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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 440 of 1986

Ambika Saran Applicant

Versus

Union of India & Others Respondents

Hon. S. Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

The applicant Ambika Saran Srivastava has come to the Tribunal against an order dated 29.6.62 passed by the Assistant Engineer Switch Room Kanpur in accordance with the recommendations of the C.I.D. Lucknow by which the applicant was suspended u.o.f. 29.6.62. The petition has been filed under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant was alleged to be involved in a criminal case which was taken notice of by the Judicial Magistrate Kanpur. In February, 1963 the applicant represented to the Divisional Engineer for being reinstated saying that the criminal case levelled against him was a non departmental case so there was no justification in suspending the applicant. The Assistant Engineer also remarked that the applicant was not directly responsible and he enhanced the subsistence allowance by 50 percent. When nothing happened regarding his reinstatement the applicant represented to the

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Minister of State for Communication vide an application dated 8.2.1968 but he got no answer. The applicant again represented in 1969 to the Assistant Engineer for enhancing his subsistence allowance and to the Vigilance Officer Telephones Kanpur for revocation of the suspension order but again nothing happened and he continued under suspension. The petitioner says that the Ministry of Home, Department of Personnel vide their letter of 8.8.77 have issued instructions that in the case of Govt. servant who was placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched the competent authority should apply its mind at the time of revocation of suspension and if he comes to the conclusion that the suspension was wholly unjustified full pay and allowance be allowed. The applicant has further said that the criminal case is still continuing and it has now more than 20 years that even his prayer to the Allahabad High Court for setting aside the criminal case have not yet been decided. He has referred to the provisions of CCA Rules regarding the procedure for confirmation, seniority and promotion of an employee under suspension pending criminal trial or investigation. He has alleged that proper procedure has not been applied in his case and he has been deprived his

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promotion, seniority and confirmation and he is entitled for the same. He has also not been paid his full salary and allowances and neither had he been reinstated in service. Such a long suspension ³ ruined has ~~ruined~~ the applicant's whole life and he could also not get any job in any Department and no chargedheet has even been submitted by the C.I.D. U.P. The applicant has therefore prayed that the order suspending him ~~@@@~~ issued on 29.6.62 be quashed directing the opposite parties to reinstate him in service with full salary for the suspension period and other benefits. He may also be promoted notionally in the proper grade and be given seniority, increments etc.

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2. In their reply the respondents have challenged the petition on the ground that the petitioner has already filed a writ petition No. 7509 of 1985 before the High Court of Judicature at Allahabad and in the said petition he has prayed for reinstatement and full wages. The applicant is also barred by time, ^{as the} ~~order~~ Suspension was passed in the year 1962. The respondents have further said that they have been advised in October, 1986 that the proceedings in the Sessions Court were stayed due to the pendency of the revision No. 1417/79 filed on behalf of the accused persons in the Allahabad High Court and since there was sufficient evidence against the petitioner to

obtain conviction in a court of law there is no merit in revocation of suspension. According to the Assistant Supdt. of Police Crime Branch the accused persons are themselves responsible for the delay in the disposal of the Sessions Trial.

According to the respondents since the crime committed by the applicant related to moral turpitude and public scandal on advice of CID the suspension order ~~by a committee and~~ was passed ⁱⁿ. The applicant has been continued on suspension on the instructions of the Crime Branch of the C.I.D. Lucknow.

3. In his replication the applicant has said that the writ petition No. 7509 of 1985 has ^{been} withdrawn on 6.1.87. This writ petition was pending for admission but the same has since been withdrawn. In regard to limitation he has said that the cause of action for challenging the suspension arose every month at the time of payment of subsistence allowance and therefore the applicant is not barred by time. He has further said that the appointing authority did not use his discretion and continued him in suspension ^{in instance} since 1962 at the ~~prosecution~~ of the CBI illegally. The rules do not permit to keep the applicant under suspension in such a long time. He has denied that he has filed any proceedings before the High Court to get the investigation or trial stayed.

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4. We have heard the learned counsel for both sides. We also were told that the applicant has since retired from service and that the suspension order was never revoked. The learned counsel for the applicant relied on Virendra Nath Mukherjee Versus State of West Bengal (AIR 1973 Calcutta 94). In this case the petitioner was under trial before the Magistrate and the trial was in the progress. There was no illegality in placing the petitioner under suspension as long as the trial was in progress but it was held that suspension cannot be continued for an indefinite period even though criminal trial might be in progress. The Hon'ble Calcutta High Court had held that where the suspension was kept alive for a period of 8 years on account of criminal proceedings without any excuse, suspension must be held to be unjustified and quashed.

5. Several instructions are available which guide the placing of a Govt. servant under suspension. Public interest has to be the guiding factor in deciding to place a Govt. servant under suspension. As a matter of guidance it has also been laid down that cases where continuance, in an office, of the Govt. servant will prejudice the investigation, trial or any enquiry or where the continuance is likely to seriously subvert discipline in the

office or where it will be against wider public interest such as there is a public scandal or it is necessary to place the Govt. servant under suspension to demonstrate the policy of Govt. to deal strictly with officers involved with scandal particularly corruption or where a prima facie case is made out with a view to justify prosecution or being proceeded against any departmental proceedings, suspension may be resorted to.

6. Rule 5(b) of the CCS (CC&A) Rules lays down that where a Govt. servant is suspended or is deemed to have been suspended the authority competent to place him under suspension may, for reasons to be recorded by him in writing direct the Govt. servant to continue to be under suspension until the termination of all or any of such proceedings.

7. In the instant petition it is not challenged that the suspension order was against rules. What is challenged is the continued suspension from 1962 till the date of filing this petition and as we have mentioned above even the applicant has since retired from service. It is not challenged that the Govt. had no authority to suspend the petitioner. Therefore the limited issue before us is whether the

suspension which continued from 1962 till the retirement of the applicant i.e. over a period of more than 24 years was justified or not. We will deal with this question.

8. The Ministry of Home Affairs has been issuing instructions for the speedy follow up actions in suspension cases and in certain areas they have even prescribed time limit. This was in the ³² ~~that it has been said~~ background ³² that though suspension is not a punishment it does constitute hardship for a Govt. servant. Therefore in fairness to him it is essential to ensure that this period is reduced to the barest minimum. It was in this background that in 1965 the Govt. issued instructions that ³² investigation should be completed and chargesheet filed in a court of competent jurisdiction in cases of prosecution are served on the officers in cases of Departmental proceedings within six months as a rule and if the investigation is likely to take more time it should be considered whether the suspension should be revoked and the officer permitted to resume duty.

³² ~~observed~~
In 1978 the Govt. further ³² after observing of instances whether Govt. servant continued to be under suspension for unduly long period, ³² ~~observed~~ that unduly long suspension involves payment of subsistence allowance without the employee performing any useful service and therefore the Govt. impressed on all authorities to observe the time limit scrupulously and review

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the cases of suspension to see whether continued suspension was actually necessary. There are also instructions that whenever it is found that the officer can be allowed to resume duty by transferring him from his post to another post order should be issued for revoking the suspension and allowing the official to resume duty with further direction as may be considered desirable.

9. It is therefore clear that the intention of the Govt. was and is to ensure that the hardship caused by suspension is eliminated if it is possible within reasonable time. We have been shown copies of the correspondence between the Asstt. Supdt, pf Police CID and the respondents. The letter of 19.10.86 placed at Annexure-1 of the reply by the respondents says that since the accused persons are themselves responsible for the delay in the disposal of the Sessions Trial there is no merit in revocation of suspension order in respect of the applicant. There is another letter placed at Annexure-2 which was sent in March, 1983. This was from the Vigilance Officer to the applicant where he wanted to ^{xc} ³¹ meet the applicant. In the letter of January, 1984 which is placed at Annexure-3 of the reply it has been mentioned by the Supdt. of Police Crime Branch in the letter

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addressed to the Vigilance Officer that there was sufficient evidence against the applicant to obtain conviction in the Court of law and there was no merit in revocation of suspension order.

The applicant has even approached the Minister of State in February, 19~~82~~⁸³. This was acknowledged by the Vigilance Officer in November, 1983 asking the applicant to extend his cooperation for early ~~by producing the documents~~ action/namely the suspension order, proof of frequent of periodical attendance or ~~presence~~^{presence} in the office HQrs. from 1962 to 1983 and other important documents, the details of the police case etc. But it appears that inspite of having obtained all the documents no action/taken even in 1983 to revoke the suspension of the applicant.

10. In their reply to the petition in para 11 the respondents have referred to Annexure-I which is a letter from Supdt. of Police Crime Branch asking the respondents to continue the applicant under suspension. It would thus appear that the normal guide lines for continuing a person under suspension were side tracked in the face of the letters from the Crime Branch saying that there was likelihood of the applicant being ~~convicted~~^{convicted} and therefore he should be continued under suspension. The cause of action of the criminal case did not arise due to any matter concerning the Department. It can only be said that it was obliquely covered

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by the "wider public interest" such as a public scandal and the fact that the case would justify his prosecution and conviction. Unfortunately this case is still not decided and the applicant had retired from service.

11. In State of Madras Versus K.A.Joseph (1969 SLR 691) the Madras High Court had given a decision that the executive cannot be vested with a total arbitrary and unfettered power of placing its officers under distress for an indefinite duration. Similarly in Manasaranjan Das Versus State of Orissa (1973) 2 SLR 553 suspension was kept alive for a period of 8 years and Vigilance proceedings were kept alive for a long period without any excuse. The orders of suspension and disciplinary proceedings were quashed. In yet another case Madhusudan Bhawan Versus State of Orissa (1975) LABIC 11 the petitioner was suspended in 1964. FIR was lodged in 1969 but a criminal case had not taken any shape and no chargesheet was filed, the suspension orders were quashed.

12. In the applicant's case there was no disciplinary proceedings because he was not involved in a departmental case. He was kept under suspension but it was not proposed to initiate any departmental action against him and therefore it is

debatable whether except in case he gets prosecuted and sentenced which may result in a dismissal from service, there could have been any other action that the department could have taken. There is another side of the coin and that is, in case the applicant gets acquitted what happens to the 24 years long suspension through which he has suffered and during the currency of which he has even retired ~~from~~ service. We feel that the analysis made by the department and the conclusion arrived at to continue him under suspension on the basis of reports from the Supdt. of Police Crime Branch were misguided and resulted in the hardship to the applicant. These decisions were wrong. A suspension could have been revoked by transferring the applicant if he was interfering with the prosecution case. But there is no report to this extent. The applicant has been paid subsistence allowance which was enhanced by 50% later on evidently indicating that he was not responsible for the continued suspension. There is also indication that the Department wanted to consider revocation but they were guided more by the letters of the Supdt. of Police rather any other factor in continuing the application under suspension.

13. Enough cases have been quoted to support the applicant's request that his continued suspension

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for such a long period was a real hardship and was not called for and in those circumstances the order of suspension is liable to be quashed. When the applicant was under suspension his service was also not counted as qualifying service and therefore he has been thrown on the roads without any retirement benefits. This is yet another hardship to the applicant.

14. Looking at the totality of the circumstances and the fact that the applicant is not responsible for the delay in the finalization of the case and that he was involved in a criminal case but he was not kept in custody for more than 40 hours as nothing has been said about it, We feel that the continued suspension was not correct and therefore it has to be quashed. We therefore quash the order dated 29.6.62. The applicant has suffered for long. He did make periodical abortive attempts to seek departmental succor by way of revocation of his suspension. His delayed recourse to legal action does not belittle his sufferings. ^{By However,} ~~but~~ for this delayed seeking of the legal remedy we consider that he cannot be considered due for any other relief. His suspension order is quashed and he will be entitled to wages, increments etc. as if he continued to work on the same post till his retirement.

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15. In the result the petition is allowed in these terms. Parties will bear their own costs.

[Signature]

Vice Chairman

[Signature]

Member (A)

Dated the 17th Aug., 1987

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