

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 226 /1996

Date of Decision: 13.9.96

Satish Chander Sachdev

Petitioner/s

Shri G.K. Masand alongwith
Shri A.I. Bhatkar

Advocate for the
Petitioner/s

V/s.

Union of India & Others

Respondent/s

Shri V.S. Masurkar
Central Govt. Standing Counsel


Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ? *yp*
- (2) Whether it needs to be circulated to *6*
other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, FORT, MUMBAI - 400001.

ORIGINAL APPLICATION NO. 226 OF 1996.

Dated this 13th day of September 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A).

Satish Chander Sachdev)
Assistant Naval Store Officer,)
Material Organisation (CWH))
Naval Store Depot, Ghatkopar)
Bombay - 400 086, presently)
residing at 2, Sabarmati,)
Naval Park Officers' Colony)
Ghatkopar (W))
Bombay - 400 086.)

(By advocates Ss: G.K.)
Masand alongwith A.I.)
Bhatkar))

... Applicant

v/s

1. Union of India)
through the Secretary,)
Ministry of Defence)
Sena Bhavan)
New Delhi - 110 011.)

2. The Chief of the Naval)
Staff, Naval Headquarters)
DHQ P.O., New Delhi -110011)

3. The Chief of Personnel)
Naval Headquarters,)
DHQ P.O.)
New Delhi - 110 011)

4. The Flag Officer Commanding-)
in-Chief, Headquarters,)
Western Naval Command)
Shahid Bhagat Singh Road)
Bombay 400 001.)

5. The Material Superintendent)
Material Organisation)
Naval Store Depot)
Ghatkopar (West))
Bombay 400 086.)

... Respondents

(By advocate Shri V.S.)
Masurkar, Central Govt.)
Standing Counsel))

MS

O R D E R S

[Per: Shri B.S. Hegde, Member (J)]

Heard Shri G.K. Masand alongwith Shri A.I. Bhatkar for the applicant and Shri V.S. Masurkar for the Respondents. In this O.A., the applicant is mainly challenging the suspension order passed by the Respondents vide dated 17-10-1994 under Rule 10 of the CCS (CCA) Rules 1965 and seeking to quash the same and allow the applicant to resume his duties or in the alternative to initiate disciplinary proceedings and complete the enquiry within the stipulated time.

2. The applicant joined the Naval Organisation as Store Man in the year 1961 and was promoted as Asstt. Naval Stores Officer in the year 1991. As against the suspension order, the applicant preferred an appeal to the Chief Personnel Officer on 1-12-1994 urging that in the facts and circumstances of the case he may be transferred to some other department other than the Material Organisation, Bombay. Again, he sent a reminder on 14-2-1995 to review his subsistence allowance and to review the suspension order itself. The Respondents by its letter dated 31-3-1995 (Ex. 8) decided not to change his subsistence allowance. Thereafter, he sent another representation dated 15-4-1995; but no reply has been received from the Respondents. Again, on 14-10-1995 the applicant sent another representation stating that

Ph

From pre-page:

even after completion of 15 months of his suspension, he has neither been given charge sheet nor his suspension is revoked. Even subsistence allowance has not been enhanced. It is further stated that one Mr. K.V. Makhwana who was also alongwith the applicant suspended but his suspension was later on revoked in the same incident and he was proceeded with departmental enquiry whereas the applicant has not even been served a charge sheet till date. It came on record that both the applicant and Shri K.V. Makhwana were arrested on 12-7-1994 and were released on bail together for the alleged misconduct i.e. for having demanded and accepted a bribe of Rs. 5000/- from a particular firm representative. Normally, the suspension should not exceed more than six months and charge sheet is to be issued within three months; therefore, it was pointed out that the suspension order passed by the Respondents is bad in law and is required to be quashed. It is not disputed by the Respondents that though they have issued a chargesheet against Shri K.V. Makhwana and finalised the disciplinary proceedings; however, the same has not been done with regard to the applicant. Both were involved in the same incident which is nothing but a discriminatory treatment and contrary to the provisions of the Constitution.

3. The Respondents in their reply did not clearly deny the various contentions of the applicant but only

M

From pre-page:

contended on the basis of a letter issued by the CBI stating that there is sufficient evidence for launching a prosecution against the applicant under the Prevention of Corruption Act and the Respondents have been given necessary sanction to prosecute the applicant by the competent authority and charge sheet has been filed in the Court of Hon'ble Special Judge, Greater Bombay and therefore the present application for revokation of suspension order has no merit etc. but no particulars of the charge sheet filed by the Respondents i.e. CBI in the Court of Special Judge, Greater Bombay has been furnished. Further, it is contended that a criminal case filed by the CBI is sub-judice in the Court of the Special Judge, Greater Bombay and delay is anticipated and as such the question of finalisation of the case by the Respondents does not arise and revocation of the suspension order by the Respondents is not desirable at this stage since there is likelihood of tampering of relevant official documents once he is allowed to resume duty. As regards the departmental disciplinary case against the applicant, it is submitted that no charge sheet has been issued against the applicant; however a criminal case was filed by the CBI in the Court of Special Judge, Greater Bombay, against the applicant and the same is pending in the Court.

4. We have heard the learned counsel for both the parties and perused the pleadings. Even assuming that

From pre-page:

that the CBI had issued a charge sheet against the applicant, the contention that the applicant is likely to tamper the evidence has no basis in law and since the CBI has completed the investigation, the question of tampering the evidence by the applicant at this stage does not arise. Further, it is not for the CBI to consider whether the suspension is required to be revoked; it is for the competent authority that the respondent department should consider keeping in view the various aspects of the case especially since Shri Makhwana was involved alongwith the applicant against whom the disciplinary proceedings had been already initiated and completed, nevertheless, no such action was taken by the department against the applicant so far. This itself shows non-application of mind by the Respondents in not taking the necessary steps to complete the proposed enquiry against the applicant. It may be noted that the proposed disciplinary enquiry cannot be linked with launching of prosecution by the CBI or any matter pending before the Criminal Court. The Respondents have contended in their reply that the CBI vide their letter dated 23rd August 1994 recommended to the Respondent no. 4 that the department can go for major penalty proceedings to be taken against Shri Makhwana and the applicant, but no such letter has been adduced by the Respondents in this O.A. It is learnt that

Am

From pre-page:

Shri Makhwana retired from service on 30-11-1995 and the applicant is likely to retire from service in June 1997. It is an admitted fact that the Respondents neither revised the subsistence allowance after passing the suspension order nor considered for revocation of the suspension order which is required to be done under the rules. The applicant was suspended as against the contemplation of the disciplinary proceedings against him. For the sake of repetition, no such disciplinary proceedings has been initiated against the applicant nor any further action has been taken in this respect; the only plea of the Respondents is that the CBI has filed a charge sheet in the Special Court of Bombay and thereby there is no question of revoking the suspension order at this stage. In our view, such contention is not tenable, because the criminal proceedings has nothing to do with the proposed action by the Respondents; as such the question of tampering the evidence by the applicant at this stage is not warranted. The learned counsel for the applicant Shri Masand drew our attention to the decision of the Co-ordinate Bench of Madras in P. Subramani v/s Union of India where a similar issue has been dealt with by the Tribunal and passed the following order -

"The question now to be considered is whether the suspension order should be revoked and the officer permitted to resume duty. In the counter also it has not been stated as to why

[Redacted]

the continuance of the officer concerned under suspension is really necessary except that investigation by CBI is not completed. If the order of suspension is based on the ground that his presence will be detrimental to the investigation or inquiry or trial, that could be solved, as pointed out in the guidelines, by transferring the officer to another place on revocation of the suspension order. In this view of the matter the application is allowed and the order of suspension will stand set aside as and from this date."

5. Applying the principle of the aforesaid judgement, in so far as this case is concerned, it is an admitted fact that the investigation has already been completed and the CBI has already filed a charge sheet in the Special Court of Bombay; therefore, in our opinion, the decision of the Madras Bench would apply in all forces to the facts of this case and accordingly, the suspension order passed by the Respondents is hereby quashed and set aside. In this view of the matter, the application is allowed and the suspension order stands quashed and set aside with liberty to the Respondents to transfer the applicant to some other unit/place if the circumstances so warrant. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

ssp.

Issued judgement
dt. 13/9/96. to ~~the~~
both the counsels.
on 18/9/96.

18/9/96.