

A3 (10)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 9th DAY OF APRIL 1996

Original Application No. 1081 of 1987

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR.S.DAS GUPTA, MEMBER(A)

Mahesh Chander Agarwal, r/o
745, Yogendra Puri, Muzaffar Nagar

Applicant

BY ADVOCATE SHRI K.K. ARORA

Versus

Senior Deputy Accountant General(TAD)
A.G. (A&E) I Office, Allahabad

Respondents

BY ADVOCATE SHRI N.B.SINGH

O R D E R(Reserved)

JUSTICE B.C.SAKSENA,V.C.

This is a 1987 petition. Though none responded on behalf of the parties when the case was called out for hearing, we reserved orders to be pronounced on the basis of the pleadings on record.

2. We have gone through the pleadings on the record and the documents annexed therewith. The applicant was working as Divisional Accountant on deputation with Rajya Krishi Utpadan Mandi Parishad, Moradabad. According to him his Parent department is the office of Accountant General, Central. An FIR was lodged by the Deputy Director(C) Rajya Krishi Utpadan Mandi parishad, Moradabad against the applicant disclosing an offence

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Under Section 406 I.P.C having been committed by the applicant. The FIR was lodged on 26.2.85. He surrendered in the court of Chief Judicial Magistrate Moradabad and was released on bail.

3. Sometime in the month of 1985 the applicant alleges he received a letter dated 1.5.85 issued by the Senior Deputy Accountant General(the respondent), copy of the said letter is Annexure 1. The applicant was ordered to be placed under suspension with immediate effect since a criminal offence was under investigation against the applicant. The said order has been passed in exercise of the powers conferred by Sub rule 10 of the CCS(CCA) Rules. In the order of suspension it was indicated that during the period the said order was ^{to} remain~~ed~~ in force~~ed~~ the Head quarter of the applicant would be the office of the Deputy Director(Administration) Rajya Krishi Utpadan Mandi Parishad, Bareilly and the applicant would not leave the Head quarter without obtaining the prior permission of the Senior Divisional Accountant General, Allahabad.

3. The applicant's case is that he submitted a representation dated 17.6.85 requesting for change of Head Quarter and sought permission to remain at Muzaffarnagar on the ground of his serious illness. He further appears to have made a representation to the Comptroller and Auditor General of India, New Delhi. In this representation the applicant stated that since there had been a delay of 6 months in filing of the charge sheet, he may be reinstated. In response to his first representation the applicant alleges that he received a letter from the Accountant General, U.P. dated 28.10.86 indicating that the Deputy Director, Rajua Krishi Utpadan Mandi Parishad may do the needful

182

:: 3 ::

for revocation of the order of suspension. A further representation was made indicating that more than 2½ years has lapsed and no charge sheet has ^{been} filed, his case be considered and order for reinstatement may be passed.

4. The applicant's grievance is that neither any charge sheet has been filed against him nor he ^{is} being reinstated in service. He pleads that the provisions of Rule 10(9) of the CCS(CCA) Rules are are mandatory and according to him if charge sheet is not filed within six months , it is mandatory to reinstate the employee.

5. The applicant therefore, seeks a direction to be issued to the respondents to decide the representation dated 28.8.86, 7.7.87, 29.8.87 made by him. The second relief is for a direction to be issued to the respondents to reinstate the applicant either in his parent department or in the department to which he was sent on deputation or to the department to which he was subsequently transferred.

6. A detailed counter affidavit has been filed on behalf of the respondents to which no rejoinder affidavit has been filed, though a copy of the counter was served by the learned counsel for the applicant as far back as on 12.7.88. The respondent's case is that after a preliminary inquiry in the matter it was revealed that a prima facie case of embazlement was made out against the applicant and therefore he was put under suspension under the provisions of rule 10(9) of the CCS(CCA) Rules 1965. It is not disputed that a

:: 4 ::

representation was submitted by the applicant to the CAG on 20.8.86 and not on 28.8.86 as alleged. It has been indicated that on receipt of the said representation order for release of subsistence allowance to the maximum extent as per rules was issued and the Mandi Parishad was directed to pay the subsistence allowance immediately. It was further indicated that the Deputy Director, Mandi Parishad through his letter dated 15.1.87 intimated that the applicant did not join his duty at Bareilly nor he has indicated his address and as such payment of subsistence allowance could not be made to him till then. It has also been indicated that the applicant had been disbursed subsistence allowance for the period from 1.5.85 to 30.11.87 i.e. for the period due by then. Information for payment of the same for subsequent months was awaited. In view of these facts it is pleaded that the prayer made to the CAG has also been conceded except for reinstatement in service. It has been pleaded that there is no such provision in rule 10(9)(3) of the CCS(CCA) Rules. It has further been pleaded that Rule 10(5)(b) of the rule ibid empowers the competent authority to keep the Government servant under continuous suspension. Reference to the Administrative instructions issued by the Government of India, G.I.M.H.A dated 7.9.1965 have also been made and it has been indicated that instructions under Para 9(3) of the said circular ~~are~~^{have} perhaps been treated by the applicant as rule 10(9)(3). On the basis of these instructions the respondents stated that where the suspension is prolonged by more than 6 months the Disciplinary Authority is required to report the matter to the next higher authority. It is stated that the present

:: 5 ::

respondent had reported the matter to the next higher authority i.e. to say the Accountant General from time to time and the latter authority issued definite order on 9.12.86 that the suspension should not be revoked. The present respondent also indicate that since the FIR was lodged with the police by the Mandi Parishad they have no information and in view of the pendency of the matter departmental action also could not be taken.

7. The only point which calls for consideration is ~~whether~~ ^{whether} ~~entire~~ by mere lapse of more than 6 months from the date of suspension the applicant was entitled to reinstatement as of right. The order of suspension has been passed under Rule 10 of the CCs(CCA) Rules. Rule 10(1)(b) clearly authorised the disciplinary authority by general or special order to place a government servant under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

8. Rule 10(5)(a) also provides that an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. .

9. The respondents have indicated that Govt. of India, Department of Personnel, O.M.s dated 4.2.71 and 16.12.1972, required the authority suspending the government official to report the matter to the next higher authority when it is not possible to finalise the chargesheet or to decide the case within 3 to 6 months. Under the provisions of Rule 10(b) the order of suspension shall remain in force until it is modified or revoked by the authority competent to do so. The order

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of suspension, copy of which is Annexure 1 does not specify the period of suspension. The Administrative instructions for reporting the matter for review if it has not been possible to issue the charge sheet within six months have been complied with and the Accountant General had passed definite orders that the suspension be not revoked. The applicant has been paid subsistence allowance as permissible under the rules to the maximum extent.

10. A similar question whether after expiry of period of six months there would be automatic~~ly~~ reinstatement of the suspended employee, ~~it~~ ^{it} may be noted ~~that a~~ ^{that a} ~~decision~~ ^{decision} came up for consideration before the Hon'ble Supreme Court ^{in a case} reported in AIR 1990 S.C 1157 Govt. of A.P. Vs. V. Sivaraman. There the order of suspension had been passed under the provisions of A.P. Civil Service(Classification, Control and Appeal) Rules. Rule 13(1). A similar plea as raised in the present OA succeeded before the A.P. Administrative Tribunal. On an appeal against the same the Hon'ble Supreme Court held that the order of suspension after the period of 6 months would not become non-est giving an automatic right to reinstatement in service.

" There is no provision of law conferring such right on a Government servant who has been placed under suspension pending inquiry of a case against him. Where the rules provide for suspending a civil servant and require thereof to report the matter to the Government giving out reasons for not completing the investigation or inquiry within six months, it would be for the Government

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P. 7

:: 7 ::

to review the case but it does not mean that the suspension beyond six months becomes automatically invalid or non est. The only duty enjoined by such a rule is that the officer who made the order of suspension must make a report to the government and it would be for the government to review the facts and circumstances of the case to make a proper order. It is open to the government to make an order revoking the order of suspension or further continuing the suspension. The order of suspension, however continues until it is revoked in accordance with law.'

11. It was also observed in the said case that ;
" Where there was no prescribed period of suspension in the order, it would not come to an end after six months. It would continue till it is revoked, though it is necessary to review the case once in six months in the light of the instruction no.18 contained in A.P. Rules and the circular of the Chief Secretary dated February 13, 1989.

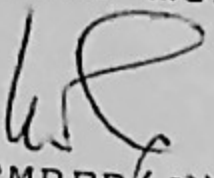
12. The counter affidavit of this case was filed as back as on 25.3.88. We do not know, because of the absence of the counsels, ^{the} ~~no~~ upto date factual position in the matter. We are , therefore, constrained to confine our adjudication to the relief claimed for in the O.A to the legal pleas raised therein. The legal plea that after a lapse of six months there would be an automatic

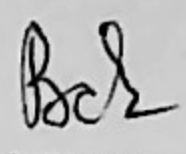
A3 (17)

:: 8 ::

reinstatement only arises to be decided and we have given our view hereinabove on that question.

13. In view of the discussion hereinabove, the O.A. lacks merit and is accordingly dismissed.


MEMBER (A)


VICE CHAIRMAN

Dated; April 9th 1996

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