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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 3040/2004

This the 22nd day of December, 2004

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

S.R.Korada
S/o Shri Korada Paidithalli
R/o 390-A, Chirag Delhi
New Delhi-110017.

(By Advocate: Sh. Kumar Parimal)

Versus

1. Union of India
through the Secretary,
Department of Scientific &
Industrial Research
Anusandhan Bhawan,
CSIR Building, Rafi Marg,
New Delhi-110001.
2. Sh. Gurmit Singh
Under Secretary,
Department of Scientific &
Industrial Research,
Technology Bhawan,
New Mehrauli Road,
New Delhi-110016.

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant impugns the order of the respondents dated 17.12.2004 (Annexure-A) whereby the suspension period of the applicant has been further extended by 180 days w.e.f 30.11.2004. Shortly stated, the facts are that the applicant was working as Senior Scientific Officer-II (Scientist 'B') in the Scientific and Technical Group 'A' in the Department of Scientific and Industrial Research when he was placed under suspension on 5.3.2004 in contemplation of

Deputy Secretary

recommendation of the review committee had further extended the suspension for a period of 180 years w.e.f. 3.6.2004 (Annexure A-1). On 1.6.2004 the Article of charge along with statement of imputation was served on the applicant for holding enquiry under Section 14 of the CCS (CCA) Rules, 1965. Applicant was not supplied the copies of all the documents relied upon. Therefore, he filed OA-1492/2004 and the Tribunal by order dated 11.6.2004 issued notice to the respondents and also stayed further disciplinary proceedings (Annexure A-2). Copies of some of the documents were supplied. The OA, however, was disposed of by the Tribunal on 22.7.2004 directing the respondents to supply the copies of remaining documents. Applicant had submitted an appeal under Sub rule 5 Clause (D) of Rule 23 of CCS (CCA) Rules, 1965 for increasing the subsistence allowance. Instead of deciding the appeal, respondent No.2 passed the order dated 13.7.2004 which was challenged by the applicant in OA-1822/2004. During its pendency, the subsistence allowance was increased by 50% of the amount admissible during the first three months of the suspension w.e.f. 3.6.2004. The Tribunal, accordingly, disposed of the OA by order dated 13.9.2004 (Annexure A-3). Applicant was placed under suspension w.e.f. 5.3.2004 for 90 days which expired on 3.6.2004. It was further extended by 180 days w.e.f. 3.6.2004 which period also expired on 29.11.2004. No order for further extension was passed by virtue of Sub rule (6) of Rule 10 of CCS (CCA) Rules thereafter.

2. In OA-629/2004 the applicant filed on 16.12.2004 an MA-2927/2004 wherein he sought declaration that applicant's suspension was deemed to have been revoked and that he should be directed to join his duty w.e.f. 30.11.2004 and for granting all consequential benefits. MA came up for hearing on 17.12.2004. After hearing the learned counsel for both the sides, the Tribunal issued notice to

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by 180 days. The order was served only after coming to know that applicant had filed the abovementioned MA in which notice had been issued on 17.12.2004. It was nothing but a malafide and colourable exercise of power and an arbitrary action to demoralize the applicant. Applicant is being victimized ~~by~~ ^{as} the respondents. The order dated 17.12.2004 assailed in this OA is vitiated by malafides and is based on extraneous considerations for achieving an alien purpose. Hence this OA.

3. I have heard the learned counsel for the applicant at length and have perused the record.

4. According to the applicant, he was placed under suspension in contemplation of disciplinary enquiry on 5.3.2004. The period of 90 days came to an end on 3.6.2004. It was extended by 180 days by order dated 1.6.2004 which also ended on 29.11.2004. In the meantime, the disciplinary proceeding under Section 14 of CCS (CCA) Rules, 1965 have started against the respondents. The only contention of the applicant is that the extension of suspension period for a further 180 days period by order dated 20.12.2004, impugned in the OA, is a malafide exercise of the power by the respondents. It is submitted that the applicant's period of suspension expired on 29.11.2004. Applicant filed OA No.629/2004 on 16.12.2004. He also submitted a MA alongwith it for a declaration that the suspension period stood revoked having ^{been} ~~not~~ extended in accordance with Sub Rule (6) of Rule 10 of CCS (CCA) Rules, 1965 before the expiry of the suspension period prior to 29.11.2004 and that he should be deemed to have joined the duty. Therefore, he should also be given consequential benefits. It is submitted that application was taken up for hearing on 17.12.2004 at 11 a.m. in the presence of the counsel for the respondent. Notice was issued to the respondents for 4.1.2005. On the same day in the evening at about 5 p.m., a

handed over

17.12.2004 is challenged is that it is malafide exercise of power by the respondents and that applicant had already filed an OA-629/2004 in which MA was filed which is listed on 4.1.2005 and further that the extension of the period of suspension by order dated 17.12.2004 that is after the earlier period of suspension had ended on 30.6.2004, which is also violative of Sub rule 6 of Rule 10 of CCA (CCA) Rules, 1965. The order impugned by the applicant in this OA reads as under:-

“In continuation of this Department’s Order No. C-11017/01/04-Admn/DSIR dated 5.3.2004 placing Sh. Korada Srinivasa Rao, Scientist ‘C’ in this Department under suspension and No. C-11017/01/04-Admn./DSIR(ii) dated 1st June, 2004 extending the suspension further and in terms of Sub Rule (6) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rule, 1965, the competent authority has reviewed the suspension of the said Sh. Korada Srinivasa Rao on the recommendation of a review committee under the chairmanship of Secretary, Department of Scientific & Industrial Research constituted for review of the suspension period of the said Sh. Korada Srinivasa Rao by this Department.

2. Now, therefore, the President, in exercise of the powers conferred by Sub rule (6) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules. 1965, hereby extends the suspension period of the said Sh. Korada Srinivasa Rao, Scientist ‘C’ under suspension for a further period of One hundred and eighty (180) days with effect from 30.11.2004.”

5. Sub-Rule (6) of Rule 10 of CCS (CCA) Rules, 1965 is also extracted as under:-

“An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority 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 exceeding one hundred and eighty days at a time.”

Manohar Lal

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Dated 7-1-2004

**Suspension of Government servants –
Constitution of Review Committees**

The undersigned is directed to say that Rule 10 (Suspension) of the CCS (CCA) Rules, 1965 is being amended to provide that an order of suspension made or deemed to have been made under this Rule shall be reviewed by the Competent Authority on recommendation of the Review Committee constituted for the purpose. It is also being provided in the Rules that an order of suspension made or deemed to have been under sub-rule (1) or (2) of Rule 10 shall not be valid after 90 days unless it is extended after review for a further period before the expiry of 90 days. It is further being provided that extension of suspension shall not be for a period exceeding 180 days at a time (*Sl.No.22 of February, 2004*).

2. It is, therefore, necessary to constitute Review Committee(s) to review the suspension cases. The composition of Review Committee(s) may be as follows:-

- (i) The Disciplinary Authority, the Appellate Authority and another officer of the level of Disciplinary/Appellate Authority from the same office or from another Central Government office (in case another officer of some level is not available in the same office), in a case where the President is not the Disciplinary Authority or the Appellate Authority.
- (ii) The Disciplinary Authority and two officers of the level of Secretary/Additional Secretary/Joint Secretary who are equivalent or higher in rank than the Disciplinary Authority from the same officer or from another Central Government office (in case another officer of same level is not available in the same office), in a case where the Appellate Authority is the President.
- (iii) Three officers of the level of Secretary/Additional Secretary/Joint Secretary who are higher in rank than the suspended official from the same Department/Office or from another Central Government Department/Office (in case another officer of some level is not available in the same office), in a case where the Disciplinary Authority is the President. The Administrative Ministry/Department/Office concerned may constitute the review committees as indicated above on a permanent basis or *ad hoc* basis.

3. The Review Committee(s) may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice to the foregoing, if the officer has been under suspension for one year without any charges being filed in a court of law or no

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recommend the continuation of the suspension of the official concerned.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued in consultation with the Comptroller and Auditor-General of India.

5. All Ministries/Departments are requested to bring the above instructions to the notice of all disciplinary authorities under their control and ensure that necessary Review Committees are constituted accordingly. It may also be impressed upon all concerned that lapsing of any suspension order on account of failure to review the same will be viewed seriously.”

7. This Rule 10 (6) read with Office Memorandum dated 7.1.2004 empowers competent authority to further extend or revoke the suspension of the employee on the recommendation of the Review Committee constituted for the purpose, “before expiry of the extended period of suspension”. The question, therefore, is whether the competent authority could have also passed the order of extension of suspension period after the previous suspension period had come to an end. The Rule does not put any embargo on the power of the competent authority and divest him of the power of extension of the subsequent period of suspension on the expiry of the earlier period of suspension. It does require him to pass the necessary order of extension of suspension period before the extension period has expired. The competent authority would not lose its power to extend the period of suspension because the earlier period has lapsed. The impugned order would show that the power has been exercised by the President on the recommendation of the Review Committee under Sub-Rule (6) of Rule 10 of CCS (CCA) Rule, 1965. No doubt it was desirable that the competent authority has taken the decision in the matter before the suspension period had come to an end but

marked above

the power of the competent authority to place the employee under suspension again under Rule 20. In case the suspension period is not continued it will, no doubt, lapse on the expiry of the period. But it would not mean that no order of suspension could be passed at all thereafter. I, therefore, do not find any force in the contention of the counsel for applicant that the impugned order dated 17.12.2004 is illegal and violative of Sub-Rule 6 of Rule 10 of CCS (CCA) Rules, 1965.

7. The next contention of the applicant is that the exercise of powers by the competent authority is a colourful exercise for malafide reason and it is based on extraneous consideration. The disciplinary proceeding are still pending against the applicant. Applicant had been placed under suspension and the only question for consideration before the competent authority was whether the period of suspension should or should not be extended as recommended by the Review Committee. The Review Committee had considered the case of the applicant and had made recommendation on which the competent authority, the President of India had exercised his power. Therefore, it is difficult to comprehend that all the exercise of constituting the Review Committee the convening of the Review Committee for review of the suspension period of the applicant, the recommendation made by the Review Committee and the consideration thereof by the President of India for exercising his power under Rule 10 (6) of CCS (CCA) Rules, 1965 could have taken place in a short span of 5 or 6 hours. According to the applicant, the earlier OA and the MA filed therein were taken up and considered by the Tribunal at 11 a.m. of 17.12.2004 and the impugned order dated 17.12.2004 was received by him from the Section Officer at 5 p.m. the same day. His contention that the impugned order was passed after the notice was issued in that case to the respondent. Therefore, there does not appear to be any merit in

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ex parte
authority of the respondents. Rather the possibility of the applicant's filing of the OA and MA on 16.12.2004 on learning about passing of the order by the competent authority cannot be wholly ruled out. For the reasons stated, we do not find any merit in the case.

7. Counsel for applicant has cited judgment of Hon'ble Supreme Court Punjab vs. Gurdial Singh reported in (1980) 1 SCR 1073 in support of his argument that there was malafide exercise of power by the respondent. He has referred to observation of the Hon'ble Supreme Court which reads as under:

- “1. What is mala fides in the province of exercise of power?
- 2. Is the acquisition proceeding in the instant case bad for bad faith?
- 3. Where, in the setting of Sec. 17 of the Act, do we draw the legal line between legitimate emergency power and illegitimate ‘emergency excess’?
- 4. On the facts, here, do we bastardize or legitimize the State action under challenge?

First, what are the facts? A grain market was the public purpose for which Government wanted land to be acquired. Perfectly valid. Which land was to be taken? This power to select is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31, (then). The court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the Executive and judicial circumspection keeps the court lock-jawed have where power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset.

The question, then, is what is malafides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power – sometimes called colourable exercise of fraud on power and oftentimes overlaps motives, passions and satisfaction – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an

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and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat ... that all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist".

Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict of impel the action, mala fides or fraud on power, vitiates the acquisition or other official act."

9. I have carefully gone through this judgment and do not find that the same advances the case of the applicant. It has been noticed that entire exercise which culminating the order dated 17.12.2004 challenged in this OA could possibly be not completed within 5 hours. The facts of the case before the Hon'ble Supreme Court were totally different and the principles of law which have been laid down would not be applicable to the facts of the case in hand.

10. The OA is dismissed in limine.

M. A. Khan
(M.A. KHAN)
Vice Chairman (J)

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