

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 566 of 2012

FRIDAY, this the 30th day of November, 2012.

CORAM :

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Prasanth KCS,
S/o. Late R. Ramachandran Nair, Aged 46 years,
Superintendent of Customs (Preventive),
(Under orders of suspension),
Custom House, Willingdon Island, Kochi- 9,
Residing at 'Saya', 2/246-G, Sankar Nagar,
Maradu P.O., Ernakulam : 682 304
... Applicant.

(By Advocate Mr. O.V. Radhakrishnan (Sr.) with
Mrs. K. Radhamani Amma)

v e r s u s

1. Commissioner of Customs,
Custom House, Willingdon Island,
Cochin - 682 009.
2. Chief Commissioner of Central Excise,
Customs & Service Tax, Kerala Zone,
Central Revenue Building,
I.S.Press Road, Kochi – 682 018
3. Union of India represented by its
Secretary, Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
New Delhi-110 001.
... Respondents.

(By Advocate Mr. George Joseph, ACGSC)

This application having been heard on 09.11.2012, the Tribunal on 30.11.2012 delivered the following:

ORDER

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

This O.A has been filed by the applicant mainly for revocation of suspension ordered as per Annexure A-2 as well as the extension of suspension from time to



time and to reinstate the applicant with full service benefits.

2. We have heard Mr. O.V. Radhakrishnan (Sr.) with Mrs. K. Radhamani Amma, learned counsel for the applicant and Mr. George Joseph, ACGSC, appearing for the respondents and perused the records.

3. Common facts and issues are involved in this O.A as well as O.A. No. 459/2012. For the sake of convenience, the order of this Tribunal dated 09.07.2012 in O.A. No. 459/2012 is reproduced in full as under:

" The applicant in this OA is a preventive officer of customs posted at the Cochin Region. By Annexure A-1 order dated 04.10.2010 on the ground of "contemplated disciplinary proceedings", he was placed under suspension and said suspension continues till date. Till today, no charge sheet has been framed against him, either in any Departmental Enquiry or in any criminal court. The grievance of the applicant in this OA is that despite a specific provision introduced in the rule relating to suspension vide Department of Personnel and Training O.M. No. 11012/4/2003/Estdt (A) dated 07-01-2004, that if the officer has been under suspension for one year without any charges being filed in a court of law or no charge-memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service, the applicant has been continued to be kept under suspension beyond the said one year. Hence, this OA seeking the following reliefs:

- (i)To call for the records leading upto the issue of Annexure A-1 and quash the same.
- (ii)To direct the 1st respondent to revoke the suspension of the applicant with immediate effect and allow him to join duty.
- (iii)Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

2. Respondents have contested the OA. They have stated that the Directorate of Revenue Intelligence, Chennai Zonal Unit effected a seizure of high valued electronic goods valued at Rs 1.35 crores (Market value) cleared from Cochin Air Cargo

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Complex on 29-09-2010 from a person and on verification, the goods were valued at Rs 8,400 only and on payment of customs duty of Rs 2,704/- the same had been cleared through Air Cargo Complex, Nedumbassery. The applicant being the Preventive Officer who had attended to the clearance of the baggage, was, therefore, kept under suspension in exercise of the provisions contained in Rule 10(1) of the CCS (CC&A) Rules 1965 vide Annexure A-1 on the ground of contemplated disciplinary proceedings. The said suspension had been duly reviewed periodically as per the Rules and the Committee, considering the gravity of the offence/misconduct had reviewed and recommended continued suspension of the applicant.

3. In addition to the above, the respondents have narrated further progress in the criminal case. They have stated that an FIR had been lodged by the CBI, Cochin Branch before the Hon'ble Court of Special Judge, CBI Ernakulam under section 120 B and 420 IPC and under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act against the applicant and certain others. And a regular case has also been registered against the applicant and five others by the CBI as communicated in their letters dated 24-08-2011 and 07.09.2011. The Review Committee took into consideration the above development in their review conducted during December, 2011 and recommended for continuance of the suspension of the applicant. Again, another Review took place on 02-03-2012 wherein it was recorded that pursuant to the FIR, the CBI has arrested the two officers including the applicant on 16-02-2012 and the applicant was remanded for two days in Police Custody, followed by 14 days judicial Custody. He was, however, released on bail on 21-02-2012. On account of the above development, in the said Review, the Committee decided to keep the applicant under suspension. And in the latest review conducted on 01-06-2012 also, noting the fact of the arrest of the applicant (and release on bail) as also of the further development that the CBI has taken up the matter with the authorities concerned for sanction for Prosecution for filing charge sheet before the Court in the criminal case and that the considered opinion of the Commissioner in favour of prosecution has been forwarded the same to DG (Vig), the Committee decided to keep the applicant under continued suspension.

4. The respondents have further stated that the provisions relied upon by the applicant that beyond 12 months of suspension, the same should be revoked if no charge sheet is filed, is that **ordinarily** such a reinstatement could be provided for, whereas, the instant case cannot be considered as an ordinary situation for the reasons of the extent of amount involved, the fact of the applicant's having been arrested and kept under custody for over 48 hours and the progress of the case for obtaining sanction for prosecution.

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5. Counsel for the applicant forcefully argued that the matter started with an order of suspension under Rule 10(1) of the CCS (CC&A) Rules, for contemplated Disciplinary Proceedings. Though the magnitude of clearance amounted to Rs. 1.35 crores, it is not the entire consignment that was cleared by the applicant and only a part of the same had been cleared. The CBI is yet to file charge sheet. The respondents cannot bring in the provisions of Rule 10(2) or ingredients thereof as this is a suspension order under Rule 10(1).

6. To a pointed question as to why the applicant did not disclose the fact of his arrest in the Original Application, which reflected the fact of a case having been registered inter alia against the applicant in which no charge sheet has been filed in the court, the counsel submitted that since the applicant's suspension order is under the provisions of Rule 10(1) of the Rules, there is no need for the same.

7. Counsel for the respondents submitted that the case is of such a serious nature that continued suspension is readily warranted. He has referred to the sequence of events that have taken place as contained in the reply and the Annexures thereto. Counsel further submitted that in view of the fact that the applicant had been kept under suspension at the time of his arrest by the CBI Police in connection with the offence explained, no separate order under Rule 10(2) had been passed.

8. Arguments were heard and documents perused. Though the matter of criminal case having been registered by the CBI has been briefly brought in para 4(8) of the OA, the attendant material fact of the applicant having been arrested in connection with the very same case and release on bail after a period of 12 days of police/judicial custody has been suppressed by the applicant. This omission cannot but be treated as deliberate suppression by the applicant. For, the matter is one of suspension and such an arrest has proximate nexus with suspension. Rules provide for deemed suspension in case of arrest or being kept in police custody for a period beyond 48 hours, vide Rule 10(2) of the Rules. For the purpose of reference, the entire rule is reproduced below:-

"10. Suspension.—(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a government servant under suspension—

(a) where a disciplinary proceeding against him is contemplated or is pending; or



(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A government servant shall be deemed to have been placed under suspension by an order of appointing authority—

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.—The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government

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servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."

9. The period of one year was over by October, 2011. By that time, the CBI has already registered an FIR. This has been kept in view by the Review Committee which met on 09.12.2011. And it was for this reason that the Review Committee had recommended to extend the suspension period of the applicant. Had there been no such development in the criminal case, perhaps, the applicant would have been covered under the provisions of OM dated 07-01-2004 relied upon by him, vide Annexure A-12. Though the OM did not explain as to which type of cases could be treated as "ordinary" and which, otherwise, tacitly, the same has been explained stating, "However, in case the officer is in Police/Judicial custody, or is



accused of a serious crime or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned." Thus, in the instant case, when the investigation is on by the CBI, the offence including alleged violation of the provisions of Prevention of Corruption Act, as well as IPC, the case falls under the term, 'serious crime' referred to in the very memorandum of 07-01-2004 and rightly the Review Committee has recommended that the suspension be extended.

10. As a matter of fact, if the decision of the Apex Court in the case of **Union of India vs Rajiv Kumar (2003) 6 SCC 516** is kept in view, no separate order of suspension is required if the case falls under 10(2). The Apex Court has in that case held as under:-

"14. Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction."

11. Obviously, the applicant has not come up with clean hands inasmuch as he has suppressed the material fact of his having been arrested by the CBI. In any event, on the basis of the recommendations of the review Committee, which has kept in view the development that has taken place in the criminal case against the applicant, the decision of the respondents cannot be faulted with.

12. The OA therefore, is devoid of merits and hence **is dismissed**. For the reason that the applicant has not come up with clean hands, justifiably exemplary cost could have been imposed against the applicant but the sober way of presentation of the case by his counsel has dissuaded us from levying the cost."

(emphasis supplied)

4. The only difference in facts in these two O.As is that the applicant in this O.A is a Superintendent of Customs (Preventive) whereas the applicant in O.A. No. 459/2012 is a Preventive Officer. This difference in fact, is not material for deciding the nature of the crime, the applicant in this O.A is accused of.

5. The CBI has registered a regular case against the applicant in this O.A



and the applicant in O.A. No. 459/2012 and others under Section 120-B read with 420 IPC and Section 13 (2) read with 13(1)(d) of the prevention of Corruption Act, 1988. They were arrested on 16.02.2012 and were remanded to 2 days police custody followed by 14 days of judicial custody and were enlarged on bail on 21.02.2012.

6. This Tribunal has already given a finding in O.A. No. 459/2012 that the type of case against the applicant therein is a serious crime meriting recommendation of the Review Committee for continuation of suspension of the official concerned. In the light of this finding, we do not consider it necessary to go into the merits of the contentions of the applicant in this O.A. except mentioning that the contention of the applicant that this O.A is similar to O.A. No. 535/2009 is not correct as both the O.As are distinguishable in facts.

7. Following the decision of this Tribunal in O.A. No. 459/2012, we hold that the applicant herein is accused of a serious crime referred to in the memorandum dated 07.01.2004 and rightly the Review Committee has recommended that the suspension be extended. We do not find any justification to interfere with the impugned orders of suspension and its extensions. Bereft of merit, the O.A. is dismissed. No order as to costs.

(Dated, the 30th November, 2012)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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