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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 35 of 1987

Ved Prakash . . . . . Applicant.

Versus

Union of India & another . . . . . Respondents.

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Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985.

2. The applicant, Ved Prakash, who is Defence Estate Officer at Agra has challenged the order dated 9.10.1986 passed by the President of India rejecting the Revision Petition of the applicant against the order of suspension dated 15.7.1986 issued by the Ministry of Defence. The applicant was suspended with effect from 15.7.1986 and the suspension was confirmed on 9.10.1986 with the rejection of the Review Petition. According to the applicant the suspension is against the rules, directions and instructions issued by the Government of India and is against the facts and circumstances of the case which do not indicate any misconduct on the part of the applicant. The applicant was suspended as there was an allegation against him that he was negligent inasmuch as he put up proposals for payment of amount to certain persons who were not entitled for the same. According to the applicant

he acted bona fide and in good faith and moved the higher authorities in the matter of complying with the orders of the execution court and made all the files available to higher authorities and he had taken timely steps to file restitution applications which were allowed by the District Judge, Gurudaspur on 16.11.1985 in the same case. The applicant has, therefore, sought relief that since the circumstances do not show that he committed any misconduct, the order of suspension and the order confirming it may be set aside. The so called irregularities <sup>& for which</sup> he was taken up happened at Pathankot and he has since been transferred to Agra but he was placed under suspension at Agra. The applicant's case is that while placing an official under suspension the competent authority had to consider whether the purpose could not be served by transferring the official to a different post from where he may not repeat the misconduct or influence the investigation and if the authorities do not find that the purpose <sup>it</sup> ~~cannot~~ be served by such a transfer they should record reasons before placing him under suspension. The applicant was placed under suspension on 15.7.1986 on the ground of contemplated disciplinary proceeding but he has not been served with any charge-sheet which is in violation of the Government's direction on the subject. The applicant has further claimed that since he has not been found guilty and no penalty has been imposed there is no justification to decline him his salary and allowances.

3. The respondents in their counter affidavit have said that the applicant was suspended on 15.7.1986

on the basis of certain prima facie case against him. The charge-sheet will be submitted shortly after getting approval of the Central Vigilance Commission for which the matter has already been referred to it. According to the respondents there is ample evidence and material against the applicant which establishes a prima facie case and justifies the suspension. The applicant has not been singled<sup>3</sup> out. There are three other officials, who have also been placed under suspension on similar grounds. The competent authority has the discretion to place a Government servant, who is suspected to have committed serious negligence and dereliction of duty resulting in loss to the Government, <sup>& under suspension</sup> While there are instructions that every efforts should be made to finalise the charges within three months from the date of suspension but in certain cases it may not be possible for some reason or the other to issue a charge-sheet within this stipulated period. In such cases the reason for suspension are communicated to the employee so that he may be in a position to exercise right of appeal available to him under Rule 23(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the applicant has been conveyed the grounds of suspension even in the suspension order and he filed a Review Petition to the President of India on 11.8.1986. This was considered by the competent authority and rejected on 9.10.1986. His suspension has been reviewed and ~~it has announced~~ <sup>&</sup> the enhancement of the subsistence allowance to 75% <sup>& has been ordered</sup> (per cent)%. According to the respondents the delay in the issue of the charge-sheet is on account of the matter having been referred to the Central Vigilance

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Commission and reply being awaited from there. Therefore, the applicant has failed to make out a case for interference by this Tribunal.

34/ 4. We have heard the learned counsel for the parties and have gone through the records. The learned counsel for the applicant contended that the transfer of the applicant from Pathankot to Agra was itself sufficient and there was no justification in suspending him as there was no possibility of the applicant interfering with the investigation or tampering with the evidence. It is more so because the other three officials who were also suspended on the same ground have been put back to duty in April, 1987. The learned counsel for the respondents <sup>re</sup>pealed the contentions on the point that the applicant's case has already been reviewed by the disciplinary authority on the expiry of three months and the authority came to conclusion that the delay in process was not for the reasons attributable to the applicant and, therefore, increased the subsistence allowance by 50% (per cent). The learned counsel for the applicant has relied on two judgments of this Allahabad Bench. In Registration (O.A.) No.392 of 1986, Swaraj Kapoor v. Union of India & another, which was a judgment given by this Bench, the petitioner was a Stenographer in the office of the Income Tax Officer. The petitioner in that case was placed under suspension on 1.8.1985. He had preferred an appeal on 6.9.1985 which was not disposed of <sup>& till</sup> ~~at~~ the time <sup>&</sup> ~~when~~ he came to the Tribunal with ~~the~~ petition. The petition was contested by the respondents on the point that the matter has been reported to the Vigilance, who were

collecting the necessary materials and have registered a case against the petitioner but the charge-sheet could not be issued to the petitioner for want of advice of the Central Vigilance Commissioner<sup>W</sup>. We had made the following observations in this case :

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"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<sup>W</sup> (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 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."

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5. In the instant case we find that though the subsistence allowance has been reviewed by the disciplinary authority <sup>no action</sup> ~~no occasion~~ has been taken to review the suspension order and the suspension of the applicant still continues though he is no more at the scene of happening.

6. The Government has already emphasised that in regard to the cases pending in courts in respect of the period of suspension pending investigation before the charge-sheet is filed in the court has also in respect of serving of a charge-sheet in a departmental case the total period of suspension should not ordinarily exceed six months. In 1978 the Government of India pointed out that inspite of existing instructions instances have

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to notice in which Government servants/continued  
under suspension for unduly long periods. These  
instructions are evidently in the back ground that  
such unduly long suspensions while putting the  
employees concerned to undue hardship, involves  
payment of subsistence allowance without the employees  
performing any useful service. Repeated administrative  
instructions issued by the Government clearly indicate  
that the Government never wanted to give an unlimited  
power to a disciplinary authority to keep a Government  
servant under suspension in contemplation of disciplinary  
action at his sweet will. As a matter of fact after  
placing the petitioner under suspension, the investiga-  
tion should have been completed within six months'  
period.

3/ 7. It has been averred that the other three  
persons who were involved in the same case have since  
been put back to duty. This has not been denied by the  
learned counsel for the respondents. The respondents  
are still awaiting for guidance and advice of the  
Central Vigilance Commission which has not come forth  
inspite of a period of nearly one year having expired  
and no charge-sheet has been issued to the applicant  
yet. We take support from a judgment of the Allahabad  
High Court in Jai Singh Dixit v. State of U.P. (1974  
S.L.J. 377) wherein the suspension order was quashed  
with the observation that if the charges are grave  
and serious the respondents are free to take proceedings  
and to hold enquiry into the charges and pass suitable  
orders on the completion of the enquiry but there was  
no justification in law for continued suspension of  
the petitioner. The respondents, were, however, all

to consider the question of placing the petitioner under suspension again if the exceptional and compelling circumstances were made out for warranting his suspension.

8. We, therefore, feel that even though there may be serious allegations against the applicant but since no charge-sheet has been issued yet and the advice of the Central Vigilance Commission has not yet been received the suspension order cannot be sustained and should have been reviewed by the competent authority, who should have sought the guidance of superior authorities if the suspension had to be continued and detailed reasons should have been recorded for the same. In the absence of such an action the continuance of the applicant under suspension will not appear to be justified.

9. In the other relied on case being Registration (O.A.) No.106 of 1986, Shamimul Husnain v. Union of India & others, the petitioner was an Income Tax Officer. He was alleged to be involved in certain irregularities and was suspended as disciplinary proceedings were under contemplation against him. He was also kept under suspension for more than a year without issue of any charge-sheet. A Bench of this Tribunal had observed that even though suspension may not be considered as a punishment, it does constitute hardship for an employee. It was, therefore, essential to ensure that the period is reduced to the barest minimum. To achieve this, investigations have to be completed in the shortest possible time <sup>& for</sup> ~~and~~ a charge-sheet <sup>to be</sup> ~~may~~ be issued. If the presence of the officer is considered departmentally at a particular

station as he may tamper with the evidence, etc. he may be transferred to another station. In the event on case the petitioner had been transferred from Agra to Etah. The department had not been able to make up its mind on the responsibility to be fixed and, therefore, it was held that since he was under suspension for more than 12 months without a charge-sheet, the suspension had been made in a hurry without giving proper thought to its necessity and the suspension order was quashed.

10. The order of 9.10.1986 refers to a Revision Petition submitted by the applicant on 11.8.1986 requesting for revocation of suspension order. His petition was rejected <sup>on the grounds that</sup> an initial lapse on the part of the applicant was not washed away by his belated action. It was held that little care and diligence on his part would have saved the Government from concomitant <sup>38</sup> ~~the~~ wrong payments <sup>38</sup> ~~and consequential wrong payments~~ and consequential litigation and, therefore, the revision petition was rejected.

11. The applicant has been removed from the scene of occurrence. He cannot thus interfere with any of the investigation or evidence to be collected <sup>as</sup> against him/and when a charge-sheet is issued. He is not responsible for the continued suspension and his subsistence allowance had already been enhanced. We, therefore, do not find any reason for the respondents to continue him under suspension any more. We accordingly <sup>38</sup> ~~direct the respondents to~~ <sup>38</sup> ~~revoke the~~ <sup>38</sup> applicant's suspension with immediate effect. The respondents will, however, be at liberty to suspend

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him again if they so desire and if the charges ultimately framed against him demand the same. The application is disposed of accordingly. Parties will bear their own costs.

अजय जैवाल

MEMBER (A).

Sharma  
31/8/87

MEMBER (J).

Dated: 31<sup>st</sup> August, 1987.

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