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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration No. 106 of 1986.

Shamimul Husnain Applicant

Versus

Union of India and Others Respondents.

Present : 1. Hon'ble S.Zaheer Hasan, V.C.
2. Hon'ble Ajay Johri, Member (A)

Judgement delivered by Hon'ble Ajay Johri, Member (A)

This is a petition under Section 19 of the Central Administrative Tribunals Act 13 of 1985. The petitioner was working as Income Tax Officer, District Etah upto June, 1985. On 3.6.1985 he was placed under suspension vide impugned order placed at Annexure-III of his petition. The petitioner has come to the Tribunal for quashing the impugned order dated 3.6.85 passed by the Commissioner of Income Tax, Agra and has requested all the privileges, benefits and continuity in service on the post of Income Tax Officer as a consequence thereof. He has further sought relief for payment of the grade increment for December, 1985 and thereafter.

2. The respondents' case is that the petitioner while working in the office of Commissioner of Income Tax, Agra as Income Tax Officer HQrs. and discharging the duties of Drawing and Disbursing Officer had committed serious lapses and great irregularities in connivance with the other members of the staff and therefore he was placed under suspension as a disciplinary proceeding was contemplated against him. According to the respondents the preliminary inquiries were made through the Zonal Accounts Officer, Central Board of Direct Taxes, Agra and it was found that

excessive and prima facie fictitious expenditure was authorised by the petitioner in transportation of forms, local purchase of stationery etc. The report has been filed as Annexure-CA-I in the Counter Affidavit. Prima facie evidence showing serious negligence and moral turpitude, dereliction in duties, carelessness, inefficiency, defalcation of Govt. money, corruption, fraud, cheating etc. being available it was considered fit to place him under suspension. The respondents have further averred that it was felt that the continuance of the petitioner in the office would prejudice investigation/inquiry as such it was decided to place him under suspension. Thereafter a detailed show cause notice was issued to the petitioner on 12.8.85. This notice is placed as Annexure-CA-II in the Counter Affidavit. The respondents received the applicant's reply on 20.8.1985. In the meantime the Central Bureau of Investigation, Dehradun also informed the Commissioner of Income Tax that a case has been registered against the petitioner and one more employee of the Department under the Prevention of Corruption Act. In his letter the Central Bureau of Investigation had mentioned that they had received information that one Shri Swaraj Kapoor entered into criminal conspiracy with the petitioner with the object of cheating the Department on the basis of bogus documents. A regular case was therefore registered and a Deputy Superintendent of Police was deputed to investigate it. The respondents have further mentioned that the petitioner had made a representation on 14.6.85 for revocation of his suspension and again on 20.11.1985 to the Chairman, Central Board of Direct Taxes, New Delhi on the same subject and that his

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representation was forwarded on 2.1.1986 to the Central Board of Direct Taxes, New Delhi for consideration and the same is pending decision and no final order has been passed.

3. The learned counsel for the petitioner has argued that a person cannot be placed under suspension pending inquiry. He also relied on the Vigilance Manual of the Post and Telegraphs Department an extract of which was also produced, which dealt on the matter of dealing with a case which has been referred to the Central Bureau of Investigation. In such cases where a reference has been made to the Central Bureau of Investigation, departmental action has to stop. He has further argued that though the petitioner was placed under suspension on 3.6.1985, the grounds of suspension have not been supplied to him as yet and his appeal to the Chairman, Central Board of Direct Taxes as well as his explanation submitted by him on 29.8.1985 in reply to a show cause notice dated 12.8.1985 have both remained un replied and that the petitioner was being subjected to harassment by this silence on the part of the Department.

4. The learned counsel for the respondents referred to the inquiry conducted by the Zonal Accounts Officer but he could not give the details of the period when this inquiry was conducted on the various issues which became the subject of the show cause notice given to the petitioner on 12.8.1985. It was also brought to our notice that as late as on 20.3.1985 the petitioner was found fit to cross Efficiency Bar

and was allowed to cross the same w.e.f. 1.12.1983. Rule 10(i) of the CCS CCA Rules on suspension says that the appointing authority or any authority to which it is subordinate or the disciplinary authority.... may place a Govt. servant under suspension where a disciplinary proceeding against him is contemplated or is pending. The impugned suspension order dated 3.6.1985 says that a disciplinary proceeding against the petitioner was contemplated and therefore he was placed under suspension with immediate effect.

5. On the other hand the show cause notice regarding disciplinary proceedings issued to the petitioner on 12.8.1985 asked him to show cause within a period of 15 days from the receipt of the notice as to why an inquiry under Rule 14 of the CCS CCA Rules, 1965 should not be instituted against him for imposition of a major penalty and why a report should not be lodged against him with the police authorities.

6. The two orders one suspending him indicating the contemplation of a disciplinary proceeding and the other asking him to show cause why action should not be taken against him clearly indicate that on 3.6.1985 when suspension was ordered the authorities had not made up their mind to issue a major penalty chargesheet against the petitioner. With the suspension order however no details of the irregularities committed by the petitioner were forwarded to him though as claimed by the learned counsel for the respondents the inquiry by the Zonal Accounts Officer against the various irregularities had been completed and an opinion was formed to take up

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with the petitioner for major penalty. The issue of the show cause notice on 12.8.1985 however negates the formation of earlier opinion and indicates that no such opinion had been formed and the petitioner was on 12.8.1985 being given an opportunity to explain his conduct in regard to disregarding Govt. decisions prescribing the standard of financial propriety and violating Rule 3(i) and 3(ii) of the CCS Conduct Rules, 1964. The chronology of events shows that before his ~~and prima facie case established~~ explanation was obtained and considered ~~he was placed~~ under suspension. Though it is not necessary to issue a show cause notice before suspending an employee, the intention in the issue of the show cause notice clearly shows that the department wanted to find whether any responsibility can be fixed on the petitioner for the various acts of omission etc. brought out in the Accounts Officer's report and thereafter make up its mind. It would be only after it has been decided that a prima facie case existed for which the petitioner was responsible that the Department would take action against him.

7. It was on 3.6.1985 that the petitioner was suspended. More than a year has since passed but no chargesheet has been issued. Petitioner's representation for enhancement of suspension allowance has also been turned down by the Department on 7.11.1985. Even though suspension may not be considered as a punishment, it does constitute a great hardship for a Govt. servant. In fairness to the employee it is essential to ensure that this period is reduced to the barest minimum. To achieve this, investigation should need to be completed

and chargesheet served on the officer in the shortest possible time. If the presence of the officer is considered detrimental at the particular station as he may tamper with the evidence etc. he may be considered for a transfer to some other station. The petitioner was at Agra during the period for which the inquiry was held but subsequently he was transferred to Etah. This action would have been taken on account of this consideration. Where an employee is placed under suspension on ground of contemplated proceedings every effort has to be made to finalise the charges as quickly as possible and a period of more than 12 months is definitely an excessive period. Suspension lasting for long period without charges being framed will itself be sufficient to prove that disciplinary action was not contemplated on the date of suspension and the order thus passed would be malafide. The representation submitted by the petitioner on 20.11.85 and the reply to the show cause notice given by him on 29.8.1985 have remained unrepplied. The Department has not been able to make up its mind on the responsibility to be fixed on the petitioner. This delay visits the petitioner with hardship. Continued suspension, non reply to his representations and explanation and no issue of any chargesheet defeats justice and robs it of its relevance. An order of suspension is not to be lightly passed against the government servant for the reality cannot be ignored that suspension brings to bear on the government servant consequences far more serious in nature than several of the penalties which can be imposed. It has a disastrous impact on the fair name and good reputation that may have been earned and built up by a government servant in the course of many years

of service. It is therefore imperative that the utmost caution and circumspection should be exercised in passing orders of suspension. Suspension also directly hits the economic position of the employee by reducing his income. He is not allowed to take up any other employment. Although he is entitled to get enhanced rate of subsistence allowance after six months. The petitioner has been denied the same. But even this enhancement does not practically help. Where suspension continues for months and years without any final action being taken it has disastrous effect not only on the financial position of the employee but also on his children, his family and his career as a whole.

8. We have heard the arguments put before us. The petitioner is not stationed any more at Agra. He was transferred to Etah in July, 1983 and worked there till his suspension. It cannot be said that he was placed under suspension because he may interfere with the course of investigations or may tamper with the evidence. As brought out in para supra, the administration is still making up its mind on the action to be taken and to decide if major penalty be imposed on the petitioner. The petitioner has already been under suspension for more than 12 months without even a chargesheet having been issued to him. Suspension, thus, has been made in a hurry without giving proper thought to its necessity.

We accordingly quash the order of suspension. The petitioner will be entitled to the consequential benefits. Parties will bear their own costs.

Yours
11-7-86
(S.Zaheer Hasan)

Vice Chairman (J)

AJ
11-7-86
(Ajay Johri)
Administrative Member