IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI.

REGN.NO. O.A. 1578/92. DATE OF DECISION: 09.11.1992.

Sh.M.K.Dixit,I.A.S. ... Applicant

versus

The Government of Madhya Pradesh through its Chief Secretary & two others. ... Respondents

CORAM: THE HON'BLE SH.P.C.JAIN,MEMBER(A)
THE HON'BLE SH.S.R.SAGAR,MEMBER(J)

For the Applicant ... Sh.Kapil Sibal,with Sh.Vivek Sibal, counsel.

For Respondents 1&2 ... Sh.Sakesh Kumar, Sh.Ashok Singh and Sh.S.K.Agnihotri, Advocates.

For respondent No.3 ... Sh.P.H.Ramchandani, Senior counsel.

1. Whether local reporters may be allowed to see the judgement? yes

2. Whether to be referred to the reporter or not? yes.

3. Whether to be circulated to the Benches of the Tribunal? No.

JUDGEMENT(ORAL)

(DELIVERED BY HON'BLE SH.P.C.JAIN,MEMBER(A)

In this OA under Section 19 of the Administrative Tribunals Act,1985,the applicant who is an I.A.S. officer of 1967 batch borne on the cadre of State of Madhya Pradesh, has assailed the order dated 23.9.91(Annexure A-1) passed by the Government of Madhya Pradesh, placing him under suspension under Rule 3(1) of the All India Services(Discipline and Appeal) Rules,1969, and the order dated 18.5.92(Anhexure A-3) passed by the Government of India rejecting his appeal against the aforesaid suspension order,under Rule 16(i) of the Rules ibid.

2. Respondents No.1&2, namely the Government of Madhya Pradesh through its Chief Secretary and Sh.Sundar Lal Patwa,Chief Minister of Madhya Pradesh respectively, have filed their replies contesting the OA. Similarly, the Union of India, respondent No.3,have filed a separate reply. The applicant has also filed a rejoinder to the replies filed by Respondents 1&2. As the pleadings were complete, it was decided with the consent of the parties, that the OA may be finally disposed of at the admission stage itself. Accordingly, we have perused the material on record to which our attention has been drawn by the learned counsel for the parties and also heard the learned counsel for the applicant as also for the respondents.

3. Before taking up the rival contentions of the parties, it may be stated that the memorandum of chargesheet was issued to the applicant on 1.11.91 on two articles of charge and that, according to the learned counsel for the applicant, the inquiry has not made any progress so far inasmuch as not a single witness cited along with the memo of chargesheet has been examined as yet. However, we do not consider it necessary to go into the merits of the articles of charge and the various procedural issues connected therewith, for two reasons. Firstly, the disciplinary proceedings

as such are not a subject matter of this OA. Secondly, any comment in regard to the disciplinary proceedings as such at this stage would neither be proper nor justified as this might prejudice the case of either side at the appropriate time.

4. The learned counsel for the applicant urged before us two basic contentions in support of the challenge to the impugned suspension order and the impugned appellate order. The main contention is that he had been placed under suspension due to mala fides on the part of respondent No.2. The second contention is that the aforesaid action of placing the applicant under suspension is arbitrary as inter alia the order has been passed without due regard to the rules on the subject. It was also contended that the suspension order has not been served on the applicant in accordance with the procedure prescribed for this purpose. As regards the contention of the mala fides on the part of respondent No.2, the learned counsel for the applicant has strongly emphasised that the Chief Minister having taken the decision on 21.9.91 for asking the explanation of the applicant before placing him under suspension, he cannot be said to have been justified in dispensing with his explanation but to place him under suspension on 23.9.91. It is stated that nothing happened

between 21.9.91 to 23.9.91, either in law or in facts, for the second decision on the part of the Chief Minister. It was also contended in this respect that the action of Respondent No.2 was politically motivated because of two reasons; one, that Madhya Pradesh Export Corporation where the applicant had been appointed as its Managing Director with effect from 2.7.88 till he was placed under suspension on 23.9.91, had its Chairman one Mr.Manohar Bairagi who happened to be a prominent Congressman and since the Chief Minister belonged to the Bhartiya Janta Party which had come to power in Madhya Pradesh sometimes in 1990, this action was taken. The second aspect of this matter urged before us is that there was going to be a by-election in Madhya Pradesh and to gain political advantage by creating sensational news, the Chief Minister had ordered the applicant to be placed under suspension. In their reply, the respondents 1&2 have rebutted the allegations of mala fides on the part of respondent No.2 in particular and against respondents 1&2 in general. On our asking the learned counsel for respondents 1&2 as to why respondent No.2 did not think it appropriate to file a separate affidavit, it was submitted by him that the relevant

file would show that the Chief Minister,i.e. respondent No.2 has not taken any initiative in the matter and, therefore, the allegations of mala fide against him were totally illegal and wrong.

5. We have perused the photo copies of the relevant file , which have been made available to us and from a perusal of the relevant notes, we find that the action in this regard was initiated by Secretary to the Department of Commerce and Industry vide his note dated 6.7.91. The Minister in-charge of that Department vide note dated 9.9.91 made definite recommendations which included placing the applicant under suspension. The note dated 21.9.91 recorded by the then Chief Secretary refers to the discussion with the Chief Minister and to a decision having been taken for taking early effective action in view of the gravity of the charges and for taking the explanation of the applicant before placing him under suspension. This note was marked to the Secretary to the Department of Commerce and Industry on which the latter recorded a note on 23.9.91 in which the letter dated 18.9.91 which the applicant had sent to the Department of Commerce and Industry after having personally discussed the matter with the Minister in-charge of that Department on 16.9.91,

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has been referred. In that note, it has been stated that whether in view of the contents of that letter it was necessary to call for the formal explanation of the applicant. This note was addressed to the Minister of Commerce & Industry on which he recorded on 23.9.91 that he was of the clear view that the Managing Director did not take the precautions which should have been taken as Managing Director of the Corporation for which he was responsible and, therefore, in accordance with his note earlier referred to, the applicant should be placed under suspension. In the meantime, the new Chief Secretary had taken over and she submitted her note on 23.9.91 itself in which she recommended for acceptance of the proposal of the Minister of Industry. The Chief Minister approved it on the same day and thereafter the impugned order of suspension was passed. The above narration of sequence of events clearly shows that respondent No.2 e.g. the Chief Minister had neither initiated the proposal nor did he take any extra interest which might give any reason for any allegations of mala-fide against him. The reason for change of decision taken on 21.9.91 and the one taken on 23.9.91 is also explained as above. The lerned counsel for the applicant stressed that the letter sent

by the applicant on 18.9.91 can, by no stretch of imagination, be taken to be his explanation in compliance of the order as per note dated 21.9.91. We have perused that letter. It is true that this is not in the nature of any explanation because none was asked for by that time. However, the fact remains that this letter does disclose the irregularities and the lapses which have taken place in certain transactions of the Corporation. Occurrence of such irregularities is nowhere disputed by the applicant. The memo of chargesheet also does not allege any mis-appropriation of funds etc. against the applicant; the gravamen of the charge being lack of supervision etc.. Thus we have no hesitation in coming to the conclusion that the charge of mala fides against respondent No.2 has not been substantiated.

6. Now we examine the contention of the applicant that the impugned order of suspension is arbitrary and without due regard to the relevant rules/ instructions on the subject. One leg of the arguments in this connection was that the change of decision taken on 21.9.91 to the one taken on 23.9.91 itself is arbitrary. This aspect of the matter, we have dealt with above. We do not find any substance

in this part of the contention. As regards the observation of the relevant rules, it may be stated that according to sub rule 1 of Rule 3 of the All India Services(Discipline & Appeal) Rules,1969, if the Government i.e.the Central Government or the State Government, as the case may be, is satisfied, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending,that Government may, pending the conclusion of the disciplinary proceedings and the passing of the final order in the case, may place that member under suspension. This is not in dispute that a preliminary enquiry had been made before the officer was placed under suspension. The learned counsel for the respondents rightly and fairly submitted that as the rules exist, there is no requirement of calling for the explanation of the member of the Service before placing him under suspension. The gravity of the transactions/incidents as a result of which a situation is said to have been created which might result in loss of about two crores of rupees to the Corporation, cannot also be a matter of dispute.

However, the main thrust of articles of charge against the applicant is with regard to the lack of action to evolve proper systems etc. and lack of supervision. These functions come within the rightful domain of the chief executive of a company/corporation. Thus we are not in a position to hold that the action of respondent No.1 for deciding to place the applicant under suspension is prima facie arbitrary or without any reasonable basis. Having said this, it also needs to be said that the Government have issued repeatedly instructions for review of cases of suspension with a view to determining whether continued suspension of a Government servant is really necessary or whether the purpose can be served by transferring him to place or post from where possibility of any probable interference in the conduct of the investigation/disciplinary proceedings against him can be eliminated. The Government have also emphasised that the disciplinary proceedings should be completed with expedition. Though an order placing a Government servant under suspension is not an order of punishment, yet it does cause problems to the Government servant in terms of his image vis-a-vis his colleagues and the public and also in certain monetary benefits such as by reduction of his pay as the subsistence allowance

is never equal to the pay which an employee draws while he is on duty. The learned counsel for respondents 1&2 stated at the Bar, of course under instructions from his clients, that the case of continued suspension of the applicant has been reviewed but it was decided not to revoke the same. However, no document in support of that contention has been placed on record. While seeing the relevant file of the Central Government in which the applicant's appeal was considered, we find that before taking a final decision on the appeal, the Central Government requested the State Government to review the case of suspension of the applicant and it is in that context that the case of the continued suspension of the applicant seems to have been reviewed, and not the periodical review which is prescribed in these matters. We therefore, consider it appropriate to issue a direction to respondent No.1 to review the continued suspension of the applicant and unless it is considered ~~xxxxxxx~~ essential to keep him under suspension, they should consider the desirability of finding a post appropriate to his seniority which may not be sensitive to enable the applicant to either interefere in the conduct of the disciplinary proceedings against him.

him or to do anything which may be found not to be in the public interest. The decision for the selection of post for the applicant as aforesaid would be entirely in the jurisdiction of respondent No.1,e.g.Government of Madhya Pradesh. We also consider it necessary to refer to the contention of the learned counsel for the applicant that the period of nearly 12 months has passed since the memorandum of chargesheet was issued but the disciplinary proceedings have not made any progress what-so-ever. We emphasise that the disciplinary proceedings against the applicant should be conducted with expedition and be completed without any undue delay.

7. Coming to the last contention of the learned counsel for the applicant that the appellate order passed by the Government of India rejecting the appeal of the applicant against the impugned order of suspension does not disclose that the consideration which was due to be applied was applied by the appellate authority in coming to the conclusion to reject the appeal. The order of suspension itself is such that it is highly tentative in nature inasmuch as there is no definite allegation mentioned in the suspension order itself. Obviously in such a situation, the appellate

authority cannot be expected to deal with the appeal in the manner in which it is required and which should have been done in the cases of appeals against orders passed by the disciplinary authorities. The scheme of the rules also appears to substantiate our observations. Rule 19 of the All India Services(Discipline & Appeal) Rules, 1969 is on the subject of consideration of appeals. Sub-rule(1) of Rule 19 stipulates that in the case of an appeal against an order of the State Government imposing any penalty specified in rule 6, the Central Government shall consider the matters laid down therein e.g., whether the procedure laid down in these rules has been complied with, and, if not, whether such non-compliance has resulted in violation of any provision of the Constitution of India or in the failure of justice; whether the findings of the disciplinary authority are warranted by the evidence on record; and whether the penalty imposed is adequate, inadequate or severe.However, sub-rule(2) of Rule 19 which deals with an appeal against any other order specified in rule 16,what is required by the Central Government is to consider" all the circumstances of the case and make such orders as it may deem just and equitable". Thus it is clear that in the nature of things itself, the

appellate order against the order of suspension cannot detail the contentions of the appellant nor the merits of those contentions, as otherwise this would affect the merits of the disciplinary proceedings. It is on the overall assessment of the circumstances that the appellate authority has to come to a conclusion.That this has been done is amply established by the relevant file made available for our perusal by the learned Senior Counsel for respondent No.3,namely, the Union of India which shows that the contentions of the applicant in his appeal have been dealt with and the final decision has been taken on the file at the highest level, namely the Prime Minister. The Prime Minister did emphasise that the realistic time-frame be determined for the inquiry so that the suspension is not seen as open ended. . . We have also dealt with this aspect of the matter in the preceding paragraphs and we expect that the Government of Madhya Pradesh would sincerely implement the observations of the appellate authority on this point. In this view of the matter, we are not in a position to uphold the contention of the applicant.

8. Before parting with this case, we may also refer to another contention of the learned counsel for the applicant that while the suspension order

was only with reference to the gum export business but the appellate authority has also taken into account Rice matter which is the subject matter of the second article of charge. It is not possible on the basis of the material on record to uphold this contention. A perusal of the impugned order of suspension makes it clear that the subject matter of the enquiry contemplated is not confined to any particular transaction. In view of this, as also in view of the fact that sub-rule (2) of Rule 19 of the All India Services (Discipline & Appeal) Rules,1969 requires the appellate authority to consider all circumstances,action of respondent No.3 in taking into account the material pertaining to both the charges cannot be said to be outside the scope of the suspension order itself.

9. In the light of the foregoing discussion, the prayer of the applicant for quashing and setting aside the impugned order of suspension dated 23.9.91 and the impugned order of the appellate authority dated 18.5.92 cannot be allowed. However, respondent No.1, namely, the Government of Madhya Pradesh is hereby directed to immediately review the continued suspension of the applicant keeping in view the observations made by us above and also to

take all necessary steps for completion of the disciplinary proceedings without undue delay.No costs.

(S.R.SAGAR)
MEMBER(J)

(P.C.JAIN)
MEMBER(A)