

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

**** ALLAHABAD ****

DATED : THIS THE 26 DAY OF SEPTEMBER 1996

CORAM : Hon'ble Mr. S. Das Gupta A.M.
Hon'ble Mr. T. L. Verma J.M.

ORIGINAL APPLICATION NO. 545/96

L. S. A. Mendies s/o A. L. Mendies
working as Director Defence Estate,
at present r/o T-88, Phase II
Palanpuram, District Meerut. 250110- - - - - Applicant

Applicant in person

VERSUS

1. Union of India through Secretary,
Ministry of Defence, South Block,
New Delhi.
2. Director General, Defence Estates
Sector 1, R. K. Puram,
New Delhi.
3. Sri R. Srinivasan, Ex. Director General,
Defence Estate, R. K. Puram,
New Delhi. to be through D. G.,
Defence Estate R. K. Puram,
New Delhi as the incumbent has retired.

----- - Respondents

C/R Sri P. Mathur

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ORDER

BY HON'BLE MR. S. DAS GUPTA AM

The applicant in this case was functioning as the Director of the National Institute of Management and Accounts (NIMA) at Meerut. Prior to his posting at Meerut, he was working as the Director, Northern Command, Jammu Cantt. He had challenged his transfer from Jammu Cantt. to Meerut by filing a petition before the Chandigarh bench of the Tribunal. The Chandigarh bench, however, dismissed the petition. By the impugned order dated 9.8.1985, he was placed under suspension and it was stipulated in that order that his Headquarter shall be NIMA, Meerut and he shall not leave the Headquarter without obtaining prior permission of the competent authority. Challenging the aforesaid order, this application has been filed under section 19 of the Administrative Tribunals Act, 1985 seeking quashing of the impugned order.

2. The applicant's case is that the aforesaid order, placing him under suspension is a malafide order and he has attributed it to the alleged bias on the part of the respondent no. 3, who has retired as the Director General, Defence Estates. The applicant has alleged that the power vested in the respondents has not been exercised in good faith, and while issuing the order of suspension that he is being kept under continued suspension without any charge sheet having been served on him only in order to subject him to harassment. He has also alleged that contrary to specific instructions of the Government of India in this regard, the respondents have not revised the quantum of subsistence allowance and that even his Headquarter have been shifted from Meerut to Delhi by order dated 7.9.1995, putting him to further hardship.

S. Das Gupta

3. In the counter affidavit, filed on behalf of the respondents no. 1 and 2, it has been stated that the applicant was ^{placed} under suspension as disciplinary action was contemplated against him. It has also been stated that Central Bureau of Investigation (C. B. I.) has been entrusted with the task of investigation as certain prima-facie irregularities were detected during the preliminary departmental enquiry. As regards the delay in serving the charge memo, it has been stated that further action in this regard would be taken on receipt of C. B. I. report. Referring to the allegation that the quantum of subsistence allowance has not been revised, it has been stated by the respondents that this matter is under the consideration of the competent authority. Regarding the change of Headquarters, it has been submitted that since NIMA has been shifted from Meerut to Delhi, the headquarters of the applicant during the suspension period also had to be shifted to Delhi in administrative exigency. The allegation of malafide on the part of the respondents has been denied.

4. A counter affidavit has also been filed by the respondent no. 3, who has been impleaded by name. The said respondent has strongly denied the allegation of malafide levelled against him by the applicant.

5. The applicant has filed rejoinder affidavit. Apart from reiterating the contentions already made in the O. A. and denying the contrary averments in the C. As., the applicant has pointed out that there exist several executive instructions issued by the Govt. of India, which stipulate the period

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within which the charge sheet should be served on a government servant, when ^{he} has been placed under suspension. He has alleged that his continued suspension without charged sheet being served on him is in contravention of the aforesaid instructions.

6. The respondents have also filed supplementary counter affidavit, seeking to controvert the various contentions made in the rejoinder affidavit filed by the applicant. They have also annexed a copy of the order passed by the Chandigarh bench of the Tribunal, dismissing the O. A. filed by the applicant before ^{1/2} that bench, challenging his transfer from Jammu to Meerut.

7. The applicant appeared in person. We have heared the arguments advanced by him as well as those advanced by Sri Prashant Mathur, learned counsel for the respondents. We have also carefully perused the pleadings on record.

8. Provisions relating to the suspension of a government servant are contained in Rule 10 of C.C.S (C. C. A) rules 1965. This rule inter-alia provides that the Appointing Authority or any authority to which it is subordinate or the Disciplinary authority or any other authority empowered in that behalf by the President, by ^{general} ~~1/2~~ or special order, may place a government servant under suspension, where a disciplinary proceeding against him is contemplated or is pending. There are other circumstances also indicated in the said rule in which a government servant can be placed under suspension, but these are not relevant to the present controversy. It is, however, clear from the provisions contained in Rule 100 ibid that

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even if, a disciplinary proceeding is contemplated against the government servant, he may be placed under suspension. Rule itself does not provide, how long a government servant can be continued under suspension or any time limit by which the disciplinary proceeding should be initiated and completed, in case the government servant remains under suspension. Thus a plain reading of the provision of the rule would tend to indicate that the competent authority has unlimited power to place a government servant under suspension and continue to keep him under suspension indefinitely. Rule itself does not provide for any check on the competent authority in the exercise of its powers under the said rule.

9. In the context of the position of the rule indicated above, question arises as to whether the court or the Tribunal does have any jurisdiction in interfering with an order of suspension, where it has been manifestly issued by a competent authority and where in the order itself, there is a recital that such order has been passed as the disciplinary proceeding against the government servant is contemplated. We are fully conscious of the fact that a court or a Tribunal has a ~~very~~ severely circumscribed jurisdiction in interfering in an order of suspension which essentially is an interlocutory order. The Apex court has repeatedly warned the High Courts and the Tribunals not to interfere in such matters lightly. At the same time, we are also conscious of the fact that no statutory rule can confer unbridled authority on the Executive to exercise any power arbitrarily because arbitrariness is anathema to any judicial system. It was because of this reason that the Apex court as well as the subordinate courts never hesitate to interfere ^{ess} with even interlocutory orders when

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such orders were found to be tainted by arbitrariness.

10. The possibility of misuse of powers condenred, under Rule 10 of C.C.S. (C. C. A.) rules 1965 seems to have been appreciated by the Government of India. This is evident from the fact that a series of instructions have been issued by a Nodal Ministry laying down ~~as~~ guiding principle for placing a government servant under suspension and also urging speedy follow up action in the cases, where the suspension is resorted to laying down certain time limit for completion of investigation and serving of charge sheet. No doubt, these Executive instructions are in the nature of guide lines and thus do not have the force of statutory law. However, since such instructions do not supplant the statutory provisions contained in Rule 10 of C.C.S (C.C.A.) rule 1965, failure to abide such guide lines and instructions without any justifiable reasons may give rise ^{to a} presumption of arbitrariness on the part of the Executive.

11. The applicant in the present case has challenged the very basis of the order of suspension, alleging that it was as a result of bias against him on the part of the respondent no. 3. In the first place, it was not the respondent no. 2, who had issued the impugned order of suspension. It is not clear from the averments as to the manner in which the respondent no. 3 even assuming, that he was biased against the applicant-
~~have~~ could not influenced the competent authority in placing the applicant under suspension. Secondly even assuming that the respondent no. 3 could have manipulated the matter in such a way that the competent authority placed the applicant under suspension, we are of the view that

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the applicant has not been able to lay a firm foundation for presuming that the respondent no. 3 harboured any malice against the applicant. In fact, in the O. A. filed before the Chandigarh bench, challenging the order of transfer from Jammu to Meerut, the applicant had alleged malafide against the respondent no. 3, who, at that time was the Director General, Defence Estate. We have seen from the order passed by the Chandigarh bench, a copy of which has been annexed to the Supplementary counter affidavit, that the applicant had narrated the same ~~incidents~~, which are narrated in the present O. A. in support of his allegation of malafide and that the Chandigarh bench did not accept the plea of malafide on the basis of such pleadings. We see no reason to dis-agree with the Chandigarh bench in this regard.

12. While we are not impressed by the plea of malafide taken by the applicant to challenge the very basis of order of suspension, we have noted that the impugned order was passed on 9.8.1995 and since then more than 13 months have elapsed and the applicant continues to be under suspension without any charge sheet having been served on him. Also, until recently and that too after we had to pass an interim order directing the respondents to review and revise quantum of subsistence allowance payable to the applicant, no order revising such quantum was passed by the respondents. The various Executive instructions referred to by the applicant in his rejoinder affidavit are quoted in Swami's compilation of CCS (CCA) rules (XVIII edition) in Chapter II thereof. We consider it relevant to reproduce the relevant instructions :

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(10) SPEEDY FOLLOW-UP ACTION IN SUSPENSION

CASES AND TIME-LIMITS PRESCRIBED.

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1. Instances have been noticed where inordinate delay has taken place in filing charge-sheets in courts in cases where prosecution is launched and in serving charge-sheets in case where disciplinary proceedings are initiated.

2. Even though suspension may not be considered as a punishment, it does constitute a very great hardship for a government servant. In fairness to him, it is essential to ensure that this period be reduced to the barest minimum.

3. It has, therefore, been decided that in case of officers under suspension, the investigation should be completed and a charge-sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officer in cases of departmental proceedings within six months as rule. If the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence, etc, or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order.

(G.L.M.H.A, O.M. no.221/18/65-AVD, dated
the 7th September, 1965)

4. In partial modification of the above orders, it has been decided that every effort should be made to file the charge sheet in court or serve the charge-sheet on the government servant, as the case may be, within three months of the date of suspension, and in cases in which it may not be possible to do so the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay.

(G.L., C.S.(Dept of Per.), O.M.No.39/39/
70-Ests(A), dated the 4th February 1971)

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5. It would be observed that the government have already reduced the period of suspension during investigation, barring exceptional cases which are to be reported to the higher authority, from six months to three months. It has now been decided that while the orders contained in the O. M. of 4th February, 1971, would continue to be operative in regard to cases pending in courts in respect of the period of suspension pending investigation

before the filing of a charge-sheet in the court as also in respect of serving of the charge-sheet on the government servant in cases of departmental proceedings, in cases other than those pending in courts, the total period of suspension viz. both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to this time limit, the disciplinary authority should report the matter to the next higher authority, explaining the reasons for the delay.

(G.L.C.S. (Dept. of Per.), O.M. No. 39/33/72-Ests(A), dated the 16th December, 1972)

6. In spite of the instruction referred to above instances have come to notice in which government servants continued to be under suspension for unduly long period. Such unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the government. It is, therefore, impressed on all the authorities concerned that they should scrupulously observe the time limits laid down in the preceding paragraph and review the cases of suspension to see whether continued suspension in all cases is readily necessary. The authorities superior to the disciplinary authorities should also give appropriate directions to the disciplinary authorities keeping in view the provisions contained above.

(G.L.M.H.A., O.M. No. 11012/7/76-Ests(A)
dated the 14th September, 1978)

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7. It is once again reiterated that the provisions of the aforesaid instructions in the matter of suspension of government employees and the action to be taken thereafter should be followed strictly. Ministry of Finance, etc, may, therefore, take appropriate action to bring the contents of the aforesaid instructions to the notice of all the authorities ~~of~~ concerned under their control, directing them to follow those instructions strictly.

(G.L.M.H.A., D.P. & A.R., O.M. No. 42014/83-Est.(A), dated the 18th February 1984)

8. All authorities receiving information/report about the continued suspension of officials from their subordinate authorities should carefully examine each case and see whether the continued suspension of an official is absolutely necessary or the suspension should be revoked by transferring the official to another post or office.

9. In order to ensure that above instructions are scrupulously observed by subordinate authorities, all cases of suspension may be reviewed regularly, particularly those where officials are under suspension for more than six months, and wherever it is found that the official can be allowed to resume duties by transferring him from his post to another post, orders should be issued for revoking the suspension and allowing the official to resume duties with further direction as may be considered desirable in each individual case.

10. In respect of cases where it is found that the competent authorities have not made reports in terms of these instructions serious notice on the lapses of such authorities should be taken as also considering making adverse entries in their annual confidential reports. Similarly when an appellate authority finds that an official has remained under suspension for a period exceeding six months and the competent authority has not made reports in terms of these instructions, the appellate authority should also take serious notice of the lapses of the concerned subordinate authority and consider making adverse remarks in annual confidential reports. (D.G.P&T's LETTER NO.201/43/76-DISC II DATED THE 15th JULY 1976)

13. It would be clear from the facts of the case that the time limit prescribed in the aforesaid instructions regarding the total period of suspension both in respect of investigation and disciplinary proceedings has long been exceeded. There is nothing in the submissions made by the respondents to indicate that such exceeding of the time-limits prescribed has been reported to the higher authorities or whether the circumstances in which continuance of suspension has become necessary, have been reviewed by the higher authorities and a decision has been taken thereon. All that has been stated, is that the matter has been entrusted to the C. B. I. and further action in this regard will be taken after obtaining a report from the C. B. I. We are aware that when C.B.I. undertakes investigation into the financial irregularities, it does take a fairly long time in completing the investigation. This, however, ipsofacto cannot justify, keeping the government servant under continued suspension. It is necessary to consider the circumstances and decide whether it is necessary to keep the government servant under continued suspension, keeping in view the nature of allegations and also possibility of government servant causing any hindrance in the investigation in case he is reinstated in service. There is no indication in the counter affidavit that competent authority has applied its mind to such circumstances and then decided that it is absolutely necessary to keep the applicant under continued suspension. In case of State of Madhya Pradesh v/s L. P. Tewari (1994 SCC (L & S) 993, the Hon'ble Supreme court inter-alia held that non serving of charge sheet within the time limit prescribed for issuance thereof may vitiate the

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order of suspension. No doubt, in the aforesaid case, the statutory rule itself provides a time limit within which a charge sheet is to be served whereas there is no such statutory provision in Rule 10 of CCS (C.C.A. rule) 1965. However, the provision of Rule 10 of CCS (CCA rules) 1965 are supplemented by Executive instructions issued by the Government of India to which we have already referred, which lay down certain time-limit for serving of the charge-sheet. Admittedly these time-limits have been exceeded long back and no justifiable reasons have been adduced for such exceeding time-limit.

14. In an earlier case of O.P.Gupta V/s Union of India (1987) 5 ATC 14, the Hon'ble Supreme court held that long continuation of suspension pending departmental enquiry is punitive and affects means of livelihood of the suspended employee. It further held that such employees are entitled to make representation to the government for expeditious disposal of the departmental proceedings and if disregarding such representation, the authorities continue to keep the employee under suspension for an unreasonable long period, their action would be arbitrary, unjust, unfair and malafide and against the principles of natural justice. No doubt, in the aforesaid case the period of suspension was nearly 11 years, whereas it is only 13 months in the present case, ^{but} we have seen from O.P. Gupta's case that delay in finalisation of departmental proceedings was broadly due to ~~the~~ prolonged litigation in various courts. In the case, before us, there is no such history of litigation, which may have resulted in delay in initiating and completing the Disciplinary proceedings. Therefore, even a period of 13 months of suspension without even serving the charge

sheet would prima-facie appear to be an unreasonably long period, in the absence of any justification therefor.

15. In the case of D. C. Mangeshwaran v/s Government of India (1987) 2 ATC 828, Madras bench of the Tribunal examined various Executive instructions issued by the Government of India laying down the time limits for issuance of charge-sheet and completing the disciplinary proceedings. It noted that various instructions indicated anxiety on the part of government of India to see that undue hardship is not caused to the officers who are kept under suspension when there is considerable delay in investigation and conduct of enquiry. In a recent case of Sudhir Kalgankar v/s Union of India (1996) 33 ATC 431, Bombay bench of the Tribunal relying on the decision of Mangeshwaran held that since no charge sheet was served on the applicant therein within the prescribed period and also since respondents did not place any material before the bench to show why ~~xxx~~ the continued suspension of the applicant is justified, quashed the order of suspension. While deciding to interfere into an interlocutory order of suspension, Bomaby bench noted the decision of O. P. Gupta (Supra)

16. As we have already pointed out, the respondents have not given any justification for the continued suspension of the applicant except making bald statement that the investigation has been entrusted to the C. B. I. It is also on record that the applicant has repeatedly represented to the government including memorial to the President for revocation of the suspension, but no action appears

to have been taken on the same. We have also noted that after completion of first six months of suspension the competent authority was required to increase subsistence allowance by suitable amount not exceeding 50% of the subsistence allowance earlier granted, if the period of suspension was prolonged due to the reasons not directly attributable to the government servant. These instructions were also not complied with by the authorities concerned in this case and it was only after specific direction was issued by this bench to the respondents, an order has ^{been} issued, increasing the quantum of suspension allowance. Such unexplained delay in revising the subsistence allowance, also tend to indicate lack of application of mind on the part of the authorities.

17 We may at this stage also refer to the plea taken by the respondents that Allahabad bench of Administrative Tribunal does not have territorial jurisdiction in this case. In this regard, we have seen the provisions contained in Rule 6 of the Central Administrative Tribunal ((Procedure) rules 1987. This rule reads as follows :

Rule 6 : PLACE OF FILING APPLICATION

An application shall ordinarily be filed by an applicant with the Registrar of the bench within whose jurisdiction --

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen

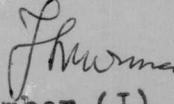
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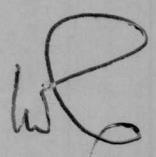
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18. Admittedly the applicant was placed under suspension when was posted at Meerut. The cause of action, therefore, had arisen almost partly at Meerut, which comes under the territorial jurisdiction of Allahabad Bench. We are, therefore, unable to accept the contention of the respondents in this regard.

19. Inview of the foregoing, we are not convinced that there is any justification to keep the applicant under suspension. Therefore, the impugned order of suspension is hereby quashed. The applicant shall be re-instated in service forthwith. The manner in which the period of suspension already undergone shall be treated, shall be subject to the final outcome of the disciplinary proceedings contemplated. Nothing in this order shall preclude the respondents from taking action as they deem fit, if at a later stage a charge-sheet is served on the applicant and the gravity of the charges levelled warrant any such action against the applicant.

20. Parties shall bear their own cost.


Member (J)


Member (A)