

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 467 of 2008

with

Original Application No. 717 of 2008

Wednesday, this the 28th day of October, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. Original Application No. 467 of 2008

K. Bhasmakara Rao IFS (Under Suspension),
10/196-14-D, Eluru Road, Gudivada-521301,
Krishna District, Andhra Pradesh, now
residing at Forest Officers Quarters,
Vazhuthacaud, Thiruvananthapuram.

... Applicant

(By Advocate Mr. P. Sanjay)

versus

1. Union of India represented by
Secretary, Ministry of Environment
and Forest, B Block, CGO Complex,
Lodi Road, New Delhi – 110 003.

2. State of Kerala rep. by Chief Secretary
to Government, Secretariat,
Thiruvananthapuram.

3. The Principle Chief Conservator of Forest,
Forest and Wildlife Department,
Vazhuthacaud, Thiruvananthapuram.

... Respondents

(By Advocate Mr. C.M. Nazar, ACGSC (R1)
Advocate Mr. R. Premsanker, GP (R2-3))

2. Original Application No. 717 of 2008

K. Bhasmakara Rao IFS (Under Suspension),
10/196-14-D, Eluru Road, Gudivada-521301,
Krishna District, Andhra Pradesh, now
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1. Union of India represented by Secretary, Ministry of Environment and Forest, B Block, CGO Complex, Lodi Road, New Delhi – 110 003.
2. State of Kerala rep. by Chief Secretary to Government, Secretariat, Thiruvananthapuram.
3. The Principle Chief Conservator of Forest, Forest and Wildlife Department, Vazhuthacaud, Thiruvananthapuram. ... Respondents

(By Advocate Mr. Varghese P. Thomas, ACGSC (R1)
Advocate Mr. R. Premsanker, GP (R2-3))

The application having been heard on 26.10.2009, the Tribunal on ... 28-10-2009... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The 1986 Batch Indian Forest Officer of Kerala Cadre, who had a deputation tenure at Andhra Pradesh from August 1996 to September 1999, had an episode to narrate that his mother being a political personality in A.P. had a lot many rivals and the same extended to the extent of some pseudonymous complaint having been made against the applicant and the Principal Chief Conservator of Forests at Kerala, not being smoothly poised with the applicant, had his own role to play whereby, according to the applicant, the CBI registered a case against the applicant and the applicant had to seek bail from the Court in December 2006. Earlier, the applicant had proceeded on casual leave initially, to attend to his ailing father and later on he extended his leave on medical grounds, vide Annexure A-1 series. On his return to Kerala, the applicant, when reported for duty was not given any posting nor was his salary paid. According to the applicant, he had been issued with a charge sheet against which a detailed representation vide Annexure A-3 had been made. By the time this representation reached the authorities, the CBI report also having been received by the respondents, the applicant was kept under

suspension w.e.f. 10-07-2007, vide Annexure A-4. The order of suspension expressly mentions that suspension would be "until the termination of all proceedings relating to the charges." According to the applicant, the suspension was not at all warranted as the alleged misconduct relates to the period when the applicant was serving at Andhra Pradesh, and thus, thoroughly unconnected with the respondents' organization.

2. Under the above circumstances, the applicant has filed two O.As, by one of which (OA No. 467/08) he has prayed for a direction to the respondents to consider the leave applications vide Annexure A-1 series, for payment of salary till the date of his suspension and continuance of subsistence allowance and through the other (717/08) the applicant has challenged the orders relating to his suspension, which was ordered vide Annexure A-2 order dated 10th July, 2007, with further orders of continuance, as also rejection by the President, of his appeal preferred against the order of suspension.

3. Respondents have contested the O.A. They have a different version about the case of the officer. According to them, the applicant while holding the post of Deputy Conservator of Forests (Marketing) Thiruvananthapuram in the office of Chief Conservator of Forests (Protection), left the Headquarters on 13-08-2001 without obtaining permission; later submitted an application for casual leave for five days with permission to prefix and suffix holidays. The Principal Chief Conservator of Forests had requested the applicant to convert the casual leave to Half Pay Leave and extended leave upto 5th June 2002, without applying for leave in proper form. It was thereafter that the applicant had requested for earned leave and half pay leave on medical ground from 13-08-2001 to 30-01-2005 and the same was received through the Principal

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Chief Conservator of Forests for further action as the power to sanction such leave in respect of All India Service Officers rests with the Government. According to the respondents, the applicant was directed to report to duty 'forthwith' and apply leave afresh with Medical Certificate for the period from 13-08-2001 and the applicant was administered with a caution that failure to comply with the direction would result in initiation of action against him. Annexure R-1 refers. As there was no response from the applicant, the respondents had proceeded to issue charge sheet for grave dereliction of duties and misconduct under All India Service (Discipline and Appeal) Rules. Annexure R-2 order dated 22-11-2002 refers. When the applicant responded to the same, he was asked to report to the Medical Board constituted by the Director of Medical Services to assess his medical fitness, vide Annexure R-3 dated 22-03-2003. The applicant did not choose to present himself before the Board. Thus, the respondents have decided to conduct a formal inquiry over the unauthorized absence, vide Annexure R-4. Inquiry and Presenting Officers were appointed to inquire into the charge framed against the applicant. The applicant did not cooperate with the inquiry; the inquiry officer has furnished his report a copy of which was made available to the applicant and on receipt of his representation, the same was also considered. And finally, reference has been made to the UPSC for their advice with a recommendation that penalty of censure be awarded to the applicant on his misconduct, which stood proved. Annexure R-7 in OA 467/08 refers.

4. As regards suspension of the applicant, respondents have stated that the applicant had to be suspended due to the institution of a criminal case before the CBI Court under prevention of Corruption Act, as the applicant had amassed assets beyond his known sources of income to the extent of



Rs.31.56 lakhs. As such, they have in their counter to OA 717/08 given justification for continued suspension as also as to the rejection of the appeal filed by the applicant.

5. Argument were advanced by the counsel for the parties. The arguments are as under:-

OA No. 467/08: The circumstances under which the applicant left headquarters and the reason why he had to continue on leave was all informed to the authorities concerned in his various letters, leave applications and through medical certificates from time to time. If at all there be any lacuna in his application, the same could at best be that the applications are not in their proper form for which the justification by the applicant was that his departure from headquarters was unplanned and urgent and he had the intention to return and report for duty and hence, he did not carry with him any formal leave applications. And, the moment he was informed of this deficiency, he had filed the leave application in the formal printed form. The applicant has been denied his salary for the period prior to his suspension when he was under compulsory waiting. All the actions were accentuated by malafides and the Chief Controller of Forests and the Principal Chief Controller of Forests who were behind the scene. As regards the reply filed by the respondents, the counsel for the applicant contended that the respondents have referred to a rule relating to deemed resignation, if an officer is absent for over a year without due authorization, whereas, this rule is posterior to the alleged absence of the applicant. Again,



the contention that the applicant was not allowed to join duties as the penalty proceedings were pending against him at that point of time, is illegal as there is no rule of that sort.

OA No. 717/08: The alleged misconduct of holding assets beyond the known sources of income was relating to a period much anterior to the date of suspension. The CBI had registered the case sometimes in 2005, while the suspension order had been passed only in July 2007. Here again, since the matter related to the period when the applicant was serving at Andhra Pradesh, all the documents/witnesses belonged to A.P. and there is no purpose that would be served in keeping the applicant away from his office at Kerala.

6. Counsel for the respondents justified the impugned orders. As regards non regularization of leave, the counsel submitted that the entire disciplinary proceedings initiated against the applicant were only as to the unauthorized absence and the recommendations of the UPSC in this regard are awaited. As such, regularization at this juncture would not be appropriate.

7. As regards continued suspension, the counsel for respondents justified the same stating that notwithstanding the fact that the alleged criminal offence was committed when the applicant was outside Kerala, the gravity of offence fully justifies suspension and its continuance till the disposal of the criminal case.

8. Arguments were heard and documents perused. First as to the claim for regularization of leave and payment of salary upto the period of suspension.

From Annexure A-1 series, it is seen that the leave applications preferred by him belong to the following spells:-

- (a) Casual Leave for 6 days from 15-06-2005 to 21-06-2005.
- (b) Casual Leave for 7 days from 15-07-2005 to 22-07-2005
- (c) Casual Leave for 4 days for 12-09-05, 13-09-05, 19-09-05 and 20-09-05.
- (d) Casual Leave for 6 days from 31-10-2005 to 09-11-2005

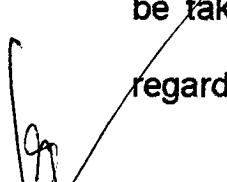
9. It is not really clear whether the entitlement for casual leave in a year would be to the extent of 23 days! Again, these were pertaining to 2005, while the charge sheet for unauthorized absence, and leaving Headquarters without permission etc., related to the period from 13-08-2001 to 18-08-2001 (Annexure R-1). The charge sheet was forwarded to the applicant as early as 22nd November 2002, vide Annexure R-2. As per the respondents, the applicant applied for 5 days CL in August 2001 and later requested for conversion of his casual leave to Half Pay leave and extended the leave upto 5th June 2002. The period of absence, if the details of the respondents are taken as correct, works out from 13-08-2001 to 30-01-2005 which amounts to a stupendous 1144 days, vide para 6 of their counter in OA No. 467/08 wherein it has been stated, "**Thereafter, the officer has requested for earned leave and half pay leave on medical ground from 13-08-2001 to 30-01-2005** and the same has been received from Principal Chief Conservator of Forests for further action as the power to sanction leave in respect of All India Service officers rests with the Government." It was by 22-02-2005 that the applicant reported to duty, when the department on the basis of inquiry conducted was to finalize the proceedings. Before a decision could be arrived at, the CBI filed the criminal case and the applicant had to be kept under suspension.

10. The expectation with an officer of All India Services, is that his status and rights/powers are commensurate with each other. It is appropriate to refer to the observation of the Apex Court in respect of status and Government Service, as spelt out in ***Roshan Lal Tandon v. Union of India, (1968) 1 SCR 185*** as under:-

"The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned."

11. As such, the applicant being a responsible officer of an All India Service, his conduct in his continued absence has not been viewed lightly by the respondents when they had issued the charge sheet and the legal procedure has to take its own course. Hence, as to his regularization of absence, the respondents have rightly stated, vide para 11 of their reply, **"It is also submitted that how the period of absence from 13-08-2001 to 22-02-2005 and till the date of suspension i.e. on 10-07-2007 is to be treated can be considered only after receipt of Government of India and taking a final decision in the matter."**

12. It is seen from the pleadings that reference to UPSC has been made requesting its advice over the disciplinary proceedings as early as in January 2008 and it is not exactly known whether the respondents had renewed their request by way of an expeditor. If not, it is high time that the UPSC is again approached so that its firm advice would be available and further action could be taken. As the entire matter rests upon the decision to be arrived at in regard to the disciplinary proceedings, OA No. 467/2008 is disposed of with a



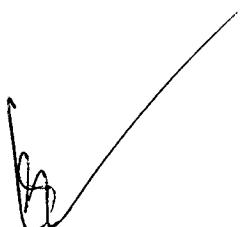
direction to the respondents to approach the UPSC to consider the pending issue in respect of the applicant and arrive at a conclusion at the earliest, whereafter the request of the officer for regularization of absence from duty be considered, as already stated in the counter, vide extract made above.

13. As regards OA No. 717/2005, it is seen that the applicant has been kept under suspension due to the pending criminal case before the criminal court and in their order passed on the appeal petition, the respondents have stated that "in view of the gravity of the charges against Shri. Bhasmakara Rao in the criminal case, the action of the Government of Kerala placing him under suspension vide their order dated 10-07-2007 is justified and is in public interest and therefore, the Appeal of Shri. Bhasmakara Rao deserves to be rejected. The President is, therefore, pleased to reject the Appeal dated 03-03-2008 of Shri. K. Bhasmakra Rao, IFS and uphold the order dated 10-07-2007 of the Government of Kerala placing him under suspension."

14. The question then is, whether the above order is justified, especially, when, as per the counsel for the applicant, the criminal case would take years to conclude and till then, the officer has to suffer the humiliation of being kept under suspension. Answer to this point would be available, if at this juncture, reference is made to the observation of the Apex Court in the case of **State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SCC 126**, wherein it has been stated as under:-

"11. This Court in U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan held that:

"Ordinarily when there is an accusation of defalcation of monies the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless,



malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered.

From the charge-sheet it is clear that the allegations against the first respondent are grave inasmuch as they indicate that the amounts mentioned therein are not deposited in the bank and forged entries have been made in the pass-book and the amounts are shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension."

12. *That was also a case in which the High Court passed interlocutory order and this Court, while reiterating that this Court does not interfere with the interlocutory orders, held that the Court was constrained to do so when the court had overlooked the serious allegations of misconduct.*

13. *It is thus settled law that normally when an appointing 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 inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry 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 inquiry 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 inquiry or contemplated inquiry 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 inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge. (Emphasis supplied)".

15. The criminal charge against the applicant under the Provisions of Prevention of Corruption Act, has been considered by the respondents as 'grave'. (See **Banshi Dhar v. State of Rajasthan, (2007) 1 SCC 324**). In that case the period of suspension was for eleven years. Also see **Principal Secretary Govt. of A.P. v. M. Adinarayana, (2004) 12 SCC 579** wherein, the Apex Court has held,

"In our view, the charge under the Prevention of Corruption Act is a graver offence than the routine misconduct contemplated under the Andhra Pradesh Civil Services (Conduct) Rules. A grave misconduct does not cease to be a misconduct because it is grave".

16. In view of the above, as it is the consistent view of the Apex Court that where the alleged criminal offence is grave enough, it would be appropriate not to interfere with the decision of the authorities, we are of the considered view that the decision by the respondents in rejecting the appeal filed by the applicant cannot be legally faulted with. The O.A. from this angle has to fail. It is, however, hoped that as and when the authorities conduct review from the point of view of subsistence allowance, they may also consider as to whether the applicant should be kept under continued suspension and act on the basis of the decision arrived at such review. With the above observation, the O.A. No. 717/08 is dismissed. The O.A. No.467/08 is disposed of in terms of the observations made in Para 12 above.

17. Under the circumstances, there shall be no order as to costs.

(Dated, the 28th October, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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