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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

...

O.A. NO. 3091/2004

New Delhi, this the 3rd day of January, 2005

**HON'BLE MR. JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE MR. S.A. SINGH, MEMBER (A)**

Anurag Vardhan,
Deputy Commissioner,
Income Tax (Under Suspension),
R/o Flat No. 2203, C-2, Vasant Kunj,
New Delhi.

...Applicant

(By Advocate: Shri Anshuman)

-versus-

1. Union of India through
Finance Secretary,
Ministry of Finance,
North Block,
New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
3. Member (P&V),
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
4. Chief Commissioner of Income Tax,
Income Tax Department,
Central Revenue Building,
I.P. Estate,
New Delhi.
5. Director General of Income Tax (Vigilance),
1st Floor, Dayal Singh Public Library Building,
Din Dayal Upadhyay Marg,
I.P. Estate,
New Delhi.

...Respondents

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman:

The applicant joined Indian Revenue Services in 1994. A First Information Report had been lodged against the applicant on 22.05.2003 by the Central Board of Investigation, Anti Corruption Branch, stating that he had paid Rs. 4.00 lakhs to another accused for getting him transferred to Mumbai. On 23.05.2003, the applicant was placed under suspension on the ground that criminal case is under investigation against him.

2. By virtue of the present application, the applicant seeks quashing of the order of 2.4.2004 whereby the respondents have decided to continue the suspension of the applicant on the ground that criminal case instituted against him on 22.05.2003 is still under investigation.

3. Some of the other facts must be stated to keep the sequence of events to be complete.

4. On an earlier occasion, the applicant had filed OA No. 1636/2004. A Bench of this Tribunal on 08.07.2004 had dismissed the said Original Application on certain technical grounds. The applicant filed Civil Writ Petition No. 15408/2004 in the Delhi High Court. The plea raised was that as the chargesheet has not been filed after seventeen months, applicant should be re-instated. The Delhi High Court directed that matter should be re-considered in the light of Office Memo of 07.01.2004, operative part of the order reads:

"Petitioner challenges this order and his counsel states that by now 17 months have gone by and yet no chargesheet was filed against him in any criminal court. He relies upon provisions of Clause 3 of OM dated 07.01.2004 which provide that where no charges are filed in the court or no charge-memo issued for one year, the

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suspended employee shall ordinarily be reinstated in service. All he wants is that respondents be asked to conduct a review of his case in the light of this and taking in regard the provisions of this OM.

We have examined the terms of OM and we find that under this respondents are otherwise required to review the case of suspension of an employee periodically. Therefore, it would be innocuous to direct them to do so in the case of petitioner also giving due regard to terms of their OM and take necessary action and pass appropriate orders in the matter within one month from receipt of this order. Petition is disposed of with this."

5. After the order of the Delhi High Court, the respondents have passed a fresh order deciding to continue with the suspension after reviewing the matter because criminal case is under investigation. The order reads:

"Shri Anurag Vardhan, DCIT, New Delhi was placed under suspension vide Ministry's order No. C-14011/24/2003-V&L dated 23rd May, 2003.

The Competent Authority has reviewed the suspension as per instructions of DOP&T Notification dated 07.01.2004 of Shri Anurag Vardhan and has decided to continue the suspension of Shri Anurag Vardhan as criminal case is under investigation.

(By order and in the name of the President)

**sd/-
(V.K. Sharma)
Under Secretary to the Govt. of India**

**Shri Anurag Vardhan,
DCIT(U/S),
New Delhi.
(Through the CCIT, New Delhi."**

6. Learned counsel for the applicant, in the light of the aforesaid facts, contended that as per Office Memorandum of 7.1.2004, if the

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chargesheet has not been filed within one year, the applicant should be re-instated. He referred to paragraph 3 of the said Office Memorandum, which reads as under:-

"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 charge-memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in police/judicial custody or is accused of a serious crime or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned."

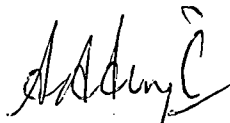
As one glances through the same, it is obvious that undue long suspension is not appreciated but the department felt that if suspension is for one year or more without charges being filed, he should ordinarily be re-instated. The expression 'ordinarily' is pregnant with meaning. We know from the decision of the Supreme Court in the case of **Union of India & others vs. Vipin Chandra Hira Lal Shah**, 1996 (6) SCC 721 that the expression 'ordinarily' means that unless there are good reasons for not doing so. In fact paragraph 3 further makes it clear that in cases where officer is accused of serious crime, the Review Committee can recommend continuation of the suspension. The present case cannot be taken to be not involving a serious crime. As per the allegations, the applicant is alleged to have paid Rs. 4.00 lakhs as illegal gratification for

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his transfer to Mumbai and, therefore, the later part of the paragraph indeed, in no event, supports the applicant's contention.

7. In that event reliance was being placed on two decisions of this Tribunal in OA 211/1987 decided on 13.7.1987 in the matter of **P. Subramani vs. Union of India & another** and in the case of **K.Rajasekaran vs. Chairman, Central Board of Direct Taxes, New Delhi and another**, [1987] 7 Administrative Tribunals Cases, 727. Both the cited cases will not help the applicant. Reasons are obvious and not far to fetch. Firstly, the matter had to be reconsidered in the light of Office Memorandum of 07.01.2004. The decisions referred to had been rendered much before the same. Otherwise also, each case has its own docket and facts and they have to be examined on their own merits. Taking stock of the totality of facts, seriousness of the offence indeed, if the department felt that suspension must continue because criminal case is under investigation, it must be stated that there is little ground to interfere. We hasten to add, at this stage, that it is for one of those cases where there is inordinate delay when nothing has been done i.e. neither chargesheet is served nor challan is filed in Court. Therefore, in the peculiar facts, the petition must be held to be without merit.

8. Resultantly, OA, being without merit, fails and is dismissed in limine.


(S.A. Singh)
Member (A)

/na/



(V.S. Aggarwal)
Chairman