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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 53 OF 1987.
~~Ex-A.O. No.~~

DATE OF DECISION 26.6.1987

SHRI R.S. PARMAR & 2 ORS. Petitioners.

P.S. CHARI Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. SRINIVASAN, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

(6)

1. Shri R.S. Parmar,
2. Shri I.G. Parmar,
3. Shri K.M. Parmar,
All C/o. Shri R.S. Parmar,
15, Jayshivshakti Society,
Behind Gyanda Society,
Jivrajpark,
Ahmedabad - 380 051. Petitioners.

(Advocate: Bharat Rao for P.S. Chari)

Versus.

1. Union of India
(Notice to be served through
Central Provident Fund
Commissioner,
Cannought Circus,
New Delhi).

2. Mr. J.M. Pandya,
or his successor in office,
Regional Provident Fund Commissioner,
Gujarat State,
Dalalwada, Relief Road,
Ahmedabad. Respondents.

(Advocate: J.D. Ajmera)

JUDGMENT

O.A. No. 53 OF 1987.

Date: 26.6.1987

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioners, viz; (i) Shri R.S. Parmar (Head Clerk), (ii) Shri I.G. Parmar (U.D.C.), (iii) Shri K.M. Parmar (U.D.C.), working in the office of the Regional Provident Fund Commissioner at Ahmedabad, were placed under suspension by separate, but similar orders dated 6.11.1986, passed by the Regional Provident Fund Commissioner, Gujarat State. The petitioners, apprehending the issuance of such orders and being aggrieved by them, they initially filed an application before this Tribunal under section 19 of the Administrative

Tribunals Act 1985, on 7.11.1986. It was registered as O.A.No. 402/86. Pending the hearing of the application, the implementation of the impugned order of suspension was stayed by this Tribunal. However, after hearing the parties, we directed the petitioners to prefer an appeal to the appellate authority under the disciplinary rules against the impugned order dated 6.11.86 and directed the appellate authority to take up for consideration the appeal when submitted by the petitioners and decide the same before 31st January 1987, vide our order dated 21.11.1986, passed in O.A.No.402/86. It was further directed that the interim stay issued earlier in this case vide order dated 10.11.1986 shall remain operative till 31st January, 1987.

2. The petitioners have again moved this Tribunal and filed this application under section 19 of the Administrative Tribunals Act, 1985 stating that the appellate authority has not decided the appeal preferred by them in terms of the directions issued by the Tribunal and prayed that the impugned order of suspension be quashed and set aside. They also claimed interim relief to stay the operation of the impugned order of suspension, which was granted vide our order passed on 2.2.1987. The Respondents have filed their counter, wherein it is contended inter-alia that the appeal filed by the petitioners, has been disposed of by the appellate authority by dismissing the same on 31.1.1987. However, they have not placed the order dismissing the appeal on record. According to them, the applicants were involved in serious criminal case and hence they are ordered to be suspended by the competent authority in exercise of its powers under the relevant rules and consequently the Tribunal should not interfere with the order of suspension

which has been now confirmed by the appellate authority.

3. When the matter came up for regular hearing, Mr. Bharat Rao for Mr. P.S.Chari, the learned counsel for the applicant produced a X'erox copy of the certified true copy of the judgment rendered by the learned Metropolitan Magistrate, Ahmedabad, in Criminal Case No. 1065/86, on 17.6.1987, whereby the petitioners are acquitted of the offence punishable under section 394 r.w.sec. 114 of I.P.C., for which they were charged. According to Mr. Bharat Rao, the impugned order of suspension was bad in law, as it was arbitrary and discriminatory, as the authority had not passed any such order of suspension against Mr. Tapodhan, an employee of the same office who was involved in the incident and against whom the petitioners had filed a complaint. It was further submitted that the impugned order of suspension was passed eight months after the alleged incident and no departmental proceedings were initiated by the authorities and now, when the order of acquittal has been passed qua the petitioners in the said criminal case, the very object of the orders does not survive and hence the same should be quashed.

4. Shri P.N. Ajmera for J.D. Ajmera, the learned counsel, on behalf of the Respondents strenuously urged that the order of suspension is not by way of penalty and the impugned order was passed as the criminal case was pending against the petitioners. In his submission, the Tribunal can not sit as an appellate authority over the order passed by the competent authority and confirmed in appeal.

5. We have carefully examined the rival contentions

canvassed by the learned counsel for the parties. The fact that some incident took place in the premises of the office of the Respondents on 28.2.1987 between the petitioners and Mr. Tapodhan, is not in dispute. It is the version of the petitioners that they had also filed a criminal complaint against Mr. Tapodhan in respect of of the said incident and he was also tried before the same Metropolitan Magistrate. It is now conceded that both the counter cases are concluded and have ended in acquittal. It was the case of the Respondents that the orders of suspension were passed as the criminal case was pending against them and it was reasonably apprehended that they may tamper with the prosecution witnesses as well as the records of the department.

6. The law is now settled that the master certainly has got a discretion in passing an order of suspension against one or other delinquent employees facing any proceedings. Hence, the plea of the petitioner that Mr. Tapodhan, who was connected with the transaction had not been suspended and they were picked up for placing under suspension, does not seem to be valid. An order of suspension must be based on objective assessment of the situation by the competent authority himself. However, in such cases an order of suspension is passed in case of offence of a serious nature involving moral turpitude and not for petty offences unrelated to morality or the official duties of the servant. Where suspension has been ordered during the pendency of criminal proceedings, it might have an adverse effect on his defence. Suspension also undermines the prestige of the employee and brings him down in public eyes. In fact, the effect of suspension on the morale of services is rather catastrophic. The Kerala High Court has rightly observed in Subramanian's

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case '73 (1973 S.L.R.p.521), that an order of suspension though not a penalty brings to bear on the employee consequences far more serious in nature than several of the penalties. It is therefore in the interest of public service that an order of suspension is made after a very careful consideration and sparingly.

7. In the instant case, the reason for the authority to pass the order of suspension was due to the fact that a Criminal Case (No.1065/86), was pending against the petitioners. Admittedly the proceedings have now ended in acquittal of the petitioners. Perhaps, now the very cause, for which the orders of suspension were passed, does not survive. It is not the case of the Respondents that they have initiated any departmental proceedings against the petitioner in respect of alleged incident. Thus there is hardly any justification for the continuance of the operation of the said order of suspension. In our opinion, the impugned orders can not be sustained and deserve to be quashed. However, this would not restrict the powers of the authorities of the department to pass such orders as they deem fit, in case they decide to take any departmental proceedings against the petitioners.

8. The result is that, this petition succeeds. We hereby quash the impugned orders of suspension dated 6.11.1986 passed qua the petitioners by the Regional Provident Fund Commissioner. With these directions the application is allowed with no order as to costs.

P.S. - 8
26/6/1987
(P. SRINIVASAN)
ADMINISTRATIVE MEMBER.

JMWS
(P.M. JOSHI)
JUDICIAL MEMBER.