

Central Administrative Tribunal
Ernakulam Bench

Dated Wednesday the twentyfirst day of June,
One thousand, nine hundred and eighty nine.

PRESENT

Hon'ble Shri P.K. Kartha, Vice Chairman

and

Hon'ble Shri N.V. Krishnan, Administrative Member

Original Application No.207/89

C.V. Zaide

: Applicant

Vs

1. Union of India,
Represented by the Secretary to
Central Board of Excise & Customs,
North Block, New Delhi.) : Respondents
2. The Collector of Central Excise,
Cochin.)

M/s K, Ramakumar & VR Ramachandran : Counsel for applicant

Mr. Thomas John, ACGSC : Counsel for respondents

O R D E R

Shri N.V. Krishnan

The applicant was working as Superintendent of Central Excise in Kanhangad Range in Kasarkode District. By an order dated 19.9.1988 (Annexure-A), issued under Rule 10 of the Central Civil Service (CCA) Rules, 1965, Rules for short, the applicant was suspended, as a case against him in respect of a criminal offence was under investigation.

2. Though an appeal^{lies} against an order of suspension under Rule 23, apparently, the applicant did not prefer one. Instead, he made a representation dated 26.9.1988 (Annexure-B) to the Secretary, Central Board of Excise and Customs, New Delhi (Respondent No.1). As no reply was received by him, he has filed this application seeking to quash the

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order of suspension (Annexure-A) and a direction to reinstate him in service in the same post from which he was suspended.

3. We have heard the counsel of both the parties and carefully perused the record of the case.

4. The applicant ~~claims~~ and this is not denied by the respondents - ~~that~~ he has an unblemished record of 32 years of service and that he has only 27 months more to retire. The impugned order (Annexure-A) does not give any particulars about the criminal case under investigation, which is the basis of the suspension. However, the applicant - obviously because of his personal knowledge - avers, that this could be due to Crime No. RC 23/A/88 registered by the Special Police Establishment on 7.9.1988 and this is confirmed by the Respondents' reply.

5. The charge against the applicant is ^{that} he entered into a conspiracy with one Mr. VK Nambiar, Proprietor of M/s Anjali Financiers and Bankers - referred to hereinafter as the private party - doing banking business, including gold loan transactions. The learned counsel for the applicant, Shri K Ramakumar, points out that the applicant's name has been unnecessarily dragged in the First Information Report (FIR) which, it is alleged, does not contain any details regarding any connection or involvement of the applicant in any thing illegal. He further urges that

the suspension has been made at the instance of the Incometax authorities, without application of mind.

6. In a raid of the premises of the private party by the income tax authorities, on 24.3.1989, 11.903 Kgs of gold ornaments were seized and taken into custody, because, urge the Respondents, Mr. VK Nambiar had admitted then that this was unaccounted for gold. Nevertheless, the Inspecting Assistant Commissioner of Incometax (I.A.C., for short), subsequently directed the release of the gold ornaments since the GS-3 return filed by the private party with the applicant showed that the gold ornaments were accounted for and pledged by various persons. However, the return of the gold to the party was stayed by the orders of the Commissioner of Income Tax.

7. The applicant has claimed - and this has not been denied - that the High Court of Kerala in OP No.4586/88 and 7901 of 1988 has ordered the release to the private party of all the materials seized from him by the Income-tax Department. The learned counsel for the applicant claims that this circumstance alone is sufficient to disprove the allegations against the applicant.

8. In his representation to Respondent No.1 (Annexure-8), the applicant has stated that, apparently, the Income-tax Department got an impression that the applicant had gone out of ^{the} way to help the private party, by making available to him a fabricated return in Form GS-3. The learned counsel of the applicant also suggests that it was to

merely bolster up a losing case - as evidenced by the release⁽¹⁾ of the seized property ordered the IAC and the High Court - that this case has been framed against the ⁽²⁾ applicant.

9. The hollowness of the case against him is, urges the applicant, proved by the fact that though officers of the CBI conducted a simultaneous search of a room attached to his office and the house of his wife where he resides, no incriminating material has been taken into custody. No material, whatever, has been recovered indicating even a remote connection with the alleged crime.

10. Shri K. Ramakumar points out that certain Guiding Principles have been framed by the Government of India in this connection, vide the Ministry of Home Affairs letter No.43/56/64 AVD dated 22.10.1964 reproduced in "Swamy's Manual on Disciplinary Proceedings for Central Government Servants." Four circumstances have been cited where a disciplinary authority may consider it appropriate to suspend a govt. servant. The learned counsel points out that only the first, out of the four circumstances mentioned, has relevance in this case - ie. suspension may be considered to be appropriate where continuance in office of the govt. servant will prejudice the investigation - for example, apprehended tampering with witnesses or documents. The remaining three circumstances are not applicable, considering the facts of the case. His allegation is that

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there was not a shred of evidence to either connect the applicant with the crime or to suspect that he would tamper with the evidence, because the Deptt. had already raided his office and residence and seized whatever they wanted. Therefore, the suspension had no basis and therefore deserves to be quashed. He also points out that the reply affidavit filed by the respondents does not contain an averment to the effect that the continuance of the applicant in office will prejudice the investigation that is now going on.

11. On behalf of the respondents, Shri Thomas John, the learned Additional Central Govt. Standing Counsel, first pointed out that the close connection of the applicant with the crime has been mentioned specifically in the F.I.R. The FIR shows the applicant as the first accused and VK Nambiar, the private party, as the second accused. Besides narrating the facts as in para 6 supra, the FIR states that the applicant and Mr. Nambiar entered into a criminal conspiracy in pursuance of which they created false and ante-dated GS.3 returns in order to show that the seized ornaments were all accounted for. The FIR also states that as a result of the conspiracy, false and forged documents were prepared and the applicant, by abusing his official position, facilitated the private party to use such documents to cheat the Central Excise Department/Income Tax Departments. It is also alleged that the investigating agency has reliable

information that the applicant had received illegal gratification of Rs.2 lakhs from the private party, which, as a result of this conspiracy, had obtained undue pecuniary advantage of Rs.35 lakhs.

12. The learned counsel urges that strong grounds were disclosed in the FIR involving the applicant in serious offences under the Indian Penal Code and the Prevention of Corruption Act. and there was a prima facie case against him. Therefore, suspension of the applicant was ordered. The case is still under investigation. The quarterly review of the suspension has been made twice and a report has also been sent by Respondent No.2 to his next higher authority.

13. The reply also states that a preliminary inquiry conducted by the department shows that the private party "had filed GS-3 returns with the applicant on 2 occasions for the quarter ending 30.9.1987 and 31.12.1987 and the quantities shown in the 2nd return are very high, compared to the earlier one. The second return which shows a larger quantity, is not entered in the inward correspondence register of the Range as receipts. Further, the applicant did not make any audit on the discrepancy or any investigation about it. . Hence, it is reasonable to presume that the applicant received the second return much later, probably after the Income-tax raid and initialled it by putting an ante-date" (emphasis ours).

14. It is stated that the representation (Annexure-8) has since been rejected by the President of India though ^acopy of the order has not been filed.

15. The learned counsel for the respondents has specifically drawn our attention to note ^(b)below the Guiding Principles referred to in para 10 supra. This sets out the types of misdemeanor where suspension may be desirable in the four circumstances mentioned therein. One set of misdemeanor is corruption and misuse of official power for personal gain. He urged that in this case all these ingredients exist.

16. He, therefore, concluded that the suspension was on concrete evidence and application of mind and therefore this application has to be rejected.

17. We have given our anxious and careful consideration to the record of the case and the arguments addressed before us. We notice that specific allegations have been made in the FIR about the applicant, as is alleged in para 3&4 of the reply affidavit. However, a senior officer of the Income-tax Department like the Inspecting Assistant Commissioner of Income-tax, had released all the seized ornaments to Mr. VK Nambiar, even though the ornaments were seized by the officers of the same Department on the ground that they were admitted to be unaccounted ornaments by Mr. Nambiar himself at the time of seizure. His order was not given effect to because of directions to the contrary

from the Commissioner of Income Tax. Be that as it may, in view of the specific mention made in the FIR, we are of the view that some legitimate ground may be urged in favour of the order of suspension.

18. We have to consider whether his continued suspension is justified. A period of 9 months has already elapsed from the date of suspension. The case is stated to be still under investigation. The statement made by the applicant that no incriminating material was seized from the raids conducted in his office room and his residence has not been denied. The manner in which the applicant is alleged to be associated with the offence is also not quite convincing. For, the first portion of the respondents' reply extracted in para 13 supra cannot necessarily lead to the presumption emphasized by us. In any case, there is no averment by the respondents that the suspension of the applicant was needed to ensure that that the investigation was not ^{interfered or} tampered with. Even if that be an unstated ground, the transfer of the delinquent officer can keep him away from the scene of investigation and ensure that there is no interference by him. That has not been considered as an alternative.

19. We are also of the view that the strength of the prima facie case against the applicant when his suspension was ordered, has been eroded since. For, as ~~averred~~ by the applicant, the High Court of Kerala has since directed the

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income tax authorities to release all ornaments to the private party. We have to presume that such orders would not have been passed, if there was a prima facie case against that private party. Further, Respondents have neither produced any evidence nor shown any reasonable ground to claim that the continued suspension is necessary in public interest. In these circumstances, we are of ^{the view} ~~that the~~ continued suspension of the applicant is, now not justified.

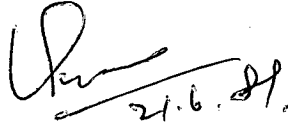
20. Accordingly, we quash the impugned order dated 19.9.1988 suspending the applicant (Annexure-A) with immediate effect. We would not like to direct his reinstatement in the same post from which he was suspended, but leave the question of his posting to the discretion to the Respondents. The Respondent (1) or (2), as the case may be, is, however, directed to pass suitable orders within one month from the date of receipt of a copy of this order, giving the applicant a posting, keeping in view the fact that he has about 27 months only left to attain the age of superannuation.

21. The applicant will be entitled to full pay and allowances during the period from the date of this order to the date on which he actually joins duty and this period will count as duty for all purposes. The period of suspension from 19.9.1988 till the date of this order shall be regulated in accordance with the rules.

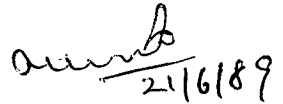
22. The Registry is directed to communicate this order urgently to the Respondents.

23. With these directions, the application is allowed.

There will be no order as to costs.



(N.V. Krishnan)
Administrative Member
21.6.89



(P.K. Kartha)
Vice Chairman(J)
21.6.89