

025

Central Administrative Tribunal
Principal Bench

OA No. 2623/2004

New Delhi, this the 25th day of July, 2006

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

D.L. Vaid
R/o A-66,
East Azad Nagar,
Delhi - 110 051.

...Applicant

(By Advocate: Shri P.P. Khurana, Sr. counsel and Sh. Amit Anand)

-versus-

Union of India through

1. The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Director Enforcement,
Directorate of Enforcement,
Lok Nayak Bhawan,
Khan Market,
New Delhi.


...Respondents

(By Advocate: Shri S.N. Sharma)

ORDER

By Mr. V.K. Agnihotri, Member (A):

In this OA, the applicant has sought quashing and setting aside of the order of the respondents dated 12.11.2003 placing the applicant under suspension and subsequent orders dated 12.02.2004 and 12.08.2004 through which his suspension was continued, with all consequential benefits. As an alternative, he has prayed for revocation of suspension forthwith, which is also the interim relief sought.



26

2. An FIR was lodged on 31.08.2000 under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 in which *inter alia* it was alleged that the applicant and his family members had acquired disproportionate assets to the tune of approximately Rs. 8.70 lakh. The applicant was issued Charge Memo dated 04.09.2003 under Rule 14 of the CCS(CCA) Rules, 1965. Applicant was placed under suspension w.e.f. 12.11.2003 on the ground that a disciplinary proceeding against him had been initiated and that a criminal offence punishable under Section 109 read with Section 13(2) read with 13(i)(e) of the Prevention of Corruption Act was also under investigation. This suspension of the applicant was continued by the respondents through orders dated 06.04.2004, 11.08.2004 and 07.02.2005 till the date of his superannuation i.e. 30.04.2005. The applicant submitted representations from time to time for the revocation of his suspension. However, he did not receive any response. Hence, the OA. During the pendency of this OA, the applicant has superannuated on 30.04.2005.

3. The applicant has sought relief on the basis of the following grounds:-

- (i) In the suspension order dated 12.11.2003 it was stated that a criminal offence punishable under Section 109 read with 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 is under investigation. However, on that date, no criminal investigation was in progress since the charge-sheet had already been filed on 31.08.2000. Thereafter the criminal case had been moving at a leisurely and slow pace.



SA

- (ii) As regards the disciplinary proceeding, which was also the reason for issuance of the suspension, by the time the OA was filed the Report of the Inquiry Officer had been received but after that no further action had been taken.
- (iii) The object of placing a government servant, against whom proceedings are contemplated or instituted, under suspension is to enable the administration to conduct the proceedings smoothly so as to establish the allegations or the charges against the civil servant. This object has already been achieved. There is no apprehension whatsoever of the applicant tampering with the evidence. The continued suspension of the applicant has, therefore, no purpose and has become punitive.
- (iv) The so-called reviews conducted by the respondents have been done in a mechanical way without application of mind. The relevant consideration to be kept in view have been eschewed while irrelevant factors have been taken into consideration. Had the disciplinary authority taken into consideration, the progress in the departmental proceedings and the criminal case, it would have come to the conclusion that the evidence led was not sufficient to hold the applicant guilty and that there was a fair chance of his exoneration/acquittal.

4. The respondents have stated that the case registered against the applicant by the CBI is of a very serious nature involving corruption leading to acquisition of assets disproportionate to his known sources of



income, as also acquisition of immovable and moveable property without seeking approval or without intimation to the prescribed authority in terms of CCS (Conduct) Rules, 1964. The instructions contained in DOP&T OM No. 142/5/84-AVD-I dated 20.06.1986 require that when a charge-sheet accusing the government servant of acts of corruption involving moral turpitude has been filed in a criminal court, the Government servant has to be placed under suspension if not already suspended. The period of suspension in respect of the applicant has been extended on the recommendation of the Review Committee constituted in terms of sub-rule (6) of Rule 10 of CCS (CCA) Rules, 1965. While placing the officer under suspension as well as at the time of extending the suspension from time to time, the competent authority has considered the facts and circumstances of the case and acted on the basis of relevant rules and instructions. Although the enquiry has been completed, the Report of the Inquiry Officer is under process. Moreover, the criminal case is still in the court of law. The Disciplinary Authority is required to take note of the development of the case, having regard to the seriousness of the charges, before arriving at a decision whether to revoke the suspension or to continue it. The question of revocation or continuance of suspension was accordingly considered by the Review Committee and it was approved by the competent authority in terms of DOP&T OM dated 07.01.2004 and Notification dated 23.12.2003.

5. The applicant has filed a rejoinder in which he has reiterated the stand taken by him in the OA.

6. We have given careful consideration to the rival contentions of the learned counsels for the parties and perused the material on record.



69

7. In the course of arguments, the learned counsel for the applicant had invited our attention to the fact that the review of suspension order had not been done in a timely manner especially after introduction of sub rule (6) and (7) of Rule 10, which were enforced w.e.f. 02.06.2004. It was pointed out that the original suspension order was dated 12.11.2003 and therefore the 90 days period expired on 09.02.2004. However, the order extending the suspension for 180 days was issued on 06.04.2004 and was made effective from 12.02.2004. Similarly, even though 180 days starting from 09.02.2004 expired on 07.08.2004, the order extending the suspension for a further period of 180 days was issued on 11.08.2004.

8. The new sub-rules (6) and (7) of rule 10 of CCS(CCA) Rules 1965, read as follows:-

“(6). An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period of exceeding one hundred and eighty days at a time.

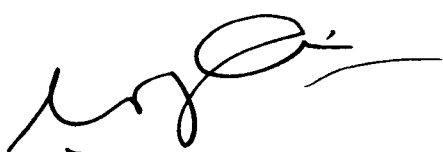
(7) Notwithstanding anything contained in sub-rule (5)(a), an order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.”

9. In the present case, the original suspension order was issued on 12.11.2003 i.e. much before the issue of Notification dated 23.12.2003 regarding amendment to Rule 10 of the CCS (CCA) Rules, 1965 and also



before enforcement of the said sub rules (6) & (7) w.e.f. 02.06.2004. It is to be noted that originally the Government had decided to enforce these amendments to Rule 10 w.e.f. 02.04.2004, which was later changed to 02.06.2004. In the context of the original decision to enforce the amendment w.e.f. 02.04.2004, through OM No. 11012/4/2003-Estt.(A) dated 19.03.2004 instructions were issued that it would be necessary to review pending cases in which suspension has exceeded 90 days, by 02.04.2004. Other suspension cases will have to be reviewed before expiry of 90 days from the date of order of suspension. We note that on the material date i.e. 02.06.2004 suspension order dated 06.04.2004 was in force and it was further reviewed on 11.08.2004. Thus whether we count backwards from 02.06.2004 or forward from that same date there is no gap of more than 90 days on either side. Thus on the material date there was a suspension order in force, which was less than 90 days old and the next suspension order was also issued before the expiry of 90 days from 02.06.2004. In this context, it is also to be noted that as per sub-rule (6) read with sub-rule (7) of Rule 10 of the Rules *ibid*, it is only the first review that has to be done within 90 days. Extension of suspension for 180 days at a time has been prescribed. There may have been a few days' gaps and some delay in the extension of suspension orders but they were prior to coming into effect of sub-rules (6) and (7) of Rule 10 of the Rules *ibid*.

10. As regards the averment that in the given facts and circumstances relating to the investigation in the criminal case and the stage of the disciplinary inquiry the continuance of suspension was uncalled for, it is to be noted that the charges against the applicant were of a very serious nature relating to corruption and acquisition of



disproportionate assets. In this connection, the observations of the Hon'ble Supreme Court in the case of ***State of Orissa v. Bimal Kumar Mohanty***, AIR 1994 SC 2296, bear reiteration:

“Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of services that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc.”


11. Thus suspension is not just for preventing the delinquent officer from interfering with the inquiry or investigation but it is also to create an impression that dereliction of duty would not bear fruits.

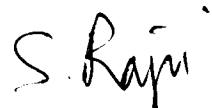
12. Even according to the guiding principles of placing a Government servant under suspension enunciated in Government of India (M.H.A.) letter dated 22.10.1964 [Swamy's Compilation of CCS (CCA) Rules, pages 211-212, 13th edition, 2006], suspension of a government servant has to be resorted in order to demonstrate the policy of the government to deal strictly with officers involved in cases of corruption, possession of disproportionate assets etc.

13. Ultimately, this issue of suspension in the present OA is largely of academic interest since the suspension has already been revoked w.e.f. 01.04.2005 on account of superannuation of the applicant.



14. In view of the facts and circumstances mentioned above and our foregoing analysis of the material on record as well as arguments advanced by the learned counsels for the parties, we come to the inevitable conclusion that the application is devoid of merit and is accordingly dismissed. There will be no order as to costs.


(V.K. Agnihotri)
Member (A)


(Shanker Raju)
Member (J)

/na/