

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

.....

OA No. 1115/91

DATE OF DECISION: 2.8.1991

SHRI V.K. ANAND

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENT

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN(J)

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

FOR THE APPLICANT

SHRI D.R. GUPTA, COUNSEL

FOR THE RESPONDENTS

SHRI R.S. AGGARWAL, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

Shri V.K. Anand, the applicant has filed this application challenging the order dated 19/20.6.89 passed by the Deputy Commissioner of Income Tax, placing him under deemed suspension w.e.f. 8.6.1989 under Rule 10 (2) of the Central Civil Services (Classification Control & Appeal) Rules, 1965.

The applicant was initially appointed as Upper Division Clerk w.e.f. 27.5.1977 and after confirmation from 22.6.1984 promoted as Tax Assistant w.e.f. 15.5.1987. He was continuing in that capacity till he was placed under deemed suspension w.e.f. 8.6.1989. The main grievance of the applicant is that he has been under suspension for over two years, yet neither any charge sheet has been served on him under the CCS (CCA) Rules, nor any FIR has been filed in a court of law.

By way of relief the applicant has prayed that the respondents be directed to reinstate the applicant by quashing the order continuing him under suspension immediately from the date he completed the period of three months under suspension.

2. The facts have not been disputed by the respondents in their reply. They admit that the applicant filed a representation on 6.5.1991 seeking his reinstatement but it was decided to continue him under suspension by the competent authority after careful review on 10.5.1991 (for the quarter ending 31.3.1991). The respondents submit that the case of the applicant is being investigated by the CBI and that the investigation is at the final stage. They further submit that the applicant is being paid subsistence allowance at 75% of basic pay plus dearness allowance and full HRA and CCA.

3. We have heard Shri D.R. Gupta, learned counsel for the applicant and Shri R.S. Aggarwal, learned counsel for the respondents.

4. The applicant was arrested by the CBI in connection with his alleged involvement in the issue of bogus income tax refunds and was detained in custody exceeding 48 hours. He was, therefore, placed under deemed suspension under Rule 10(2) of the CCS (CCA) Rules, 1965 w.e.f. 8.6.1989. The applicant has since then been under suspension. Although his case had been reviewed periodically as required under the Rules yet his suspension has not been revoked on the plea that the CBI is still investigating the case. On a query from the Bench whether the applicant could have been taken back on duty and transferred to another section of the office, we were not able to elicit any satisfactory reply from the respondents, indicating that in the course of the periodical review of the suspension orders, this aspect had been kept in view by the competent authority.

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The Ministry of Home Affairs vide OM No.221/18 65-A.V.D. dated 7th September, 1965 had directed that in such cases:

"....the investigations should be completed and a charge-sheet filed in a court of competent jurisdiction in cases 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, he may be transferred on revocation of the suspension order."

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 charge-sheet 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 December, 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 No.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

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 OM 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 instructions strictly."

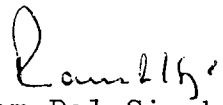
In view of the above directions of the Department of Personnel and Administrative Reforms and in absence of adequate reasons for continuing the applicant under suspension without filing a charge

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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 that he could not be taken back on duty as he would be able to tamper with the evidence etc. Accordingly, we direct that the respondents shall revoke the order of suspension No. DCIT/R-5/89-90/CR-196 dated 19/20.6.1989 within a period of two weeks from the communication of this order.

The OA is disposed of as above with no orders as to costs.


(I.K. Rasgotra)
Member(A)


(Ram Pal Singh)
Vice Chairman(J)