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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 1801 of 1993
Bachchu Singh Yadav Applicant.
Versus
Union of India
and others Respondents.

Hon. Mr. S. Das Gupta, Member (A)
Hon. Mr. T.L. Verma, Member (J)

(By Hon. Mr. S. Das Gupta, Member (A))

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order of suspension (Annexure-A1) be declared as illegal, arbitrary and violative of principles of natural justice and that the applicant be deemed to have not been suspended and entitled to get full salary during the period of suspension.

2. The applicant in this case is a Electric Mistry in Opium and Alkaloid Works, Ghazipur. He was placed under suspension by the impugned order dated 15.2.1993 in which it was stated that since the disciplinary proceedings were contemplated against him based on certain complaint against the applicant, he was placed under suspension. The applicant states that he was not given the copy of the complaint referred to in the order of suspension.

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nor was he informed of the contents of the said complaint. He claimed that in view of this passing of the impugned order was unfair and arbitrary. He has also submitted that so far no charge-sheet has been served on him. He has challenged the impugned order of suspension on the ground that the same is arbitrary and illegal and passed in colourable exercise of and/ or abuse of powers. He has also claimed that the impugned order is violative of Articles 14 & 16 of the Constitution of India and is violative of principles of natural justice.

3. In the counter reply, the respondents have submitted that one ~~one~~ A Chinna Maddhulety, a Constable of C.I.S.F. was caught red handed with 300 Grms Semi Refined Morphine by another Constable. The said Maddhulety, who was under suspension stated that he had received the Morphine from the applicant. On the basis of this complaint, the applicant was placed under suspension in contemplation of the disciplinary action in exercise of the powers conferred by the disciplinary authority under sub- rule 10 of Rule 10 of the C.C.S. (CC&A) rules, 1965. The respondents averred that the order of suspension is ~~not~~ arbitrary, / illegal and cannot be challenged. They also contend that the present application is not maintainable since the applicant has statutory right of appeal against the order of suspension and he had approached this Tribunal without exhausting statutory remedy.

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4. At the out set, we must say that the suspension is not a penalty. It is an order of inter-locutory nature and normally Courts/ Tribunals ~~do~~ not interfere in such orders unless it is established that such orders are malafide and issued in colourable exercise of the powers conferred under rule 10(i) of the C.C.S.(CC&A) Rules. The applicant has failed to submit any material fact which would tend to show that the order of suspension is colourable exercise of powers. He has also ^{not} imputed malafide against the disciplinary authority. We cannot, therefore, hold that the order is illegal, arbitrary or violative of Articles 14 & 16 of the Constitution.

5. So far as the ground taken by the applicant that the order of suspension does not indicate reasons nor has he been given a copy of the complaint referred to therein, It is clear from the relevant rules that there is no need to indicate detailed reasons for suspension, but it is sufficient merely to mention that the suspension is on account of contemplated disciplinary proceedings. We, therefore, do not find any violation of principle of natural justice in issuing the impugned order of suspension.

6. Having said the above, we must observe that while the disciplinary authority has got ^{no} power under rule 10(i) of the C.C.S(CC&A) Rules to place an

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employee under suspension for any indefinite period. We have noted that the applicant was suspended as early as on 15.2.1993. More ~~than~~^{than}, a year has elapsed since then and yet no charge-sheet has been served on the applicant so far. The Government of India have issued instructions from time to time emphasising that an employee should not be kept under suspension for an indefinite period and that the disciplinary action must be brought to a speedy conclusion. The respondents must, therefore, serve a charge-sheet on the applicant without delay and bring the disciplinary action to a conclusion *intra* time bound manner.

7. As regards the plea raised by the respondents that the applicant has not exhausted statutory remedies, we find that under rule 23(i) of the CCS (CC&A) Rules, the applicant has got right of appeal against the order of suspension made under rule-10 *ibid*. However, the question is as to whether there is sufficient material in his possession for framing appeal against the order of suspension, since, he does not know on the basis of what complaint, the disciplinary action is contemplated against him. This situation was envisaged by the Government of India while issuing the office memorandum dated 9.11.1992, The relevant extract ~~as~~ from DP & AR O.M. No. 35014/1/81-ESTS(a) dated 9.11.1982 is reproduced

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below;

"2. Where a Government Servant is placed under suspension, he has a right of appeal against the order of suspension, vide Rule 23(i) of the C.C.S(C.C.A) Rules, 1965. This would imply that a Government servant who is placed under suspension should generally know the reasons leading to his suspension so that he may be able to make an appeal against it. Where a Government servant is placed under suspension on the ground that a disciplinary proceeding against him is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial, the order placing him under suspension would itself contain a mention in this regard and he would, therefore, be aware of the reasons leading to his suspension.

3. Where a Government servant is placed under suspension on the ground of "contemplated disciplinary proceeding, the existing instructions provide that every effort would be made to finalise the charges, against the Government servant within three months of the date of suspension. If these instructions are strictly adhered to, a Government servant, who is placed under suspension on the ground of contemplated disciplinary proceedings will become aware of the reasons for his suspension without much loss of time. However, there may be some cases in which it may not be possible for some reason or the other to issue a charge-sheet within three months from the date of suspension. In such cases, the reasons for suspension should be communicated to the Government Servant concerned immediately on the expiry

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of the aforesaid time-limit prescribed for the issue of a charge-sheet, so that he may be in a position to effectively exercise the right of appeal available to him under rule 23(i) of the C.C.S. (C.C.A.) Rules, 1965.

8. In the result, we give the following directions to the respondents;

(i) the reasons for suspension ~~can~~ shall be communicated to the applicant within a week of communication of this order and thereupon, the applicant shall be at liberty to file an appeal against the order of suspension. The respondents, without 4 weeks of receipt of such appeal shall dispose of the same by a reasoned and speaking order.

(ii) a charge-sheet shall be served on the applicant immediately and the disciplinary proceedings should be finalised within a period of 6 months from the date of communication of this order, failing which, the order of suspension, if not already revoked on the basis of the appeal aforesaid, shall stand automatically revoked, provided, however, that the applicant cooperates in the enquiry.

9. The application is disposed of with the above directions. There will be no order as to costs.

T. J. Usha
Member (J)

W. P.
Member (A)

Dated: 09 May, 1994
(n.u.)