

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 524 of 1991.

Date of decision: 13.10.1992.

Baidyanath Jena Applicant.

Versus

Union of India and another ... Respondents.

For the applicant ... M/s. Devanand Misra,
Deepak Misra,
R. N. Naik, A. Deo,
B. S. Tripathy, P. Panda,
Advocates.

For the respondent No.1 Mr.C.A.Rao,
Addl. Standing Counsel (CAT)

For the respondent No.2. Mr.K.C.Mohanty,
Government Advocate (State)

• • •

C O R A M:

THE HONOURABLE MR. K. B. ACHARYA, VICE-CHAIRMAN

A-N-D

THE HONOURABLE MR. C. S. PANDEY, MEMBER (ADMN.)

• • •

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

三

JUDGMENT

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash Annexure-1 by virtue of which the applicant has been placed under suspension with effect from the date of service of the said order and furthermore it is prayed to issue a direction to Respondent No.2 i.e. the State of Orissa represented by its Secretary to the Government of Orissa in the Home Department to reinstate the applicant with immediate effect with all arrear salary and other benefits accruing to the applicant during the period of suspension.

2. Shortly stated, the case of the applicant is that he is a member of the Indian Police Service working under the State Government of Orissa. While the applicant was working as S.S.O. (Home Guards) at Cuttack the applicant was served with a memo bearing No.31735 dated 25.6.1990 (contained in Annexure-1) conveying the orders of the Government of Orissa placing the applicant under suspension in view of the fact that a criminal charge of corruption is pending investigation against the applicant. From the details of the facts unfolded in the pleadings of the parties it appears that on receipt of information that the applicant, Shri Baidyanath Jena was in possession of movable and immovable properties either in his own name or in the name of his family members which were disproportionate to his known source of income, Government quarters occupied by the applicant

EN

was raided and searched on 12.5.1990, as a result of which some hard cash, house-hold articles were seized and a case under section 13(2) read with 13(1)(e) of the Prevention of Corruption Act was registered vide Cuttack Vigilance P.S.Case No.39 dated 19.6.1990 against the applicant. Being aggrieved by the order of suspension passed against the applicant, the present application has been filed with the aforesaid prayer.

3. Respondent No.2 i.e. the Government of Orissa represented by its Secretary in the Home Department has filed a counter in which it is stated that huge amount of cash, unlicenced revolver and documents relating to purchase of 20 plots of land and certain other acquisitions having ~~detected~~ ^{and} ~~in~~ ⁱⁿ detected that the applicant being ~~in~~ ^{and} possession of assets disproportionate to his known source of income, a case under section 13(2) of the Prevention of Corruption Act was registered against the applicant and therefore the Government was of opinion that in the interest of administration and for the ends of justice, the applicant should be placed under suspension and accordingly he was placed under suspension. No illegality having been committed by the State Government in this regard, the application is devoid of merit and is liable to be dismissed.

4. We have heard Mr.Deepak Misra, learned counsel for the applicant and Mr.K.C.Mohanty, learned Government Advocate (State) for Respondent No.2 at a considerable length.

4

8 8

5. At the outset we may say that though some arguments were advanced at the Bar regarding the properties in possession of the applicant said to be disproportionate to his known source of income we do not like to express any opinion because it involves the merits of the case which is under investigation and ultimately to be decided by the learned Special Judge under the Prevention of Corruption Act, if at all any charge-sheet is filed. Any observation made by us either directly or indirectly may embarrass or adversely affect either parties and therefore, we refrain ourselves from expressing any opinion on those issues.

6. Before we deal with the merits of this case, we would like to dispose of the preliminary objection raised by the learned Government Advocate (State) who submitted that in view of the provisions contained in Section 20 of the Administrative Tribunals Act, 1985, this application is not maintainable as no appeal has been preferred to the appropriate authority against the order of suspension.

Section 20 of the Administrative Tribunals Act, 1985, runs thus :

" (1) A Tribunal shall not 'ordinarily' admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. xx xx "

The word 'ordinarily' has a significance. The above quoted provision does not wholly create a bar for the
VN

9 9

Bench to admit a case even though other remedies have not been availed. This question came up for consideration in the case of K.C.Pattanayak versus State of Orissa and others reported in ATR 1987(2)CAT 401. In the said case one of us(Acharya, J) was a party to the judgment. While expressing opinion on the maintainability of the application filed by Shri Kishore Chandra Pattanayak, I.P.S. for not having exhausted other remedies, the word 'ordinarily' was interpreted according to the dictum laid down by Their Lordships of the Hon'ble Supreme Court in the case of Kailash Chandra v. Union of India reported in AIR 1961 SC 1345. At paragraph 8 of the judgment, Their Lordships have been pleased to observe as follows:

" 'Ordinarily' means in the larger majority of cases but not 'invariably'".

7. This eventually means that the Tribunal may make a departure from the general rule in appropriate cases. Legislature has also vested discretion with the Tribunal while using the word 'ordinarily' in section 20 of the Act. The Legislature has intended that as a general rule every case cannot be thrown out merely on the ground that other remedies have not been exhausted. There might be cases where emergent situation may need immediate interference and therefore, the Parliament in its wisdom has intentionally used the word 'ordinarily' having in its mind that there may be cases in which an aggrieved person should not wait to exhaust other remedies but would prefer to immediately

V N

6

VO 10

seek for the interference and protection of a Court.

Therefore, each case has to be decided according to its own facts and circumstances.

8. The next important question arises for consideration as to what would be an emergent situation ? In answer to this question we have no hesitation in our mind to say that if immediate relief is not given to the person aggrieved, which he is entitled under the law to so receive, then either substantial loss or irreparable injury would be caused to him. Applying this test to the facts of the present case one has to look into the emergent situation existing in the present case. Here is a member of the Indian Police Service who has been placed under suspension and he feels aggrieved in regard to the order of suspension which according to the applicant is not justifiable in the eyes of law. The immediate relief asked for if permissible to be granted under the law to the applicant should be awarded to him and if denied to him merely on the technical ground then it may cause substantial loss and irreparable injury which would clearly come within the wholesome principle " Justice delayed Justice denied and Justice buried". Therefore, keeping in view the peculiar facts and circumstances of this case, it cannot but be said that ^{an} emergent situation exists in this case. Considering all these aspects the Bench by its order dated 22.1.1992 admitted the case for hearing thereby waiving the bar created under section 20 of the Administrative Tribunals Act.

9. Now, we would proceed to consider the justifiability

or otherwise in keeping the applicant under suspension till now. While addressing this Bench on the sustainability of the order of suspension it was submitted by Mr. Deepak Misra, learned counsel for the applicant that the entire investigation conducted in respect of the alleged assets said to be in possession of the applicant which is said to be disproportionate to his known source of income has been completed specially in respect of recording of evidence under section 161 of the Code of Criminal Procedure, seizure of documents etc. The only receipt thing now remains of sanction under section 197 of the Code of Criminal Procedure to be accorded by the Central Government. Hence it was submitted by Mr. Misra that adopting the view taken in Original application No. 312 of 1991 (Nikunja Kishore Parija vrs. Union of India and others), judgment of which was delivered on 24.4.1992, the same benefit should be given to the present applicant.

10. All Civil servants are placed under suspension because if he or she is allowed to still remain in office there may be ~~an opportunity~~ for the concerned Officer to exercise his influence and make attempt to either tamper with the evidence or create a hurdle in the fair investigation. Therefore, to enable the concerned authority to conduct the investigation smoothly and fairly so as to establish the allegations against the Civil Servant, such officer is placed under suspension. This Court is now required to address itself as to whether in the facts and circumstances of the present case, the order of suspension should be allowed to continue, keeping in

12

12

view the fact that the investigation has already been completed and the only matter which remains for submission of the final form, according of sanction under section 197 of the Code of Criminal Procedure for prosecution of the applicant, is awaited, which is admitted case of the parties before us. The order of suspension was passed on 25.6.1990 i.e. a little more than two years ago. Therefore, in our opinion, the instructions issued by the Government of India in the Ministry of Home Affairs vide Office memorandum dated 14th September, 1978 comes to the rescue of the applicant, which runs thus :

" Inspite of the instructions referred to above, instances have come to notice in which Government servants continued to be under suspension for unduly long periods. Such unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Government. It is, therefore, impressed on all the authorities concerned that they should - scrupulously observe the time limit laid down in the preceding paragraph and review the cases of suspension all cases is really necessary. The authorities superior to the disciplinary authority should also give appropriate directions to the disciplinary authority keeping in view the provisions contained above. "

11. A case similar to the present one came up for consideration before the Central Administrative Tribunal, Principal Bench. It is reported in 1989(10) Administrative Tribunal Cases 75 (C.L. Bakolia vrs. Union of India and others). Hon'ble Mr. Justice Madhava Reddy, Chairman speaking for the Bench observed that since no charge sheet was filed either in the criminal Court or any disciplinary proceeding was initiated after Bakolia was placed under suspension within a reasonable

V.N.

13

period and due to the inaction of the competent authority in this regard and after applying the above quoted instructions of the Ministry of Home Affairs the Tribunal quashed the order of suspension. Similar view was also expressed in the case of Brajakishore Singh vrs. Government of Bihar and others by the Central Administrative Tribunal, Patna Bench reported in 1990(92) Administrative Tribunals Cases 501. In this case, Officers of the Central Bureau of Investigation had raided the house of Brajakishore and had seized some properties. A case under section 5(2) of the Prevention of Corruption Act was registered and thereafter Brajakishore was placed under suspension. Such order of suspension was quashed on the ground that it was violative of the guidelines laid down by the Central Government and the State Government that the Civil Servants shall not be placed under suspension for a protracted period. Besides the above, there are pronouncements of similar nature in several other judgments of different Benches of the Central Administrative Tribunal, which need not be quoted in extenso but the views of the High Courts on this subject should also be mentioned. In the case of J.S. Chauhan vrs. State of U.P. reported in 1978 S.L.J. 421, High Court of Allahabad observed as follows:

" If a Government servant is placed under suspension for an indefinite period of time, it would certainly be against public interest and is liable to be struck down."

V.N

In the case of State of Madras vrs. K.A. Joseph

reported in AIR 1970 Madras 155, Their Lordships observed as follows:

" There is a very clear and distinct principle of natural justice that an officer is entitled to ask if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence and that charges should be framed against him within a reasonable period of time. If such a principle were not to be recognised, it would imply that the Executive is being vested with a total arbitrary and unfettered power of placing its officer under disability and distress for an indefinite duration. "

12. All the above mentioned observations of different Benches of the Central Administrative Tribunal and the High Courts have received approval of Hon'ble Supreme Court in the case of O.P.Gupta vrs. Union of India and others reported in 1987(4) SCC 328. At paragraph 15 of the judgment, Their Lordships were pleased to observe as follows:

" An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. The real effect of the order of suspension as explained by this Court in *Khem Chand v. Union of India* is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance- generally called subsistence allowance- which is normally less than the salary instead of the pay and allowances which he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the Departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. In the case of *Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni* the Court held that the expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. The conditions of service are

within the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution, but even such rules have to be reasonable and fair and not grossly unjust. It is clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceeding should be concluded with reasonable diligence and within a reasonable period of time. If such principles were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officer under disability and distress for an indefinite duration."

The principles laid down by Their Lordships in the above mentioned judgment applies equally to an investigation in respect of a criminal charge or criminal trial.

13. Last but not the least, We feel tempted to mention another order passed by the Hon'ble Supreme Court in a case of similar nature resulting in suspension of a Superintending Engineer of the Public Works Department, wherein incriminating articles were recovered from the house of the Superintending Engineer and a case under the Prevention of Corruption Act was registered against the said Officer and he was placed under suspension. Because of the delay in filing of the charge-sheet, the Superintending Engineer had moved the State Administrative Tribunal, Orissa, Bhubaneswar to quash the order of suspension which formed subject matter of O.A.1253 of 1991. A Division Bench of the State Administrative Tribunal, quashed the order of suspension because of the delay in submission of the charge-sheet and for other reasons. The State of Orissa carried the matter in appeal to the Hon'ble Supreme Court which formed subject matter

of S.L.P. (Civil) No.19528 of 1991. Their Lordships were pleased to dismiss the Special Leave Petition preferred by the State of Orissa. Though strictly speaking the order passed by the Hon'ble Supreme Court may not be treated as a declaration of law coming within the purview of Article 141 of the Constitution but it can be safely presumed that the view of the State Administrative Tribunal quashing the order of suspension because of the aforesaid reasons has been upheld by the Hon'ble Supreme Court and every son of the soil is bound by the views expressed by the Hon'ble Supreme Court. Taking into consideration the above mentioned judgments of the Hon'ble Supreme Court, different Benches of the Central Administrative Tribunal and applying the principles laid ~~therein~~ and different High Courts in India, to the facts of the present case, one can safely come to the conclusion that the principles laid down in those judgments apply mutatis mutandis to the facts of the present case. At the cost of repetition we may say that the applicant has been placed under suspension for a little more than 2 years and further more, all relevant evidence- both oral and documentary evidence have been ~~concluded~~ ^{collected} otherwise the Central Government could not have been moved to accord sanction under section 197 of the Code of Criminal Procedure. Keeping all these in view it can safely be said that there is no more chance on the part of the applicant to tamper with the evidence or ~~to~~ ^a cause disappearance of any evidence. The intention in placing an Officer under suspension is to keep the Officer out of his Office so that he would have a least chance of manipulating the records or influencing any person in giving statement against him and

thereby impair or cause an obstacle to the fair investigation of a particular case. In view of the aforesaid facts and circumstances there is no scope left for the present applicant to either tamper with the evidence, manipulate any evidence or cause disappearance of evidence. Therefore, in our opinion, the principles laid down by Their Lordships in the above mentioned judgments apply in full force to this particular case.

14. At this stage, we feel tempted to quote the observations of Hon'ble Mr. Justice Sabyasachi Mukherjee of Calcutta High Court (as my Lord, the Chief Justice of India then was) in the case of P.P.Biswas vrs. State of West Bengal reported in 1980(1) SLR 611. In this case the applicant before the Hon'ble High Court of Calcutta was a member of the Indian Police Service posted as Superintendent of Police, Midnapur. Since Mr.Biswas did not carry out the orders of the Government, to hand over the charge of the Office of the Superintendent of Police, Midnapur, despite repeated directions having been given by the Government, Mr.Biswas was placed under suspension. He invoked the extraordinary jurisdiction of the High Court praying to quash the order of suspension. His Lordship observed as follows:

" Discipline really generates from a sense of justice based on confidence. If a Government servant feels that before his case is heard he is put under suspension unnecessarily then in my opinion the morale is more shaken and indiscipline more engineered than by creating an atmosphere that the Government servants are given to understand that while the Government will not permit insubordination and disobedience

18

of the Government order but the penalty will be visited only after due process of law and without victimization. If that sense can be created and that confidence generated, in my opinion, then the true basis and foundation of discipline would be laid within the administration who will be in charge of the maintenance of the law and order. Therefore, the very fact that the petitioner was being charged with insubordination and yet allowed to continue in service pending the enquiry in my opinion, would generate more confidence in the administration and generate more sense of discipline among the Police force who, as I said must be maintained in a highly disciplined manner if law and order in this country has to be maintained."

15. This view was adopted and followed in the case of *Abullaish Khan v. The State of West Bengal and others* decided by the Calcutta Bench in which one of us (namely Acharya J.) was a party to the judgment and following the dictum laid down by Hon'ble Mr. Justice Sabyasachi Mukherjee, the suspension order of Abullaish Khan was quashed. The case of Abullaish Khan has been reported in ATR 1986(2)CAT 97. Relying on these judgments mentioned above, this Bench in O.A. 312 of 1991 (N.K. Parija vrs. Union of India and others) quashed the order of suspension and the facts constituted in the case of N.K. Parija being exactly similar in nature to the facts of the present case, we find no justifiable reason to take a view other than what has been taken in the case of N.K. Parija.

16. Before we part with this case, we must express with some discontentment that in the counter it is stated that the Supreme Court in the case of *Babulal vrs. State of Haryana* reported in 1991(1)SLJ 221,

18

has observed that a person suspended on the ground of pendency of criminal proceeding against him is entitled to reinstatement into service only on being acquitted of the criminal charge. We have very carefully gone through the judgment pronounced by the Hon'ble Supreme Court in the case of Babulal. Nowhere we find in the judgment that Their Lordships have observed that a person suspended on the ground of pendency of criminal proceeding against him is entitled to reinstatement into service after acquittal of the criminal charge. Babulal was placed under suspension and a criminal case was initiated against him. Babulal's services were terminated before the disposal of the criminal proceeding which would be evident from paragraph 7 of the judgment which runs thus:

" The pivotal question that poses itself for consideration before this court is firstly whether during the period of suspension in view of the criminal proceeding which ultimately ended with the acquittal an order of termination can be made against the appellant by the respondent No.2 terminating his adhoc services without reinstating him as he was acquitted from the charge u/s.420 IPC and secondly whether the impugned order of termination from his service can be made straightforward without reinstating him in the service after he earned acquittal in the criminal case and thereafter, without initiating any proceeding for termination of his service as the impugned order of termination was of penal nature having civil consequences. xx xx "

17. Such being the limited question for consideration by Their Lordships it was further observed in the same paragraph as follows:

" xx xx It is the settled position of law that the appellant who was suspended on the ground of pendency of criminal proceeding

against him, on being acquitted of the criminal charge is entitled to be reinstated in service. His acquittal from the criminal charge does not debar the disciplinary authority to initiate disciplinary proceedings and after giving an opportunity of hearing to the appellant pass an order of termination on the basis of the terms and conditions of the order of his appointment. xx xx "

18. Again, we repeat that there has been no observation made by Their Lordships in the judgment that the order of suspension could be revoked only after the criminal proceeding is finalised. Such an averment, in our opinion finds place in the counter by not going through the entire judgment but by noticing the placitum which runs thus :

" A person suspended on the ground of pendency of criminal proceeding against him is entitled to be reinstated in service on being acquitted of the charge. "

19. There has been a clear misreporting in the placitum which does not find place in the judgment which is nothing but misleading. We are sorry with a word of discontentment to note that the Officer who drafted this counter and verified the pleadings did not care to go through the judgment of the Supreme Court and an attempt was made to mislead the Court. We are sure the verificant is certainly aware of the consequences of misleading the Court. In such circumstances, the averments finding place in the counter to the above effect is not borne out of the judgment of the Supreme Court and therefore it has no application to the facts of the present case.

The contention put forward on behalf of the Respondents

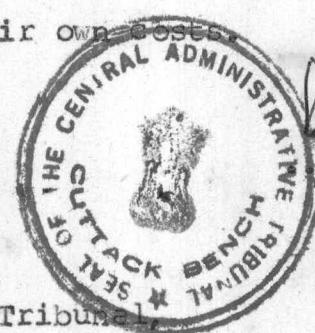
21

that the order of suspension should not be revoked or cancelled before the finality in the criminal case is arrived at, deserves no merit because in all the cases mentioned above and observations quoted, the petitioners in those cases were involved in criminal charges and ~~XXXXXX~~, the orders of suspension were cancelled. Therefore, we find no merit in the aforesaid contention put forward on behalf of the respondents.

20. In view of the aforesaid facts and circumstances, we are of opinion that there is no justifiable reason to keep the applicant out of service any longer and in case the order of suspension is made to continue, then it would not only cause hardship to the applicant but will unnecessarily tell upon the State exchequer to pay to the applicant the subsistence allowance without rendering any service to the State Government. Hence, we find that the continuance of the order of suspension of the applicant would not be justifiable both on questions of fact and law. Hence, we do hereby quash Annexure-1 placing the applicant under suspension and direct his reinstatement to service forthwith.

21. Thus, this application stands allowed leaving the parties to bear their own costs.

.....
Chandru
.....
MEMBER (ADMINISTRATIVE)



.....
13/10/92
.....
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.

13.10.1992/Sarangi.