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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO.390 OF 2005

ALLAHABAD THIS THE 21st DAY OF April, 2005

**HON'BLE MR. S.C. CHAUBE, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J**

V.S. Rathore,
S/o Sri S.L. Singh Rathore,
Presently Posted as Principal,
Kendriya Vidyalaya, I.T.I. Road,
Aligarh.

.....Applicant

(By Advocate Shri S. Dwivedi)

V E R S U S

1. Union of India,
Through the Secretary,
Ministry of Human Resources & Development,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.
3. The Deputy Commissioner (personnel)
18-A Institutional Area,
Shahid Jeet Singh Marg, New Delhi.

.....Respondents

(By Advocate: Sri D.P. Singh)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The applicant challenges the order of suspension (AnnexureA-11), which was passed under the provisions of Rule 10 of CCS (CCA) Rules, 1965. The order of suspension has been passed without specifically mentioning the reason therefore. The

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applicant has challenged the said order stating that the same is under the colorable exercise of power and with malafide intention.

2. The respondents were represented by their counsel, who was also present at the time of admission hearing. It has been contended by the learned counsel for the respondents that the order of suspension being an appealable order, Section 20 of the Administrative Tribunals Act, mandate that statutory remedy should be exhausted and the Tribunal should not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievances. In this regard, the counsel for the respondents relied upon an order dated 14.3.2005 passed by this Bench in O.A. 237 of 2005, which incidentally also relates to Kendriya Viayalaya Samiti. On the other hand, the counsel for the applicant heavily relied upon the judgment of the apex court in the case of Mahavir Prasad Vs. State of U.P. & Others AIR 1970 SC 1302. He has also relied upon the judgment of Hon'ble High Court of Kerala in the case of C.E. Eranimose, Circle Inspector of Police, Kayamkulam Vs. State of Kerala & Another.

3. After hearing the counsel, on the question of interim relief, order was reserved.

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4. As per the decision of the Apex Court in the case of Mahavir Prasad, when the relevant rules granted a right of appeal to the state Government against an order and that implied that the aggrieved party must have an opportunity to convince the State Government that the order passed by the District Magistrate was erroneous, that right could be effectively exercised if reasons be recorded by the D.M. and supplied to the aggrieved party. If the aggrieved party is not supplied the reasons, the right to appeal is an empty formality. The applicant's counsel contends that since the impugned order of suspension does not disclose any reason, the said order is not in conformity with the law laid down by the Apex Court in the case of Mahavir Prasad.

5. In this connection, reference to Rule 10 of the Rules is appropriate. Rule 10(1) reads as under:-

(1) "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 or Special order, may place a Government servant under suspension:

- (a) Where a disciplinary proceeding against him is contemplated or is pending ; or
- (aa) Where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

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(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial."

6. Again Rule 23 provides for appeal against order of suspension made under Rule 10. Rule 27 stipulates that in case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirmed or revoked the order accordingly. The words, "having regard to the circumstances of the case" go to show that the appellate authority will consider the case, obviously, with reference to the circumstances and thus, the appellate authority will have before it the entire case file and decide accordingly. Hence, there is no need that the full reasons for suspension should be given in the order of suspension. As could be seen from Rule 10, there are three circumstances, under which suspension can be invoked. If the departmental proceedings is pending, the same would be to the knowledge of the applicant. So is the case where any criminal offence is under investigation, inquiry or trial. If in the opinion of the authority, the applicant has engaged himself in activities prejudicial to the interest of the security of the State, the same would have been reflected since it is the "opinion" of the authority. What is left, therefore, is when a disciplinary proceedings is contemplated. The

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applicant can agitate against the order of the suspension in the appeal accordingly and perhaps one of the grounds may also be that he has not been informed about the grounds of suspension. Thus, non-indication of the reasons cannot be a ground to directly approach the Tribunal for revocation of suspension.

7. It is settled law that suspension is not a penalty. As such, the applicant cannot have any grievance against suspension so as to approach the Tribunal directly.

Public Services Tribunal Bar Assn. v. State of U.P., (2003) 4 SCC 104, at page 123 :

35. In U.P. Rajya Krish Utpadan Mandi Parishad case⁸ it was held by this Court that it was desirable that an order of suspension passed by a competent authority should not be ordinarily interfered with by an interlocutory order pending the proceeding. It was observed: (SCC p. 487, para 10)

"Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question."

Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157, at page 157 :

"3. Order dated 12-11-1993 in OAs. Nos. 1702 of 1993 and 2206 of 1993 of the Tamil Nadu Administrative Tribunal, Madras is in question before us. The respondent while working as Assistant Section Officer, Home, Prohibition and Excise Department had been placed under suspension. Departmental inquiry is in process. We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case is

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pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied."

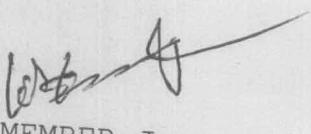
State of Orissa v. Bimal Kumar Mohanty, (1994)
4 SCC 126, at page 132 :

"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further

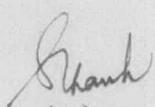
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opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

8. In view of the above, there is absolutely no ground for passing any interim orders. Accordingly, the interim prayer is rejected. Subject to filing of counter and rejoinder, the case would be finally decided. Case may be listed before the Registrar on 06-07-2005 for completion of pleadings.



MEMBER-J



MEMBER-A

GIRISH/-