

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.334/2009

This the ^{1st} day of ^{September} August, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A.K. Mishra, Member-A

Krishna Nand Sonkar aged about 34 years, Son of Rama Nand Sonkar R/o C-2821, Rajajipuram, Lucknow, presently posted as Tax Assistant in the office of Commissioner Customs, Central Excise and Service Tax, Kendriya Bhaswan 12th Floor Div.1, Aliganj, Lucknow.

.....Applicant

By Advocate: Shri S.C. Sitapuri.

Versus.

1. Union of India through Commissioner Customs, Central Excise & Service Tax 7-A, Ashok Marg, Lucknow.
2. Joint Commissioner (Vigilance) Central Excise 7-A, Ashok Marg, Lucknow.

.....Respondents

By Advocate: Sri Sunil Sharma.

ORDER

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

Heard counsel for the parties.

2. The applicant seeks quashing of suspension order dt.7.7.2009, as contained in Annexure-A-1, passed by Joint Commissioner (Vigilance), Central Excise, Lucknow. The petitioner has challenged the suspension order mainly on the ground that no reasons for suspension has been assigned in the impugned order; that the impugned order also does not indicate that any one was appointed as an enquiry officer and that no preliminary enquiry was conducted by opposite party no.2 before passing the suspension order dt.7.7.2009.



3. A bare perusal of the suspension order shows that it has been passed under Rule 10 Sub Clause (1) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that departmental proceeding is under contemplation. Under the rules there is no such requirement of law which necessarily requires holding of any preliminary enquiry before passing the suspension order and also not mentioning the name of enquiry officer, does not vitiate the suspension order. Rule 10 Sub Clause (1) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides that if an enquiry is under contemplation the competent authority is empowered to place an employee under suspension. It is not necessary that when the suspension order is passed, a charge sheet must be prepared. The charge sheet has also not yet been served on the applicant. It can be served within 90 days. The Apex Court in P.R. Nayak vs. Union of India, AIR 1972 SC-554, has held that an order of suspension before actual initiation or commencement of departmental enquiry is valid.

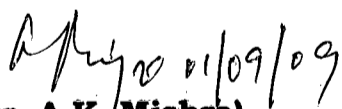
4. The learned counsel for the applicant has placed reliance on a judgment of Allahabad High Court (Lucknow Bench) passed in W.P.No.1852 of 1983 decided on 7th April, 1983 in the case of **Sher Jung Dubey and Another Vs. Regional Manager & Others.** In that case, the High Court quashed the suspension order on the ground that the suspension order did not indicate the reasons whether the enquiry is pending or is under contemplation. The law laid down by High Court did not apply in the instant case, because in the instant case, in the suspension order itself it is recorded that the enquiry is under contemplation. He has further placed

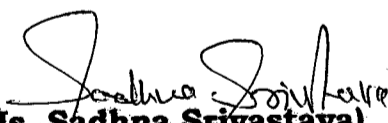


reliance on the decision of Mohinder Singh Gill's case reported in AIR 1978 SC 851 and submitted that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons, so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

5. In the instant case the rule provides that an employee can be suspended when an enquiry is under contemplation and the impugned suspension order also shows that the enquiry is under contemplation. In the instant case, the aforesaid judgments will not apply in the facts of the present case. In the case of Government of India Vs. Tarak Nath, AIR 1971 SC-823, the Supreme Court has held that if the rules provide the government is entitled to place a government servant under suspension even before definite charges are communicated to him

6. In view of the above, we do not find any ground to interfere with the impugned order. The OA is dismissed. No order as to costs.


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


(Ms. Sadhna Srivastava)
Member (J)