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Registration O.A.No. 1414 of 1988

Vs.

Union of India
and 3 others ... Respondents.

Hon. G. S. Sharma, JM
Hon. K. J. Raman, AM

(By Hon.G.S.Sharma, JM)

In this petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the Applicant has prayed that the order dated 10.7.1988 passed by the U.P. Government- respondent no.2 ^{placing him under suspension} be declared to be null and void and the respondents be directed to pay him his salary from July 1987 onwards and for a further direction to the U.P. State to supply the documents and preliminary inquiry report demanded by the Applicant vide his letter dated 25.9.1988.

2. Briefly stated, the relevant facts of this case are that the Applicant, a member of the Indian Police Service, while posted as Superintendent of Police Unnao was transferred and posted as Superintendent of Police, Anti Dacoity Operation, Kanpur by the respondent no.2 vide Radiogram dated 3.7.1987. The Applicant handed over the charge of his post on 7.7.1987 but did not resume the charge of the post of Superintendent of Police (for short SP) Anti Dacoity Operation Kanpur. The Applicant is alleged to have made representations for the cancellation of his transfer and had also applied for some leave and when he did not resume the charge of the new post even after a lapse of about 13 months he was placed under suspension by the State Govt. on 10.8.1988 under rule 3 of the All India Services (Discipline & Appeal) Rules, 1969 (hereinafter referred to as the AIS (DA) Rules) by

the Governor of U.P. and on 23.9.1988 he was served with a charge sheet in connection with the misconduct for which he was placed under suspension.

3. It is alleged by the Applicant that on 20.8.1988 he had made a representation to the respondent no.2 for the cancellation of the suspension order and had also submitted several applications for making available the relevant record to him for preparing his defence case but neither his suspension was revoked nor any subsistence allowance was paid to him nor the documents required by him in his application dated 25.4.1988 were made available to him.

4. As the Applicant had not waited for a full period of 6 months after the date of his alleged representation against the suspension, a notice was ordered to be issued to the respondents to show cause as to why the petition be not admitted. Three replies have been filed on behalf of the respondents in this case. The Union of India - respondent no.1 has not submitted any reply. On behalf of the U.P.State the reply has been filed by an Upper Division Assistant under the authority of Joint Secretary Home and Police Department, U.P. and it has been stated therein that the Applicant was placed under suspension in contemplation of disciplinary proceedings and the charge sheet was duly served on the Applicant on 23.9.1988 within the stipulated time from the date of suspension and in this way, the suspension is fully covered under Rule 3 of the AIS (DA) Rules and the Applicant cannot challenge its validity. It was further stated that the Applicant on his own showing did not comply with the order of his transfer for about a year and such a conduct was not expected from a member of the Indian Police Service, which is a uniform force and the generosity of the State Government for not placing him under suspension ^{earlier}

should not be misconstrued by him. The representations made by him against the suspension were rejected by the Government after due consideration and the question of supplying the documents will be considered in the disciplinary proceedings on the appointment of the inquiry officer.

5. On behalf of the Director General of Police-respondent no.3 the reply has been filed by the Dy.Superintendent of Police (P), Police Headquarters Allahabad without filing any letter of authority and it has been stated that the Applicant was not given any assurance by the respondent no.3 about changing his posting or treating the period of his absence as compulsory waiting as wrongly alleged by him in his petition. The suspension of the Applicant was recommended according to law and there was no malafide intention behind such recommendation for placing the Applicant under suspension and the impugned order of suspension is perfectly in accordance with law. The former Director General of Police Sri R.N.Gupta who has been impleaded as respondent no.4 in this case has filed his separate reply and has stated therein that the Applicant had never met him after the order of his transfer and he had not given any assurance to the Applicant about the change in his posting and as the Applicant failed to join at the place of new posting, his suspension was rightly recommended by him in his capacity as Head of Police Department and Advisor to the Government in this case and there has been no illegality in this connection and the allegation of malafide made by the Applicant is false and has been made with oblique motive. Regarding the subsistence allowance, it was stated that the Applicant was required to furnish a certificate which he failed to produce for a long time and it was ultimately furnished

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on 19.11.1988 and the necessary orders in this connection were then issued to the Chief Accounts Officer, Police Head Quarters on 21.11.1988.

6. The Applicant has filed three rejoinders to the replies filed by the respondent nos. 2 to 4 reiterating that the order of his suspension is contrary to Rule 3 of AIS (DA) Rules and the refusal to issue the copies of the required documents is also not in accordance with law and he has not been paid the subsistence allowance so far. It is also alleged that no inquiry officer has been appointed so far and the disciplinary proceedings have not proceeded till now.

7. We have very carefully considered the various contentions raised on behalf of the parties in this petition. Considering the gravity of the suspension order as well as the subsequent rejection of the representations of the Applicant against the same, we feel inclined to admit this petition so far as relief for the cancellation of the suspension order is concerned. The relief regarding payment of salary subsequent ~~to~~ the period of his suspension is connected with it and can also be considered in this petition. Relief (b) claimed by the Applicant for supply of certain documents has no concern with the relief (a) and the refusal to supply the documents is not a final order in the disciplinary proceedings. Further, the Applicant can renew his request for supplying any relevant document to him before the inquiry officer ~~and~~, therefore, we refuse to consider relief (b) in this petition.

8. The main thrust of the Applicant on the question of suspension is ~~on~~ the point that under Rule 3 of AIS

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(DA) Rules the Applicant could be placed under suspension only after the articles of charges had been drawn up against him and not in contemplation of a disciplinary action and as such, his suspension is illegal being contrary to Rule 3. The relevant part of Rule 3 is extract -ed below for the sake of convenience :-

"3. Suspension-(1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may -

(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government, request that Government to place him under suspension,

pending the conclusion of the disciplinary proceedings and the passing of the final order in the case."

9. A careful perusal of this Rule shows that for placing an officer governed under Rule 3 of AIS (DA) Rules it is not necessary that the articles of charges should be drawn up first. What seems to be necessary is that having regard to the circumstances in any case and if articles of charges have already been drawn up, after due regard to the nature of the charges, the officer can be placed under suspension by the Government concerned

The words "are contemplated or are pending" in Sub-Rule (1) of Rule 3 quoted above are very significant in this connection and they clearly go to show that an officer can be placed under suspension against whom disciplinary proceedings are either contemplated or pending and as such, it is not correct on the part of the Applicant

to contend that he could not be placed under suspension without drawing up the articles of charges.

10. It has been next contended on behalf of the Applicant in this connection that the articles of charges served on him, as shown by copy annexure 12, are not of serious nature and it was not a fit case in which he should have been placed under suspension. It has also been contended that the various representations made by the Applicant were still under the consideration of the Government and without their disposal, his suspension was not warranted under the law. The respondents have denied the latter contention of the Applicant and according to them, he was neither given any assurance by any authority nor his any representation for change in posting is under consideration. Regarding seriousness of the charge against him, we are unable to accept his contention. The Applicant is a responsible and senior member of the Indian Police Service. He is otherwise a fully mature person of about 52 years. On his own showing, he had not complied with the orders of his transfer made on 3.7.1987. If the senior Police officers ~~will~~ refuse to comply with the orders of their transfer simply because the posting is not of their choice or they have any personal difficulty, it will be difficult for the administration to maintain law and order ~~situation~~ in the State. The Applicant also does not seem to have applied for leave except for a short period of one month during this long period of 13 months after the orders of his transfer before he was placed under suspension and as such, it does not lie in his mouth to say that the charge against him is not of serious nature so as to warrant his suspension.

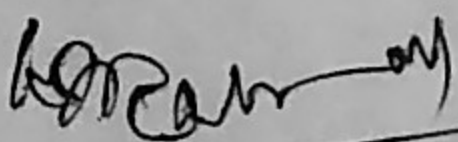
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11. Reliance has been placed on behalf of the Applicant on Narain Chandra Pal Vs. Union of India ((1987) 3 ATC-217); Asok Kumar Seth Vs. State of Bihar ((1988) 7 ATC-461); Jnananda Sarma Pathak Vs. Union of India ((1987)2 ATC-657); P. Chandra Manoharan Vs. Union of India ((1987) 4 ATC-979) and P.K.Nag Vs. Union of India ((1987)4 ATC-78) in support of his contention that under the circumstances of his case he could not be placed under suspension. We have very carefully gone through the rulings relied upon by the Applicant and in our opinion all the cases cited on his behalf are distinguishable and have no application to his case. The Applicant being a responsible Police officer had boldly flouted the orders of his transfer for a long period of over one year. He neither resumed his duties at the place of new posting nor applied for leave to justify his absence from duty. We will not like to comment on the grounds taken by him for the cancellation of his transfer but for the purposes of this case only, we are of opinion that his alleged personal problems could hardly have any bearing on his transfer from Unnao to Kanpur at a distance of less than 20 kms. and he seems to have refused the new posting merely because it was not to his liking and also involved a risk to life, as contended on behalf of the Respondents before us. Thus, having given our most anxious consideration to all the facts and circumstances of the case of the Applicant, we are of the view that the order of his suspension is neither bad in law nor on facts and the same is not liable to be interfered with in this case. It was stated by Sri P.C.Srivastava learned Standing Counsel for the U.P. State at the time

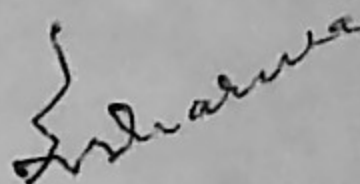
of argument, before us that an inquiry officer has already been appointed to conduct the disciplinary proceedings against the Applicant and they will be concluded expeditiously. On this ground as well, no interference with the order of suspension is called for.

12. The impugned order of placing the Applicant under suspension already contains the direction for payment of subsistence allowance to the Applicant and the actual payment of the subsistence allowance is to be made on the observance of certain formalities and procedure. The respondents have already passed the necessary orders for the payment of the subsistence allowance to him and so long his suspension remains in force, the Applicant is not entitled to get any salary over and above the subsistence allowance. In this way, he is not entitled to any relief in this petition.

13. The petition is accordingly dismissed without any order as to costs.



MEMBER (A)



MEMBER (J)

Dated: 5th May 1989
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