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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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

Ved Prakash Applicant.

Versus

Union of India & another Respondents.

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
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

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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 ^{& for which} 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 ~~cannot~~ ^{can} 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~~³ 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~~³ ~~under suspension~~ 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 been announced~~³ the enhancement of the subsistence allowance to 75% ~~has been ordered~~ (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

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

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 ^wrepealed 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 ~~at~~ ^{& till} the time ^{3/} when he came to the Tribunal with the ~~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 Commission~~ee~~^w. 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 memorandum~~s~~ (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 no ~~occasian~~^{action} 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.

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,

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 ^{✓ for} and a charge-sheet ^{✓ for} may be issued. If the presence of the officer is considered departmentally at a parti-

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 ~~as~~ ^{on the grounds that} 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 ~~as~~ ³⁵ wrong payments ~~and consequential~~ ³⁶ ~~consequential~~ ³⁷ ~~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 as 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 ~~do not~~ ³ ~~the~~ ³ ~~respondents~~ ³ to revoke the 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.

~~3/GR/ST/EM~~

MEMBER (A).

Z. Sharmin

31/8/87
MEMBER (J).

Dated: ~~September~~ ^{31st} August, 1987.

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