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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 617/87

198

~~T.A. No.~~

DATE OF DECISION 20.4.90.

Hari Vithu Gaikar

Petitioner

Shri M.A.Mahalle,

Advocate for the Petitioner(s)

Versus

The Inspecting Assistant Respondent  
Commissioner of Income-tax and another

Shri P.M.Pradhan,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.

G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr.

M.Y.Priolkar, Member(Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

*24/4*  
( G.Sreedharan Nair )  
Vice Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW BOMBAY BENCH  
NEW BOMBAY.

O.A.617/87.

Shri Hari Vithu Gaikar ... Applicant.  
-versus-  
The Inspecting Assistant  
Commissioner of Income-Tax,  
Thane Range-I, Thane, and  
another ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicant- Shri M.A.Mahalle, Advocate.

For the respondents - Shri P.M.Pradhan, Advocate.

Date of hearing-18.4.90

Date of Judgment and Order- 20.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant, a Lower Division Clerk, Income-Tax Office, Circle-I, Thane, was placed under suspension by the order dated 27.12.1985 in exercise of the powers conferred by sub-rule (1) of Rule 10 of the CCS/CCA Rules, ~~vide~~ since disciplinary proceedings were contemplated against him and a criminal offence in which he was involved was under investigation. By the order dated 2.1.1986, he was allowed subsistence allowance equal to the leave salary ~~which~~ he would have drawn if he would have been on leave on half-pay, and dearness allowance and compensatory allowance. The request of the applicant for increase of the subsistence allowance was rejected by the order dated 8.5.1986. Since the applicant persisted in his claim for enhancement of subsistence allowance, by the order dated 10.11.1986 it was increased by 50% of what was already granted. It is alleged by the applicant



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that his request for revocation of the suspension and for reinstatement should have been allowed.

He prays for vacating the order of suspension and for reinstatement and for a direction to the respondents for paying him the salary during the period of suspension less the allowance paid to him.

2. In the reply filed on behalf of the respondents, it is admitted that the suspension was ordered on the ground of the criminal offence being under investigation and in view of the contemplated disciplinary proceedings. According to the respondents, till the criminal investigation/disciplinary proceedings are finally concluded, the suspension is just and proper.

3. Though suspension may not be considered as a punishment, it does constitute very great hardship to a Government servant, and in fairness to him it is essential to ensure that the period of suspension is reduced to the barest minimum. This principle has been recognised by the Government of India and is embodied in the O.M. dated 7.9.1965 issued by the Ministry of Home Affairs. According to the said Office Memorandum, where an officer is placed under suspension the investigation should be completed and a charge-sheet filed in a court of competent jurisdiction within six months as a rule, and if the investigation is likely to take more time, it should be considered whether the suspension order should be revoked. To safeguard the interest of the administration, it is further provided therein that if the presence of the

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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. By the subsequent Office Memorandum dated 4.2.1971, the period of six months has been reduced to three months, and it has been directed that in case it is not possible to file the charge-sheet within the said period, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay. Though the six months period has been restored by the Office Memorandum dated 16.12.1972, the Government have impressed on all the authorities concerned that they should scrupulously observe the time-limit and review the cases of suspension to see whether the continued suspension is really necessary, as is revealed from the Office Memorandum dated 14.9.1978.

4. In this case, the applicant was placed under suspension by the order dated 27.12.1985. From the concerned file made available to us by the counsel of the respondents, it is seen that a review was conducted only on 15.12.1989, <sup>when</sup> and it has been observed that the situation does not call for any revocation of suspension and that the suspension should be continued pending the decision of the criminal case and the ~~conclusion~~ conclusion of the disciplinary proceedings contemplated against the applicant. It has to be emphasised that the order of suspension was passed in contemplation of disciplinary proceedings and in view of the investigation of the criminal offence. No disciplinary proceeding has been initiated against the applicant till date.

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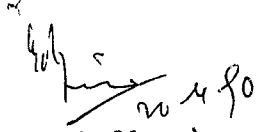
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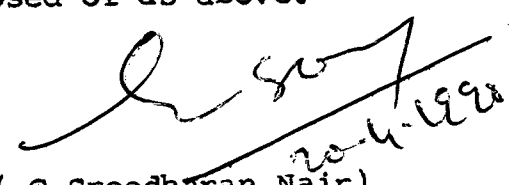
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In respect of the criminal offence, though it is of a serious nature, the investigation is over and, admittedly, a charge-sheet has been filed. Hence, we are of the view that there is no justification in the continued suspension pursuant to the aforesaid order.

5. We hereby direct the first respondent, the Inspecting Assistant Commissioner of Income-Tax, Thane Range-I, Thane, to revoke the order of suspension forthwith. The manner in which the period of suspension has to be treated & for payment of salary and allowances shall be determined by the competent authority after the termination of the criminal proceedings initiated against the applicant.

6. The application is disposed of as above.

  
( M.Y. Priolkar )  
Member (Admn)

  
( G. Sreedharan Nair )  
Vice Chairman.

S.P. Singh/  
19.4.90.

Judgement dt. 20.4.90  
served on R. No. 1 on  
dt. 8.5.90

MS  
14/5/90