

CENTRAL ADMINISTRATIVE TRIBUNAL: PATNA BENCH
PATNA.

Registration No.O.A.No.121 of 1995

Date of order: 9.5.1995

Ashok Kumar Sinha Applicant

VERSUS

Union of India and another ... Respondents

Counsel for the applicant ... Mr. S.K. Singh
Mr. Pramod Kumar Thakur
Mr. Manoj Kumar Ambastha

Counsel for the respondents J. Mr. J.N. Pandey

Coram: Hon'ble Mr. Justice R.K. Varma, V.C.

Hon'ble Mr. K.D. Saha, Member (A)

ORDER

Hon'ble Mr. Justice R.K. Varma, Vice-Chairman

By this application filed under section 19 of the Administrative Tribunals Act, 1985 the applicant has sought quashing and revocation of the order of suspension dated 21st April, 1994 (Annexure A/7).

2. The facts giving rise to this application briefly stated are as follows :-

The applicant was appointed as Assistant Divisional Engineer pursuant to ^{having} ~~the~~ successfully competed in Indian Telecom Services in the year 1972. The applicant was promoted to the post of Divisional Engineer Telegraph on 7.5.1978 and was

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posted at Dhanbad in the State of Bihar. On 25.8.82 the applicant was promoted and posted as Director Telecommunications at Dibrugarh in Assam. Subsequently the applicant was conferred Selection Grade of Junior Administrative Grade Officer w.e.f. 1.7.1986.

3. The applicant has averred in para 4.3 of the application that ^{due to law} his extra-ordinary performance in North East Region and other places, the applicant was conferred with awards by the Prime Minister as well as by Hon'ble Mr. Justice Smt. Fatma Bibi of Hon'ble Supreme Court. This award related to the work of the applicant, executed by him beyond 26.4.1989 while he was at Dibrugarh. The applicant has alleged that on account of the efficiency of the applicant and his admiration by the Government of India and other superior authorities, he has become an eye sore to his competitors in the Department who were always operational to fix him in trouble. Two criminal cases were instituted by the C.B.I. The first one being not found prima facie true, was dropped. The second one ^{led} _{led} to submission of charge-sheet under Rule 16 of the Central Civil Services (C.C.S.) Rules, 1965 and ultimately resulted into minor penalty by an order dated 20.4.93 and subsequently it was challenged by the applicant in O.A.274 of 1993.

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This Tribunal allowed the said O.A. and set aside the order dated 15.10.1993 (Annexure A/1). An SLP No.572/94 was also dismissed against the Tribunal's order on 14.2.1994.

4. The applicant has further averred that CBI picked up the applicant on 25.3.94 and kept him in its custody till 3.4.94 when he was shown to be formally arrested in connection with ~~as~~ a case instituted by the C.B.I. on 24.3.94 under the provisions of section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act 1988 alleging that the applicant has amassed assets worth 19 lacs which were disproportionate to his known ^{According to the applicant} source of income. This 19 lacs included the house of the applicant's wife and the assets found therein which exclusively belong to her and had no connection with the applicant's earning. The CBI before instituting the case on 24.3.94, did not provide any opportunity to the applicant to explain his case. The applicant has averred that otherwise the case could not have succeeded since the applicant had furnished entire paper including income tax return and assessment order passed with respect to his wife by the Income Tax Authorities and could have explained other properties also.

5. The applicant was suspended by virtue of ~~clause (a)~~ ^{law} of provision of sub-rule (2) of Rule 10 of the CCS (CCA) Rule 1965 (vide order dated 21.4.94 (Annexure A-7)) which reads as under :-

^{KW} "28 10.(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;"

6. The contention of the applicant that he cannot be deemed to be under suspension after his release on bail from judicial custody on 13.4.94 and the order of suspension dated 21.4.94 (Annexure A-7) based on the rule ~~is in clause~~ 10(2)(a) could not be applicable to the period after 13.4.1994 and as such was without due application of mind, arbitrary and not sustainable.

7. The applicant submitted an appeal for revocation of suspension on 24.5.1994 but the appellate authority has deferred consideration of revocation of suspension ^{by} order dated 2.8.1994 (Annexure A/9) till the completion of investigation.

8. Suspension under order dated 21.4.94 (Annexure A-7) is still continued despite the fact that the ~~Govt.~~ Govt. of India instructions ^{were} required periodical review on the question of continuation of suspension.

9. The learned counsel for the applicant has submitted that the suspension of the applicant has been prolonged inordinately by the authorities without giving the reasons. The learned counsel has relied on a decision of Madras Bench of C.A.T. in K.Rajasekaran V. Chairman, C.B.D.T. (O.A.457/1987 decided on 25.1.1988) which lays down that in long suspension the department is bound to take up periodical reviews and give reasons if it is decided not to revoke the order of suspension.

10. In the instant case the only reason for continuance of suspension as stated in the order passed in appeal Annexure A/9 is ~~the investigation by C.B.I.~~
 The learned counsel for the applicant has placed reliance on another decision of Madras Bench of C.A.T. in P.Satya Narath V. Collector of Customs (OA-695/1987 decided on 23rd March, 1988) which lays down that the continuance of

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cannot be justified on the only ground that it is

necessary for investigation of the case. The suspension cannot be held to be justified because the respondents have to show how his presence in office will hamper the investigation and why the purpose cannot be achieved by his transfer.

11. It has been contended on behalf of the applicant that there was no justification in passing the order of suspension dated 21st April, 1994 (Annexure A/7) under Sub Rule 2 of Rule 10 of the CCS(CCA) Rules, 1965 since on that date the applicant was not in custody as he had already been released on provisional bail on 30.4.94.

12. The learned counsel for the applicant cited a decision of C.A.T. Ahmadabad Bench in R.T. Sharma v Union of India reported in (1991) 14 A.T.C. 547 to submit that it was incumbent upon authorities to consider applicant's case to decide whether continuance of the applicant under suspension was absolutely necessary or not after the release of the applicant from Police custody and that the continuance of suspension for indefinite duration is arbitrary. In the instant case there has been no application of mind to consider whether continuance of the applicant under suspension was absolutely necessary or not. There is no justification to continue the suspension for indefinite duration without passing

reasoned order periodically for extending the duration of suspension. The continuance of suspension is, therefore, rendered arbitrary and illegal and is liable to be revoked.

13. The respondents have filed written statement pending judgments and we have perused the same. In their reply to the petition the respondents submit that :

"The revocation of the suspension of the petitioner will prejudice the investigation and inquiry and seriously subvert discipline in the office and it is essential for the Govt. to demonstrate the policy of the Govt. to deal strictly with the officer involved in such a scandal, particularly corruption."

It is further stated that the petitioner having ~~xx~~ amassed wealth disproportionate to his honest way of livelihood ought not to be allowed to work as it may embolden other employees of the department to follow suit. The respondents has contended that :

"The present OA is premature and the Govt. is legally entitled to keep the petitioner under suspension till he is exonerated of the charges by the disciplinary authority and the CBI inquiry completed."

14. We are unable to accept the above contentions of the respondents in the circumstances of the present case. It is not disputed that in cases where continuance in office of the Govt. servant is likely to prejudice the investigation, trial or inquiry (e.g. apprehension of tampering with the witnesses or documents) or where there are charges of corruption and possession of dis-proportionate assets or where, there is a public scandal, a Govt. servant concerned can be placed under suspension under the rules. But, no legal material has been placed before us which could justify continued suspension of the employee for an indefinite period for the purpose of investigation on the allegation of ~~or~~ possession of dis-proportionate assets. On the contrary the Govt. of India, Ministry of Home Affairs, O.M. No. 221/18/65-AVD dated 7.9.1965 provides 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 of served on the officer in cases of departmental proceedings within six months as a rule. 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. 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."

The circular also mentions that :

"Even though suspension may not be considered as a punishment, it does constitute a very great hardship for a Govt. servant. In fairness to him, it is essential to ensure that this period is reduced to the barest minimum."

In OM dated 4.2.1971 this period was brought down from six months to three months. The position was further reviewed and in the instructions issued vide Deptt. of Personnel O.M. dated 16.12.1972 the following was stipulated :

" It has now been decided that while the orders contained in the O.M. of 4th February, 1971, would continue to be operative in regard to cases pending in courts in respect of the period of suspension pending investigation before the filing of a charge-sheet in the court as also in respect of serving of the charge-sheet

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on the Government servant in cases of departmental proceedings, in cases other than those pending in courts, the total period of suspension viz., both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to this time-limit, the disciplinary authority should report the matter to the next higher authority, explaining the reasons for the delay."

14.1 In the instant case, the applicant is deemed to have been suspended w.e.f. 3.4.1994 after his detention by CBI who are investigating into the charge that the applicant has assets disproportionate to his known sources of income. ~~xxxx~~ It is not a case where the officer is involved in a specific public scandal. This apart, the matter is under investigation by the CBI for more than a year and no charge-sheet has as yet been issued. Against this background, we are of the view that the respondents have not made out a case for continued suspension of the applicant for an indefinite period.

15. We find from reading of the order dated 2.8.94 (Annexure A/9) passed in appeal against the continued suspension of the applicant that the appellate

authority has decided to consider revocation of suspension after completion of investigation in CBI case against the applicant. This order therefore, does not decide the question of revocation of suspension and instead defers the consideration of revocation of suspension after completion of investigation. The order is, therefore, bad in law and cannot be sustained. A prolonged continuance of an order of suspension for over a year, as in the instant case, cannot be justified on the only ground that it is necessary for investigation of the case. Consequently, we set aside the appellate order (Annexure A/9) and hereby order that the order of suspension shall stand revoked with immediate effect. It will, however, be open to the respondents to transfer the applicant in case it is felt necessary in the interest of proper investigation of the case by the C.B.I.

16. The application, therefore, is allowed as above with no order as to costs.

(K.D.Saha)
Member (A)
C.A.T., Patna Bench
Patna.

R.K. Varma
(Justice R.K. Varma)
Vice-Chairman 19-5-95
C.A.T., Patna Bench, Patna.