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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 734 of 1987

Kishore Chandra Agnihotri Applicant

Vs.

Union of India and 2 others 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 applicant has prayed that the impugned order of his suspension dated 25.3.1987 be quashed and he be reinstated.

2. The relevant facts of this case in brief are that the applicant had joined the Department of Central Excise and Customs as Lower Division Clerk in 1959 and was promoted as Inspector Central Excise in Sept.1975. By his order dated 25.3.1987, the Dy.Collector (P&E) Central Excise Allahabad- respondent no.2 placed the applicant under suspension under rule 10(1) of Central Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as the CCA Rules) in contemplation of a disciplinary proceeding. The applicant made a representation against this suspension on 21.4.1987 to the Collector Central Excise, Allahabad stating that his suspension was made in haste without following the norms and guidelines on the subject and prayed for its revocation. Being unsuccessful in his attempt to get his suspension revoked, the present petition was filed by the applicant on 17.8.1987 without preferring a departmental appeal with the allegations that no reasons were

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disclosed in the order of suspension and despite the expiry of more than 3 months, no disciplinary proceedings were initiated against the applicant. Apprehending that his suspension was made in connection with seizure of some foreign goods on 16.12.1986 by the applicant and his party, it was pleaded by him that the seizure was supervised by the Asstt. Collector Customs- respondent no.3 and there were a number of officials in the party making the seizure but there was no justification in choosing the applicant and one other Inspector for this action. It was also alleged that the applicant was not afforded any opportunity on receiving the complaint against him and the action taken against him is arbitrary, malafide and illegal.

3. As the departmental remedy of appeal available to the applicant was not exhausted, the petition was not admitted and a notice was issued to the respondents to show cause against its admission. A reply has been filed on behalf of the respondents by the Asstt. Collector Central Excise Allahabad stating that the applicant was placed under suspension after investigation on a specific complaint regarding his misconduct in seizing the foreign goods by the applicant and his party. The seizure was not supervised by the respondent no.3 and he had visited the scene for a while and had issued certain guidelines to the raiding party. The investigation on the complaint received against the applicant was conducted by the Addl. Collector Customs Gorakhpur in which the applicant and one other Inspector were found to have been involved in gross mis-conduct. The

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applicant himself was examined during the course of investigation and it was mentioned in the suspension order itself that a disciplinary proceeding for misconduct was contemplated against the applicant. It is, therefore, wrong to say that the applicant did not have sufficient information about the reasons of his suspension or his suspension was motivated, malafide or illegal. The charge sheet against the applicant is under process of preparation and it will be served on the applicant as soon as it is completed. The applicant was further communicated the reasons of his suspension on 28.8.1987, copy annexure 1 to the reply, but he did not file any appeal against his suspension nor waited for 6 months for making the representation and as such, his petition is premature and is not maintainable.

4. The only point pressed before us on behalf of the applicant in this case is that in spite of the suspension of the applicant a year before on 25.3.1987, the applicant has not been served with any charge sheet so far and it is illegal and in contravention of the various instructions issued by the Government of India and the decision of this Tribunal and other Courts. The stand of the respondents in this connection is that the applicant was already informed of the reasons of his suspension and the charge sheet against him could not be finalised so far and as soon as it is finalised, it will be served on him.

5. The Government of India under its G.I., M.H.A. , O.M. No. 221/18/65-AVD dated 7th Sept. 1965 had directed that in cases of officials under suspension

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the investigation should be completed and a charge sheet served on them in case of departmental proceedings within 6 months as a rule. This period of 6 months was reduced to 3 months under subsequent G.I., C.S. (Department of Personnel) O.M. No. 39/39/70-Ests. (A) dated 4.2.1971 and under a subsequent notification G.I., C.S. (Department of Personnel) O.M. No. 39/33/72-Ests (A) dated 16.12.1972 it was directed that the total period of suspension, viz., both in respect of investigation and disciplinary proceedings, should not ordinarily exceed 6 months. The Govt. of India further laid stress on this point by issuing G.I. M.H.A. O.M. No. 11012/7/76-Ests (A) dated 14.9.1978 stating that it is impressed on all the authorities concerned that they should scrupulously observe the time limits of six months and review the cases of suspension to see whether continued suspension in all cases is really necessary. The superior authorities were required to give appropriate directions to the disciplinary authorities keeping in view the provisions stated above. The Govt. of India thereafter further reiterated that the provisions of the aforesaid instructions in the matter of suspension of Govt. employees and the action to be taken there^{under}of should be followed strictly by issuing G.I., M.H.A. Deptt. of Personnel & A.R. No. 42014/7/83-Estt. (A) dated 18.2.1984.

6. It thus consistently follows from the various instructions given by the respondent no.1 itself from time to time that the time limit of 6 months for keeping an official under suspension, in contemplation of and during the disciplinary proceeding, has to be strictly adhered to and in case of delay the matter should be reviewed by the authorities to ascertain whether it is absolutely necessary to keep the

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official under suspension if the proceedings are not concluded within this time limit. There is nothing in the reply of the respondents to show that the case of the applicant was ever reviewed by the disciplinary authority or his superior authority in the light of these instructions. There ~~might~~ be some difficulty in finalizing the charge sheet against the applicant as some foreigners may be necessary witnesses but as some proceedings had already taken in the matter earlier and the seized goods were already released by the Addl. Collector of Customs Muzaffarpur vide his adjudication order dated 12.5.1987, copy annexure 3 to the petition, the charge sheet should have been finalized in the meantime. Thus, irrespective of the fact that no appeal was filed by the applicant, as he had made a representation and about a year has expired since the applicant was placed under suspension, we will like to revoke his suspension on the clear understanding that in case the keeping of the applicant at his present station is not expedient in view of the contemplated action against him, he may be transferred to any other suitable place and after finalizing and serving the charge sheet on the applicant, the respondents will be at liberty to reconsider the desirability of placing him under suspension again in accordance with law, if the charges framed against him so warrant.

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The petition is accordingly allowed and the suspension of the applicant shall stand revoked from the date he reports for duty. There shall be no orders as to costs.

राजेश जी
MEMBER (A) 24/3/88

MEMBER (J)
24/3/88

Dated: 24th March, 1988
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