

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.615/08

Friday this the 16th day of January 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

P.R.Vijayan,
Deputy Commissioner of Customs (under suspension),
Office of the Commissioner of Customs (Preventive),
Central Revenue Buildings, I.S.Press Road,
Cochin – 18.Applicant

(By Advocate Mr.C.S.G.Nair)

Versus

1. Union of India represented by its Secretary,
Department of Revenue, North Block,
New Delhi – 110 001.
2. The Chairman,
Central Board of Excise and Customs,
North Block, New Delhi – 110 001.
3. The Chief Commissioner,
Central Excise and Customs,
Central Revenue Buildings,
I.S.Press Road, Cochin – 18.
4. The Commissioner of Customs (Preventive),
Central Revenue Buildings,
I.S.Press Road, Cochin – 18.Respondents

(By Advocate Mr.M.V.S.Nampoothiry,ACGSC)

This application having been heard on 16th January 2009 the
Tribunal on the same day delivered the following :-



ORDER**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant was suspended from service in terms of Sub Rule (1) (b) of Rule 10 of the CCS (CCA) Rules, 1965 vide Annexure A-1 order dated 3.8.2007 as a case against him in respect of a criminal offence was under investigation. The aforesaid rule reads as under :-

"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 -

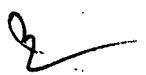
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(b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial."

Thereafter, vide Annexure A-6 order dated 20.10.2008 after careful consideration of the recommendation of the Review Committee set up in the light of DoPT's O.M.No.11012/4/2003-Estt(A) dated 7.1.2004 as well as the representation of the applicant dated 1.8.2008, the competent authority decided that his suspension shall continue for a further period of 180 days beyond 23.10.2008.

2. Counsel for the applicant, Shri.C.S.G.Nair, has submitted that since the investigation in the aforesaid criminal case has already been completed and the charge sheet has also been filed in the CBI Special



Court, Ernakulam, there should not have been any apprehension on the part of the respondents that the applicant would tamper with the evidence and therefore, the continuation of suspension is illegal and unwarranted. He has also submitted that the applicant is going to retire on 31.5.2009 and the continuation of suspension will prejudicially affect him.

3. Respondents, on the other hand, submitted that the allegation against the applicant in the criminal case was that he has amassed wealth to the tune of Rs.76,80,700/- in his name and in the names of his family members, which is disproportionate to all his known source of income. Thereupon, a case as RC 22 (A)/2006 was registered against him and six others under Section 120B and 109 of IPC and Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 by the Cochin Unit of the CBI as the investigation revealed that he hatched a criminal conspiracy with his nephew Saju Parameswaran, his son-in-law Rasi Balakrishnan, his wife Smt.Vasantha, his daughters Smt.Dhanya, Smt.Divya and Smt.Navya to possess illegally amassed assets in their names by routing through Money Exchange centres in UAE to the newly opened accounts and existing accounts in the name of his wife, daughters, son-in-law, nephew etc. They have also referred to the guidelines prescribed by the Government in the matter of suspension/continuation of suspension which has been reproduced by the applicant himself in para 8 of his OA, which reads as under :-



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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.

4. According to Shri.M.V.S.Nampoothiry, the learned counsel for the respondents, the principles envisaged in the aforesaid guiding principles are good and sufficient reasons for rejecting the prayer of the applicant for reinstatement in service pending trial in the criminal case initiated against him. According to him, if the applicant is reinstated, it would prejudice the trial of the pending criminal case and would seriously subvert discipline in the office. He has also submitted that the applicant cannot claim reinstatement solely for the reason that charge sheet in the



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case has already been filed by CBI. As the Review Committee has considered the entire aspects carefully and meticulously, the challenge against Annexure A-1 and Annexure A-6 is unsustainable. Counsel for the respondents has further argued that in the matter of suspension, the Courts and Tribunals would not ordinarily interfere and the decision of the Review Committee shall prevail unless it is found to be illegal or arbitrary, particularly when criminal case is pending against the delinquent employee and it is under trial. He has also relied upon the judgment of the Apex Court in Punjab National Bank Vs. D.M.Amarnath (2000 Vol.10 SCC 163) in this regard. Being a very short one, it is reproduced as it is as under :-

1. Heard counsel on both sides.
2. Leave granted.
3. The respondent was an employee in the appellant Bank. On the basis of certain alleged misconduct on the part of the respondent, he was placed under suspension by order dated 19-4-1996, by the competent authority in terms of Regulation 12.1 of the Punjab National Bank Officers Employees (Discipline and Appeal) Regulations, 1977. The said order of suspension was challenged. The High Court took the view that the order of suspension did not mention whether any disciplinary proceedings were contemplated or were pending against the respondent or any criminal case was under investigation, inquiry or trial and hence the order was not maintainable. The suspension was quashed. The Bank has come up in appeal.
4. In our opinion, the law does not require that the suspension order must on its face disclose that any disciplinary proceedings were contemplated or were pending or that any criminal offence was under investigation, inquiry or trial. It would be sufficient if the competent authority recorded in its proceedings that the conditions mentioned in Regulation 12.1 were in existence.

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5. Learned counsel for the appellant Bank has produced before us the relevant file of the Department. It shows that the above conditions are satisfied, disciplinary proceedings were contemplated, and in fact a criminal case itself is pending.

6. For the abovesaid reasons, the order of suspension was justified when it was passed. The High Court was wrong in relying upon the judgment of the Karnataka High Court in Channamallappa Kallappa Roogi v. S.M. Megur, Administrative Officer, Distt. School Boards which is reproduced below:

"In order of suspension which does not state that it was a prelude to the institution of any disciplinary proceeding amounts to perpetual suspension and a punishment, and is illegal. Only in the event of the authority proposing to commence disciplinary proceedings, there could be an order of suspension."

7. If it was intended to lay down that the order of suspension must state that disciplinary proceedings are proposed or are pending and otherwise, the order would be bad, we are unable to agree with such a view.

8. The order of the High Court is set aside. The suspension order is restored. It should not, however, be understood that we have said anything on merits of the allegations which are pending whether in the disciplinary inquiry or in the criminal court.

9. The appeal is allowed. There shall be no order as to costs.

5. We have considered the arguments of both Shri.C.S.G.Nair for the applicant and Shri.M.V.S.Nampoothiry,ACGSC for the respondents. We have also perused the rule position. Rule 10 (1) (b) of the CCS(CCA) Rules, 1965 clearly says that 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 where a case against

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him in respect of any criminal offence is under investigation, inquiry or trial. In the present case, undisputedly, the criminal case is under trial as in the case of Punjab National Bank (supra). We also agree with Shri.Nampoothiry and hold that the view of the Review Committee as approved by the competent authority in such matters cannot be substituted by this Tribunal so long as there are no allegation of bias, arbitrariness etc. We, therefore, consider that the respondents are quite justified in ordering the continuation of the applicant under suspension. It is only incidental that he is retiring on 31.5.2009. We, therefore, do not find any merit in this case. The O.A is, accordingly, dismissed. There shall be no order as to costs.

(Dated this the 16th day of January 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER