

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. NO. 648/2005

Date of Order: 27/10/2005

C O R A M

**Hon'ble Ms. Sadhna Srivastava, Member(Judicial)
Hon'ble Mr. A.K. Singh, Member(Administrative)**

Swetabh Suman, Son of Late B.K. Singh, resident of 8, C.H. Area (North), P.O. Jamshedpur, P.S. Bistupur, Jamshedpur, District East Singhbhum.

..... Applicant.

By Advocate:- Shri Sadanand Jha with Shri S.C. Mitra.

-Versus-

1. The Union of India through the Secretary, Department of Revenue , Ministry of Finance, Govt. of India, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Chief Commissioner of Income Tax, Patna, C.R. Building, Birchand Patel Path, Patna.
4. The Chief Commissioner of Income Tax. C.R. Building, Main Road, Ranchi.
5. The Commissioner of Income Tax, Jamshedpur I.T. Office, 47- C.H. Area, Jamshedpur.
6. Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.

..... Respondents



By Advocate: Shri M.K. Mishra, Sr. Standing Counsel.

ORDER

A.K. Singh, Member[A]:-

OA 648 of 2005 has been filed by applicant Swetabh Kumar (hereinafter referred to as applicant) against order dated 16th September, 2005 U/S 19 of Administrative Tribunal Act, 1985 on the following grounds:-

- i) The suspension of the applicant is against the guidelines for suspension, of the Government of India as stated in para 4.17, 4.18, 4.19 and 4.20 of the OA.
- ii) Chargesheet has not been submitted against the officer.
- iii) In view of serious illness of his old mother, who is being treated at Jamshedpur Cancer hospital, the order of suspension was unjustified.
- iv) There is no chance of tampering with the evidence if he continues to be posted at Jamshedpur as the investigation of the case against the applicant is being conducted at New Delhi.
- v) That the impugned order of suspension is intended to harass the applicant and bring an efficient officer to disrepute.
- vi) That the impugned order of suspension is hasty and without application of mind by the competent authority and is arbitrary and discriminatory.

2. The applicant has accordingly prayed for quashing the impugned order of suspension dated 16th September, 2005.

Applicant has also prayed for stay of the impugned order of



suspension as an immediate measure of interim relief.

3. We have heard the applicant as well as the respondents today i.e. On 27.10.2005. The applicant was represented by learned counsel Shri Sadanand Jha . The respondents were represented by the learned Sr. Standing Counsel Shri M.K. Mishra.

4. Commencing the arguments on behalf of his client, learned counsel for the applicant submitted that his client had an unblemished record of service and was posted at Dehradun till May,2005 and was posted to Jamshedpur on his own request on ground of his mother's sickness. His mother is a chronic patient of Cancer and is undergoing treatment at MTMH Cancer Hospital, Jamshedpur. She is also receiving treatment of an heart ailment. He submitted that Medical Certificate as well as prescriptions from Hospital authorities are available on record. He further submitted that applicant has a meritorious record of service and that during his posting at Jamshedpur, an F.I.R. was lodged on 2.8.2005 at New Delhi bearing No. CBI/SCR-1/2005 RC SI I 2005 A 0016, dated 2.8.2005 under Section 13(2) read with Sec 13(1) (E) of the Prevention of Corruption Act, 1988. On the ground that applicant had acquired huge assets in his own name and in the name of his family members which were disproportionate to



his known Source of Income. He further submitted that allegations in the FIR were figments of imagination of the police and were frivolous in nature. His client hailed from a rich and respectable family and that even before joining the service he had enough share of property in his name. No charge sheet has yet been issued to his client in the case and the case was still in a fluid stage. His client was cooperating with the investigations in the aforesaid case. Unless chargesheet is issued, suspension of an employee from service, accused of an offence, is not desirable. He further submitted that as per guidelines, suspension of an officer from the service are to be sparingly resorted to and the competent authority must take all factors into consideration and exercise his discretion with due care in this regard even when the matter is under investigation and a prima facie case is established. No Chargesheet has been issued to his client so far. Hence the impugned order of suspension has been issued in haste. Competent authority had also to consider other relevant factors i.e. whether the continuance of his client in office would prejudice investigations, such as, tampering with witnesses or documents or that it will subvert discipline in the office. He accordingly submitted that impugned order of suspension of his client is not only hasty but without application of mind by the

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competent authority.

5. He also submitted that even subsistence allowance had not been allowed to his client which was obligatory on the part of the Competent Authority under the rules laid down in this behalf.

6. He also relied on apex Court decision in the case of Bimal Kumar Mohanty Vs. State of Orissa reported as per AIR 1994 Supreme Court Page 229 wherein it has been held that an order of suspension should not be passed as a matter of administrative routine and that gravity of misconduct sought to be investigated and the nature of evidence placed before appointing authority should be considered before passing order of suspension. He also cited a number of other decisions in support of his plea that impugned order of suspension should either be quashed or stayed.

7. He also argued that no subsistence allowance had been sanctioned to his client by the Competent Authority even though it was admissible to him under the rules. He accordingly prayed for grant of necessary relief in this regard.

8. He further submitted that his client, on suspension had been transferred to Chennai from Jamshedpur which was a harsh decision in view of serious illness of his old mother who was suffering from cancer and heart ailment, and was being

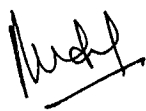


treated in Jamshedpur Cancer Hospital. He accordingly prayed for stay of transfer order F. No. C-13011/4/2005 dated 16th December, 2005.

9. Learned Counsel Shri M.K. Mishra, on behalf of respondents, submitted that it was within the competence of disciplinary authority or employer to suspend an employee pending investigation into grave charges of misconduct and that the competent authority had taken this decision to suspend the applicant after taking into consideration all relevant facts, including the gravity of misconduct sought to be investigated. He also cited the Apex Court decision in the case of Shri Parma Nand Vs. State of Haryana and Others reported as per 1989(2) SCC 177 wherein the Apex Court has held that Tribunal cannot interfere with the findings of the Inquiry Officer or Competent Authority where they are not arbitrary or perverse. Tribunal also has no powers to substitute its own discretion for that of the Authority.

10. He also vehemently opposed grant of stay of transfer order F. No. C-13011/4/2005 dated 16th September, 2005 as it would virtually amount to allowing the OA in question.

As regards grant of subsistence allowance, he categorically stated that subsistence allowance will be admissible to the applicant immediately on joining his new



place of posting at Chennai.

11. We have considered the submissions made by learned counsels on behalf of the applicant and the respondents in support of their case. Under Chapter 2, Para 4(4) of Swamy's Compilation of CCS(CCA) Rules, it is clearly laid down that "Even in cases where any Criminal Offence is under investigation by the police or under inquiry, the Government Servant concerned may be placed under suspension". In Para (vi) of aforesaid Chapter 2, certain guiding principles have been laid down by the Government for deciding the suspension of a Government Servant by the Competent Authority.

Sub para (2) of Para (vi) specifies certain types of misdemeanor where suspension may be desirable. These include corruption, possession of assets disproportionate assets to the known sources of income of public servant etc. It has also been laid down in sub para 1(1) of para-(6) that a public servant can also be suspended where his continuance in office is likely to prejudice the investigations in the case.

12. We also find from the record that CBI registered a Regular Case as per RC S1 I 2005 A 0016 dated 2.8.2005 under Section 13(2) r/w Section 13(1) (e) of Prevention of Corruption Act against the applicant for possessing assets disproportionate to his known sources of income in pursuance



to a secret investigation. In the preliminary investigation CBI has unearthed assets valued at Rs. 1,49,43,597.00 acquired by the applicant which include immovable properties worth valued as 1,45,58,320 and movable property (in the form of cash deposits) worth Rs. 3,85,277.15. The value of disproportionate assets as per CBIs findings on record comes to Rs. 53,11,254/-, which in their opinion, "was likely to increase substantially in view of the investments being made by Shri Swetabh Suman for acquisition of properties at Dehradun or Lucknow through USHA and IRS Officer's Cooperative Housing Society respectively....."

13. In view of the facts on record, the Competent Authority seems to have passed the suspension order in question vide F.No. C-13011/4/2005- V& L dated 16th September,2005, after full application of mind and his decision can neither be said to be arbitrary, capricious or without application of mind. We, therefore, would not like to interfere with the impugned order of suspension for the aforesaid reasons.

Moreover, as rightly pointed out by the learned counsel for the respondents that Central Administrative Tribunal , in the normal course, can not substitute its own discretion for that of the Competent Authority unless the same



is arbitrary or perverse. This view finds support from the Apex Court decision in the case of Shri Parma Nanda Vs. State of Haryana and Others, [1989] (2) SCC 177 wherein apex Court has held that Tribunal can exercise only such powers which the Civil Court or in High Courts could have exercised by way of judicial review. Their Lordship of the Supreme Court further held that jurisdiction of Tribunal to interfere with disciplinary matters or punishment cannot be equated with appellate jurisdiction. The Tribunal can not interfere with the findings of the competent authority where they are not arbitrary or perverse.

In the case of State Bank of India vs. Samarendra Kishore ENDOW , 1994 (1) SLR 516, the Apex Court reiterated its earlier decision by holding that Tribunal had no powers to substitute their own discretion for that of the authority. The Apex Court has also reiterated the same view in the case of State of Orissa vs. Bimal Kumar Mohanty wherein their Lordships have held -

" On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondents, the Tribunal was quite unjustified in interfering with the orders of Suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in

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haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondents, therefore, that the direction exercised by the Tribunal shall not be interfered with and this court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance. (Para 13)"

On the basis of the above, as we have already stated above, it will not be possible for us to interfere with the impugned order of suspension. Nonetheless, we find that there is substantial merit in the applicant's request for subsistence allowance, which is clearly admissible under the rules. Grant of subsistence allowance to a public servant on suspension is admissible under the Rules (Ref paras (1) and (2) of Chapter (4) of Swamy's Compilation of CCS, CCA Rules). It is also provided under the Rules that a government servant under suspension is entitled to subsistence and other allowances from the date and during the period of suspension under statutory provision of FR 23. However, subsistence allowance to a suspended government servant can be disallowed under only one condition i.e., when the government servant is unable to produce or furnish a certificate that he is not engaged in any other employment, business, profession or vocation during the



period of suspension."

24. Sub para (ii) of para 1 of Chapter 4 provides different levels of subsistence allowance depending on the period of suspension.

25. Learned counsel for the respondents also ^{Conceded} ~~conceded~~ that subsistence allowance is admissible to the applicant and that the same shall be paid as soon as he joins his new place of posting. Hence, there is no dispute on the point that subsistence allowance is admissible to the applicant under the Rules. Competent Authority should, therefore, consider granting subsistence allowance to the applicant retrospectively from the relevant date as soon as he reports to his place of posting as decided by the Government.

26. Applicant has also sought relief in respect of transfer of his headquarters from Jamshedpur to Chennai on the ground of his mother's illness.

27. When we examine the request of the applicant vis-a-vis the provision of Rules laid down in this behalf we find that as per para 16(1) of Chapter 2 of Swamy's Compilation of CCS (CCA) Rules, " the station of posting of a suspended Government servant, immediately before his suspension will be the headquarters of the suspended officer"

However, as per para 16(2), the competent authority can change the headquarters of a Government Servant under suspension if it is in public interest.

Para 16(3) further lays down,

"When an individual under suspension requests for a change of headquarters, there is no objection to the Competent Authority changing it if it is satisfied that such a course will not put government to any extra-expenditure like grant of travelling allowance etc. or other complications like creating difficulty in investigation or in processing the disciplinary proceedings."

28. While we feel that the applicant has some case in respect of subsistence allowance or for that purpose a change in the headquarters in view of the serious hardship faced by him, nonetheless we find that he has not exhausted the remedies available to him under the statute:

Para 17 of Chapter 2 of Swamy's Compilation of CCS(CCA) Rules provides for appeal to competent authority. Since suspension itself is not a punishment, nonetheless, it constitutes a great hardship for a government servant. Therefore, the further course for the applicant to seek relief in respect of revocation of his suspension, or claim of subsistence allowance, or of change of headquarters, from Jamshedpur to Chennai on ground of extreme hardship, lay with the Competent Authority and it was only after rejection of



his request that he could approach this Tribunal for necessary relief.

Section 20(1) of the Administrative Tribunal Act lays down :-

(i) "A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant Service Rules as to redressal of grievances."

(ii) As per sub rule(2) of Section 20,

" For the purposes of subsection (1), a person shall be deemed to have availed of all the remedies available to him under relevant Service Rules as to redressal of grievances.-

(a) if a final order has been made by the Government or other authority or officer or other person competent to have such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or


(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation has expired....."

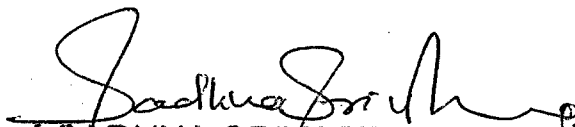
29. We do not find any indication of this fact either in OA or in the oral submissions of the applicant. We are, therefore, of the opinion that applicant should in the first place approach the Competent Authority for necessary relief in

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respect of the above. We also direct the competent authority to consider and decide the representation of the applicant as per speaking order within two months from the date of receipt of the same in his office. The applicant is at liberty to approach the Tribunal in case he is aggrieved by the decision of Competent Authority, as per Law.

30. The O.A. is disposed of accordingly.


[A. K. SINGH]
MEMBER[A]


[SADHNA SRIVASTAVA]
MEMBER[J]

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