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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 2052/2004

New Delhi this the 5th day of June, 2007

**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J).
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A).**

S.K. Bhatia,
S/o late Shri Tirkha,
R/o 4117, Pocket IV,
Sector-D, Vasant Kunj,
New Delhi.

... Applicant.

▼ (By Advocate Shri Sachin Chauhan)

Versus

1. Union of India,
Ministry of Urban Development,
Through its Secretary,
New Delhi.
2. Superintending Engineer,
CPWD Coordination Circle (Civil),
East Block, R.K. Puram,
New Delhi.
3. Director General Works,
Nirman Bhawan,
CPWD,
New Delhi.
4. Members,
Appropriate Authority,
Income Tax Department,
Janpath, New Delhi.
5. Superintending Engineer,
Appropriate Authority,
Income Tax Department,
Janpath, New Delhi.

... Respondents.

(By Advocate Shri H.K. Gangwani)

O R D E R (ORAL)

HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J).

We had heard Shri Sachin Chauhan, for the applicant and Shri
H.K. Gangwani, appearing for the respondents. Necessarily for

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disposal of this application, it has become essential that subsequent developments are required to be taken notice of. As the matter presently stands, we think, it will be inappropriate to go into the merits of the contentions for the grant of reliefs, as they have to fall in line on with the adjudication of pending proceedings before the Special Judge, Delhi, initiated against the applicant under the Prevention of Corruption Act, 1988.

2. The applicant had filed the application at a point of time when there were no disabling circumstances as against his claim for joining duty or for claiming emoluments as a matter of course. But this was only true and available for a brief period. Before the above period as also subsequent to the filing of this application, he was and continues facing criminal prosecution.

3. The case of the applicant is that while employed in the CPWD, he had been sent on deputation to the Income-tax Department in the year 1988. While working there, he had been subjected to disabilities without authority of law. It is seen that CC 93 of 1996 as well as CC 124/96 had been registered against him and were pending before the Special Judge, CBI, Tis Hazari Court. Also charges were framed against him on 7.10.2002 by the Special Judge, as coming within the provisions of the Prevention of Corruption Act but challenging it an application was filed before the High Court pointing out that the competent authority had not granted sanction for prosecution. On 6.11.2003, the High Court had accepted the contentions of the applicant and had declared that the sanction relied on was invalid. It was with certain reservations however. The Special Judge, finding that the applicant has been discharged by the

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High Court in CC 124/96 on his own, had held that CC93/96, which was tried by him, also patently suffers from the same defect. The applicant was discharged for this reason.

4. The applicant did not hear about any further steps having been taken and the present application had been filed at that point of time since by Annexure A-5 order, his application for reinstatement stood rejected. However, no interim orders were passed and the matter was kept for long as pending. Mr. Chauhan appearing on his behalf submits that it is not required that in every case when disciplinary proceedings or criminal proceedings are initiated, civil servant is to be mandatorily placed under suspension. The Department had practically misunderstood his representation while rejecting it by Annexure A-5 order and at least a review should have been directed, as practically there are no reasons incorporated in the above order when his application for reinstatement was refused.

5. According to applicant, present proceedings are likely to continue for some time more, although he had never, on his own, caused any delay. A civil servant is entitled to continue in service in view of the prima facie finding that the proceedings against him were misconceived.

6. We had the benefit of hearing Mr. H.K. Gangwani, who controverted the contentions raised in the application. Adverting to the reply filed, it is pointed out that the applicant was on a misapprehension and unfortunately this had reflected in the judgment of the High Court as well. He was a person permanently employed in the Central Public Works Department and never sent on deputation to the Income Tax Department. He was posted in the income tax

Department in an encadred post with CPWD. It was not uncommon, according to counsel, that Government make such an arrangement and in the present case the staff continue on the sanctioned strength of CPWD and the postings and transfers are administered by the CPWD. There is no element of deputation and at no time the Income Tax Department had borrowed his services. He also points out that there was an omission to point out these details when the matter was with the High Court.

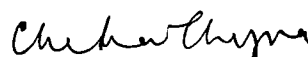
7. He had also adverted to Annexure R-1, which is a copy of an O.M. dated 24.8.2004, to shows that the arrangements, as suggested by him, regarding the encadred post, were authorized and they were not considered as deputation post. It is further submitted that as of now, the procedural hassles have been cleared, competent authority has sanctioned prosecution and charge has been laid and trial is in progress.

8. However, it is for the respondents to establish any such contentions as may be open to them. Now that sanction has been obtained, from the competent authority, and proceedings as against the applicant, are in full swing, the position has to reflect in our present order. Counsel handed over to us a copy of the letter received from the Supdt. of Police, CBI, addressed to Income-tax Department pointing out that case No. RC 34 (A)/95-DLI against the applicant is pending in the court of Special Judge, Delhi and stands posted to October, 2007 for prosecution evidence. Likewise, RC No.53 (A)/95-DLI as against him, is pending before the Special Judge, Delhi and is in progress. Therefore, it appears that criminal proceedings, in fact, are pending as against the applicant and it will

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be inappropriate at this point of time to direct the Department to consider his claim for reinstatement or for any other reliefs.

9. Although he is under suspension for a long time, unlike in departmental disciplinary cases, when a Government servant faces criminal prosecution, it is not uncommon for the Department to maintain that suspension as it would be better suited, in public interest. The rules governing the applicant will take care of his interest once the proceedings come to an end and for determining whether the suspension was wholly unnecessary or whether it was justified and whether monetary reliefs are admissible. Such decisions are required to be objectively taken, in the light of parameters prescribed by the nominated authorities. For the Tribunal to consider such issues, would be premature.

8/5/2014
10. ^ Reserving such rights of the applicant to agitate his claims at proper time, in the discretionary jurisdiction that is exercised by us, we do not think that this is a fit case for interfering with the orders currently passed or for granting the reliefs prayed for. Consequently, the O.A. is dismissed. No costs.


(CHITRA CHOPRA)
MEMBER (A)


(M. RAMACHANDRAN)
VICE CHAIRMAN (J)

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