

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(22)

O.A.No. 967/92

Date of decision 8/1/93

Shri S.P. Singh ...

Applicant

v/s

Union of India & Ors. ...

Respondents

O.A.No.1426/92 ...

Shri Sanjay Partap Singh ...

Applicant

v/s

Union of India & Ors ...

Respondents

CORAM:

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Member Mr. I.P. Gupta, Member (A)

For the Applicant ...

Shri S. Gopala Subramaniam
with Shri S.S. Tiwari and
Shri B.K. Aggarwal, counsel.

For the Respondents ...

Shri N.S. Mehta, counsel.

✓(1) Whether Reporters of local papers may be allowed
to see the judgement ? *yes*

✓(2) To be referred to the Reporter or not ? *yes*

J_U_D_G_E_M_E_N_T

Delivered by Hon'ble Shri I.P. Gupta, Member (A) 7

The two O.As., referred to above, are being dealt with together as they concern the same applicant and as the issues to be decided also get connected in several respects.

2. In O.A. No. 967/92 the applicant has prayed for setting aside his transfer orders dated 28.2.1992 relieving him from Pondicherry Administration with effect from the afternoon of 28th February, 1992 with direction to report to the Ministry of Home Affairs, New Delhi for further orders. This has been issued by the order of the Lt. Governor. The applicant has also prayed for directions to respondents to give him all his TA/DA payments which have been withheld.

3. In O.A. No. 1426/92, the applicant has prayed for quashing of his suspension order dated 3rd April, 1992 issued by the Ministry of Home Affairs by order and in the name of the Central Government. The applicant has prayed for a suitable posting for him after setting aside his suspension order and has further requested for payment of arrears of salary and dues like transfer T.A. etc.

4. We shall deal with the case of suspension order

first, since the transfer order has lost much significance after the suspension order, except in so far as the question of jurisdiction is concerned in regard to the issue of the suspension order. Furthermore, despite the transfer order the respondents have mentioned in the counter that the Government of Pondicherry have been advised by the Ministry to make payment of the salary from 29.2.1992 till 2nd April, 1992 and the applicant was placed under suspension from 3rd April, 1992.

The Delhi Administration, according to the counter, have been advised to make payment of the subsistence allowance with effect from 3rd April, 1992.

5. The applicant is a member of the IAS in the cadre known as Arunachal Pradesh-Goa-Mizoram-Union Territories (shortly referred to as the 'Agmu' ^{'AGMU'} Cadre). He belongs to 1984 Batch. Initially, he was posted at Delhi and then transferred to Arunachal Pradesh and from there he was posted as Collector, Daman in September, 1990. The applicant was transferred from the post of Collector, Daman to that of Collector, Diu in September, 1991. From Diu the applicant was transferred to Pondicherry in November, 1991 i.e. after two months. From Pondicherry he was

released on 28.2.1992 with instructions to report to Ministry of Home Affairs by order dated 28.2.1992.

6. The impugned suspension order is at Annexure

A-1. It has been issued by the Ministry of Home

Affairs in the name of the Central Government in

exercise of the powers conferred under rule 3 of the

All India Services (Discipline & Appeal) Rules, 1969,

since disciplinary proceedings against the applicants

were contemplated and since a case against the applicant

in respect of criminal offence was also under investi-

gation. The headquarters of the applicant during the

period of suspension was ordered to be Delhi.

7. The Learned Counsel for the applicant contended

that the order of suspension was issued by the Ministry

of Home Affairs without jurisdiction and was also

malafide.

8. Regarding jurisdiction, the Learned Counsel for the

applicant drew attention of the Bench to rule 3 of the

All India Services (Discipline & Appeal) Rules, 1969,

as amended. The extracts from rule 3 are reproduced

below :-

" 3. Suspension during disciplinary Proceeding.

*** (1) if, having regard to the circumstances

in any case and, where articles of charge had

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been drawn up, the nature of the charges, the Government of State or the Central Government as the case may be, 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 -

- (a) If the member of the Service is serving under that Government, pass an order placing him under suspension, or
- (b) If the member of the Service is serving under another Government, request that Government to place him under suspension, pending the conclusion of the disciplinary proceedings and the passing of the final order in the case; Provided that, in cases, where there is a difference of opinion -
 - (i) between two State Governments, the matter shall be referred to the Central Government for its decision;
 - (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail:

Provided further that, where a State Government passes an order placing under Suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty five days from the date from which the member is placed under suspension or such further period not exceeding forty five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.

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9. The Learned Counsel for the applicant argued that according to the aforesaid rule, it is the Government of the State or the Central Government, as the case may be, that may place a Member of the Service under suspension. If the services of the applicants were placed by the Lieutenant Governor, Pondicherry at the disposal of the Ministry of Home Affairs by order dated 28th February, 1992, the applicant has to be treated as if he was serving in connection with the affairs of the Central Government. In that case, according to the arguments of the Learned Counsel for the applicant, the appropriate Ministry/issue the order to the appropriate Ministry/issue the order of the suspension was the Ministry of Personnel, Public Grievances and Pension, as per allocation of Business Rules, 1961 which have been framed by the President in exercise of the powers conferred by clause 3 of Article 77 of the Constitution. The rules have, therefore, statutory force. The distribution of subjects under the Ministry of Personnel and Public Grievances and Pension shows that ' all matters relating to the Indian Administrative Service including the Indian Civil Service ' concern the Ministry of Personnel and Public Grievances and Pension and, therefore, the Central

Government in so far as matters relating to IAS are concerned are appropriately to be the Ministry of Personnel, Public Grievances and Pension. When the attention of the Learned Counsel for the applicant was drawn to an entry under the Ministry of Home Affairs where it has been shown that the Ministry of Home Affairs is concerned with IAS cadre of the Union Territories (matters falling within the purview of the State Governments), the Learned Counsel for the applicant invited attention to the order issued by the Ministry of Personnel, Public Grievances and Pension dated 28th December, 1988 which states that the Central Government, in consultation with the Governments of Arunachal Pradesh, Goa and Mizoram hereby constitutes for the States of Arunachal Pradesh, Goa, Mizoram and Union Territories, an Administrative Service Cadre and abolishes the Indian Administrative Service cadre of Union Territories from the date of publication of the notification. Therefore, he said that since the IAS cadre of Union Territories has been abolished the entry in regard to the IAS Service cadre of Union Territories under the Ministry of Home Affairs becomes redundant and meaningless. Therefore, the Learned Counsel for the applicant stressed that the Ministry of Home Affairs

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was not competent to issue the order of suspension in respect of the applicant who belongs to Arunachal Pradesh-Goa-Mizoram-Union Territories cadre of the IAS.

10. Even if it is assumed that the applicant was not serving in the Ministry of Home Affairs but was continuing with the Union Territory of Pondicherry, who have been asked by the respondents to pay his salary even beyond 28.2.1992 the question that arises is whether the Ministry of Home Affairs would be the appropriate authority for issuing the suspension order. The Learned Counsel for the applicant referred to rule 2(c) of the All India Services (Discipline & Appeal) Rules, 1969 which reads as follows :-

"2(c)'Government' means in the case of a Member of the Service serving in connection with a Union Territory or in the case of a Member of the Service serving under a foreign Government ~~in~~ or outside India whether on duty or on leave, the Central Government."

The Learned Counsel for the applicant, therefore, contended that here too the Central Government, according to the

Allocation of Business Rules, 1961, as amended, would be the Ministry of Personnel, Public Grievances and Pension and not the Home Ministry; the IAS cadre of the Union Territories having been abolished by order of the Ministry of Personnel, Public Grievances and Pension, referred to above. Therefore, the suspension order issued by the Ministry of Home Affairs will, in any case, be without jurisdiction and, therefore, bad in law.

11. The Learned Counsel for the applicant further contended that order was malafide. In this connection the following dates and some incidents were cited by him to demonstrate the point :-

Dates:

1. Application made to the Central Administrative Tribunal at Bombay against transfer order and for leave which was being refused.

26.9.1991

2. Criminal complaint filed in respect of one carpet (Rs 4000/- alleged estimate) not in the inventory of articles at collector's residence. One carpet recovered from applicant's baggage different in size and specification from the alleged carpet in respect of which case filed Baggage in transit.

12.10.1991

3. Criminal complaint in respect of alleged official files allegedly

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handed over by PA to Chief Secretary
one year earlier when applicant was
was acting as Chief Secretary and one
eye witness casstte., applicant asked
by the inspector of police to identify
the files in the collector's office
at Daman.

16.10.1991

4. Criminal complaint in respect of two
pistols (both licensed, one from the
Arunachal administration, the second
by the Union Territory of Daman Adminis-
tration) on the ostensible ground that
the two pistols not licensed recovery
from baggage in transit licenses deli-
berately not disclosed by officials.

15.10.1991

5. Criminal complaint in respect of
possessing alleged liquor bottles
from luggage in transit at Gujrat &
consequently for violating prohibition
rules and regulations prevalent in
Gujrat.

17.10.91

6. Criminal complaint filed at Diu
union territory for alleged theft of
two carpets from the Curzon Road
Apartments, the liaison office of the
union territory administration at New
Delhi and allged removal and storage
in New Delhi (Carpet allegedly valued
at Rs 4000/-each) No complaint lodged
at New Delhi the alleged scene of
offence, complaint got registered Diu
under the jurisdiction of Sh. Bhanu
Prakash Singh applicant's father's house
searched. Search warrant malafide procured
by the union territory administration,

Nov/Dec. 1991

within union territory at
Daman for Delhi. Nothing
recovered.

12. The applicant has alleged that investigations/cases were initiated after the applicant has moved the Central Administrative Tribunal, Bombay against his illegal transfer in September, 1991 as the sequence of events mentioned above would indicate. Prior to September, 1991 not a single criminal/investigation/disciplinary case was lodged/initiated/pending. The applicant has stated that he was even remanded into custody for 43 hours before the High Court directed his release.

13. The applicant has further stated in the O.A. that when he reported to Pondicherry where ~~top~~ he was transferred in November, 1991 he was not given any assignment and relieved on 28.2.1992. He said that the Administrator of Daman & Diu bore malice against him as revealed by his submissions made in his application before the Bombay Bench of the Tribunal and the representations made to the Home Ministry dated 3rd October, 1991, and the submissions in the Tribunal Writ Petition 103/92.

14. The Learned Counsel for the applicant contended that -

(i) There ought to be an application of mind on the part of the respondents as to how and on what ground it is necessary and desirable to pass the impugned order of suspension. The applicant was suspended by order dated 3rd April, 1992 but no chargesheet was given till 16th November, 1992. Therefore it took more than 7 months for the respondents to frame the chargesheet. So far as criminal investigation is concerned, no chargesheet appears to have been filed in the court. Suspension order could be issued after disciplinary proceedings were actually initiated.

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1992 SLR 290 SC 7 and in any case the

interregnum between the issue of the

chargesheet and the order of suspension

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should not be so long as to make the order of suspension suspect on the ground that satisfaction of the appropriate authority could not be there on the basis of the materials placed before him at the time of suspension. If materials were there, it should not have taken the respondents so long to issue the order of suspension.

(ii) The Government of India have themselves issued various instructions regarding quick disposal of cases of Government servants under suspension. Their guidelines say that the total period of suspension, namely, both in respect of investigation and disciplinary proceedings should not, ordinarily exceed six months.

The Administrative Reforms Commission in their Report on Personnel Administration have made the following observations in Chapter X (Conduct and Discipline) of

Report :-

" Officials remain, at present, under suspension for considerably long periods, because of the delays in the decision of their cases. Instructions exist that, as far as possible, investigation and disciplinary cases should be completed and a charge sheet filed in the court of law in cases of prosecution or the memorandum of charges served in the case of departmental proceedings, within a period of six months; if cases are likely to be delayed, the question of revocation of the suspension order should be examined. These instructions have not been followed in very many cases, and this indicates a lack of urgency among those handling the cases."

15. The above has been incorporated in the Department of Personnel O.M. No. 39/33/72-Ests (A), dated 16.12.1972 wherein Government of India have stated that investigation should be completed and a charge-sheet filed in the court in cases of prosecution, or served on the Government servant in cases of departmental proceedings within six months. Instructions of the Government of India further incorporate the provisions for periodical review of cases of suspension so that a balance is maintained between the interest of the Government servant on the one hand and public interest on the other. No such review seems to have taken place nor any order issued regarding increase of subsistence allowance.

16. The Learned Counsel for the respondents argued that the Ministry of Affairs in its capacity as cadre controlling authority of IAS Officers of AGMU cadre has full powers to place an IAS officer of AGMU cadre under suspension under the provisions of Rule 3 of AIS (Discipline and Appeal) Rules, 1969. He drew attention of the Bench to the minutes of the meeting of Joint Cadre Authority (AGMU Cadre) wherefrom

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some extracts are reproduced below:-

" After going through the provisions of All India Service (Joint Cadre) Rules, 1972 ; IAS(Recruitment) Rules, 1954; IPS(Recruitment) Rules, 1954 ; All India Service (President Fund) Rules, 1955 ; All India Services (Discipline and Appeal) Rules, 1969 ; All India Services (Confidential Rolls) Rules, 1970 IAS/IPS(Probation) Rules ; IAS/IPS(Regulation of Seniority) Rules IAS/IPS(Pay) Rules, etc.

the JCA decides as under-

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" In the interest of the morale of the service officers as well as to maintain the uniformity in decision-making on matters pertaining to vigilance cases/ departmental proceedings it is desirable as well as necessary that such matters are dealt with at Central level though the recommendations of the constituent units are to be given due consideration. It is, therefore, advisable to leave this matter with MHA(UT Division)!"

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The Learned Counsel for the respondents therefore said that the State Government concerned in relation to a joint cadre, according to definition 2(e) of the All India Services (Discipline & Appeal) Rules, 1969 meant the Governments of all the States for which the joint cadre was constituted and included the Government of State nominated by the Government of all such States to represent them in relation to a particular matter. The States concerned with AGMU cadre entrusted the functions relating to vigilance cases/departmental proceedings to the U.T. Division of the Home Ministry and, therefore, the order of suspension was issued by the Ministry of Home Affairs.

17. The Learned Counsel for the respondents added that according to Article 73 of the Constitution the executive power of the Union should extend to the exercise of such rights, authority and jurisdiction as were exercisable by the Government of India by virtue of any treaty or agreement. In view of the agreement of the Joint Cadre Authority the Ministry of Home Affairs would exercise the power to suspend the officer. The order of suspension was, therefore, perfectly legal and as per the

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provisions of AIS (Discipline and Appeal) Rules, 1969, the applicant has been placed under suspension due to contemplated disciplinary proceedings against him and pending investigation into the criminal charges against him. The allegation of suspension order having been made under the influence of the Administrator, Daman & Diu and Dadar and Nagar Haveli was totally baseless and was denied.

18. The Learned Counsel for the respondents relied on the case of State of Tamil Nadu v/s P.M. Belliappa L*(1968) 3 SLR 534. It has been stated therein that Rule 3 of the AIS (Discipline and Appeal) Rules, 1969 leaves the matter of suspension to the objective satisfaction of the Government. The Rule contemplates two contingencies, one prior to the drawing up of the articles of charges and the other posterior to the drawing up of the articles of charges. Where articles of charges have been drawn up, regard must be had to the nature of the charges but where articles of charges have not yet been drawn up, it would suffice the purpose if regard is had to the circumstances of the case. In either way the Government must be satisfied that it was necessary or desirable to place the member of a service under sus-

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suspension. When the matter of suspension was left to the objective satisfaction of the Government, the normal rule was that it was not necessarily justiciable. When serious allegations of mis-conduct are imposed against a member of a service normally it would not be desirable to allow him to continue in the post where he was functioning. Whether it is necessary or desirable to place the officer under suspension would depend on the facts and circumstances of the case and the court cannot scrutinise the objective satisfaction arrived at by the Government while passing the impugned order of suspension. The principle laid down in Belliappa's case (Supra) are that facts or materials must exist; the authority must have taken them into account; the decision must be a reasonable one and it is not for the court to substitute its own views for those of the authority and the task of the court was only to decide as to whether there was any foundation of relevant fact.

The charge-sheet would show that the officer has been charged on several counts.

19. The above observations of the Apex Court in Belliappa's

case sets at rest the objection of the Learned Counsel for

the applicant that when a charge sheet is not furnished

the respondents could not consider the issue of suspension

or pass the order of suspension. All that is required

is that materials must exist and the authority must

~~never~~ take them into account. After amendment of 1975,

Rule 3 clearly enables the appropriate authority to

suspend a member of the Service in Contemplation

of disciplinary proceedings.

20. As regards quick disposal of cases of Government

servants and furnishing of chargesheet within a period

prescribed by instructions, doubtless the delay cannot

be viewed with favour but the delay by itself cannot strike

at the root of the order in the absence of any prescribed time

limit in the Rules. The guidelines and instructions can at

best be considered as directory but not mandatory.

21. Keeping the allegation of malafide aside, we proceed

to examine the important question of jurisdiction raised by the

Counsel for the applicant in regard to the issue of the order of suspension. The order of suspension dated 3rd April, 1992 was issued by the Ministry of Home Affairs by order and in the name of the Central Government. According to Rule 3 of the All India Service (Discipline and Appeal) Rules, 1969, it is the Government of the State or the Central Government, as the case may be, that may place a member of the service under suspension. If the applicant is taken to be serving in connection with a Union Territory as the Pondicherry Administration has been asked to pay salary from 29.2.1992 till 2nd April, 1992, the appropriate Government in terms of Rule 2(c) of the said rule would mean the Central Government as discussed earlier in this order. According to the Allocation of Business Rules, 1961 the Ministry of Personnel, Public Grievances and Pension would be concerned with all matters relating to the Indian Administrative Service including the Indian Civil Service. An entry ' Indian Administrative Service Cadre of the Union Territory, matters falling within the purview of the State Government' occurs under the Ministry of Home Affairs in the Allocation of Business Rules but the Indian Administrative Service Cadre of the Union Territories stood abolished by the Ministry of Personnel, Public Grievances & Pension Order

dated 28.12.1988. It was for the appropriate authority to consider an appropriate substitution for the aforesaid entry under the Ministry of Home Affairs but no substitution or replacement has been shown to us. The entry "IAS Cadre of the Union Territories, matter falling within the purview of the State Governments" became redundant after the abolition of IAS cadre of Union Territories. Even otherwise the Ministry of Home Affairs could have at best exercised the functions of the State Govt. for the IAS cadre of the Union Territories but the word 'Government' under Rule 2(c) of the AIS (Discipline and Appeal) Rules, 1969 meant the Central Government in the case of a member of the service serving in connection with a Union Territory. Under Rule 3, it is not the Joint Cadre Authority which can order the suspension. This is further evident from Rule 7(iv) of the AIS(Discipline and Appeal) Rules which provides that the authority to impose penalty is the Government which placed him under suspension, when read with proviso under IB of the same Rule (Rule 7) which says that in relation to the members of the Service borne on a joint cadre, the punishing authority shall consult the Jt. Cadre Authority. So what is provided for is consultation with Jt. Cadre Authority. The punishing authority or the suspending authority is clearly the Govt. of State or the Central Govt. Even so, if the Joint Cadre Authority meant the Government of State nominated by the Government of all such States and Government of a State meant the Ministry of Home Affairs according to the minutes of the meeting of the Joint Cadre Authority referred to above, the suspension order or the charge-sheet could not have been issued by the order and in the name of the Central Government, since the Ministry of Home Affairs could have acted only as the Government of a

State under Rule 2(e) of the AIS (Discipline and Appeal) Rules, 1969.

22. The argument of the Learned Counsel for the respondents that Article 73 of the Constitution enables the exercise of the executive power by the Ministry of Home Affairs by virtue of the agreement arrived at in the meeting of the Joint Cadre Authority would not protect the order of suspension issued by the Ministry of Home Affairs by order and in the name of the Central Government. While Articles 73 and 162 of the Constitution make the executive powers of the Central Government and the State Government co-extensive with the legislative powers, the provisions of Articles 73 and 162 are subject to the provisions of the Constitution. It is Article 258(1) and 258(A) which enable the State Government to delegate to the Union Government an executive function belonging to itself and vice-versa. Article 258A which is in Chapter II of Part XI of the Constitution reads as follows

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* Power of the States to entrust functions to Union.-

Notwithstanding anything in this Constitution the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

It will be seen from the above that it is the Governor of a State who may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officer functions in relation to any matter to which the executive power of the State extends. The minutes of the Joint Cadre Authority attended and signed by officers of the State and the Ministry of Home Affairs who constituted the Joint Cadre cannot obviously be taken as entrustment of functions to the Union by the State concerned in the ^{with reference to Article 258A (supra)} Joint Cadre. Apart from that, the All India Services Act have been framed under Article 312 of the Constitution which says that notwithstanding anything in Chapter VI of Part VI or Part XI, Parliament may by law provide for creation of one or more All India Services common to the Union and the States and subject to the other provision of this Chapter regulate the recruitment and conditions of services of persons appointed to any such service. The All India Service Act have been framed under Article 312 of the Constitution and part XI (which includes Article 258A of the Constitution) will have no relevance. The All India Service (Discipline and Appeal) Rules have been framed under the All India Service Act and, therefore, there is no alternative but to go strictly according to the provisions of All India Service (Discipline and Appeal) Rules, 1969 where the appropriate Government

to suspend in connection with a member service serving in connection with Union Territory would be a Central Government and the Central Government, according to Allocation of Business Rules framed under Article 77(3) of the Constitution would relate to the Ministry of Personnel, Public Grievances and Pension until any substitute entry in regard to IAS cadre of AGMU under the Ministry of Home Affairs after abolition of Indian Administrative Service cadre of the Union Territories. Even if the applicant is taken as serving under the Ministry of Home Affairs after his services were placed at the disposal of Ministry of Home Affairs by order dated 28.2.1992, the applicant has to be treated as if he was serving in connection with the affairs of the Central Government and in that case too the Department of Personnel, Public Grievances and Pension should have issued the order of suspension, as per the Allocation of Business Rules

23. Therefore, the order of suspension dated 3.4.1992 by the Ministry of Home Affairs (by order and in the name of Central Government) is clearly without jurisdiction and more so when the entry relating to IAS Cadre of the U.T. under the Ministry of Home Affairs has become redundant with the abolition of IAS cadre of the Union Territory. We have already stated that

it is for the appropriate authority to consider any substitute entry under the Ministry of Home Affairs for the aforesaid entry under the Allocation of Business Rules. The order of suspension dated 3rd April, 1992 is, therefore, set aside and the applicant should be treated as having continued in service with consequential benefits. The setting aside of the order of suspension dated 3rd April, 1992 is without according to law prejudice to the continuance of the disciplinary proceedings against the applicant for which the charge-sheet has already been furnished to him or without prejudice to follow-up action with regard to criminal offence which was said to be under investigation.

24. In view of the above observations and direction we do not consider it necessary to go into other aspects of the case nor do we think it necessary now to examine the validity of the transfer order dated 28.2.1992 which has become irrelevant in view of the subsequent order of suspension and in view of the observations in the counter that despite placement of the services of the applicant at the disposal of the Ministry of Home Affairs the Government of Pondicherry have been advised by the Ministry to make payment of the salary from 29.2.1992 till 2nd April, whereafter the applicant was placed under suspension.

It is for the appropriate authority now to issue an order regarding the posting of the applicant.

25. With the direction and orders given above, the case is disposed of with no order as to costs.

I.P. Gupta
Member (A) 8/1/93

Ram Pal Singh
Vice-Chairman (J)