

(18)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

C.A.302/87 & 676/87.

Narayan Phakiraji Jadhav,
Near Varsha Chawl,
Near Block No.563-A,
Gajanan Nagar,
Ulhasnagar - 421 004.
Dist. Thane.

.. Applicant

V/s.

1. Inspecting Assistant
Commissioner of Income-Tax,
Thane Range-I, Thane,
Qureshi Mansion, Naupada,
Thane.
2. The Commissioner of Income-Tax,
Pune Charge, Pune,
Aayakar Bhavan, Sadhu Vaswani Road,
Pune - 411 001.
3. Chief Commissioner of Income-Tax
(Admn.), 12, Sadhu Vaswani Road,
Pune - 411 001.

.. Respondents.

CGRAM : Hon'ble Vice Chairman Shri Justice U.C. Srivastava.
Hon'ble Member (A), Shri M.Y. Priolkar.

Appearances:-

Shri M.A. Mahalle, Advocate
for the applicant.

Shri P.M. Pradhan, Advocate
for the Respondents.

JUDGMENT

DATED: 9-8-81

¶ Per : Hon'ble Shri U.C. Srivastava, Vice Chairman ¶

These two petitions are filed by the same applicant against the same department against two suspension orders. The same have been clubbed together and are being disposed of by this common judgment.

2. The applicant is Inspector of Income-Tax and has challenged the first suspension order in O.A.302/87 and second one has been challenged in O.A.676/87, with consequential reliefs.

CA 302/87 & 676/87.

3. The applicant was suspended under Rule 10(1) of the C.C.S.(C.C.A.) Rules by the Inspecting Assistant Commissioner of Income Tax, Thane Range vide order dtd. 27.12.1985 on the ground that his criminal offence is under investigation.
4. On 27.6.1986 the applicant has applied to the Commissioner of Income Tax for increasing the subsistence allowance and as the Assistant Commissioner of Income Tax refused to do the same, on 17.9.1986 the applicant appealed to the Commissioner of Income Tax for revocation of suspension order which according to him was not made by the appointing authority. The subsistence allowance was increased to the applicant vide order dtd. 10.11.1986 but vide order dtd. 23.9.1987, the Chief Commissioner of Income Tax, Pune purporting to exercise the powers under Rule 10 sub-rule (5)(c) passed an order revoking the suspension order with effect from 30.9.1987. Thereafter on 28.9.1987 another suspension order was passed by the Commissioner of Income Tax, Pune on the ground that criminal offence is under investigation.
5. The applicant filed an application before this Tribunal in O.A.302/87 for quashing the suspension order dtd. 27.12.1985 claiming the difference between the pay and allowance which was paid to him and treating the suspension period as period on duty, and also claiming interest on the above.
6. On 18.1.1988 a charge sheet was filed against the applicant in the Court of Special Judge, Greater Bombay and one Shri H.B. Gaikar another co-accused and the said

OA 302/87 & 676/87.

criminal case is still pending. The applicant's house was searched but according to the applicant nothing was found and he was neither arrested nor detained in custody and afterwards he has not been required to attend any investigation even.

7. The applicant has challenged his continuous second suspension order. The contention of the applicant in respect of the first suspension order regarding the department is that his application has become infructuous in that the suspension order could be passed only by the appointing authority and was not confirmed by the Commissioner of Income Tax within a period of one month from the date of passing of the suspension order to make it valid. This plea of the applicant that it was not passed by the Competent Authority was substantially accepted by the Chief Commissioner of Income Tax vide order dtd. 23.9.1987 by which the said suspension order was revoked but with effect from 30.9.1987 which is evident from the order itself as at the bottom it is mentioned that the order of suspension in the case of Shri N.P. Jadhav, Inspector was made by IAC, Thane, however the competent authority to make the order in the instant case was CIT, Pune and in the circumstances as the suspension order has been made by the authority concerned without proper jurisdiction the same is hereby revoked. The order having been passed by the authority who was not competent to pass the order, the order was illegal from the very inception and as such if the Chief Commissioner of Income Tax who had power to revoke the same notwithstanding the fact that he was still superior authority than Commissioner of Income Tax the suspension order becomes non existent and the revocation was to date back from the date it was passed.

O.A.302/87 & 676/87.

(21)

8. Accordingly the earlier application deserves to be allowed and the suspension order dtd. 27.12.1985 revoked and the order passed by the Chief Commissioner of Income Tax revoking the order is partially quashed so far as the date in the same is mentioned. The result will be that the applicant will be deemed to be continuing in service and entitled to full pay and allowances till he was placed on suspension again vide second order which is subject matter challenged in other O.A.676/87.

9. The second suspension order dtd. 28.9.1987 has been passed on the ground that the criminal offence is under investigation. The second suspension order has been passed without any reference to the first order. The applicant moved an application on 15.10.1987 for cancellation of the second suspension order. On behalf of the applicant it was contended that now the investigation in the criminal offence is over and a charge sheet has been filed in the Court and the prosecution is not taking any step with the result that the applicant is placed continuously under suspension without any justification and the continued suspension order in the circumstances could not be legal. On behalf of the applicant it has been pleaded and contended that the proceedings are not completed within 6 months and the suspension order therefore becomes non-est and liable to be revoked. The respondents have pleaded and contended that the circulars on which reliance has been placed are not mandatory in character and as such even if the proceedings are not concluded within 6 months the suspension order would not become automatically non-est and in this connection reference has been made to the judgment of the Supreme Court in the case of Government of Andhra Pradesh Vs. V. Sivaraman (1990)3 Supreme Court Cases 57 in which it was held that the failure on the part of the government to

OA 302/87 & 676/87.

review the order of suspension within six months as required under Instruction 18 in Appendix VI to A.P. Civil Service (CCA) Rules, would not render the order non est after six months and order would continue to be effective till its revocation in accordance with law and the Rule 18 has no statutory force. Obviously suspension order merely because it has continued for six months or the same has not been reviewed after six months will not become invalid or non est as has been contended by the applicant. On behalf of the applicant it has been contended that continued suspension order is not warranted and the same could not be a legal order which can continue indefinitely more so that the investigation has now been completed and the applicant is not in a position to influence the witnesses. Learned counsel for the respondents placed before us certain decisions of Administrative Tribunal to contend that administrative orders are guidelines which are not mandatory and it is not necessary to make reference to those cases as instructions may be binding in some matters but not all matters and so far as the suspension is concerned the instructions on which reliance is placed will not be mandatory in character as has been held in Sivaraman's case Supra.

10. In this connection learned counsel for the applicant has made reference to the case of O.P. Gupta V/s. Union of India AIR 1987 SC page 2257 in which it was held that prolonged suspension adduced negative character in the said case and as suspension order continued for years together.

11. Learned counsel for the applicant placed reliance on decision of this Bench in Hari Vishnu Gaikar, a co-accused who was also suspended like him and the Bench of the Tribunal of which one of us was a Member (Shri M.Y. Friolkar) 1991(1) S.L.J. A.448 C.A.T. New Bombay Bench vacated the suspension order as it was continued beyond 6 months. He has also made reference to other cases in which the suspension order was unduly prolonged after filing of the charge sheet for more than 18 months, in A. Palaniswamy and another Vs. Union of India 1991 (1) 509 SLJ. Reference was also made to the case of D. Mangalswaran Vs. C.I.T. where, after the investigation of the C.B.I. the official was charge sheeted under the Prevention of the Corruption Act, the suspension was revoked as he was under suspension for more than 10 months. Reference was also made to the case of K. Rajshekhara Vs. Chairman, Central Board of Direct Taxes (1988) A.T.C. 727, where the suspension was vacated and continued beyond 3 months and was not reviewed regularly while rejecting the plea that the charges were serious. A reference to few other cases was also made. Here in the instant case as we have noticed, the suspension order of the co-accused has already been revoked and further charge sheet has already been filed in January, 1988. More than 3 years have been passed and the criminal case has not yet ended and rather it has not yet started. It is not known as to how many years it will take for completion. In case the suspension continues for years together and the applicants succeed, Government shall be required to pay the full salary amount to the applicant without taking any work from him. The charge may be of a criminal nature but it cannot be presumed that the applicant will in case he is reinstated will be in a position to tamper the documents or witnesses as there are ample safeguards with the department.

-: 7 :-

C.A.302/87 & 676/87.

12. We do not find any justification or any legal ground to continue the suspension order indefinitely and accordingly the second suspension order dtd. 28.9.1987 is also quashed with the direction for the department to post the applicant elsewhere, if necessary, with the result he will not be in a position to either tamper with the documents or the witnesses. It is for the respondents to assign him any duty which they consider in the circumstances is to be given to him.

13. With the above observations both the applications are allowed and suspension orders are quashed with the direction given in both the cases i.e. in first one the emoluments and salary etc. to be given and in the second one that the applicant will be restored back to duty and will be deemed to be on continuous duty.

There will be no order as to costs.