

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 191/2000

Thursday the 8th day of June, 2000.

CORAM

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Ram Karan Singh Nim
Assistant Director (U/S)
Enforcement Directorate
A2, Alsa Spring Field
Easwaravilasam Road
Jagathi
Trivandrum-14.

Applicant.

By advocate Mr C.S.G.Nair

Versus

1. Union of India represented by
Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi.
2. The Deputy Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi.
3. The Director
Enforcement Directorate (FERA)
Lok Nayak Bhavan
New Delhi.

Respondents

By advocate Mr P.Vijayakumar, ACGSC

The application having been heard on 8th June, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash Annexure A-4.


A-4 is the order dated 7th February, 2000 by which the
applicant has been placed under suspension with immediate
effect. The first ground stated is that the order of



suspension is issued on the ground that a disciplinary proceedings under the Foreign Exchange Regulation Act is contemplated, that there is no provision under the FERA for disciplinary proceedings and that for violation of the provision of FERA, prosecution can be launched under the relevant provision. As far as this ground is concerned, it is submitted by the learned counsel for the applicant that a charge memo has been served on the applicant and this ground no longer exists.

2. Another ground stated is that the order of suspension is issued without notice or calling for any explanation. It cannot be said that an order of suspension can be issued only after issuance of a notice or calling for explanation from the concerned employee.

3. Another ground raised is that during the suspension period, Headquarters of the applicant is fixed at Chennai and usually the Headquarters used to be fixed at the place where the officer was on duty last or the Headquarters of the Department. In Swamy's Manual on Disciplinary Proceedings for Central Government Servants, 1999 Edition at page 189 under the heading 'Headquarters during Suspension', it has been stated that the competent authority can change the Headquarters of a Government servant in public interest. So there is no taboo in fixing the Headquarters of the applicant at Chennai during the suspension.



4. The last ground raised is that orders regarding subsistence allowance are yet to be issued. It is submitted by the learned counsel for the applicant that orders have been issued by the competent authority granting subsistence allowance. Learned counsel appearing for the respondents made available in a sealed envelope the allegations against the applicant. From the same, we find very serious allegations. Normally when the authority competent seeks to suspend an employee pending enquiry or contemplated enquiry or pending investigation into grave charges, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be enquired into or investigated and the nature of evidence placed before the authority concerned and on due application of mind. It is for the authority concerned to consider the above aspects and decide whether it is expedient to keep an employee under suspension. It is well settled that suspension is not a punishment. It is only one of forbidding or disabling an employee to discharge the duties of the office or post held by him. It would be another thing if the action is actuated by malafides, arbitrary or for ulterior purpose. There is no allegation of malafides or ulterior purpose in this case. The authority concerned has necessarily to 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.


5. Learned counsel appearing for the applicant drew our attention to A-5 and A-6. A-5 only says that every efforts



should be made to file the charge-sheet in court or serve the charge sheet on the Government servant, as the case may be, within 3 months of the date of suspension and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay. Since it is the admitted case of the applicant that a charge memo has been served on him, A-5 has no application here.

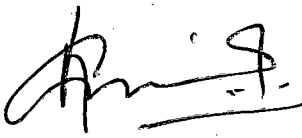
6. A-6 says that in cases of officers under suspension, the investigation should be completed and a charge sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officer in cases of departmental proceedings within six months as a rule and if the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty and that if the presence of the officer is considered detrimental to the collection of evidence etc. or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order.

7. Based on A-6, the learned counsel of the applicant submitted that when a charge memo is served on the applicant, the applicant is entitled to get the suspension revoked. On a careful reading of A-6, we are unable to come to such a conclusion. According to us, A-6 does not mandate that on serving a charge memo, the delinquent servant as a matter of right is entitled to get the suspension revoked.



8. Accordingly we do not find any merit in this OA and the same is dismissed. We hope that the respondents shall expedite the disciplinary enquiry against the applicant and complete it without delay.

Dated 8th June, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order

A-4: True copy of the Order No. 9/13/99-Ad.IC dated 7.2.2000 issued by the 2nd respondent.

A-5: True copy of the O.M. No.39/39/70/Est.(A) dated 4.2.71 of the Cabinet Secretariat (Department of Personnel) taken from Swamy's manual on Disciplinary Proceedings.

A-6: True copy of O.M.No.221/18/65 AVD dated 7.9.65 of Ministry of Home Affairs taken from Swamy's manual on Disciplinary Proceedings.