

2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1636 OF 2004

New Delhi, this the 8th day of July, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

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

.....Applicant

(By Advocate : Shri Raju Ramachandran, senior
advocate with Shri Anshaman Sinha)

Versus

1. Union of India through Revenue Secretary,
Department of Revenue,
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)

This Original Application has been filed by the applicant Anurag Vardhan under Section 19 of the Administrative Tribunals Act, 1985. The Para 8 relating to the relief sought for reads as follows:-

"8. RELIEF SOUGHT FOR:--

(a) Because the applicant was suspended on 23.5.2003 under rule 10(1) of CCS (CCA) Rules, 1965 for having criminal



offences under investigation against him and till date inspite of passage of more than one year no charge sheet has been submitted by the CBI before the Court.

(b) Because in light of office memorandum no. 11012/2003-Estt. (A) dated 7.1.2004 the suspension of the applicant deserves to be revoked on the ground that no charge sheet has been filed by the CBI in the court."

2. The applicant stated that he joined the Indian Revenue Services in September, 1994. The applicant had made a request for transfer from Delhi to Mumbai on account of his personal problems relating to treatment of his minor children. In view of his request, he was transferred to Mumbai vide order dated 21.5.2003. The applicant stated that he was involved in Anti Corruption Branch CBI case on 22.5.2003. Subsequently, he was placed under suspension as per order dated 23.5.2003 (Annexure-C).

3. The learned counsel has invited attention to Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, OM dated 7.1.2004 which provides as follows:-

"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

Chintan

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."

4. It is claimed by the learned counsel that the applicant should have ordinarily been reinstated after expiry of one year from the date of issue of suspension order in view of the above mentioned provisions of the Memorandum. However, the suspension order has not been revoked and the applicant has not been reinstated in service. According to the learned counsel, this Tribunal has powers to quash such suspension order after the lapse of one year. He further stated that the applicant had made a representation dated 23.5.2004 (Annexure G) to the Chairman, Central Board of Direct Taxes with a copy to the Revenue Secretary. The learned counsel stated that this representation was followed by a reminder dated 31.5.2004. But the applicant has not been informed of any decision either on the representation or on the reminder. On these facts, it was further urged on behalf of the applicant that this Tribunal should direct the respondents to decide the pending representation.

5. When it was pointed to the learned counsel that the applicant should have filed an appeal against the suspension order or should have asked the competent authority for review of the suspension order

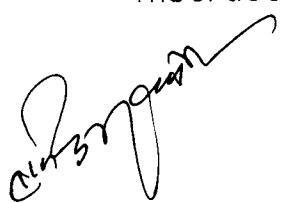
A handwritten signature in black ink, appearing to read "Ch. B. M. Agarwal". The signature is written in a cursive style with a long, sweeping line extending from the left.

in terms of the DOP&T OM dated 7.1.2004, the learned counsel pointed out that it was in this context that the prayer for disposal of representation was being asked for. According to him, he was not challenging in this OA the suspension order on merits but only seeking enforcement of OM dated 7.1.2004.

6. After hearing the learned senior counsel of the applicant and after perusal of the records, it is apparent that the applicant has not claimed any reliefs. What is stated in Para 8 of the OA as extracted earlier is merely submission of facts. Even if it is assumed that the applicant was aggrieved by the order of suspension under Rule 10 (1) of CCS (CCA) Rules, 1965, admittedly, no appeal has been filed. The claim made on behalf of the applicant that the OM dated 7.1.2004 has not been complied with after the expiry of one year from the date of suspension also appears to be misconceived. There does not appear to have been made any representation to the disciplinary authority or the appellate authority. Representation to the Chairman, Central Board of Direct Taxes was not properly made inasmuch as it was not addressed to the competent authority. The plea of the learned senior counsel of the applicant that Chairman, Central Board of Direct Taxes is the Head of the organisation, therefore, any representation to the competent authority has to be moved through him. Even if it is accepted that a representation has to be moved through Chairman, it has to be addressed to the

R.S. Jagannath
C.M.

competent authority. In this case, the suspension order has been issued in the name of President. Therefore, the same has to be first reviewed by the President or by any other authority to whom President has delegated such power. Admittedly, such power has not been delegated to Chairman, Central Board of Direct Taxes. Therefore, so called representation was not properly made. In the absence of any proper representation, it is not desirable to issue any direction to decide the pending representation as claimed on behalf of the applicant. The Division Bench of Ernakulam of this Tribunal in the case of G. Muthuswamy Vs. The Divisional Personnel Officer, Southern Railway and Ors, 2002 (2) SLJ (CAT) 2003 has held that the Original Application cannot be entertained by the Tribunal to issue a mechanical order to dispose of the representation. Therefore, the request made on behalf of the applicant for disposal of the representation cannot be entertained at this stage. The applicant was put under suspension by an order dated 23.5.2003. Any action of its review or otherwise has to be taken on the basis of the instructions on the subject as available on that date. Therefore, the applicant should have approached the competent authority in terms of the instructions as available on the date of issue of suspension order on 23.5.2003. Of course, if the applicant wanted to take further recourse to subsequent Govt. of India instructions for examination of OM dated 7.1.2004, he



could do so after said date. But for that purpose, he has to make an application to the competent authority.

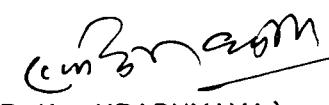
7. This Original Application as made in the present form cannot be entertained for several reasons. Section 20 of the Administrative Tribunals Act, 1985 provides that the applicant should have availed of all the remedies available to him under the relevant service rules as to redressal of grievances before approaching the Tribunal. This could have been done by filing an appeal as provided for in the CCS (CCA) Rules, 1965. The applicant has admittedly not filed any appeal. Therefore, the suspension order cannot be challenged before the Tribunal. The revocation of suspension order on account of no chargesheet having been filed within one year, as a matter of fact, it should have been considered by the competent authority. For that purpose, the applicant has to approach such a competent authority, if reasonable period say of six months from the date of receipt of the same has expired. The claim of the applicant for any relief can be considered at that stage by the Tribunal. In the present case, as pointed out earlier, no representation to competent authority for enforcement of OM dated 7.1.2004 has been made so far. Even the representation addressed to the Chairman, Central Board of Direct Taxes has been made only on 23.5.2004. A reasonable period say of six months has not yet expired. Therefore, it cannot be presumed that the respondents authorities

A handwritten signature in black ink, appearing to read "C. B. Rajaram". The signature is written in a cursive style with a diagonal line through it.

are not going to consider the case of the applicant. Any direction for enforcement of the provisions as per OM dated 7.1.2004 at this stage can be said only a pre-mature exercise.

8. After considering the legal aspect of the case as aforesaid, it has to be observed that in the interest of justice, the respondents themselves should have taken the exercise of review of suspension order as per their OM dated 7.1.2004. Even though this Original Application is not being entertained for reasons as pointed earlier, it will not preclude the respondents to review the suspension, if the same was to be done in accordance with their own instructions on the subject as per notification dated 23.12.2003 (Annexure A/5). If the suspension has to be extended by the order after a review, if it exceeded for a period of 180 days at a time some such decision has to be communicated to the applicant. If the applicant is so advised, he may file an appeal or a representation as per rules and instructions on the subject and the respondents will be duty bound to decide the same. However, no order of this Tribunal is required. At this stage neither any appeal nor any proper representation has been filed by the applicant.

9. In view of what is stated in the preceding paragraphs, this Original Application being devoid of any merit and also being pre-mature is rejected at the admission stage without any order as to cost.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

/ravi/