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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH; CUTTACK.

MISCELLANEOUS APPLICATION NO.638/96
(Arising out of Original Application No.681 of 1996)

(Date of order 7th October,1996)

Gudey Srinivas

....

Applicant

Vrs.

Union of India & others

....

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

N. Sahu
(N.SAHU) 7.10.96
MEMBER (ADMINISTRATIVE)

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MISCELLANEOUS APPLICATION NO.638 OF 1996
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CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE).

...

Gudey Srinivas, IAS,
son of G.S.Chalam,
presently working as
Collector & District Magistrate,
At/P.O/Dist.Jajpur

....

Applicant

By the Advocates

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M/s Jagannath Patnaik,
H.M.Dhal, A.A.Das,
B.Mohanty & S.Das.

-versus-

1. Union of India, represented through
Secretary to Government,
Department of Personnel & Training,
North Block, New Delhi.
2. State of Orissa, represented through
Secretary to Government of Orissa,
General Administration Department,
Orissa Secretariat Building,
At/P.O-Bhubaneswar, District-Khurda Respondents

By the Advocate

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Mr.K.C.Mohanty,
Government Advocate
(For R-2)

O R D E R

HU, MEMBER (ADMINISTRATIVE)

This M.A. is filed with the following prayer:

"It is therefore humbly prayed
that the order dated 20.9.1996 directing
not to give effect to the order of

suspension passed, be vacated and the order of suspension which is annexed herewith as Annexure-R-2/1 may be directed to be received by the applicant immediately;"

The O.A. was filed on 20.9.1996 on the apprehension of the applicant from newspaper reports that he would be placed under suspension for alleged irregularities in the Mid-day Meal Scheme ('M.M.S.' for short). The O.A. was admitted on the submissions of the learned counsel for the applicant that the suspension was on frivolous grounds and on account of non-application of mind. An interim stay of fourteen days was granted for not giving effect to the suspension order. The Court directed:

"....Within this period the State Government may file its showcause for vacation of interim stay granted by this Bench. If the State Government feels that public interest would be in jeopardy or the process of investigation into the charges against the applicant would be impeded due to his continuance in the office, the State Government is free to make their submissions before this Court any day for vacation of stay and need not have to wait the period of two weeks (14 days) to expire."

In response to this direction the present M.A. is filed with the above prayer.

2. It is stated by Shri K.C. Mohanty, learned Government Advocate that an order of suspension is not a punishment and the statutory rules permit the Government to place an officer under suspension pending disciplinary proceedings. Judicial interference in a suspension order is disapproved by the Apex Court. He cited the case of State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296. He also cited the decision of S.A. Khan v. State of Haryana, AIR 1993 SC 1152, wherein their Lordships have held that the

challenge being only to the suspension order and as alternative remedy of appeal is available, the petition was not entertainable before exhaustion of remedy. Shri Mohanty laid considerable stress on the alternative remedy provided by the statute. He stated that there was application of mind because there was a preliminary enquiry into the allegation of malfunctioning of the Mid-day Meal Scheme. On the basis of this preliminary enquiry, a decision was taken to suspend the Collector "for his total inaction and irresponsibility committed in proper implementation of Mid-day Meal Scheme."

3. This is a matter for vacation of interim stay. It is not necessary to discuss the merits of the case in detail and in depth. In order to find out whether there is a prima facie ^{on merits} case ^a for stay, it is necessary to broadly outline the reasons and the background facts leading to the suspension order which is Annexure-R-2/1 under Rule 3 of the All India Services (D&A) Rules, 1969. The applicant, Sri G. Srinivas is a direct recruit to the Indian Administrative Service, 1990-Batch and was posted as Collector, Jajpur in October, 1995. There were newspaper reports that the Mid-day Meal Scheme was not satisfactorily implemented in Jajpur District. The Additional Secretary to Government of Orissa in the Department of Women & Child Development Department was directed to make a preliminary enquiry and submit a report to the Government. The alleged seven irregularities from the report are as under:

- (a) The Progress Report with regard to the Mid-day Meal was not sent to the Government from July, 1995.

- (b) Though Mid-day Meal is required to be served on 210 days in all Blocks and Notified Area Councils of the District, it was served on much less days than what it was required.
- (c) In certain Blocks, all the Schools have not been listed in this Scheme and due to non-supply and/or less supply of food materials, the Mid-day Meal Scheme had been affected.
- (d) The Inspecting Officers of the Scheme have not properly inspected.
- (e) Utensils for the kitchen have been supplied very late.
- (f) District Magistrate has not been able to produce all the materials concerning the Scheme.
- (g) Mobile Squad constituted in the District for scrutiny of proper implementation of the Scheme has not at all worked.

The Respondents felt that a popular welfare scheme was not properly implemented. On receipt of this report, the Chief Secretary to the Government of Orissa recommended either suspension or transfer from Jajpur and proposed "for the serious negligence and dereliction of duty", disciplinary action against the applicant. A popular scheme was jeopardised and therefore, an erring officer, if suspended, would not justify interference by the Courts, argues Shri K.C.Mohanty, learned Government Advocate. Paragraph 12 of the petition states

as under;

"12. That the Deponent most respectfully leaves it to the kind consideration of the Honourable Tribunal as to whether allowing the applicant to continue at Jajpur would be in the best public interest or such continuance seriously affects and jeopardises the policy decision of the Government affecting hundreds of students in the Primary Schools for non-supply and/or improper supply of Mid-day Meal in order to pass an order for vacating the order of interim stay passed on 20.9.96."

Shri K.C.Mohanty further stated that the Government is not prepared to accept the submissions of the learned counsel for the applicant to transfer him from out of Jajpur and they persist in their prayer for vacation of the interim stay.

4. Opposing this prayer for vacation of stay, it is stated by Sri J.Patnaik, Senior Counsel that the allegations are absolutely incorrect and that the ~~suspension~~ order was occasioned due to non-application of mind. With regard to statistical reporting, the monthly progress reports were sent to the very reporting officer who stated that monthly progress reports were pending for three months, i.e. from April to June, 1996 and therefore, the allegation that such reports were not sent from July 1995 is absolutely incorrect. Even from April to June, 1996 it is averred by Annexure-18 that the said reports were sent. With regard to irregularities (b) and (c) noted above, all efforts have been made by the applicant in all the 1310 schools in the district for implementation of M.M.S. Before the applicant joined it was running only in 3 Blocks out of 10 Blocks. He had made all efforts to start the scheme in all Blocks and Municipalities. He denied that all the schools are not covered. In some Blocks, the programme was running successfully and in others, due to various constraints, the most conspicuous being that no regular District Social Welfare

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Officer (the nodal and crucial officer) was posted, there was slow implementation. The fuel cost, the payment of wages to the cook and helper were inadequate, and poor quality of food material was supplied, for which the teachers refused to lift the stock. With regard to allegation (d), he submitted that the Collector distributed the work to different officers in each Block as per Annexure-12 dated 1.2.1996. As soon as he joined, he placed orders for utensils and all the funds were exhausted for procurement of utensils. With regard to allegation (g), it is submitted that Mobile Squad was constituted as would appear from letter under Annexure-12 and it scrutinised the implementation of the scheme and the said Squad worked effectively. Shri Patnaik stated that the entire preliminary enquiry report was not put to the applicant and he emphasised on the point that the order of suspension was issued in an arbitrary manner. There was no adverse remark on the functioning of the Collector in any of the inspections. The concerned Commissioner could have communicated his displeasure or could have given him time to improve. This was not done. In fact, there was no intimation of displeasure or any deficiency was brought to his notice by his superior officers. With regard to alternative remedy, Sri Patnaik submitted that this alternative remedy should be equally efficacious or adequate and this law is settled on the subject.

5. I have carefully considered the submissions of Shri K.C.Mohanty, Government Advocate and Shri J.Patnaik, Senior Counsel for the applicant. I have no hesitation in refusing to vacate the stay. While merits of the case in all their detail and depth will be discussed as soon as the counter affidavit is

filed, I am convinced that there is more than a prima facie case. One aspect that strikes me is that this order of suspension was passed without any regard to the guiding principles on the subject. The Government have specified a number of such criteria. I am extracting the guiding principles from Swamy's Manual on Disciplinary Proceedings, page 179;

"6.Guiding Principles.

1.While public interest is to be the guiding factor in deciding to place a Government servant under suspension, the competent authority should take all factors into account and exercise his discretion with due care while taking such action even when the matter is under investigation and before a prima facie case is established. The following circumstances may be considered appropriate to place a Government servant under suspension:-

- (i) where his continuance in office will prejudice investigation, trial or any enquiry (e.g., apprehended tampering with witnesses or documents);
- (ii) where his continuance in office is likely to seriously subvert discipline in the office in which he is working;
- (iii) where his continuance in office will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal with officers involved in such scandals, particularly corruption;
- (iv) where a preliminary enquiry revealed a prima facie case justifying criminal or departmental proceedings, which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service; and
- (v) where he is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

2. Certain types of misdemeanour where suspension may be desirable in the circumstances mentioned above are indicated below;

- (i) an offence or conduct involving moral turpitude;

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- (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;
 - (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;
 - (iv) desertion of duty; and
 - (v) refusal or deliberate failure to carry out written orders of superior officers."

It is very clear to me from a narration of the basic facts that the above circumstances do not exist in the present case. I have perused the notings in the file. The officers who examined the preliminary enquiry report have not considered whether the above guidelines are attracted to the facts of this case and whether in view of the above guiding principles of the Government of India, a suspension is necessary or desirable. It is admitted in the Court that none of these canons in paragraph 2 applies to the applicant. It is not a case of moral turpitude, corruption or embezzlement or serious negligence and dereliction of duty resulting in considerable loss to the Government, desertion of duty or refusal to carry out orders. The suspension of an IAS officer and that too, a Collector of the District on the alleged ground of non-submission of statistical reports and on the alleged ground of deficiencies in implementation of a scheme does not, in any way, meet the object of suspension; Public interest and any impediment to enquiries that the Respondents might face in the conduct of the contemplated disciplinary proceedings which are on the anvil. If a scheme is not implemented by one officer, it could be implemented by another officer, and the officer, who is replaced, should get a rating at best for inefficiency, provided the allegations of improper and inefficient functioning are borne out. Suspending him, without resorting to any of the known conventional methods of chastising a Government servant, is a very radical measure which does not serve the object for which it is resorted to. The learned counsel for the applicant submitted that he is the Chairman of 33 Committees. This (M.M.S)

is a small fraction of his total workload, albeit an important fraction. There are a chain of officers at the Block level and the District level who are directly responsible for implementation of the scheme. The Collector has only a supervisory role and that he fulfilled that role to the best of his ability and diligence. It is submitted that the Collector scrupulously tried to adhere to the guidelines of the Women & Child Development Department dated 22.6.1995 which contained the Mid-day Meal Scheme in all its detail and parameters. The methods of implementation were also specified in great detail. The scheme mandated a quarterly meeting under the chairmanship of the Chief Minister or the departmental Minister for review of the scheme and ~~the~~ guidance. It is submitted that no such review had taken place so far. The applicant stated that he tried his best to stick to the guidelines as far as possible within the constraints of man and material available to him. It is not necessary for me to accept as true and correct all the above submissions. May be the Collector had his failings; may be he is inept or worse; it is for the superior officers to supervise, advise and warn. Is suspension the answer?

6. An order of suspension should not be made in a perfunctory or in a routine or casual manner where no public interest is to be served. Assuming without admitting that the Mid-day Meal Scheme was not implemented by the applicant as Collector of Jajpur in an efficient manner, there are a chain of steps available from inspection, admonition, adverse remarks, transfer, recording of his inefficiency in C.R., etc., to correct and improve the officer. What purpose does a suspension of a Collector achieve? I have repeatedly tried to ascertain as to whether any of the superior officers has inspected the functioning of the Collector and communicated to him that the functioning of the Mid-day Meal Scheme needs to be improved. It was mentioned to me in the Bar that no such steps were taken. What exactly the Government

has done is that they deputed an officer who is of equal rank and who made the enquiry on his own and conveyed his impressions of what he called as an enquiry to the Government on the basis of which the impugned suspension order was issued. The alleged deficiencies or alleged irregularities have not been even put to the applicant.

7. Shri K.C.Mohanty has cited the decision in the case of Bimal Kumar Mohanty (supra) of the Supreme Court. The applicant there was a Manager of the State Guest House. There was an audit report and vigilance report making serious allegations against him of corruption and malpractices. Besides, the suspended official in that case was in possession of disproportionate assets to the known sources of his income. The crime was registered in Crime No. 46 under Section 3(2) read with Section 13(1) of the Prevention of Corruption Act, 1948. The Supreme Court found serious allegation of misconduct and therefore, did not interfere with the suspension order. The Apex Court, after considering the law on the subject, held;

"12. It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on

consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry, etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

(Emphasis supplied)

The above is a statement of the law on the question of suspension, and may I say, with respects, there is no need to look into any other authority. I have tried to find out which of the criteria laid down by the Apex Court applies to this case: Answer is none. I have taken the liberty of supplying emphasis. The facts show that there is no misconduct involved. There is no prima facie evidence of dereliction of duty. I am of the view that within the parameters of the law laid down by the Supreme Court in the aforesaid case, there is a prima facie case for stay of suspension order. This is not a case of disproportionate assets, or embezzlement, or criminal defalcation, or disobedience to orders, or desertion of duty.

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8. The next case cited by Shri Mohanty is that of S.A.Khan(supra). In that case there were allegations of benami commercial ventures, alleged false claims of T.A. and D.A., FIRs lodged against the petitioner, wide public reaction against his corrupt practices prevailing, etc. There were very grave charges of misconduct and in that case the petitioner had availed of the alternative remedies open to him. Hence the Supreme Court decision in S.A.Khan's case is of no assistance to the Respondents.

9. With regard to powers of the Tribunal to stay an order of suspension, we have already a case from this Bench in O.A.No.64 of 1996 (B.B.Misra v. Union of India). Sri B.B.Misra was suspended consequent on the report of a Commission of Inquiry to inquire into the liquor tragedy set up by the Government of Orissa holding the said Sri Misra responsible for several acts of omission and commission prior to and after the liquor tragedy and on the ground that he has acted in a manner unbecoming of his high office. This suspension order was contested on the ground that the order of suspension was arbitrary and passed in a mechanical manner without application of mind and there was absolutely no material against the applicant. This Tribunal having stayed the order of suspension, the stay was challenged before the Apex Court. The Apex Court in Petition(s) for Special Leave to Appeal (Civil) No.10724-10725/96, against the judgment and order dated 8.2.1996 in M.A.Nos.143 and 144 of 1996 in O.A.No.64 of 1996 of C.A.T.,Cuttack Bench, did not interfere with the order of stay of suspension, but only directed that it shall be open to the Government of Orissa either to post him or not to post him at any place, but to give him full salary and emoluments to which he is entitled.

10. One more aspect to be dealt with is exhaustion of alternative remedy. It is settled law now that this rule is no absolute bar for granting a writ. A writ will be granted

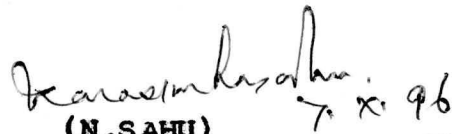
if the Court finds circumstances justifying the said writ in exceptional circumstances. One such circumstance is where the statute affords no effective remedy against the particular order complained of and where it is evident from the acts of the statutory, or appellate, or revisional authority that it is futile to approach such authority for revising the impugned order. (Ganpath v. A.D.M. (1985) 2 SCC 301). The order of suspension is made under Rule 3. There is a proviso that such an order shall not be valid unless before the expiry of a period of forty-five days from the date on which the member is placed under suspension, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government. The appeal provision is no doubt available under Rule 16, but then the appeal should be filed within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant. An appeal lies only after the suspension act is completed. An order of suspension carries a stigma. It shows to the public and the society that there must be some inadequacy or blemish or misdemeanour on the part of the suspended official to deserve suspension. There is an unstated indictment whether the suspension is deserved or not. The suspended officer must live down the said stigma. There is also deprivation, social censure and a certain degree of psychological anguish which the suspended officer suffers from. Thus the right of appeal is after the act of suspension and that too, to the very same Government to which the State Government has to write for confirmation. If the Central Government agrees with the suspension order, an appeal is superfluous and even mischievous. If the Central Government does not agree with the suspension order, the appeal is redundant and

during the time-lag what is the remedy available except a writ and invoking the extraordinary jurisdiction of this Tribunal ? However, a suspension is not a punishment and in deserving cases, no Court should interfere as laid down by the Apex Court. I have tried to examine the facts of this case in the light of the principles of law laid down by the Supreme Court in the case of Bimal Kumar Mohanty (AIR 1994 SC 2296) and I find that this suspension order does not appear to stand the tests laid down by the Apex Court. Possibly when the counter affidavit is going to be filed, more facts may come to light. This Court has not so far got any inkling about the charges, but in an interim stay it is not necessary to go into more details.

11. Shri K.C.Mohanty mentioned that the order of suspension was finalised, that is to say, the order of suspension was approved, numbered and made ready for despatch on 13.9.1996. This should be presumed to be served on the applicant on that date itself. It was also despatched to the Revenue Divisional Commissioner for service. I cannot accept this submission. In fact, the prayer in the M.A. is that the annexed suspension order should be directed to be received by the applicant immediately. It is presumed that this suspension order, though ready on 13.9.1996, was not served on the applicant nor was it communicated to him. This is a minor point and need not detain me further.

12. It appears to me on consideration of the submissions of the rival counsel and after going through the File No. AIS 100/95
V produced by the Government Advocate, that the applicant has more than a prima facie case, and that while invoking Rule 3(1) of

the AIS (D&A) Rules, it had to be considered whether it was really necessary to place the applicant under suspension or the purpose would be achieved by transferring him elsewhere. Any comment, at this stage, on the merits of the case would be inappropriate. Although a suspension is not a punishment, it is a stigma on the officer, particularly when he is heading a District Administration and even if he is exonerated later on, the suspension, as it is an extreme step, would be there on his record. The balance of convenience also would show that possibly the objective of suspension could be achieved by other methods. In this view of the matter, the order of suspension is stayed till disposal of the O.A. I would only, with respects, repeat the directions of the Hon'ble Apex Court in O.A.No.64 of 1996 (supra) that if the State Government wants to utilise the service of the applicant elsewhere other than at Jajpur, it is free to do so by posting him at any other place.


(N.SAHU)
MEMBER (ADMINISTRATIVE)

A.Nayak, F.S.