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Reserved

Central Administrative Tribunal, Allahabad.
Registration O.A.No.392 of 1986.

Swaraj Kapoor Applicant
Vs.

1. Union of India
2. Inspecting Asstt.
Commissioner of Income
Tax Range II, Agra Respondents.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In this petition under section 19 of the Administrative Tribunals Act XIII of 1985, the petitioner, a Stenographer in the office of the Income Tax Officer, Circle II, Agra, has challenged the order dated 3.6.1985 of his suspension from service passed by the respondent no.2.

2. In his brief petition, it is alleged by the petitioner that while working as Stenographer in the office of the Income Tax Officer, Circle II, Agra, the petitioner was forced to work as Lower Division Clerk and on 3.6.1985, he was placed under suspension by the respondent no.2. On 1.8.1985, the respondent no.2 issued a show cause notice to the petitioner stating the various irregularities alleged to have been committed by him and requiring him to show cause within 15 days as to why the inquiry under rule 14 of the CCS (CCA) Rules, 1965 be not instituted against him. The petitioner submitted his reply on

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31.8.1985 to the show cause notice and also preferred an appeal on 6.9.1985 to the Commissioner of Income Tax, Agra against his suspension, which have not been disposed of so far. According to the petitioner, the order of his suspension without issuing charge sheet is bad in law and it deserves to be set aside. He has further alleged that in the similar circumstances, Shamimul Hasnain, Income Tax Officer was suspended and this Tribunal vide its order dated 11.7.1986 passed in O.A.No.106 of 1986 quashed his suspension order. He has prayed that the order of his suspension be quashed and he be allowed continuity of service with all privileges.

3. The petition has been contested on behalf of the respondents and in the counter affidavit filed on their behalf by Sri R.C.Tomar, Inspector of Income Tax, Agra, it has been stated that while working in the office of the Commissioner of Income Tax Agra from 8.8.1980 to 18.7.1983 as Stenographer, the petitioner in collusion with the Income Tax Officer (headquarters) (in short ITO HQ) Sri Shamimul Hasnain and Sri K.S.Dhakre, Caretaker hatched a long drawn conspiracy to misappropriate the Government funds for their personal benefit. Despite his working as Stenographer, the petitioner voluntarily assumed the duties relating to the work involving financial implication and in collusion with his

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accomplices - the ITO HQ and the Caretaker above-named, made fictitious and disproportionate expenditures on the local purchase of the stationery from Nov.1982 to July 1983 though no stationery was ever received in the office. No stock register for such heavy purchase was made by the petitioner and a number of other financial irregularities were committed by the petitioner as mentioned in the show cause notice dated 1.8.1985, copy annexure 1 to the counter affidavit. After his transfer from the office of the Income Tax Commissioner to the Income Tax Office, Circle II, the petitioner continued his mal-practices and he obtained sanction of Rs.4,224.50P of the Commissioner of Income Tax through ITO HQ on 22.7.1983 in respect of false T.A./medical bills. This was done with a view to embezzle the Government money through forged and fictitious bills. He thus failed to maintain the absolute integrity in the discharge of his official duty as a public servant and committed misconduct involving moral turpitude. He was accordingly placed under suspension on 3.6.1985 as his continuance in office could prejudice investigation, trial and inquiry. The matter has been reported to the C.B.I.(Vigilance) which is collecting the necessary material and the Superintendent of Police, C.B.I. Dehradun has

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registered a case under sections 120-B, 420, 468, 471 IPC and Section 5(2) of the Prevention of Corruption Act against the petitioner on 2.9.1985 vide copy Annexure CA 2. The charge sheet could not be issued to the petitioner so far for want of advice of the Central Vigilance Commissioner and the detailed reasons for placing him under suspension were duly communicated to him vide show cause notice dated 1.8.1985 mentioned above. Sufficient material/record could not be produced before the Tribunal inadvertently in the case of the ITO Shamimul Hasnain and the order of the Tribunal quashing his suspension is being studied by the authorities and they are moving an application to recall the said order after obtaining sanction of the higher authorities. The suspension order of the petitioner was passed according to law and it is not liable to be quashed. It was also stated that the petition is barred by time.

4. In his rejoinder, it was stated that the petitioner has already been transferred to the office of ITO Circle II situated in a different building from the office of the Commissioner of Income Tax and his continuance in office cannot prejudice investigation in any manner. The delay of more than 1½ years in finalising the charge sheet against the petitioner shows that the action of the respondents is malafide and at the time of his suspension, no inquiry was contemplated and no inquiry is in fact to be held in the matter and

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the petitioner has been unnecessarily punished by placing him under suspension.

5. The learned counsel for the petitioner has contended that despite the suspension order of the petitioner having been passed on 3.6.1985, he has not been served with a charge sheet so far and the appeal preferred by him under rule 23 of the CCS (CCA) Rules, 1965 has also not been decided so far though the alleged accomplice of the petitioner namely, Sri Shamimul Hasnain, ITO has been taken on duty after his suspension was quashed by this Bench and the petitioner is, thus, suffering a great hardship and discrimination. He placed before us a certified photostat copy of the judgment of this Bench of the Tribunal in Registration O.A.No.106 of 1986 filed by the ITO HQ Shamimul Hasnain against the respondents. He too was placed under suspension by the Commissioner of Income Tax on 3.6.1985. By the time he filed his petition under section 19 of the Administrative Tribunals Act XIII of 1985, no charge sheet was served on him and as the charge sheet was not served upto 7.8.1986, the judgment was delivered in his case and his suspension was quashed by the Bench. One of the grounds which weighed with the Bench was that the petitioner in that case was already transferred to a different district out of Agra and there was no possibility of his interfering

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with the investigation or tampering with the evidence. The Bench had also taken into consideration that as the charge sheet was not finalised during the long period of over one year, it appeared that the administration was still making up its mind and the suspension was made in hurry. The contention of the petitioner before us is that the grounds, which were taken into consideration by the Bench for quashing the suspension order in that case are available in the present case also and the petitioner is entitled to get his suspension order quashed under the law as he is similarly situated in all respects.

6. Sri K.C.Sinha, Additional Standing Counsel for the respondents in this case, however, did not take the decision of the Tribunal in the case of Shamimul Hasnain seriously and it was contended by him that the Tribunal had taken an extreme view in that case and he did not come across any case in which such decision was given by any Court. It was also contended by him that as the investigation in the case is being made by the C.B.I., some time is likely to be taken in finalizing the charge sheet and there has been no undue delay in serving the charge sheet upon the petitioner, who has already been served with a show cause notice containing the reasons on which he was suspended.

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7. One of us was a member of the Bench which had decided the case of Shamimul Hasnain, ITO. The unkind remarks of Sri K.C.Sinha at the time of arguments forced us to reconsider the verdict given by the Bench in the case of Shamimul Hasnain, ITO and for the reasons given below, we feel that the said case was rightly decided and it does not call for any review.

8. It has not been disputed in this case that a public servant can be placed under suspension by the competent authority in contemplation of a disciplinary proceeding against him. As clause (a) of sub-rule(1) of rule 10 of CCS (CCA) Rules authorising suspension in contemplation of a disciplinary action gave wide powers to the superior authorities to place the public servants under suspension without laying down any limitation regarding time or otherwise, the Government felt the necessity of issuing several guidelines in the form of office memorandums (in short OMs) and we will like to quote some of them. The first instructions in this connection were issued on 7.9.1965 vide G.I. M.H.A. O.M. no.221/18/65-AVD. In para 3 of this OM, the Government allowed 6 months time for finalising investigation and charge sheet and observed that 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. It was further observed that if the presence of the officer is considered detrimental to the collection of evidence, or if he is

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likely to tamper with the evidence, he may be transferred on revocation of the suspension order. Para 2 of this OM, which contains the reason and the aim of issuing this OM, is reproduced below :-

"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 is reduced to the barest minimum. "

9. The period of 6 months allowed by the Government for completing the investigation and preparing charge sheet was later on considered to be too much and vide its G.I.C.S. (Department of Personnel) O.M. no.39/39/70-Ests (A) dated 4.2.1971, the Government reduced this period to 3 months and laid down that in partial modification of the aforesaid OM dated 7.9.1965, 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 3 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. It has not been brought to our notice on behalf of the respondents that the respondent no.2 in compliance of this OM ever reported the matter to the next higher authority explaining the reasons for the delay in serving the charge sheet on the petitioner. // The Govt. of India further reconsidered the problem arising on

account of undue delay in completing the investigation and filing the charge sheet against the Government servants and vide G.I., C.S. (Department of personnel) OM no.39/33/72-Ests (A) dated 16.12.1972 it further laid emphasis that while the orders contained in the OM of 4.2.1971 could continue to be operative in regard to the 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. For ensuring strict compliance of its earlier instructions, the Government of India by issuing G.I., M.H.A., O.M. No.11012/7/76-Ests (A) dated 14.9.1978 pointed out that in spite of the instructions referred to above, instances have come to notice in which Govt. servants continued to be under suspension for unduly long periods. Such unduly long suspension while putting the employee concerned to undue hardship, involves payment of subsistence allowance without employee performing any useful service to the Government and impressed on all

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the authorities concerned that they should scrupulously observe the time-limits laid down in the preceeding paragraph and review the cases of suspension to see whether continued suspension in all cases is really necessary. The authorities superior to the disciplinary authorities should also give appropriate directions to the disciplinary authorities keeping in view the provisions contained above.

10. Again by issuing D.G., P&T letter no. 201/43/76-Disc.-II dated 15.7.1976, the superior authorities were required to examine each case of suspension carefully with a view to see whether the continued suspension of an official was absolutely necessary or it could be revoked by transferring the official to another post or office. The appellate authorities were further directed to take serious notice of the lapses of the concerned subordinate authorities to consider whether an adverse remark in the annual confidential report of the disciplinary authority was called for on account of the delay in keeping any official under suspension beyond the prescribed limit.

11. The repeated administrative instructions issued by the Government of India from time to time, as mentioned above, thus clearly go to show that by framing rule 10(1) (a) of CCS (CCA) rules, the Government of India never wanted to give an unlimited power to a disciplinary authority to keep a Government servant under suspension in contemplation of disciplinary action for any time at his sweet will. After placing the petitioner under

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suspension, the investigation against him should have been completed within 3 months and in any case, within 6 months as directed by the Government of India. The respondent no.2 then should have reported the matter to his superior authority stating reasons for not completing the investigation and serving the charge sheet upon the petitioner within ^{the} ~~A~~ prescribed time. In case, the respondent no.2 failed in his duty to bring such reasons to the notice of his superior or appellate authority, the Commissioner of Income Tax Agra should have taken action suo-moto on receiving the appeal of the petitioner under rule 23 of the CCS (CCA) Rules. Unfortunately, he too slept over the matter and instead of directing the respondent no.2 to take any action in the matter, he has not cared to dispose of his appeal so far.

12. Coming to the facts of this case, we find that according to the respondents, there appears to be a very big conspiracy of serious nature hatched by the petitioner in collusion with the ITO HQ and the Caretaker for misappropriating Government money by manufacturing fictitious and forged bills and showing fictitious purchase etc. It, ^{however,} ~~further~~ appears from the FIR registered by the Superintendent of Police CBI/SPE Dehradun on 30.8.1985 about 3 months after the suspension of the petitioner that the total sum involved in this conspiracy amounts to Rs.7,165/- only vide copy annexure CA-2. We never mean to point out that a public servant misappropriating Government money to this extent is immune ^{from} ~~to~~ any legal action but what we want to emphasize is that the matter of alleged conspiracy does not seem to involve bigger transactions of high amounts and in the ordinary

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course, CBI should have completed its investigation so far. The fact that in the absence of ^{the} involvement of high amounts, the CBI could not dispose of this matter suggests that it may not be necessary for keeping the petitioner under suspension any more, if the investigation has to proceed with such a slow pace .

13. We, therefore, do not agree with the contention of the respondents that a long time was required for finalising the charge sheet against the petitioner according to the nature of his case.

14. In view of the various administrative instructions issued by the Government of India itself, it may not be necessary for us to cite any authority to give any relief to the petitioner in this case. We will, however, like to quote a few decisions of the High Courts on this point. In the case of Arya Vir Saxena Vs. State of U.P. and others (1979 (1) SLR-52), the Allahabad High Court had made the following observations :-

"..... No disciplinary proceeding can be contemplated unless the authority has completed the preliminary fact enquiry and come to the prima facie conclusion that the suspension has a foundation. The fact that suspension has lasted for more than three years without the charge sheet being served is by itself sufficient to prove that disciplinary enquiry was not in contemplation on the date the suspension order was passed. The order passed by the State Government suspending the petitioner from his service was thus

without any authority of law."

14. In Jai Singh Dixit Vs. State of U.P. (1974- SLJ-377), the petitioner had filed a writ petition under article 226 of the Constitution challenging his suspension made on 2.11.1972 after 11 months. During the pendency of the writ petition, he was served with a charge sheet and it was contended on behalf of the State Government that since the charge sheet was served, which contained serious and grave charges, it would not be proper to interfere with the order of suspension. That contention was repelled by the Allahabad High Court and the suspension was quashed with the observation that if the charges are grave and serious, the respondents were free to take proceedings and to hold enquiry into the charges and pass suitable orders on completion of the enquiry but there was not justification in law for the continued suspension of the petitioner. The respondents were, however, allowed to consider the question of placing the petitioner under suspension again if the exceptional and compelling circumstances were made out for warranting his suspension.

15. It was held by the Sikkim High Court in Sar-nigiri Vs. Union of India (1985(3) SLR-587) that if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. The service rules together with OM should, therefore, be taken as complete code on the subject. The learned single Judge of the

Sikkim High Court had considered various CMs issued by the Government and quashed the suspension order of the petitioner before it on the failure of the respondents to serve him with a charge sheet within a period of about 19 months from the date of his suspension. Sri KC Sinha could not enlighten us with any case law laying down the contrary view in the matter.

16. To sum up, we feel that there are serious allegations of corrupt practices against the petitioner. After some investigation, the CBI had already registered a FIR against the petitioner and his two accomplices. The investigation is still going on and the respondents appear to be serious to prosecute the petitioner and his two other accomplices as well as to proceed against them departmentally. We are, therefore, of the opinion that at the time the petitioner was suspended, the respondent no.2 really contemplated disciplinary proceedings against him and his suspension made on 3.6.1985 is, therefore, not bad or void ab-initio. We, however, feel that neither the disciplinary authority nor the appellate authority has so far come forward with any exceptional ground for keeping the petitioner under suspension after the expiry of the stipulated period of 6 months prescribed in the various instructions by the Government of India. It is also not shown that the petitioner is likely to indulge in influencing the witnesses and tampering with the evidence likely to be produced against him. Even if the respondents may have any such apprehension, the petitioner may be transferred

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out of Agra but in the absence of any exceptional ground, we do not feel his further suspension necessary till the investigation or departmental proceedings are completed.

17. Now, coming to the question of limitation raised on behalf of the respondents, we feel that in this case, the limitation of one year prescribed under sub-section (1) and the limitation of 6 months prescribed under sub-section (2) of Section 21 of the Administrative Tribunals Act XIII of 1985, both were ¹available to the petitioner. Under sub-section (1), the petitioner could file the petition within a year after the expiry of 6 months of his filing the departmental appeal on 6.9.1985. Under sub-section (2), he could file the petition within 6 months from 1.11.1985, when the Central Administrative Tribunal was established. The claim of the petitioner ²though having been preferred on 13.8.86 is barred by sub-section (2) of section 21 but as in this case both sub-sections (1) and (2) are applicable, the petitioner could file this petition within 1 year from the expiry of 6 months from the date of his filing the appeal or within 6 months from the establishment of the Tribunal, whichever expired later. The claim petition is, therefore, well within time and it is not barred by limitation.

18. We accordingly revoke the suspension of the petitioner with effect from the date he reports

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himself on duty. On the basis of this revocation alone, he shall not be entitled to get anything more than the subsistence allowance sanctioned to him for the period of suspension, which will depend upon the ultimate result of his case when the departmental proceedings and the criminal case, if any, are finalised. The parties shall bear their own costs.

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9.12.1986
Member (A)

S. Sharma
9.12.1986
Member (J)

Dated 9.12.1986
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