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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1224/2004

New Delhi, this the 13th day of April, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

L.S. Pawar
Additional Commissioner
Income Tax. ... Applicant

**(By Advocate: Sh. R.Venkataramani, Sr. Counsel with Sh.
Jagjit Singh)**

Versus

1. Union of India
Through Revenue Secretary
Ministry of Finance
Govt. of India, New Delhi.
2. Chairman
CBDT Govt. of India
North Block
New Delhi. ... Respondents

(By Advocate: Sh. V.P.Uppal)

ORDER

By Mr. Justice V.S.Aggarwal

Applicant (L.S.Pawar) joined the Indian Revenue Service. By virtue of the present application, he seeks to assail the order suspending him.

2. It has been asserted that the applicant has a distinguished service career. He was posted as Assistant Director of Income Tax. He was thereafter posted as Assistant Director (Intelligence) and later on as Inspecting Assistant Commissioner of Income Tax followed by as Deputy Director of Income Tax (Investigation).

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3. An inquiry is stated to have been conducted against the applicant pertaining to various assets and properties beyond his known sources of income. After conducting the detailed inquiry for a period of two years, the investigations were closed as nothing incriminating could be found against the applicant. It is thereafter that the name of the applicant was cleared for the post of Commissioner of Income Tax.

4. According to the learned counsel for the applicant, an FIR under the Prevention of Corruption Act, 1988 was registered against the applicant alleging that he had indulged in corrupt practices while working as Income Tax Officer and acquired assets disproportionately to his known sources of income. According to the applicant, the case was closed by the then Finance Minister of India. The applicant was transferred from Thane to Cochin. He had been placed under suspension by virtue of the following order:

"New Delhi, the 13 March, 2001

Order under Rule 10 (1) of the CCS (CCA) Rules, 1965.

Whereas a case against Sh. L.S.Pawar, Addl. CIT, Thane, in respect of a criminal offence is under investigation.

Now, therefore, the President, in exercise of the powers conferred by sub-rule(1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Sh. L.S.Pawar under suspension with immediate effect.

It is further ordered that during the period of his suspension, the headquarters of Sh. L.S.Pawar, Addl. Commissioner of Income-tax shall be Cochin (in the office of CCIT, Cochin) and the said Sh. L.S.Pawar shall not leave the

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headquarters without obtaining the previous permission of the competent authority.

By order and in the name of President of India.

Sd/-
Under Secretary to the Government of India"

5. The applicant assails the said orders and the subsequent orders whereby the extension had been granted. It is contended that (a) applicant has been kept under suspension for a very long time; (b) There are no reasons to continue the suspension; and (c) There has been no timely review in this regard.

6. The application is being contested.

7. Respondents plead that CBI later had found many immovable and movable properties, which were not inquired into earlier by the CBI/Department. On searches conducted in the premises of the applicant, many incriminating documents were found. Respondents plead that prosecution has been sanctioned in one FIR that had been registered as RC No.16(A)/2001 on 25.2.2004 and in the other RC No.10(A)/2001, the investigation report has been received from the CBI. The representation had been considered and had not been found to be having any merit. The respondents plead that in respect of all the CBI cases against the officers working under them, they have adopted a policy of not revoking the suspension till such time any criminal case is under investigation or inquiry or trial, is completed.

8. We have heard the parties' counsel and have seen the relevant record.

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9. The applicant had filed **MA 2078/2004** seeking to take additional grounds pleading that the order extending the suspension, is bad and is contrary to the Circular of 7.1.2004. The Circular has totally been ignored and the review of continuing suspension, therefore, cannot be sustained.

10. The abovesaid Miscellaneous Application has been opposed but in the interest of justice, since the pleas are based on the facts, which were not disputed and are purely legal, we have no hesitation in allowing the additional pleas to be taken on record.

11. The respondents had filed **MA 88/2005** pointing out that after filing of the counter on 6.8.2004, the case of the applicant for revocation of suspension has been reviewed by the Review Committee and that the sanction for prosecution in RC 10(A) of 2001 has been issued on 2.12.2004. The respondents wanted to place on record the said document. Since all these are subsequent events, we have no hesitation in permitting the same to be taken on record.

12. Another **MA 415/2005** has been filed pointing out that a Memorandum has been issued on 11.1.2005 whereby a chargesheet, issued under Rule 14 of the CCS (CCA) Rules, 1965, even had been served. Keeping in view these subsequent events, we allow the document to be placed on record.

13. As regards the timely reviews, we were informed that after the applicant was suspended, the review of suspension had been affected on 11.4.2002, 12.8.2003 and thereafter on 1.4.2004, 21.9.2004 and 17.3.2005.



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14. Rule 10 of the CCS (CCA) Rules, 1965 had been amended vide notification of 23.12.2003. Sub-Rules (6) and (7) have been added to Rule 10 which read as under:

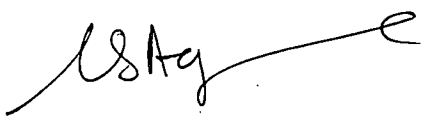
“(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose 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 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.]”

15. Corrigendum has been issued on 29.3.2004 pertaining to the provision that has now been added. The date of enforcement has now been changed to 2.6.2004 vide Notification of 2.4.2004 issued by Department of Personnel & Training.

16. Thereafter, there have been some periodic reviews that have been taken and, therefore, we find no reason to conclude that there have been no periodic reviews in this regard as contemplated under Sub-Rule (5) and Sub-Rule (6) of the aforesaid Rule 10.

17. The learned counsel for the applicant had drawn our attention to the fact that the Finance Minister had already closed the matter in this regard. We find that the said plea is simply



stated to be rejected. This is for the reason that merely because if some order has been passed on the file, there is no ground to conclude that the case has been closed. An order as yet has not been issued.

18. At this stage, we are pained to record and deprecate practice of filing the departmental copies, which are secret notings, even without the permission of the Tribunal in this regard. The Division Bench of the Delhi High Court in the case of **SURGICAL ELECTRONICS AND ANR. v. UNION OF INDIA AND OTHERS**, 60 (1995) DELHI LAW TIMES 359, clearly held that filing of photo copy of an official noting unauthorisedly obtained from a Government file disentitles the petitioner for any relief. In identical terms had been the decision of the Supreme Court in the case of **R.C.JAIN v. HIGH COURT OF PATNA AND OTHERS**, (1996) 10 SCC 5. In view of these facts, we only reiterate, what we have recorded above, that the applicant is not entitled to take the benefit of any such notings which obviously have been obtained unauthorisedly.

19. Reliance on behalf of the applicant was placed on the instructions of the Government of India issued on 7.1.2004. The same reads:

".. .. 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



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continuation of the suspension of the officer concerned."

20. It clearly reveals that in matters of serious crimes, the Review Committee can recommend continuation of the suspension even for a longer period.

21. The applicant, as has been noticed above, is stated to be involved in crimes pertaining to two cases under the Prevention of Corruption Act, 1988. We hasten to add that we are not expressing any opinion on the merits of the matter but the fact of the matter remains that they are serious crimes.

22. We were informed that sanction to prosecution has been accorded and even departmental proceedings have been initiated.

23. Taking stock of these, if suspension as such is continued, in our considered opinion, there is little ground to interfere.

24. The Supreme Court in the case of **STATE OF ORISSA** v.

BIMAL KUMAR MOHANTY, AIR 1994 SC 2296 held:

"It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an

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automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. 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 service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry 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. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

25. In fact, in the case of UNION OF INDIA & OTHERS v. RAJEEV KUMAR & ANR., 2004 (1) AISLJ SC 1, the Supreme Court held:

"27. Another plea raised relates to a suspension for a very long period. It is submitted that the same renders the suspension invalid. The plea is clearly untenable. The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely

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because it is for a long period that does not invalidate the suspension."

26. When examined on the abovesaid touch-tone, we find that taking stock of the totality of facts and circumstances and seriousness of the alleged crimes, it would be inappropriate for this Tribunal to interfere in judicial review.

27. The learned counsel for the applicant had drawn our attention to the following decisions to contend that there is an inordinate delay and hence, the suspension should be revoked:

- a) J.K. Varshneya v. Union of India & Others, (1988) 8 ATC 1.
- b) P. Chandra Manoharam v. Union of India and Another, (1987) 4 atc 979.
- c) Andayil Rajakrishnan v. Union of India and Others, (1988) 6 ATC 597.
- d) D. Mangaleswaran v. Commissioner of Income-Tax, Tamil Nadu and Another, (1987) 2 ATC 828.

28. In our considered opinion, keeping in view the subsequent decision of the Supreme Court in the case of **RAJEEV KUMAR** (supra), that when delay is explained, there is no ground to quash the said order. In the present case before us, the delay is explained and prosecution has been sanctioned in one FIR and in the other, it has been accorded during the pendency of the present application. Some delay in investigation would be inherent.

29. The object and purpose of placing a public servant under suspension during contemplated disciplinary proceeding/criminal cases may be manifold. Where serious allegations of misconduct

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are imputed against an official, the service interest may render it undesirable to allow him to continue at the post where he was working. Usually if not always, it would be embarrassing and inopportune both for delinquent official and inquiry officer while such official is present holding his official position. Suspensions are ordered to facilitate free inquiry/trial. Just as criminal procedure is intended to sub-serve the basic cause of a free and fair inquiry, similarly suspension is also for fair inquiry. Power of suspension is thus an interim measure and a salutary power during criminal trial or inquiry. Possibility of indulging in similar activities is one of the considerations. The purpose can be to keep the Govt. servant out of the sphere. Seriousness of allegations is one of the major factors under consideration.

30. Power still must be exercised with circumspection.

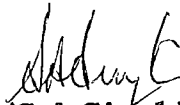
31. The learned counsel for the applicant had even relied on the decision of the Supreme Court in the case of A.L.KALRA v. PROJECT AND EQUIPMENT CORPORATION OF INDIA LTD., (1984) 3 SCC 316. In that case, advance had been taken from the office but neither documents of purchase were furnished nor the unutilized advance amount was refunded. The Supreme Court held that this was an act unbecoming of a public servant to effect the integrity.


32. This is not the controversy before us. In fact, we hesitate to express any opinion in this regard.



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33. For these reasons, the application being without merit must fail and is accordingly dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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