

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.1011/92

Date of decision: 9.2.83

Sh.S.D.Khare

.. Applicant.

versus

Union of India

& others

.. Respondents.

Sh.S.C.Gupta with

Sh.M.K.Gupta

.. Counsels for the  
applicant.

Sh.R.R.Bharti

.. Counsel for the  
respondents.

CORAM:

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

The Hon'ble Sh.I.K.Rasgotra, Member(A).

J U D G E M E N T

(Delivered by Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

In this application, filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for quashing the impugned order (Annexure 'A') dated 26th March, 1992 by which the applicant was directed to be suspended. The applicant contends that the impugned order is ab-initio, null and void, nonest, ineffective and inoperative.

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2. The applicant, according to his averement in the O.A., joined the Indian Customs and Central Excise Service in the year 1970. He was posted as Assistant Collector of Central Excise at Jabalpur, Ujjain and Lucknow. He was also Undersecretary of Central Board of Excise & Customs, New Delhi in 1978. He was also posted on deputation with the Ministry of Information and Broadcasting, Government of India, New Delhi as Dy. Director General, Doordharshan/A.I.R. Subsequently he was promoted to the Collector's grade and was appointed as Collector of Appeals (Customs) in the year 1980 at Bombay and then Collector of Appeals Excise at Bombay. His posting on the relevant date was as Collector of Customs Airport at the Sahar International Airport, Bombay. One Mrs. Jayshree S. Waghre, Assistant Collector of Customs, on probation, was undergoing training at Bombay, who visited the applicant in the office at the Sahar International Airport at Bombay on 21.3.92 which was her last day of training. It is alleged that she reported against the applicant that he tried to molest her and also outrage her modesty. It is also alleged that the applicant also wrongfully confined her in a room. The complainant, about this incident, filed a complaint with the Principle Collector of Customs and Central Excise, Bombay with the noted allegation. She also filed F.I.R. No. 277/92 dated 23.3.92 and thereupon a case under Section 342 and 354 of the Indian Penal Code was registered against the applicant.

3. Respondents appeared on notice and filed their counter wherein they have justified the order of suspension. They also contended that there was a

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prima facie case against the applicant and as the Police have filed the chargesheet against the applicant, the applicant's suspension is continuing and shall continue till the conclusion of the criminal trial.

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4. Sh.S.C.Gupta with Sh.M.K.Gupta appeared for the applicant and Sh.R.R.Bharti for the respondents. Both the counsels were heard in great detail. The provision of suspending of an employee is provided under Rule 10 of the C.C.S.(C.C.A.) Rules, 1965 (hereinafter referred as 'rules'). According to the said rule an employee can be suspended by the appointing authority or an authority subordinate to it or the disciplinary authority on behalf of the President by general or special order; a government servant under suspension where disciplinary proceedings against him is continuing or pending; where in the opinion of the authority he has engaged himself in the activities prejudicial to the interest of the security of the State or where a case against him in respect of a criminal offence is under investigation, enquiry or trial.

5. The necessity of suspension arises during the pendency of the investigation or trial so that the employee may not use his official position to terrorise or influence the witnesses during investigation or trial. No such stand has been taken by the respondents in their counter. The complainant has also not alleged that the petitioner is in any way trying to influence her from dissuading from depositing a statement against him during the trial. In such a situation

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when the chargesheet has been filed in the criminal court and the trial is pending then the authority should have applied its mind with regard to the continuance of the suspension of the applicant. A long suspension of a government functionary is also not in the public interest because the cause of state suffers due to the suspension <sup>of the</sup> functionary.

6. The learned counsel for the applicant cited a ~~plethora~~ of case laws in support of his contention. 1984 S.L.J. 164, 1988 S.L.J. C.A.T.179, 1971(2) S.L.R. 232, 1973 S.L.J. 755 and A.I.R.1974 S.C.555. The sum and substance of the citations are large yet we shall capsulise them only to the relevant matter which is at hand. Before passing an order of suspension against a member of service, under the Government of India, the competent authority should take into account all the relevant materials available, the nature of the charges and the necessity of the desirability of the placing the public servant under suspension. On the subject there are several guidelines issued by the Government of India. This is also to be kept in view that the power of suspension should not be excercised in an arbitrary or vindictive manner. The power of suspension is required to be excercised with utmost care and caution. Though suspension by itself is not one of the penalties, major or minor, yet great deal of approbrium attaches to suspension. The stigma of severest penalty can be washed out by an appeal or review in the subsequent stages but not so with the suspension. As it is not a penalty the rules do not provide for similar relief in respect of suspension. The officer who has the

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misfortune to become the victim of suspension must live with unjustified stigma throughout his service, may be throughout his life. It is also to be remembered that mere receipt of a compliant is not sufficient to pass the order of suspension against a government employee. That is why it is all the more necessary that there should be an application of mind when the order of suspension is passed. The Division Bench of High Court of Bombay has held that the rules of natural justice required that the petitioner must be heard before any order of suspension is passed (1983(1) A.I.S.L.J p.484). As stated earlier, mere receipt of a compliant is not sufficient to suspend a government servant. The order must itself show that there has been an application of mind and all the facts and circumstances in the totality have been taken into consideration. A constitution bench of the Apex Court in the case of E.P.Royappa (A.I.R. 1974 S.C.555) has observed that where an act is arbitrary it is implicit in it that "unequal both according to political logic and statutory law and therefore, is in violation of Article 14 and it affects any matter relating to public employment. It is also violative of Article 16. Articles 14 and 16 strive at arbitrariness in a State action and ensure firmness and equality of treatment. It requires that a state action must be passed on valid relevant principles applicable alike to all similarly constituted and it must not be guided by an extrenous irrelevant consideration because that would be denial of equality.

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7. Assuming that the order of suspension was passed by the respondents on receipt of the compliant from the prosecutrix yet the respondents have not brought out alongwith their counter any material on record to show that it was reasonably sufficient ground to pass the impugned order. The impugned order itself does not show that there was any application of mind while passing that order (annexure A). Even if we assume that the respondents have power to place the applicant under suspension yet we do not see any necessity of it being continued indefinitely for more than a period of one year. When the chargesheet has been filed in the court, when there is no complainant of witnesses of the prosecution that the applicant is trying to influence her then there appears to be no necessity of keeping the applicant in continuous suspension telling upon the injury to the public interest. As no valid reason exists for continuing this impugned order of suspension, we are of the view that the act of continuing the suspension of the applicant is arbitrary.

8. We are, therefore, of the opinion that Annexure 'A' should be quashed. Consequently, we quash the suspension order(Annexure 'A') dated 26.3.92 and allow this O.A. with no order as to costs and direct the respondents to act according to law.

*I.K.Rasgotra*  
(I.K.Rasgotra)  
Member (A)

*Ram Pal Singh*  
(Ram Pal Singh)  
Vice Chairman (J)