

3
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : CAMP : NAGPUR

O. A. 422 of 1989

Present : Hon'ble Mr. A.P.Bhattacharya, Judicial Member
Hon'ble Mr. P.S.Chaudhuri, Administrative Member

P.B.DANDEKAR

VS

UNION OF INDIA & ORS

For the applicant : Mr. V.G.Moharil, advocate

For the respondents : Mr. S.V.Gole, advocate for
Mr. S.V.Natu, advocate

Heard on : 18.1.90 : Order on : 19.1.90

O R D E R

A.P.Bhattacharya, J.M. :

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri P.B. Dandekar, against the Quality Assurance Officer, Quality Assurance Establishment (Armaments) of the Govt. of India. In his application the applicant has prayed for quashing the order passed on 18.9.86 by the respondent placing him under suspension.

2. The applicant is an Upper Division Clerk in the office of the respondent. For a got-up incident, as alleged by him, he was placed under suspension by an order issued by the respondent on 18.9.86. On 20.11.86 and thereafter on 12.3.87 he made representations to the said authority for revoking the suspension order. By letter issued on 20.3.87, his disciplinary authority informed him that the suspension order could not be revoked as a complaint made against him was under investigation by the C.B.I. Thereafter, the applicant preferred an appeal to the Director General of Inspection on 26.3.87. In reply he was informed by ^a letter issued on 9.7.87 that as a criminal case had been started against him

W : Om

on the report submitted by the C.B.I and as the said case was pending in court, the order of suspension could not be revoked. In that letter the appellate authority advised the applicant's disciplinary authority for reviewing his subsistence allowance. Thereafter, the applicant again made a representation on 9.2.89 to the same appellate authority. Getting no reply he filed the instant application before this Tribunal.

3. Opposing the admission of the application the respondent had filed a brief written reply. On a consideration of the materials on record and the law on the point, we are constrained to hold that this application is not at all fit for adjudication by this Tribunal. The applicant was placed under suspension by an order issued on 18.9.86 under Rule 10 of the C.C.S.(C.C.A.) Rules, 1965. Under that rule a disciplinary authority by general or special order may place a Government servant under suspension where a case against him in respect of any criminal offence is under investigation, enquiry or trial. In his application, the applicant has stated the happening of an incident in the afternoon of 17.9.86. According to him, that was a got-up incident in which he was falsely implicated. At this stage we are not entering into the genuineness of that incident. All what we get now is that on the basis of a complaint lodged over that incident an investigation was taken up by the C.B.I. From Annexure-VII to the application we get that on 23.3.87 the applicant was informed by the concerned authority that after investigating the matter the C.B.I. had filed a case against him under sections 120B and 161 I.P.C. read with sections 5(1)(D) and 5(2) of the Prevention of Corruption Act, 1947. Considering this position, we do not find that the concerned authority had done any wrong in not revoking the order of suspension passed against the applicant. In this connection, the nature

of the offence alleged to have been committed by the applicant should not be over-looked. It is the version of the respondent that the applicant was caught red handed by the Anti-Corruption Bureau while taking illegal gratification. In our opinion, when the offence is one of moral turpitude, the disciplinary authority has its discretion to retain or revoke the suspension order passed against a particular Government servant. From the circumstances of the case we do not find that the concerned authority had misused that discretionary power so far as the applicant was concerned. Such being the position, we hold that the applicant has no *prima facie* case.

4. It appears from the record that the applicant's prayer for revocation of the suspension order made to his disciplinary authority was rejected on 20.3.87 (vide Annexure-V). Being aggrieved by that order he preferred an appeal to the Director General of Inspection on 26.3.87 (vide Annexure-VI). By ^a reasoned order his appeal was rejected by his appellate authority, as we find from Annexure-VIII, on 9.7.87. It is curious to note that he preferred another appeal to the same appellate authority on 9.2.89. Without waiting for expiry of a period of six months for getting a reply, the applicant filed the instant application before this Tribunal on 22.6.89. We find that in that regard this application cannot be admitted as it is premature.

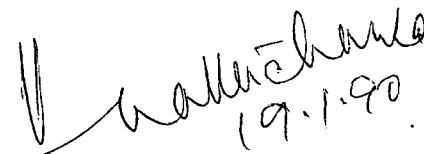
5. Lastly, we find it from para 6 of the written reply filed by the respondents that a similar application filed by the applicant earlier being Numbered as O.A. 803 of 1987 had been withdrawn by him without liberty to file a fresh one on 11.3.88. It is now well settled by the decision of the Supreme Court reported in AIR 1987 SC 88 that withdrawal of a claim without permission to sue afresh on the same cause of action would bar a fresh application on the same subject matter.

(6)

Considering that aspect of the matter also, we hold that this application is not fit for adjudication by this Tribunal. In view of the observations made above, we dismiss this application summarily.



(P.S. CHAUDHURI)
ADMINISTRATIVE MEMBER
19.1.90



(A.P. BHATTACHARYA)
JUDICIAL MEMBER
19.1.90

Decoyment-dtd. 19.1.90

Send to parties

on 31.1.90.

