

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, KOCHI

ORIGINAL APPLICATION NO.599/2013

DATED THIS THE 25th DAY OF NOVEMBER, 2014

HON'BLE SHRI U.SARATHCHANDRAN ... MEMBER(J)
HON'BLE SHRI RUDHRA GANGADHARAN ... MEMBER(A)

Sri Mohammed Kudage,
Aged 54 years,
S/o V.A.Hussain,
Executive Engineer (under suspension),
Lakshadweep Public Works Department,
Kavaratti, UT of Lakshadweep, residing at "D-20"
Government quarters, Kavaratti,
UT of Lakshadweep 682 555. ... Applicant

(By Advocate Shri Shafik M.A.)

Vs.

1. The Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110 011.
2. The Administrator,
UT of Lakshadweep,
Kavaratti – 682 555. ... Respondents

(By Standing Counsel Shri S.Radhakrishnan for Respondent-2)

ORDER

HON'BLE SHRI RUDHRA GANGADHARAN ... MEMBER(A)

The applicant is an Executive Engineer in the service of the Lakshadweep Public Works Department. He was in additional charge of the



post of Managing Director of the Lakshadweep Co-operative Marketing Federation (LCMF), Kozhikode during June, 2008 to April, 2009. He was placed under suspension for alleged misconduct during this period. While a criminal case is pending in court, no disciplinary proceedings have been initiated against him so far and the suspension continues. Hence the present OA.

2. The applicant submits that he was given charge of the post of Secretary to the Administrator of the Union Territory of Lakshadweep (UTL) on various occasions during his tenure in Kochi. Since the Secretary to the Administrator is the ex- officio Managing Director of LCMF, the applicant held the charge with this position as well. The CBI registered an FIR dated 28.2.2009 under various sections of the IPC and the Prevention of Corruption Act, 1988, against several persons including the applicant and certain officials of the UTL Administration, alleging that they illegally diverted and sold subsidized High Speed Diesel (HSD) at open market rates. The CBI alleged that the applicant received about Rs.2,57,735 as illegal gratification for facilitating the unlawful diversion of a quantity of 2000 litres of HSD. The UTL Administration granted sanction to prosecute the applicant on 06.11.2010 and placed him under suspension under Rule 10 (1) of the CCS (CCA) Rules 1965, on 22.9.2012 (Annexure A1). A Review Committee headed by the Joint Secretary (UT) in the Union Ministry of Home Affairs recommended extension of the period of suspension of the applicant from time to time (Annexures A2 and A3).

2

3. The applicant has denied the charges. He submits that his representation dated 7.12.2012 (Annexure A5) to review Annexure A1 is yet to be considered and disposed of, that his suspension is being extended in a mechanical manner, that other officials named in the final report of CBI (Annexure A4) have been let off, and that the third accused has not even been placed under suspension. He submits that the respondents have acted in a mala fide manner. He points out that the trial is yet to start since the court of CBI Judge is over loaded and at the present rate of disposal it could take 10 or more years for his case to be heard and disposed of. Keeping him under suspension for such a long period is unfair as well as arbitrary. He alleges that he has been placed under suspension so that the charge of his post can be handed over to a junior officer who is not from Lakshadweep and that there seems to be a concerted move to accommodate people from the mainland in various positions in preference to natives of the UTL. The applicant cites an order dated 12.4.2012 in a similar matter in OA No.1063/2010 (Annexure A9) where an order of suspension was quashed by this Tribunal

4. In their reply statement the respondents submit that a criminal case against the applicant is pending trial and disciplinary proceedings against him are contemplated on the basis of very serious allegations, hence Annexures A1 to A3 are perfectly legal. Sanction to prosecute the applicant was given at the request of the CBI by the competent authority [Annexure R2(a)]. Contrary to the applicant's allegations the third accused



was also suspended. Moreover some of the other accused named in Annexure A4 (namely, A-I, A-IV, A-V, A-VIII and A-IX) are not employed by second respondent. There is no disparity in the way in which the accused have been treated by the respondents.

5. The respondents contend that suspension is not a punishment per se and that the charged officer gets enough opportunity to prove his innocence during the departmental enquiry. Under Rule 10 (1)(b) of the CCS (CCA) Rules, 1965, a Government servant has to be placed under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial. As per the instructions contained in the Central Vigilance Commission Manual, Chapter No.V, it is stipulated that public servants involved in criminal cases should be referred for suspension from service. Moreover an official facing criminal proceedings can influence the witnesses if he is allowed to continue in the office which he was holding. The provisions of Rule 10(5) (a), (6) and (7) have been strictly followed while extending the period of suspension of the applicant. The respondents deny the allegation that there is any mala fide involved.

6. In his rejoinder dated 12.11.2013 the applicant submits that the only reason given for placing him under suspension in the order dated 21.9.2012 is that a criminal case is pending. He reiterates his averments that the trial has not commenced, that no charges have been framed by the court, and that even preliminary hearing of the arguments concerning the veracity of the charges is yet to take place. He alleges that he was placed under suspension by a comparatively junior officer 19 months after

1

prosecution sanction was issued. He claims that the following response of the Secretary of LCMF to an RTI petition shows that the charges against him are without foundation:

1. *During the period of 13.6.2013 to 20.2.2010, no supply order/purchase order have found issued by Mohammad Kudage, then Managing Director, LCMF. 2. As per the Minutes of the LCMF during the period from 13.6.2008 to 20.2.2010, no decision is found recorded in the Minutes of the Board meeting for issue supply orders for supply of HSD oil, to M.M.Associates/H.K.Mohammad Kassim.*

7. The applicant also alleges that the guidelines identified by the Hon'ble Madras High Court in the case of State of Tamil Nadu Vs Giriappa (LABIC 51) have not been adhered to in the present case. He cites the judgment of the Hon'ble Supreme Court in Royappa versus State of Tamil Nadu (AIR 1974 SC 555) which prohibits mala fide and arbitrary exercise of power. He also cites the decision of the Hon'ble Supreme Court in E.S.Reddy Vs. Chief Secretary, Government of A.P.[(1987) 3 SCC 258], which held that selective suspension offends Article 14 of the Constitution. He submits that the respondents have taken the stand that they will not consider reinstatement of the applicant until the completion of the proceedings in the court, knowing that the case cannot and will not be completed even within 10 years. The Hon'ble Supreme Court of India has clearly clarified the purpose of suspension in Sundarshan Vs. Superintendent of Police, Kolar Gold Fields (1984 Lab.IC 359) that the ... *object and purpose of placing a civil servant under suspension is to keep him away from a position where he can interfere with the conduct of inquiry or tamper with the documentary or oral evidence in, or, where, having*

1

regard to the nature of charges against him, it is felt that it would be unsafe to continue to vest in him the power of the post.

8. The applicant cites the instructions of the Union Department of Personnel and Training in OM.No. 11012/4/2003 ESHCA dated 7th January, 2004, and 12th July 2007, as well as various other judgments of the Hon'ble Supreme Court including P.L.Sha V. Union of India (AIR 1989 SC 985) and O.P.Gupta V. Union of India (AIR 1987SC 2257) which are intended to ensure that suspension does not become punitive in nature. He alleges that the review committee has merely endorsed the proposal to extend his suspension while ignoring standing instructions on the subject.

9. In their additional reply statement the respondents contend that the seniority of the IAS officer is not the question to be considered while suspending a subordinate officer, that prosecution sanction was accorded by the competent authority, and that the review committee comprises officers of the rank of Joint Secretary who have recommended extension of suspension after duly considering all aspects. The suspension itself has been extended based on the recommendation of this committee. They have also produced a document dated 13.12.2013 [Annexure R2 (b)] which states that the case against the applicant stands posted to 14.1.2014 for preliminary hearing.

A

10. The issues to be considered here are whether suspension of the applicant was warranted and whether his continued suspension is desirable.

11. Rule 10 (1) (c) of the CCS (CCA) Rules empowers 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 of India by general or special order, to place a Government servant under suspension

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

12. In this connection the instructions of O.M.No.11012/4/2003-Estt.(A), dated 7.1.2004 state that:

2. A Government servant against whom proceedings have been initiated on a criminal charge, but who is not actually detained in custody (e.g., a person released on bail) may also be placed under suspension under Clause (b) of Rule 10(1). If the charge is connected with the official position of the Government servant or involves any moral turpitude on his part, suspension is to be ordered under this rule unless there are exceptional reasons for not adopting this course.

13. This is further supplemented by DOPT's O.M.No.11012/4/2003-Estt.(A), dated the 2.1.2014 which states that the disciplinary authority may consider placing an official under suspension in the following circumstances:

4(iv) where allegations have been made against the Government servant and preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or is being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

14. In State of Orissa through its Principal Secretary, Home Dept. V. Bimal Kumar Mohanty [JT 1994 (2) S.C.51] it was held that:

.....Suspension is not a punishment but it 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 malafides, 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.

On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending enquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and this court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.

15. The records show that the order of suspension was issued in compliance with the rules and instructions of the DOPT cited in paragraphs 11 and 12 above. The suspension was ratified and then extended in Annexures A1 to A3 by the competent authority in the manner prescribed. Although the applicant has attributed mala fides, he has neither named the alleged perpetrators of the mala fides, nor been able to substantiate such allegations. The allegation that this is part of a conspiracy to replace natives of the UTL with persons from the mainland is not particularly convincing. The order of this Tribunal in OA No.1063/2010 (Annexure A9) referred to a case that involved disciplinary proceedings involving a minor

2

penalty, and so cannot be compared to the present matter where the charge described in paragraph 2 above appears more serious. The order of suspension is also in harmony with the judgment cited in paragraph 13 above.

16. The continued suspension of the applicant, however, calls for more thought. We do not know if the respondents considered whether the purpose could be served by transferring the applicant to a post where he would not be in a position to influence the investigations or tamper with evidence. The DOPT has issued consolidated instructions on the subject of suspension in OM No.11012/17/17/2013-Estt. (A) dated 2.1.2014. Paragraph 3 states that:

3. *Suspension, though not a penalty, is to be resorted to sparingly. Whenever, a Government servant is placed under suspension not only does the Government lose his services but also pays him for doing no work. It also has a stigma attached to it. Therefore the decision to place a Government servant under suspension must be a carefully considered decision and each case would need to be considered on merits.*

17. In this connection the following paragraph from DOPT's O.M.No.11012/4/2003-Estt. (A) dated 7.1. 2004 is worth citing.

3. *The Review Committee(s) may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice to the foregoing, 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 without prejudice to the case against him. 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.*

18. The DOPT has also emphasized the need to quickly dispose of disciplinary cases in its OM No O.M.No.11012/4/2003-Estt. (A) dated 6.4.

1

2004, even pointing out that Courts have set aside orders imposing penalties in view of inordinate delay in initiating action.

19. In B.Srinivasulu v. Secretary, State Legislature (A.P.) [1994 (8) SLR] it was held that:

It is possible that in some cases the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is to call for an explanation from the authorities in the matter and if it is found unsatisfactory to direct them to complete the enquiry within a stipulated period. In the present cases after going through the counter filed by the respondent authorities and after perusing the files where the impugned decisions were reached, the Court is not prepared to condemn the impugned actions as unreasonable or arbitrary or made in violation of principles of natural justice or without application of mind. The Court finds that there was justification for the respondent-authorities to extend the period of suspension. As rightly argued by Sr V.Venkataramanaiah, the learned senior counsel that if after suspension enquiry is unduly delayed or prolonged then it may show the suspension is not bona fide and that the officer who is kept under suspension is entitled to ask on suspension that the matter should be investigated with reasonable diligence and charges should be framed within reasonable period of time and if such a principle of natural justice is not recognized then it would imply that the executive is vested with a totally arbitrary and unfettered power of placing its officer under disability and arbitrary and unfettered power of placing its officer under disability and distress for an indefinite duration. It is also true that suspension of the petitioners in the present cases is not a measure of punishment. It may not be punishment, nevertheless the suspended petitioners carry stigma, public ridicule and they will be under a cloud so long they are kept under suspension. Therefore, principles of natural justice and fair play require that the disciplinary authorities and the investigating authorities should act with promptitude and necessary zeal to complete the investigation at the earliest possible time. However, as pointed out supra, the Court finds that there was justification for the respondents authorities to extend the periods of suspension by further periods. In that view of the matter, the court does not find any justification to interfere with the impugned orders (emphasis added).

20. In N.Prabhakar Murthy Vs. Tirumala Tirupathi Devasthanams, Chittoor Dist. [1992(1) SLR 555] it was held that:

1

.....Generally this Court will not interfere with the suspension orders made pending disposal of a case before the A.C.B. Court. But in this case, for 3 long years, the department has not taken any action. The action taken by the authorities by suspending the petitioner merely on the ground that a charge-sheet has been filed against the petitioner after a long lapse of six years, is illegal and arbitrary and calls for interference by this Court and the Writ petition itself is to be allowed.

21. While recognizing that the power of this Tribunal to interfere in matters concerning suspension is limited, we nevertheless feel there is scope for the respondents themselves to assess the situation afresh. There is no reason for the respondents to await the outcome of the trial, which the applicant rightly apprehends may well take years, before they venture to initiate any disciplinary proceedings against him. Nothing prohibits the respondents from pursuing disciplinary action during the pendency of the trial. Moreover, having placed the applicant under suspension as far back as on 6.11.2010 the respondents cannot simply sit back and extend his suspension from time to time, ignoring his rights. We therefore issue the following directions to the respondents.

- a) The respondents will consider and take a decision on the question of initiating disciplinary proceedings against the applicant within a period of three months of receiving a copy of this order, based on the merits of the case.
- b) The respondents will arrange to conduct a fresh review of the suspension of the applicant and decide whether his continued suspension is warranted or not within a period of two months of receiving a copy of this order. While doing so, the respondents will keep in mind the merits of the case, the instructions of the DOPT referred to in paragraphs 16 to 18

1

above, as well as the judgments cited in paragraphs 19 and 20 above. We expect the respondents to issue a reasoned order justifying their decision.

22. The OA is disposed of accordingly. There is no order as to costs.

sd.

Rudhra
(RUDHRA GANGADHARAN)
MEMBER(A)

U.Sarath
(U.SARATHCHANDRAN)
MEMBER(J)