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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 1884/92  
M.P. NO. 1694 & 1695/93

DECIDED ON : 16-07-1993

Amitabh Bhattacharya

... Applicant

Vs.

Union of India & Anr.

... Respondents

CORAM :

THE HON'BLE MR. JUSTICE S. K. DHAON, V.C. (J)  
THE HON'BLE MR. B. N. DHOUNDIYAL, MEMBER (A)

Shri P. P. Khurana with Ms. A. Salwan,  
Counsel for the Applicant

Shri R. Sasiprabhu, Counsel for Resp. No.2

Ms. Jasvinder Kaur, Counsel for Resp. No.1

JUDGMENT

Hon'ble Shri B. N. Dhoundiyal, Member (A) —

Heard the learned counsel for the parties on admission of the O.A. as also on MPs-1694 & 1695/93. The applicant, Shri Amitabh Bhattacharya, is an IAS Officer of Kerala Cadre of 1983 batch. He was working as Under Secretary in the Ministry of Defence at the time of filing this O.A. He approached this Tribunal to grant him an interim stay against his suspension, his apprehension being based on a statement given by the Industries Minister in the Kerala State Assembly wherein it was stated that the State Government of Kerala was requesting the Centre to place the applicant under suspension. On 23.7.1992 a notice was issued to the respondents to show cause as to why an interim order on the lines prayed for be not granted. On 16.10.1992 after hearing the learned counsel for both the parties, this Tribunal issued the following order:-

"In this background, as an interim measure, we direct that in case any order of suspension has been forwarded by the State Government to the Department of Personnel & Training, the same shall not be given effect to in the case of the petitioner."

Later, the applicant moved M.P. No. 174/93 in which the applicant expressed his apprehension that the respondents were seeking to repatriate him prematurely before completion of the period of deputation of three years. On 19.1.1993, the learned counsel for the respondents took notice of this M.P. and was required to file a reply within a week. In the meanwhile, the respondents were directed not to pass any order repatriating the applicant to his home State.

2. In M.P. 1694/93, the applicant has requested for extending the date of hearing on the ground that he was hospitalised for treatment of a lump in his stomach. Later on, the learned counsel for the applicant, Shri Khurana, made a statement at the bar that at present the applicant is admitted in Tata Memorial Cancer Hospital, Bombay and the disease has reached an advanced stage. In MP-1695/93, the respondents have requested for vacation of the stay granted vide orders dated 16.10.1992 and 19.1.1993.

3. Rule 3 of the All India Services (Discipline & Appeal) Rules, 1969 provides that if the Government of a State is satisfied 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, if the member of the Service is serving under the Central Government, request that Government to place him under suspension pending conclusion of the disciplinary proceedings and passing of the final order in the case. It is clear from the record that such a request was made by the State

Government to the Secretary, Department of Personnel and Training on 17.9.1992. It is not clear from the submissions made by the respondents whether the Central Government had in fact taken a decision to suspend the applicant and were restrained only by the interim order passed by this Tribunal on 16.10.1992 and 19.1.1993. We, therefore, modify the interim order dated 16.10.1992 to the extent that the Central Government may take a final decision on the basis of the request made by the State Government on this question after taking all the relevant factors into account.

4. As regards premature repatriation of the applicant to his State Cadre, it has been submitted by the learned counsel for the applicant that his normal term would expire in November, 1993 and that at present he is admitted to Tata Memorial Cancer Hospital, Bombay and is in the terminal stages of Cancer disease. He has fairly stated that the applicant would be willing to co-operate with the inquiry to the extent possible and would be prepared to accept any chargesheet served on him. We feel that this question can best be decided by the cadre controlling authority, i.e., the Department of Personnel & Training after taking all the relevant factors into account, like, the physical condition of the applicant, the stage of inquiry and the possibility of medical leave being granted to him. The competent authority may pass a speaking order on this question within a period of one month. The interim order dated 19.1.1993 shall remain in force only till a final order on the lines indicated above is issued by the competent authority.

5. With the above observations, the O.A. is also disposed of at the admission stage itself. The applicant will be free to approach the Tribunal again in case he is not satisfied with the results of the inquiry. There shall be no orders as to costs.

B. N. Dhoundiyal  
( B. N. Dhoundiyal )  
Member (A)

<sup>SD</sup>  
( S. K. Dhaon )  
Vice Chairman (J)

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