.

**CORAM:**

HON'BLE JUSTICE SHRI RAM PAL SINGH, VICE CHAIRMAN (J)

HON'BLE SHRI I.P. GUPTA, 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?
4. To be circulated to all Benches of the Tribunal?

**JUDGEMENT**

(DELIVERED BY HONB'BLE JUSTICE RAM PAL SINGH )

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The applicant is a direct recruit of Indian Revenue Services and belongs to 1968 batch. He was posted as Commissioner Income Tax, Ahmedabad Range I, Gujarat.

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For attending his case in the Supreme Court, he came over to Delhi on 13.04.1991 along with his wife. In Delhi, the applicant's wife committed suicide by hanging herself on 14.04.1991. Thereupon the applicant was arrested by the Police for having committed offence punishable under Section 498(a) and 306 of the Indian Penal Code. He remained in custody for 8 days i.e. till 22.04.1991 when he was released on bail by orders of the Additional Sessions Judge dated 20.04.1991. Thereafter, the applicant went to Ahmedabad and reported for duty on 03.06.1991 but he was not allowed to join his duty. By a registered letter, the applicant was served on 28.10.1991 by order dated 25.09.1991 placing the applicant under deemed suspension w.e.f. 14.4.1991 under sub-rule (2) of Rule 10 of the CCS(CCA) Rules of 1965 (Annexure A-8). Thereupon on 7.10.91, he filed a representation urging for revocation of his suspension praying therein for exercise of the discretionary powers in favour of the applicant. He therefore, has filed this OA under Section 19 of the Administrative Tribunal's Act of 1985 praying therein for quashing the order dated 25.9.1991 (Annexure B) by which he was placed under the deemed suspension. By way of interim relief, he also prayed for a direction for fixing his headquarters at Delhi but the prayer for interim relief was turned down. Applicant also contended that he has been discriminated as the suspension of similarly situated persons have been revoked. He also contended that as the charge-sheet against the applicant has been filed in the court, the continuance of suspension is not justifiable.

2. Respondents on notice appeared and filed their counter. They took a preliminary objection that Ahmedabad Bench of the Tribunal has the jurisdiction. After

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admitting the factual position, they opposed the prayer contained in the OA and contended that they have not exercised the powers of placing the applicant under suspension either arbitrarily or against the provisions of the Rules. The respondents contended that the revocation of suspension of Vinay Kumar and A.K. Srivastava were passed as their case is different from that of the applicant. They, according to the respondents, were arrested by police while performing their departmental duties. That is why their suspension has been revoked.

3. The applicant has filed the rejoinder to this reply. We have heard the learned counsel for the applicant Shri P.P. Khurana and Shri R.S. Aggarwal, counsel for the respondents. Shri Khurana contended that the order of suspension was passed without application of mind by the respondents. He also drew our attention to the order passed on his bail application by the Additional Sessions Judge. He also contends that his continued suspension amounts to be against the public interest. In the end, he contended that 18 months have passed since the deemed suspension order dated 14.04.1991 was passed and the respondents have not taken steps for reviewing it. The learned counsel for respondents Shri Aggarwal maintained that the deemed suspension order was in accordance with Rule 10 of the Rules, that the applicant remained in custody for more than 48 hours and the suspension order has been reviewed by the respondents by order dated 19/20th October, 1991. He has filed a copy of the order which we have perused. The prayer for review was turned down by the respondents after approval from the Board. Rule 10 of

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the CCS(CCA) Rules, 1965 provides grounds for passing order of suspension. Sub-rule (b) of Rule 10 provides that where a case against him in respect of any criminal offence is under investigation, enquiry or trial, then the employees can be suspended. Sub-rule 2 of Rule 10 contains the provisions for passing order of deemed suspension. Sub-rule 5(b) of Rule 10 provides that where a Government servant is suspended or is in deemed suspension then the Competent authority may for reasons to be recorded in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings. Thus, the Competent Authority is required to give reasons to be recorded by him in writing for continuance of the suspension order. The document placed by Shri R.S. Aggarwal before us at the time of the arguments dated 19/20th October, 1992 does not appear to contain any reason as to why it is necessary to continue the deemed suspension of the applicant. The only ground mentioned in para 3 of the order is that it has been decided with the approval of the board that the request of the officer for revocation of suspension cannot be acceded to, pending the criminal trial. The grounds which were raised by the applicant before them were that his utility to Department will be lost if the deemed suspension period is not revoked. He had also contended that the charge-sheet has been filed by the Police before the criminal court against the applicant. When these material were before the Reviewing Authority then they should have passed an order giving reasons as to why the suspension of the applicant is not being revoked. The question before them was whether the continued suspension of the officer is

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really necessary even after the expiry of the period of six months referred to in the guidelines. The guidelines contained in the circulated dated 15.07.1976 provides that

"...all cases of suspension may be reviewed regularly particularly those were officials who are under suspension for more than six months, and whenever it is found that the official can be allowed to resume duties by transferring him from his post to another post, orders should be issued for revoking the suspension and allowing the officials to resume duties with such further direction as may be considered desirable in each individual case." with regard to

Thus, the process of review regularly continuous specially with regard to the officials who are under suspension for more than six months. In such situation, according to these guidelines, the suspension can be revoked by allowing the officers to resume duties with such further directions as may be considered desirable in the particular case with regard to their postings and transfers.

4. A government servant is suspended when he is alleged to have committed an offence in which the investigation is going on. As soon as the investigation/ is complete the situation changes. The situation appears to have changed as soon as the charge-sheet has been filed by the Police. In such situation, the order <sup>of</sup> ~~the~~ suspension can be reviewed. An employee is suspended so that he may not influence the witnesses ~~whose~~ whose statements are to be recorded during the investigation of a criminal case. The learned counsel for the applicant has cited the cases of P. Subramani reported in 1987 (3) CAT AISLJ p.599 by the Madras Bench, wherein it has been held that the Authority reviewing suspension order must consider whether continuation of suspension was absolutely necessary or not. Similarly, in the judgement of New Bombay Bench passed in OA No.15/88,

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The Bench held that in view of this O.M. dated 15.7.1976, the suspension orders can be modified or revoked by the Competent Authority.

5. We are, therefore, of the view that non-consideration of the question of revocation of suspension by the competent authority clearly violates the guidelines issued by the Government on the subject. In this case, no justification for continuance of the suspension of the applicant without any review or without recording any reasons, can be sustained. The reason for consideration for revocation or otherwise of the suspension was also the fact of filing of the charge-sheet by the police in a Court at New Delhi for which the applicant has been kept under deemed suspension. We therefore, allow this O.A. and direct the respondents to review the order of suspension in the changed circumstances after recording their reasons thereon, while reviewing the order of suspension, shall also keep in view the desirability or otherwise of posting the applicant either at Ahmedabad or at Delhi in case it is decided appropriate by them to revoke the order. With the above direction, this OA stands finally disposed of. No order as to costs.

Before parting we add that the review of order of suspension be done early, preferably within two months.

*I.P. Gupta*  
( I.P. Gupta ) 11/11/92

Member (A)

*Ram Pal Singh*  
( Ram Pal Singh )

Vice-Chairman (J)