

Central Administrative Tribunal Lucknow Bench
Lucknow

Original Application No. 285 /2009

This, the ^{7th} day of October, 2009

Hon'ble Ms. Sadhna Srivastava, Member (Judicial)
Hon'ble Dr.A.K.Mishra, Member (Administrative)

K.P. Gautam aged about 58 years son of late Ram Gautam, r/o
1/87, Sector B, Aliganj, Lucknow.

Applicant

By Advocate: Sri A.Moin

VERSUS

1. Union of India through the Secretary, Ministry of Mines, New Delhi.
2. Director, Ministry of Mines, Govt. of India, New Delhi.
3. Director General, Geological Survey of India, 27 Jawahar Lal Nehru Road, Kolkatta.

Respondents

By Advocate: Sri Vishal Chowdhary

ORDER

By Hon'ble Ms. Sadhna Srivastava, Member (J)

The applicant seeks quashing of the suspension order dated 2.7.2009 and the consequential relief thereto.

2. The facts are that in a criminal case, CBI after investigation has submitted a charge sheet in CBI Court at Kolkatta. A charge sheet dated 9.2.2009 for major penalty has also been issued against him. There are some serious complaints under investigation in the department in respect of which departmental enquiry may also be instituted as alleged in the counter reply. Therefore, the applicant was placed under suspension vide order dated 5.2.2009. However, the said suspension order was not reviewed after expiry of 90 days. Therefore, the competent authority, treating that the suspension order dated 5.2.2009 has come to an end, issued another suspension order dated 2.7.2009 which is under challenge.

3. Heard the learned counsel for parties and perused the record.



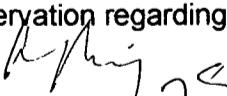
4. The power to suspend pending an enquiry or criminal trial is an administrative power. It is also well settled that Article 311 is not attracted in the matter of suspension. In the instant case, it is admitted in the O.A. itself that a criminal trial is pending against him at Kolkatta. It is also admitted that departmental enquiry is pending against him. It is also not in dispute that the applicant was suspended initially vide order dated 5.2.2009. A representation against the said order made by the applicant has also been rejected. The impugned order of suspension dated 2.7.2009 is only in continuation of the original order of suspension dated 5.2.2009. The only reason for passing the impugned order of suspension dated 2.7.2009 is that the earlier order was not reviewed as mandated by rules on expiry of 90 days. In such circumstances, we are of the opinion that the Tribunal cannot sit as a court of appeal in the matter of suspension.

5. The learned counsel for the applicant has challenged the impugned order on the ground that it does not disclose the reason for suspension. We have considered the case law on the subject- *Mohinder Singh Gill Vs. Chief Election Commissioner, AIR 1978 SC 851, Punjab National Bank Vs. D.M. Amarnath, (2000) 10 SCC 162* and *Radhey Shyam Srivastava Vs. State of U.P. and others, 2008(2) ALJ, 649*. The import of law as laid down is that as and when a statutory functionary makes an order, the validity of the grounds on the basis of which such an order has been passed, must exist at the time when the order was passed. It would mean that if the suspension order has been passed in contemplation of an enquiry or trial, it must be shown that such a state of affair did exist which prompted the statutory authority. However, if there is no evidence to show the existence of the essential grounds for passing the suspension order, the same becomes bad in law. In the instant case, the suspension order dated 5.2.2009 mentions about the pendency of criminal trial. The subsequent suspension order is in continuation of the

earlier order. Therefore, the argument of learned counsel for applicant that the subsequent suspension order does not mention the reason as mandated in the prescribed form can not be accepted. The applicant has also admitted in the O.A. about the pendency of Criminal trial and the Departmental enquiry. Therefore, there is no reason for us to say that the order is bad in law on that ground.

6. Another ground raised on behalf of the applicant is that he has already been transferred from Kolkatta to Lucknow and therefore, it was not necessary to keep him under suspension. Again, it is the matter for the department to take a decision in this regard. It may be that continuation of the employee in office may, in the opinion of authorities, seriously subvert discipline in the organization or may be against the wider public interest. If so, keeping an employee under suspension pending an enquiry or criminal trial cannot be said to be unjustified. Consequently, we are not inclined to interfere in the suspension order. The only fact which requires our intervention is once the earlier order of suspension stood revoked and the subsequent order of suspension was passed after a gap of 2 or 3 months, the applicant was entitled to payment of salary for the said period. Therefore, the competent authority has to take a decision about the entitlement of salary for the intervening period.

7. Resultantly, the O.A. is dismissed with the above observation regarding entitlement of salary. No costs.


(Dr. A.K. Mishra)
Member (A)


(Sadhna Srivastava)
Member (J)

HLS/-