CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 366/2009

this the 27 th day of August , 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

S. Pulikeshy IPS
Additional Director General of Police
residing at Arudra Villa
Bhagvathy Nagar
NCC Road, Peroorkada
Trivandrum. .. Applicant

By Advocate Mr. Nandakumara Menon Sr., P. K. Manoj Kumar and Sushya Rajan

Vs

1 Union of India represented by
the Secretary, Ministry of Home affairs
North Block, New Delhi-110001

2 The State of Kerala
represented by the Chief Secretary
to Government
Secretariat, Trivandrum. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1
Advocate Mr. P. Nandakumar GP for R-2

The Application having been heard on 27.7.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The challenge in this case is against Annexure A-1 order dated 18.2.2009 placing the applicant under suspension and Annexure A-15 order dated 18.5.2009 extending the suspension for a further period of 180 days.

2 The applicant is a member of Indian Police Service, Kerala cadre 1977 batch. While he was working as Inspector General of Police, on 12.10.2001 he was appointed on deputation as the Chairman and Managing Director of the Kerala State Civil Supplies Corporation (SUPPLYCO for short). He was reverted back on completion of the deputation period, to the Police Service on 4.10.2004 and was working as Additional Inspector General of Police Armed Police Battalion, Kerala State. While so, he was served with an order of suspension dated 18.2.2009 (A1). The suspension was ordered on the ground that the CBI has reported that there were certain irregularities in the purchase of medicines for Maveli Medical stores during the tenure of applicant in SUPPLYCO and that the SUPPLYCO has suffered a loss of Rs. 54,97,947.00 due to the alleged purchase and that Sri Alappatil Srinivasa rao a Chillie Supplier to SUPPLYCO suffered much hardship from the SUPPLYCO by way of delay or rejection of lorry loads of the commodity supplied due to the suspected connection between the applicant and another. The applicant is challenging the suspension order on the grounds that it is based on extraneous consideration as he is one of the seniormost officers of the Police Service in the rank of Addl. DGP likely to be considered for promotion to the post of DGP, had left the services of the SUPPLYCO as early as on 4.10.2004 and that, it is based on irrelevant facts, denial of copies of the reports referred to in Annexure A1 has caused considerable prejudice to the applicant in effectively challenging A1 which amounts to flagrant violation of the principles of natural justice and that the 1st respondent has failed to exercise the statutory duties under Rule 16 of the All India Service (Discipline and Appeal) Rules, 1969 by refusing to consider Annexure A-14 appeal. Hence, he filed this O.A. to set aside orders at Annexures A-1 and A-15, direct the respondents to reinstate the applicant in service forthwith and direct the first respondent to consider Annexure A14 Appeal in accordance with law.

3 The 2nd respondent filed reply statement controverting the averments in the O.A. At the outset relying on the order of the Full Bench (Hyderabad Bench of the Tribunal in O.A. No. 27/90 B. Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru) and the decision of the Tribunal in O.A. 593/07 (V. Gopinathan IFS Vs. State of Kerala) the OA is opposed as not maintainable either in law or on facts. On merit, it is submitted that the 2nd respondent has received two reports from the CBI regarding the irregularities that had occurred during the tenure of the applicant as Chairman & Managing Director of SUPPLYCO and that the applicant has been arrayed as the main accused in the case, along with other accused have cheated the Corporation by purchase of medicines at exorbitant rates thereby caused pecuniary loss of Rs. 54,97,947/- to the Corporation. The second charge was based on a complaint from Sri Alappati Srinivasa Rao Proprietor, M/s Sravan Kumar Traders, Eluru that faced much hardship from the SUPPLYCO by way of delay or rejection of lorry loads of the commodity supplied due to the suspected connection between the applicant and another. The CBI has requested prosecution of the applicant for the 1st charge under Section 120-B IPC r/w 420 and Section 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988 and for the second charge recommended Departmental action for major penalty proceedings against the applicant for his gross misconduct. They have denied the allegation of extraneous or irrelevant considerations for suspension of the applicant They submitted that since the process for disciplinary action and prosecution sanction against the applicant is moving ahead, the State Govt. extended the period of suspension of the applicant for another 180 days. They also submitted that the reports of the CBI are denied to the applicant as per provisions of Right to Information Act.

4 The 1st respondent has not filed any reply statement.

5 We have heard learned counsel appearing on both sides and carefully gone through the records produced before us.

6 The learned Senior Counsel appearing for the applicant argued that the order of suspension is totally unwarranted and uncalled for and that he had left the SUPPLYCO as early as on 4.10.2004, that it is issued only due to extraneous reasons and irrelevant considerations, at the instance of certain persons who are interested on stalling the promotion of the applicant to DGP , denial of supply of copies of the reports submitted by the CBI caused prejudice to the applicant, on the same issue two officers of the SUPPLYCO have been proceeded separately but they are retained in service. The learned counsel also relied on the judgments of this Tribunal in O.A. 12/09, OA 593/07 and 1999(6) SCC 257 on the question of maintainability of the Application.

7 The learned counsel for the respondent No.2 on the other hand vehemently argued that the O.A. is not maintainable as the applicant has not exhausted the alternate remedy. The counsel further argued that the State Govt. has received two reports from the CBI regarding the irregularities that had occured during the tenure of the applicant as Chairman and Managing Director of SUPPLYCO and that the CBI has reported that investigation prima facie discloses commission of offences by the applicant. The counsel submitted that the Govt. has not misused and abused the statutory power while suspending the applicant, that the State Government has recommended the Govt. Of India to issue prosecution sanction against the applicant, reply in this regard has not been communicated. The learned counsel relied on the judgment of this Tribunal in O.A. 217/09, 27/90 (B Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru Hyderabad Bench), AIR 1993 SC 1152, and 1989(4)SCC 582 in support of his argument.

8 We may look into the objection raised by the respondents on the maintainability of the Application on the ground of alternative remedy available to the applicant. In this case we notice that the applicant has filed an appeal against the suspension which is pending disposal. In fact, one of the reliefs prayed for in this Application is to direct the first respondent to consider Annexure A-14 Appeal dated 16.3.2009 in accordance with law after affording the applicant an opportunity of being heard. According to the applicant suspension and extension of suspension are extra ordinary situations which have forced the applicant to approach the Tribunal with the O.A. without waiting for the disposal of the Appeal. Therefore, the learned Senior counsel argued that in the facts and circumstances of the case, the Application is maintainable. The learned Counsel for the respondents argued that at the very outset, the applicant having not exhausted the alternative remedy, the application is premature that the applicant should have waited for the disposal of the Appeal preferred by him before rushing to the Tribunal.

9 We have considered the rival contentions on the maintainability issue. The applicant has relied on the order of this Tribunal in O.A. 12/09 and O.A. 593/07.

10 As regards non-exhaustion of alternative remedies, this Tribunal in O.A. 12/09 and O.A.593/07 had occasion to consider similar objections raised by the respondents. The Tribunal discussed in detail the following decisions on the issue:

(a) S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, (2004) 7 SCC 166 :

"The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226 5 . But the existence of such remedy does not impinge upon the jurisdiction of the High

Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed."

(b) Durga Enterprises (P) Ltd. v. Principal Secy., Govt. of U.P.(2004) 13 SCC 665 :

"2. By the impugned order the writ petition, which was pending for a long period of thirteen years, has been summarily dismissed on the ground that there is remedy of civil suit.

3. The High Court, having entertained the writ petition, in which pleadings were also complete, ought to have decided the case on merits instead of relegating the parties to a civil suit."

(c) Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

(d) U.P. State Spg. Co. Ltd. v. R.S. Pandey,(2005) 8 SCC 264

"16. If, as was noted in Ram and Shyam Co. v. State of Haryana the appeal is from 'Caesar to Caesar's wife' the existence of alternative remedy would be a mirage and an exercise in futility."

(e) Ram & Shyam Co. v. State of Haryana, (1985) 3 SCC 267 :

"Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law."

(f) **L.K. Verma v. HMT Ltd.**,(2006) 2 SCC 269 :

'It is well settled, availability of an alternative forum for redressal of grievances itself may not be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised. "

(g) **Harbanslal Sahnia v. Indian Oil Corpn. Ltd.**,(2003) 2 SCC 107

" The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

In B. Parameshwara Rao's case (1990 13 AT 774)), the Hyderabad Bench of this Tribunal has held that in extraordinary situations, the Tribunal may in its discretion entertain the application before the expiry of six months. In para. 13 to 19, the Tribunal has considered and placed emphasis on the word 'ordinarily'. In para. 21, the Tribunal has held as under:

"However, where the tribunal exercises its discretion treating it to be exceptional or extraordinary case as contrasted to the word 'ordinarily', it may be entertained and admitted subject to other provisions of the Act".

In this regard, the orders of the various Benches of of this Tribunal are as follows:

(1) **(1987) 4 ATC 477 (All) and (1987) 4 ATC 606** (Jodhpur Bench) wherein it has been held that once an application has been admitted, objection regarding non-availing of alternative remedy cannot be entertained later.

(2) **In A.N. Saxena and anr v. Chief Commissioner** (1988) 6 ATC 320, the Principal Bench of this Tribunal held that condition laid down in Section 20 (1) of the Administrative Tribunals Act has to be considered at the admission stage only and even at that stage there is no absolute bar for admission of application without exhausting departmental remedies.

(3) **In Thakur Prasad Pandey v. Union of India** [1988 (8) ATC 911], the Jabalpur bench of the Tribunal in para. 14 has held that Section 20 of the Administrative Tribunals act does not lay down an absolute bar to admission of an application where alternative remedy has not been exhausted.

(4) In **Braj Kishore Singh's case** [1990 (12) ATC 501], the Patna Bench has repelled the objection that no appeal was preferred before the Central Government against the order of suspension and held that as the original application has been admitted, though the remedy of appeal was not pursued by the applicant, it will not be proper to hold at that stage that the application is not maintainable.

(5) In **S. Pandian and ors v Union of India** [1991(16) ATC 184] the Madras Bench has held that the objection regarding non-exhaustion of alternative remedy cannot be exercised once the application is admitted by the Tribunal.

(6) In **Ved Prakash v. Union of India** [1992 (21) ATC 358], it has been held that the objection about non-maintainability of the OA for the reason that the applicant had not exhausted the remedy of statutory appeal is not sustainable.

In **Kanak v. U.P. Avas Evam Vikas Parishad**,(2003) 7 SCC 693, the Hon'ble Supreme Court has noticed that the writ petition was entertained and the appellants therein filed a counter affidavit and the matter was argued on merits and in that view of the matter it is too late in the day to contend that the respondent herein should have availed the alternative remedy. In the present case also the original application was entertained and reply statements have been filed on behalf of the respondent and arguments were heard on merits.

11 The learned Counsel for the respondents relied upon the Full Bench judgment of the Tribunal in the case of ***B. Parameshwara Rao vs Divisional Engineer, Telecommunications & Ors.*** in OA No. 27 of 1990 of the Hyderabad Bench, wherein it has been held as under:-

"The emphasis on the word, 'ordinarily' means that if there be an extraordinary situation or unusual event or circumstances, the Tribunal may exempt the above procedure being complied with and entertain the application. Such instances are likely to be

rare and unusual. That is why, the expression 'ordinarily' has been used. There can be no denial of the fact that the Tribunal has power to entertain an Application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases."

According to the learned counsel, there is no special circumstances in this case to exercise this discretion. In addition to the above, the counsel invited our attention to the decision of the Apex Court in the case of ***S.A. Khan vs State of Haryana*** (1993) 2 SCC 327), wherein the Apex Court has held,

"Above all, we are inclined to dismiss this writ petition since it is only a suspension order and there is a statutory remedy available to the petitioner."

12 In this view of the matter, following the decisions of the Tribunal on identical issues in O.A. 12/09 and O.A. 593/07 and keeping in view the fact that the applicant has filed an appeal against the suspension order and that while the said appeal was pending the suspension order was reviewed by the competent authority and extended for a further period of 180 days, we reject the preliminary objection of the respondents that the O.A. is premature and that the applicant has not availed of all the remedies available to him under the relevant service Rules.

13 The respondents have made available the files wherein the decision to suspend the applicant has been taken.

14 The relevant provisions of suspension as stated under Rule 3 of All India Service Rules are extracted below:

"3. **Suspension** (1) If, having regard to the circumstances in any case and where articles of charge have been drawn up, the nature of the charges, Government of a State or the Central

Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the service, against whom disciplinary proceedings are contemplated or are pending that Government may-

(a) if the member of the service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the service is serving under another Government, request that Government to place him under suspension,

pending the conclusion of the disciplinary proceedings and the passing of the final final order in the case.

Provided that, in cases, where there is a difference of opinion -

(i) between two State Governments, the matter shall be referred to Central Government for its decision;

(ii) between a State Government and the Central Government, the opinion of the Central government shall prevail.

Provided further that, where a member of the service against whom disciplinary proceedings are contemplated in suspended, such suspension shall not be valid, unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him:

Provided also that the Central Government may, at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceeding, to be recorded in writing, allow continuance of the suspension order beyond the period of ninety days without the disciplinary proceedings being initiated.]

(1A) If the Government of a State or the Central Government, as the case may be, is of the opinion that a member of the Service has engaged himself in activities prejudicial to the interests of the security of the State; that Government may-

(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government request, that Government to place him under suspension,

till the passing of the final order in the case :

Provided that, in cases, where there is a difference of opinion-

(i) between two State Government, the matter shall be referred to the Central Government for its decision;

(ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail.

(2) A member of the Service who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government [ ] be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a [member of the Service] or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

X x x x x x x

(6A) Where an order of suspension is made, or deemed to have been made, by the Government of a State under this rule, detailed reports of the case shall be forwarded to the Central Government ordinarily within a period of fifteen days of the date on which the member of the Service is suspended or is deemed to have been suspended, as the case may be.

(7)(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 member of the Service 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 in writing,direct that the member of Service shall continue to be under suspension subject to sub-rule (8).

(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 deemed to have made the order.

(8)(a) An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time, unless revoked earlier.

(b) An order of suspension made or deemed to have been made or continued, shall be reviewed by the competent authority on the recommendations of the concerned Review Committee.

(c) The composition and functions of the Review Committees and the procedure to be followed by them shall be as specified in the Schedule annexed to these rules.

(d) The period of suspension under sub rule (1) may, on the recommendations of the concerned Review Committee, be extended for a further period not exceeding one hundred and eighty days at a time:

(e) Provided that where no order has been passed under this clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed.

(9) Every order of suspension and every order of revocation shall be made, as nearly as practicable, in the appropriate standard form appended to these rules."

15 Rule 3, when read between lines would clearly mean that under two circumstances the Government may place a Member of the service under suspension. They are:-

(a) If, having regard to the circumstances in any case, the Government of a State or the Central Government as the case may be, is satisfied; and

(b) where articles of charge have been drawn up, having regard to the nature of the charges, the Government of a State or the Central Government as the case may be, is satisfied;

16 The learned Senior Counsel appearing for the applicant submitted that on the basis of the report from the CBI, the competent authority orderd immediate suspension of the applicant. The Learned Counsel further contended that the ingredient "Government is satisfied" is conspicuously absent in the order. Therefore the counsel argued that the suspension of the applicant was not taken after consideration of the entire facts at

appropriate level and an opinion was not formed to place the applicant under suspension.

17 The learned Senior Counsel relied upon the decision of the High Court of Kerala in O.P No. 27195 of 2001 wherein the High Court has extracted the following decision of the Apex Court in the case of **Govt. of India, Ministry of Home Affairs v. Tarak Nath Ghosh, (1971) 1 SCC 734,**

> "When serious allegations of misconduct are imputed against a member of a Service normally it would not be desirable to allow him to continue in the post where he was functioning. If the disciplinary authority takes note of such allegations and is of opinion after some preliminary enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed. It would not be improper to remove the officer concerned from the sphere of his activity inasmuch as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the officer concerned as well as to those whose duty it was to make the enquiry to do so while the officer was present at the spot. Such a situation can be avoided either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension. Government may rightly take the view that an officer against whom serious imputations are made should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. Rule 7 is aimed at taking the latter course of conduct. Ordinarily when serious imputations are made against the conduct of an officer the disciplinary authority cannot immediately draw up the charges: it may be that the imputations are false or concocted or gross exaggerations of trivial irregularities. A considerable time may elapse between the receipt of imputations against an officer and a definite conclusion by a superior authority that the circumstances are such that definite charges can be levelled against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned." (emphasis applied)

18 The High Court in its judgment in OP 14879 of 2000 (Annexure A13) filed by a proprietress of the business firm engaged in purchase and sale of provisions having contractual dealings with the SUPPLCO, while dismissing the OP held as follows:

> "6.....The Corporation was established with the objective of making available essential commodities at reasonable rates to the consumers and thereby to prevent increasing price trend of such commodities. It is relevant to note that the procedure now adopted by the 1st respondent Corporation for selecting or scrutinising samples is more affable and without any room for any kind of malptractice or corruption or causing any loss to the public exchequer. The method of three tier scrutiny of the sample at the first stage by the Ladies Committee, the second stage by the Manager (Quality Control) and lastly by the Purchase Committee will not give any room for favourtism. It is also pertinent to note that even after the scruitiny of the Purchase Committee the Board of Directors will scrutinise the lowest tenders submitted by the tenderers and necessarily further negotiation will be done with regard to any change of articles and rates. That apart, before fainalisingthe tenders and placing the purchase orders, the Board of Directors shall have a comparative study of the qualilty, rates, etc. of each commodity which is agreed to be supplied by the tenderers with that aof the rates and quality available in the private market. In this context it is useful to quote relevant portion of paragraph 9 of the counter affidaivit of the respondents 1 & 2 which are as follows: ... .From the above it can be inferred that from December, 2001 onwards the method followed by the 1st respondent Corporation for scrutinising or selecting the tenders will not give any room for favourtism.
>
> 7 It appears that the 1st respondent Corporation is strict in selecting samples meeting all parameters as that of an ordinary consumer and at the same time to maintain the quality without making any compromise for the sake of price.
>
> 8 It is also relevant to note that the rejection of some of the articles submitted by the petitioner was only for reason that those items did not tally with the samples which she had supplied at the time of taking orders for purchase. The allegation of the petitioner that the rejection of the articles at the district centres and the distribution outlets is only for the reason that the

contractors were not willing to abide by the conditons dictated by the officials is baseless. No such specific instances are notified by the authorities. **(emphasis applied)**

9 In this context it is observed that since the ladies committee and the Purchase Committee are not technically and scientifically qualified to analyse the samples of agriculture products, an Expert Body of quality control consising of not less than five members headed by the Manager (Quality Control) and other officers of the quality control wing be constituted. The selection made by this Expert qualilty control committee shall be final."

The High Court has held that the procedure adopted by the Corporation after the applicant took charge of the same is without room for any malpractice or corruption and that vested parties may not be happy with the introduction of the three tier system by the applicant. Perhaps, M/s Sri Alapatty Sreenivasa Rao, A.P. Jayakar & Co etc. may be parties not happy with the introduction of new system in the Corporation by the applicant.

19 Relying upon the order of this Tribunal **Gopinathan v. State of Kerala & another** (O.A.No.593/2007 decided on 16.11.2007), the learned counsel for the 2nd respondent argued that under the following circumstances, a Government servant may be placed under suspension:

"23. As to the provisions of Rule 3, the same when read between lines would clearly mean that under two circumstances the Government may place a Member of the service under suspension. They are:-

(a) If, having regard to the circumstances in any case, the Government is of a State or the Central Government as the case may be, is satisfied; and

x x x x x x

20 As to the power to suspend by the authorities and the limited scope for judicial interference in matters of suspension, the counsel for the respondents relied upon the following judgments:

(i) the Hon'ble High Court of Kerala in **WPC 28804 of 2006 decided on 13th April,2007**, wherein their Lordships have held,

> "Whether the Government servant against whom disciplinary proceedings are contemplated should or should not continue in his/her office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are malafide and without there being even prima facie material connecting the Government servant with the alleged misconduct. ..... A government servant can be placed under suspension for the smooth conduct of disciplinary proceedings. It is not necessary that before suspending the employee he shall be found guilty.

(ii)In the case of **U.P. Rajya Krishi Utpadan Mandi Parishad and Others vs Sanjiv Rajan (1993) Supp (3) SCC 483** the Apex Court held thus:

> "whether the employee should or should not continue in their office during the period of enquiry is a matter to be assessed by the authority concerned and ordinarily, the court should not interfere with the orders of suspension unless they are passed malafide and without there being even a prima facie evidence or record connecting the employees with the misconduct in question".

21 The learned counsel further argued that Rule 3(1) of the All India Services (Discipline and Appeal) Rules, does provide for suspension of a Member of the Services even when disciplinary proceedings are contemplated. In the instant case, proceedings were contemplated and the decision to invoke the provisions of Rule 3 of the afore said Rules had been taken by the competent authority before passing the impugned order. The decision of the Apex Court in Nayak, argued the learned counsel for the respondents is with reference to the earlier rule, when suspension could be

resorted to after the commencement of inquiry. However, as the Rules have been subsequently amended, whereby, provision of suspension has been made available even when disciplinary proceedings are contemplated, the applicant has been suspended by the competent authority. There is thus, no illegality in the order of suspension. He has further argued that

> "when a statutory power is subject to the fulfilment of a condition then the recital about the said condition having fulfilled in the order raises a presumption about the fulfilment of the said condition and that the validity of the order does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence."

In this regard, the counsel relied upon the decision of the Apex Court in the case of **State of Haryana vs Hariram Yadav, (1994 2 SCC 617)**. According to the counsel for the respondents, the applicant has committed a serious misconduct and a conscious decision to suspend him, has been taken by the competent authority.

22 The question that comes up for consideration before us is whether the suspension of the applicant is warranted in the facts and circumstances of the case. Let us examine the various judicial proncouncements on the subject:

In **State of Orissa Vs. Bimal KumarMohanty** (1994 SCC (L&S) 875 the Apex Court observed as follows:

> "13 ".....Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In 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 inquiry without any impediment or to prevent an oportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in

office to impedde the progress of the investigation or inquiry 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 inquiry or contemplated inquiry 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 inquiry. The authority also should 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." (emphais applied)

23 In **Anil Kumar Vs. State of Kerala** (2002(2) KLT 101) the High Court of Kerala held as under:

"7. .....what is under challenge is a suspension order. It can be successfully challenged under Art.226 of the Constitution of India if only the same has been issued without jurisdiction. Assuming everything that is stated in the suspension order is correct, still the suspension is unwarranted, this court can interfere with it. A suspension order cannot be attacked on the ground that the facts stated therein are not correct or the conclusions on the facts are improper. Such contentions are available only before the appellate authority. A court exercising the power of judicial review may interfere with a decision if on the given set of facts, no man in his senses could arrive at such a decision. The validity of the suspension order has to be tested within the above parameters. (emphasils applied)

In **Balakrishnan Nair Vs. state of kerala (1986 (1) KLT 14)**, the apex court has observed as under:

"8. The suspension order, Ex.P9 may also be tested in the light of Supreme court decisions of U.P.Rajaya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan, JT.1993(2) SC 550, and State of Orissa v. Bimal Kumar Mohanty, (1994 4 SCC 126. It has been laid down by the Supreme court in the former case that whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority and ordinarily the Court should not interfere with the orders of

suspension unless they are passed malafide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the instant case, no mala fide has been alleged or proved against the respondents. On the other hand, the Government has acted on the basis of some material which imputed motives on the part of the petitioners and authorities felt that they should be kept away from service so as to facilitate an enquiry. The Supreme Court in the latter case has laid down the principle for keeping an officer under suspension. The Supreme Court has said that it will not be an administrative routine or an automatic order to suspend an employee. It would be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in this behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should 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. 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 inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry 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 inquiry, etc." (emphasis applied)

In **Raj Mohan vs. Secretary to Government (2001(3) KLT 956)** the High Court of Kerala held as under:

"7. The paramount consideration in placing a public servant under suspension is public interest. That is the touchstone on which a suspension has to be tested. Therefore, when public interest demands an employee to be kept out of service, there cannot be a fetter on such demand other than those provided under the statute. Clause (a) of sub-rule (1) of R.10 provides for suspension when a disciplinary proceeding against an employee is contemplated or is pending, Clause (b) provides for suspension where a case in respect of any criminal offence is under investigation or trial and Clause (c)

provides that in contemplation of final orders on the disciplinary proceedings, an employee could
be placed under suspension. In all these situations, suspension is justified if the appropriate authority in the then prevailing circumstances considers the suspension necessary in public interest". (emphasis applied)

In **Abdul Gafoor Vs. State of Kerala (2001(2)KLJ 31 para 7)**, the Honourable High Court of Kerala held as follows:

"7. Suspension does not prejudice an official because it is now settled that suspension does not amount to a punishment. The lien of the officer is still continued in the service. He is only kept away from discharging duty pending disciplinary action. He will get ample opportunity to defend himself, during the course of the enquiry, to be conducted against him. It is only at that stage the principles of natural justice arise. An incumbent is not entitled to be heard, in terms of the statute governing the disciplinary action before placing one under suspension. So it cannot be stated that there is violation of the principles of natural justice. Rule 10 does not require that an incumbent shall be heard before the order of suspension is passed ",

24 The order of suspension is an executive action that lies within the domain of administrative discretion. The scope of interference by the Court with the order of suspension in the case where a delinquent employee faces departmental/criminal charge has been examined in large number of cases. The consensus of opinion in the cases has been that even if a criminal/departmental trial takes a long time it is ordinarily not open to the court to interfere in the case of suspension as it is the executive domain of the competent authority who can always review its order of suspension as it has inherent power to do so and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order if satisfied that the disciplinary case would be concluded. The action of the authority is always amenable to judicial review. But such a review is directed not against the decision but is confined to the examination fo the decision making process. The judicial function is limited to testing whether the

administative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration. In the ultimate analysis, judicial review depends on the facts and circumstances of each case and to see whether the findings of the facts are reasonably based on evidence and whetherh such findings are consistent with the law of the land. It may be expedient to recapitulate certain cases on this aspect of the matter:

In State of Orissa Vs. Vimal Kumar Mohanty (AIR 1994 SC 2296) the Hon'ble Supreme Court observed as under:

> "When an appointing authority or the disciplinary authority seeks to suspend an employee the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is 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 rerfrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of servicethat dereliction of duty wouuld 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 ivestigation 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 would be another thing if the action is by mala fides, arbitrary or for ulterior purpose. The suspension must be

a step in aid to the ultimate result. The authority also should keep in mind public interes to the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge"

In B.K. Sharma Vs. State of Rajasthan & Ors (29 ILR (1979)515) the Court considered the scope of power to suspend and its effect observing that the Rules does not provide for maximum period of suspension, however,the State Government has issued various circulars from time to time emphasising the necessity of keeping a Government servant under suspension for a minimum period for the reason that he is being paid the subsistence allowance without taking capacity as constant mental torture both financial and otherwise is bound to fell upon his nerves.

In the **Andhra Pradesh State Road Transport Corporation V State Transport Appellate Tribunal & Ors** (1998(7)SCC 353) the Hon'ble Supreme Court explaining the exercise of discretionary power held as under:

"The power cannot be arbitrarily or indiscriminatory exercised. The power is coupled with a duty. The authority must genuinely address itself to the matter before it. It must act in good faith, must have regard to all relevant considerations and must not be shirked by irrelevant consideration, must not shriek to promote alien to the letter and spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously."

In **Dai-Ichi Karkaria Ltd. Vs. Union of India & Ors** (2000(4)SCC 57) the Apex Court held that the embargo of arbitrariness is embodied in Article 14 of the Constitution. The Authorithy which has been given a very wide power must consider all relevant aspects governing the questions and issues before it. It must form the opinion on the basis of material before it by application of mind.

25 Suspension pending departmental enquiry is a safeguard against the Government servant interfering with and hampering the preliminary

investigation and tampering with material evidence-oral and documentary. In case of involvment in criminal proceedings, such charges usually involve moral turpitude. It would not be proper to allow the person concerned to work as a public servant, unless there are exceptional reasons for not resorting to suspension. Suspension is also ordered as a deterrent to exhibit the firm determination of the Government to root out corruption or other grave misconduct. Though suspsension is, in itself, not a form of penalty, it definitely constitutes a great hardship for the affected Government servant, in that, apart from not being allowed to perform legitimate duties and earn his salary, he is paid reduced rates during the period and thus affects him injuriously. Suspension may also cause a lasting damage to the Government servant's reputation and its stigma is not easily washed away, even if he is ultimately exonerated or awarded only a minor penalty and reinstated. Ordinarily when serious imputations are made against the conduct of an officer if the disciplinary authority while taking note of serious allegations of misconduct, etc. against a Government servant is of the opinion after preliminary enquiries that the circumstances of the case it would not be improper to remove the Government servant concerned from the sphere of his activity by resorting to immediate suspension. It is however, imperative that utmost caution and circumspection is to be exercised in passing an order of suspensiion resulting in grave consequences to the Government servant concerned. It is also necessary to remember that the the power of suspension is to be sparingly exercised and only for valid reasons and not for extraneous considerations. An order of suspension should not be made in a perfunctory or in a routine and casual manner without proper regard to the guiding principles and where no public interest is likely to be served. It is needless to emphasise that the power in this regard is exercised sparingly with care and caution and only when it is absolutely essential. 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 discretiion 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 approrpirate to place a Government servant under suspension. (i)where his continuance in office will prejudice investigation, trial or any enquiry 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 a wider public interest.

26 Thus, the application of mind to the facts and circumstances of the case by the authority concerned is a mandatory requirement of law. State must act for good reasons and after application of mind to all the relevant facts, such a decision of the State must be specific and cannot be left to be inferred from surrounding circumstances. Nor such a decision be based on irrelevant materials, otherwise the same has to be held to be bad in law for non-application of mind. (**C.Navaneaswara Reddy Vs. Govt. of Andhra Pradhesh & Ors (AIR 1998 SC 939) Commissioner of Police Delhi & Another V. Dhaval Singh (1991(1)SCC 246) State of Maharasashtra & Ors V. Ku. Tsanuja (AIR 1999 sC 791) and Rajat Baran Roy Vs. State of West Bengal (AIR 1999 SC 1661)**

27 In this case, on receipt of the reports from the CBI the competent authority has ordered suspension of the applicant. But it is a fact that the applicant being a senior Officer in the Police Service, having left the SUPPLYCO four years ago, can neither interfere with the functioning of the SUPPLYCO nor can influence the witness or inquiry proceedings contemplated against him. This aspect has not been brought to the notice of the competent authority before the suspension is ordered. We are therefore, of the considered view that the the competent authority has to look into the matter again.

28 Having heard the learned counsel on either side, on perusal of various pronouncements of judicial fora on issues brought out by the learned counsel for the parties and after going through the records produced before us, we are of the considered opinion that the O.A. can be disposed of with direction. Accordingly, we direct that the 2nd respondent shall review the suspension of the applicant keeping in mind the above discussion and our observation in para 27. This shall be done within two months from the date of receipt of a copy of this order.

28. The O.A. is disposed of as above. In the circumstances, there shall be no orders as to costs.

Dated 27th August, 2009.

K. NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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