

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 560 of 1996

Dated 5-12-1997

Prabhu Narayan Singh, son of Late Akhil Singh, resident of Village Bardahi, P.S. Sikta, District West Champaran, at present residing at Railway Quarter No.177 A, Medical Colony, Sonepur, P.S. Sonepur, District Saran, Chapra.

-- Applicant

-versus-

1. Union of India through its Secretary, Ministry of Railway, Rail Bhawan, Barauda House, New Delhi.
2. The Divisional Railway Manager, Sonepur Division, North Eastern Railway, Sonepur.
3. The Divisional Mechanical Engineer (C and W) Sonepur Division, Sonepur.

.. Respondents

CORAM : Hon'ble Shri V. N. Mehrotra, Vice-Chairman
Hon'ble Shri S. Das Gupta, Member (A)

Counsel for the applicant : Shri R.R. Mishra.

Counsel for the respondents : Shri P.K. Verma.

ORDER

Hon'ble Shri S. Das Gupta, Member (A) :-

The applicant in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, has been working as Office Superintendent Grade II in the N.E. Railway at Sonepur. The CBI, Patna, registered a case against the applicant on 11.9.1994 for offences punishable under certain sections of I.P.C., the accusation being that he had forged and fabricated certain documents purported to have been issued by the Additional Private Secretary to the Railway Minister and

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thereby cheated one Hare Ram Singh. By an order dated 11.1.1995 he was placed under suspension. The applicant represented to the respondents for revocation of his suspension several times. Thereafter, he approached this Tribunal by filing O.A.No.190/96 challenging the order of suspension. This O.A. was decided by a Single Member Bench of this Tribunal by an order dated 13.8.1996. The Bench directed the respondents to consider the representation of the applicant as an appeal and to dispose of the same within specified period by a reasoned and speaking order. In compliance of the aforesaid direction, the respondents considered the said appeal and by the impugned order dated 29.9.1996 rejected the same indicating the reasons for such rejection. Hence, this application seeking quashing of the order dated 11.1.1995 by which he was placed under suspension and a direction to the respondents to allow him to discharge his duties and to pay him entire back-wages after adjusting the subsistence allowance.

2. The applicant has challenged the order of suspension on the following grounds :-

- (i) The order of suspension as well as the order passed in appeal are mala fide, arbitrary and without application of mind.
- (ii) The said orders have not been passed in exercise of utmost caution and circumspection.
- (iii) The suspension cannot be allowed to continue for an indefinite period even though criminal trial might be in progress and such continuation after completion of investigation is not justified.
- (iv) The reason given by the respondents in rejecting his appeal on the ground that the case involved moral turpitude tarnishing the image of the Department is not valid.

3. In the written statement filed by the respondents, it has been submitted that the applicant was prima facie found responsible for grave criminal misconduct on the basis of investigation conducted by the CBI who filed a charge-sheet dated 31.1.1995 against him before the Special Judge, CBI, Patna. It has been stated in these circumstances the applicant was placed under suspension and the order is in no way mala fide or arbitrary. It has been further submitted that the competent authority had acted on the basis of materials available while passing the order of suspension. As regards the rejection of the appeal, it has been stated that the same was duly considered by the Divisional Railway Manager, Sonepur and after thorough and due consideration of the facts and circumstances of the case, the same was rejected by a detailed and speaking order.

4. The applicant in a rejoinder affidavit has taken a plea that no departmental action has been contemplated against him till date and that respondent no.2 had passed the order dated 29.9.1996 rejecting his appeal in a mechanical manner, without application of his mind and thus acting against the spirit of the observation of the Tribunal in its order dated 13.8.1996 passed in O.A.No.190/96. It has further been brought out that the investigation in the matter having been concluded on 31.3.1995, there is no likelihood of his tampering with the evidence and, therefore, the continuance of suspension is not warranted. He has further pointed out that the impugned order of suspension was passed in Form 5(2) of the Discipline and Appeal Rules and this would indicate that the authority while passing the order of suspension had not taken due care and caution.

5. We have heard learned counsel for both the parties and carefully perused the pleadings on record.

6. So far the order of suspension is concerned, the same was under challenge in the earlier O.A.No.190/96. The Bench of the Tribunal deciding the matter had already noted the circumstances leading to the applicant being placed under suspension but it appears that no irregularity in the order of suspension per se was found. The Bench only questioned the continuance of the suspension and felt that the same was without application of mind and, therefore, gave a direction that an appeal made by the applicant for revocation of suspension be considered. We, therefore, do not see any reason to go into the validity or otherwise of the order of suspension.

7. It is, however, to be noted that a point has been taken in the rejoinder affidavit that the order of suspension is not in proper form. It is seen from the copy of order at Annexure-2 that the Form which has been used is one which is relevant to a case where a Government servant is deemed to be under suspension as a result of his detention in custody. In the case before us, the applicant appears to have been suspended in view of the fact that a criminal proceeding was pending against him and it was not a case of deemed suspension. Therefore, no doubt, a wrong Form has been used in issuing the order of suspension. The learned counsel for the applicant, during the course of argument, laid great emphasis on this aspect to contend that there was lack of application of mind on the part of the respondents in issuing the order of suspension.

8. We have carefully considered the aforesaid submission. It is not in dispute that at the time when the suspension order was issued, the applicant had already been involved in a CBI case which was under investigation. The first part of the impugned order states that the suspension is being

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ordered whereas a case against him in respect of a criminal offence is under investigation. A latter part of the order indicates that the applicant is deemed to have been suspended with effect from the date of detention. This portion of the Form should have been scored out as not being applicable. This, however, has not been done and this, no doubt, indicates carelessness on the part of the authorities while issuing the order. This cannot, however, detract from the fact that a criminal case was under investigation against him and the respondents were well within their right in ordering suspension in these circumstances.

9. The matter which now concerns us is whether the applicant's plea that there is no longer any reason to keep him under continued suspension has any validity or not. It is this issue to which we address ourselves.

10. Against the continued suspension, the plea taken by the applicant is that the investigation in the criminal case having already been completed, there is no question of his tampering with the evidence. The matter regarding placing a Government servant under suspension and continuance thereof came under a close scrutiny by a Full Bench of the Principal Bench of the Tribunal in the case of J.S. Goel vs. Union of India (O.A.No.2119/97). In that case the applicant was involved in ~~the~~ CBI case, the accusation being one of demanding and accepting bribe. The applicant was placed under suspension in view of the criminal charges being under investigation. The question ~~was~~ whether he should be allowed to continue under suspension when he had only a short time left before retirement was considered by the Bench in the light of the ~~extant~~ rules and the guidelines issued by the Govt. of India from time to time. The Bench, inter alia, came to the conclusion that the disciplinary authority would have

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the discretion to decide the matter after taking all the relevant factors into account and while doing so, the public interest would be the guiding factor. The Bench further observed that a Court cannot go into the correctness of the choice made by the administrator among the various alternatives open to him, nor could a Court substitute its own decision for that of the administration.

11. By the earlier order dated 13.8.1996 passed in O.A.No.190/96 a Bench of this Tribunal had already directed the respondents to consider the question of keeping the applicant under continued suspension on the basis of an appeal filed by him. In compliance of this direction, the respondents have considered the matter and by a reasoned order have rejected the appeal. The reason indicated by them is that criminal charge against the applicant is one involving moral turpitude. The validity of suspending an employee ~~and continuance thereof~~ when a criminal charge against ^{is} him involving moral turpitude ~~pending~~ trial came up before the Hon'ble Supreme Court in the case of Allahabad Bank vs. Deepak Kumar Bholu, 1997 SCC (L&S) 897. The Hon'ble Supreme Court, inter alia, held that it would be indeed inconceivable that an employee should be allowed to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money and that allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted.

12. The charge against the applicant is quite serious. It has been alleged that he has committed criminal offence of forgery and fabrication of documents with the intent to cheat. This certainly involves moral turpitude. In the aforesaid case of Allahabad Bank the Hon'ble Supreme Court had

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also held that the mere fact that nearly 10 years had elapsed since the charge-sheet was filed, can be no ground for allowing the charged employee to come back to duty unless he is exonerated of the charge. It would, therefore, be seen that the Hon'ble Supreme Court has not accepted the plea that once a charge-sheet has been filed, the charged-employee can be allowed to return to duty. The plea taken by the applicant before us is that since the charge-sheet has already been filed, there is no reason to keep him under continued suspension. In view of the decision of the Hon'ble Supreme Court, indicated above, this cannot be a valid reason for revocation of the suspension.

13. In any view of the matter, the question as to whether the applicant should continue to remain under suspension or his suspension be revoked is to be decided by the competent authority keeping in view the facts and circumstances of the case. They have decided on the basis of the appeal that this is not a case in which the applicant may be allowed to return back to duty. As already indicated in the foregoing in the case of J.S. Goel (Supra) a Court cannot substitute its own decision for that of the administrative authority in such matters, unless the decision of the authority is wholly arbitrary and capricious. We do not see any arbitrariness in the rejection of the appeal of the applicant by the respondents.

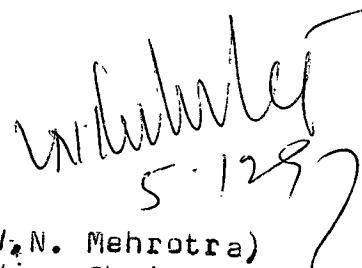
14. The learned counsel for the respondents submitted during the course of argument that the applicant would still have a remedy available to him by way of a revision petition. We, therefore, give liberty to the applicant to file a revision petition before the competent authority and

in case the same is filed, let the same be decided within a reasonable time. Needless to say that while deciding such revision petition, the respondents would take into account the various facts and circumstances of the case and decide whether it is necessary to keep the applicant under continued suspension or whether he can be allowed to resume his duties.

15. With the aforesaid observation, this application is finally disposed of leaving the parties to bear their own costs.



(S. Das Gupta)
Member (A)



V.N. Mehrotra
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(V.N. Mehrotra)
Vice-Chairman