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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No.230/92.

Date of decision: 24th Sep 92

Shri P.S.Meena

.. Applicant

Versus

Union of India & Another.. Respondents

CORAM:

THE HON'BLE MR. T.S.OBEROI, MEMBER (J).
THE HON'BLE MR. P.C.JAIN, MEMBER (A).

For the Applicant .. Shri V.K.Rao, Counsel.

For the Respondents .. Shri N.S.Mehta, Sr. Standing Counsel.

1. Whether Reporters of the local papers be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.

JUDGMENT

(Delivered by Hon'ble Mr. T.S.
Oberoi, Member (J))

The short question which requires to be looked into and decided in this case is whether the continued suspension of the applicant is justified ? The relevant facts and details necessary for deciding the point, briefly stated, are as under:

2. The applicant, an officer in the Integrated Grades II and III of the General Cadre of the Indian Foreign Service (B), was appointed as Regional Assistant Passport Officer, Bareilly, on deputation, for a period of one year, ending on 15-10-90. He applied for extension for a further period of one year from 16-10-90 onwards, vide his letter dated 14-9-90. Though, no formal reply granting the extension applied for by him, was received by

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him, the applicant continued to serve as Regional Assistant Passport Officer, Bareilly, even after 15-10-90. However, vide Order dated 1-9-90 (Annexure - A), issued by Deputy Secretary (PVA), Ministry of External Affairs, the applicant was reverted to the parent cadre, and one Shri Purshottam Dass was posted, on deputation, in his place, at Bareilly. Said Shri purshottam Dass did not join there, and consequently, the applicant continued to work. However, on 11-3-91, the Joint Secretary (Counsellor and Passport Visa) and Chief Passport Officer of the Ministry of External Affairs conducted a surprise inspection of the Passport Office, Bareilly, where the applicant was posted, presumably because of certain complaints, against the applicant, having been received in the headquarter at New Delhi. The said Inspecting Officer, however, vide his Inspection Note dated 19-3-91 (Annexure B) gave a good chit to the applicant. Shortly afterwards, on 1-4-91, there was a replacement in the Office of the Chief Passport Officer where Shri O.P.Gupta joined in that capacity, and vide a telephonic message, directed the applicant to hand over the charge of the Office of the Regional Assistant Passport Officer, Bareilly to the Superintendent in the said office and to report for duty in the Office of CPV Division by 6-5-91.

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This was followed by a telegram dated 2-5-91 (Annexure C). In the meantime, applicant's headquarter was also shifted from Bareilly to the headquarter office at New Delhi though, according to the applicant, after his reversion to the parent office, as per Order dated 1-9-90 (Annexure A), he having been already reverted to his parent office, this could not have been issued, and his headquarter during the period of suspension, directed to be at the Office of the CPV Division, as he was no more on deputation with them, and for the same reasons, the Order dated 5-7-91 (Annexure D) could also not have been issued by the said Office, suspending the applicant with immediate effect. An appeal dated 22-7-91 (Annexure E), against his suspension as well as his posting back to the headquarter's Office of the Borrowing Department was filed by the applicant, besides sending a representation to the Minister of State concerned, but to no effect. His grievance also is that he is now under suspension for over a year or so, by now, no effective headway has been made in holding enquiry against him, and his continued suspension for such a long spell is against the Government orders and directives on this subject, which, therefore, should be revoked, ^{and} he be posted, in his parent department, in pursuance of his reversion back to the parent department, vide Order dated

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1-11-90 (Annexure A). He also alleges that his posting in the headquarter office as well as his suspension vide Order dated 5-7-91, passed by the Borrowing Department, are illegal.

3. In the counter filed on behalf of the respondents, the applicant's ^{/case} has been opposed, stating that, in pursuance of the extension on deputation sought for by the applicant, for another year after 15-10-90, and the inability of the department to spare Shri Purshottam Dass, in posting him as Regional Assistant Passport Officer, at Bareilly, in place of the applicant, the applicant was granted further extension, and his suspension vide Order dated 5-7-91 ^{/competent authority in the} (Annexure D) was passed in consultation with the / Lending Department, and this was in accordance with the rules on the subject. Further, as applicant's continuance at Bareilly was detrimental to the public interests, he was removed from that office, and posted at headquarter office of the Borrowing Department, where he was suspended vide Order dated 5-7-91. It was further stated that a chargesheet has since been issued to the applicant vide letter dated (Annexure F), and that the delay in issuing the same was due to collection of evidence, examination of a

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large number of files, in which the irregularities have been committed by the applicant, besides other relevant record. It was also stated that C.B.I. has registered a regular case against the applicant, on the grounds of serious allegations of possessing assets disproportionate to his ^{known} sources of income, which is being investigated, and hence his continued suspension is attributable to the same, till such investigations against him are complete. It was also submitted that the applicant has since been allowed the subsistence allowance at the enhanced rates, vide an Order dated 9-4-92 (Annexure E). The revocation of the suspension order, as prayed for by the applicant, was opposed on the grounds of the seriousness of the charges against the applicant and also because of the investigation of the criminal case against the applicant, which is still going on. The appeal filed by the applicant was also rejected vide Order dated 13-4-92.

4. In the rejoinder filed by the applicant, the submissions, as made in the O.A., were broadly reiterated. He also took up the plea that because of various reforms and innovations introduced by him in streamlining the work in the Passport Office at Bareilly, he incurred the unhappiness of certain persons, who, in collusion with certain officials at the headquarter

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office of the Borrowing Department, were instrumental in easing him out of the Passport Office at Bareilly, and with a view to harass him further, managed to put him under suspension. He also assailed the order rejecting his appeal not being a speaking order, not disclosing the reasons for rejection of his appeal.

5. We have also heard the learned counsel for the parties. The learned counsel for the applicant, by referring to (1987) 2 ATC 828 (D. Mangaleswaran Vs. Commissioner of Income Tax, Tamil Nadu and Another) and also 1983(2) SLR 436 (N. Chengaiah Vs. State of Tamil Nadu and Another), besides certain guidelines on the subject, as contained in Government orders and directives, pleaded that firstly the suspension of the applicant by the Borrowing Department, after applicant's reversion to his parent office, as per Order (Annexure A-1) was not in order, and even if, for any reasons, the same could be held as justified, the continued suspension of the applicant, for over a year by now, was against the guidelines, issued by the Government on the subject, and hence, applicant's suspension deserves to be revoked forthwith. The learned counsel for the respondents,

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on the other hand, pleaded that the circulars referred to by the learned counsel for the applicant are directory in nature and not mandatory and that in view of the voluminous nature of the record to be looked into, involving criminal case also, being investigated by the CBI, the delay in the case, cannot be regarded as unjustified. In this regard, the learned counsel for the respondents also pleaded that the subsistence allowance at the enhanced rates has since been allowed to the applicant. We have carefully considered the rival contentions together with the circumstances of the case and also the citations referred to by the learned counsel for the applicant. Rule 10(1)(a) and 10(1)(b) of the CCS(CCA) Rules, 1965 provide for the suspension of a Government servant against whom a disciplinary proceeding is contemplated or against whom a criminal case is pending for investigation, and so, in the present case, both these eventualities are present. As regards the plea that the applicant having been reverted to his parent office, as per Order (Annexure A-1), the Borrowing Department could not have passed the suspension order, the respondents' plea is that in view of the extension applied for by the applicant, he continued to be on deputation with the Borrowing Department and so, his suspension which was ordered in consultation with the

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competent authority in the Lending Department, was within the provisions of rules on the subject. We find this explanation^{as}/in order, and therefore, do not find any force in the contention of the applicant, in this regard.

6. As regards the delay, the respondents have attributed the same to the criminal case against the applicant, which is being investigated by the CBI, involving voluminous record and examination of a large number of witnesses, by the investigating agency. Keeping the same in view and also the serious nature of the offences alleged against the applicant, which are ^{allegedly} concerning the disproportionate assets/~~possessed~~ by him, we see the contentions put forth by the learned counsel for the respondents in this regard regarding the delay in the progress of the investigation, resulting in the continued suspension of the applicant, as not unjustified.

7. Yet another point was put forth by the learned counsel for the applicant, pointing out that the purpose of suspending the Government servant, in a case like the present one, is to keep him away from the position of authority, which he ~~was~~ holding earlier, so as to do away with the possibility of any scope of tampering with the evidence, or winning over of the witnesses, and not to punish the applicant, at

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that stage, but, in the instant case, with the applicant having already been transferred to the headquarter office of the Borrowing Department, there was hardly any possibility of any of such like eventualities, being present in this case, therefore, there is no justification in the continued suspension of the applicant, and posting him at a place, which may not have any direct link with the earlier posting or nature of work handled by him in that capacity. The plea of the learned counsel for the respondents, on the other hand, in this regard, was that the nature of the offences alleged against the applicant in the criminal case are such that the public at large would lose faith in ~~their~~ dealings with him, and, therefore, from the point of public policy, it would not be appropriate to put back the applicant, back on duty, by revoking his order of suspension. The learned counsel for the respondents further pleaded that the applicant had already been allowed the subsistence allowance, at the enhanced rates, in accordance with the rules, and therefore, this will ameliorate his hardship, if any, in this regard. After carefully considering the rival contentions on this point, we are of the view that this aspect best deserves to be considered and reviewed in accordance with the rules on the subject, by the respondents

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themselves and appropriate orders passed in this regard, as early as possible, and preferably within six weeks from the date of receipt of a copy of this order.

8. As a result of the above discussion, the O.A. is decided on the lines indicated above, leaving the parties to bear their own costs.

Clear 24/9/92
(P.C.JAIN)
MEMBER (A)

T.S. Oberoi 24.9.92
(T.S.OBEROI)
MEMBER (J)

PKK.
22-9-92.