

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:16/2000
DATED THE 4th DAY OF JAN, 2002

CORAM:HON'BLE SHRI JUSTICE B.N.SINGH NEELAM, VICE CHAIRMAN
HON'BLE SMT SHANTA SHAstry, MEMBER(A)

Dilip Laxmikant Deo,
Flat No.6, Gulmohar,
Tilak Nagar, Nagpur.

... Applicant

By Advocate Shri R.B.Pendharkar

V/s.

1. Union of India, through the
Secretary, Ministry of Finance,
New Delhi.
2. Central Board of Direct Taxes,
New Delhi.
3. Director of Income-Tax,
Vigilance, New Delhi.
4. Joint Director of Income-Tax,
(Vigilance), Aaikar Bhavan,
Mumbai.
5. Commissioner of Income Tax,
Vidharbha, Nagpur.
6. Chief Commissioner of Income Tax,
Pune.

... Respondents

By Advocate Shri V.G.Rege

(ORDER)

Per Shri B.N.Singh Neelam, Vice Chairman

This OA is so filed by one Shri D.L.Deo under section-19
of the Adminsittrative Tribunals Act 1985 seeking relief/reliefs
after
so detailed para 29 of this OA which need not be repeated.
The main grievance of the applicant is that he was suspended vide
order dated 14/9/93 a copy of which is filed marked as Annexure
'E' under subrule -1 of the Rule 10 of the CCS (Classification
Control and Appeal) Rules 1965 because of the criminal case so

instituted against the applicant under section 7 of the Prevention of Corruption Act 1988 relating to which criminal case pending No.20/93 got so registered before Special Judge, Nagpur and in the said order the circumstances in which the order of suspension was made are also detailed stating that a complaint was lodged by one LIC Agent, Shri A.J.Mahant on the basis of which a trap was laid by CBI and the applicant as alleged was caught red handed on 6/9/93 while accepting the bribe of Rs.150/-. The case of the applicant is that since then mechanically a stenio type orders were so passed by the respondents extending the period of his suspension in support of which reference is made to Annexure J to W and by the plain reading of the same it will transpire that while extending the period of suspension, the matter was not reviewed as expected and till today the said criminal case is pending though charge sheet is submitted belatedly, charge has not yet been framed against the applicant. It is also the case of the applicant as detailed by his learned counsel that good number of representations were also so filed by the applicant before the concerned respondents who also happens to be the Appellate Authority, the copies of such representations filed are also furnished marked as Annexure X to Z-4 but all such representations were so not considered favourably rather disposed of on cryptic grounds and thus there was no sense in filing a separate appeal under the provision of Rule 23 of the CCS (CCA) Rules 1965. Furthermore, attention is drawn to the amendment petition so filed for adding paragraph 8(a) in the Original application which was also allowed detailing that in the background of the facts and circumstances, it was incumbent on the part of the respondents as to consider the present case

revoking the suspension order under the provisions of Rule-10 Subrule-5 clause-c of the CCS(CCA) Rules 1965. Illustrations are so given of some of the cases in which ~~because~~ of the undue delay in concluding the criminal trial, such relief by way of revoking the suspension order was given to the Officer suspended by the Disciplinary Authority and in support of his this contention, reference is made to the case of S/Shri K.K.Pratap, B.R.Madame, B.L.Didwani who ~~so~~ submitted were given relief by way of revoking the suspension orders and it is a case of clear discrimination when the applicant being also similarly situated, the prayer so made for revoking the suspension was not allowed. In support of his this contention with regard to the other employees in similar circumstances, being given the reliefs by the respondents, reference is made to Annexure Z-9 to Z-13 and Annexure Z-5 which is the ~~order~~ ~~so~~ in OA-561/91 so disposed of on 18/6/92 by this Bench. It is also the case of the applicant that though the subsistence allowance at one time was revised but subsequently reason best known to the respondents, the recovery was so made relating to excess payment made as subsistence allowance which was so done without serving notice and in reference to this contention attention is drawn to Annexure Z-8, which is a tabular chart so submitted claiming arrears to the tune of Rs.86,834/- and also claiming the subsistence allowance to the tune of Rs.7,585/- and not Rs.4,640/- as paid. As ~~far as~~ Annexure Z-10 is concerned in which suspension is revoked in case of B.T.Madame, it has been pointed out that the said case is very much identical with the case of the present applicant. Another leg of argument so advanced by the learned counsel for the applicant that ~~there~~ ^{is} was revision of pay in the year 1996, but

the respondents even failed to consider as to fix up subsistence allowance at the revised scale of pay and a step motherly treatment in this regard was also so given/being raised in the representation petitions so filed ~~at~~ several occasions but to no effect. Hence mainly, the prayer so made is that suspension of the applicant right from 14/9/93 to this date in the background of the facts and circumstances when there is no chance of conclusion of criminal trial in near future because of the charges have not yet been framed, the order of suspension is thus fit to be revoked and the continuance of which for such long period i.e. for ~~eight~~ years can well be said to be arbitrary, quite prejudicial to the interest of the applicant and against the principles of natural justice. It is also the case of the applicant that till today no disciplinary proceeding has been initiated against the applicant and delay in conclusion of the trial or in framing of charge in the said criminal case can on no account be said to be in any way attributable to the ^{action of the} suspended officer, i.e. the applicant. A reference is also made with regard to the guideline so given relating for consideration of revocation of suspension order as contained under Rule 3(c) of the Suspension General Instructions contained in Chapter-3 of the Swamy's CCS (CCA) Rules 1965 which shows that while placing an official under suspension the competent authority should consider whether the purpose cannot be served by transferring the official from his ~~place of~~ posting to another place where he may not repeat the misconduct or influence the investigations if any in progress and if the authority finds that the purpose cannot be served by transferring the official from his ~~place~~ to another ~~place~~ then that authority should record reasons either before placing the official under

suspension. That being position, this guideline has also not been followed by the authorities. In support of this contention, mainly challenging the continued suspension order right from 1993 to this date, on behalf of the applicant some of the reported cases are also cited. As regards the discrimination so made when in similar circumstances, other employees being suspended; their suspension got revoked, attention is drawn to a reported case 1999 LAB.I.C.1311, Anil Kumar Gupta V/s. State of Rajasthan. On the same analogy, hence the prayer is that the continued suspension of the applicant can well be said to be bad in law and well be said to be illegal, contrary to the rules. With regard to the subsistence allowance liable to be paid to the applicant as per the revised scale of pay as revised in 1996, the applicant has claimed and fortified by two reported cases being cited and they are 1993 Supp(2 SCC) 210, Umesh Chandra Mishra V/s. Union of India particularly in its paragraph 9 is therefore referred. The second case cited on this point is the judgement so passed in WP 2814/88 on 26/7/2001 by the High Court of Judicature at Bombay. It is further pointed out that applicant has faced great humiliation and harassment in the hands of the respondents by keeping the applicant on prolonged suspension which is manifestly against the principles of fair play in action.

2. The learned counsel for the applicant it transpires though has claimed other consequential benefits but in our considered opinion the only question which arises for consideration which is claimed to be vital and pressed into service is as to whether the continued suspension of the

applicant in the background of the facts and circumstances of this case can be said to be justified and legal or it be declared to be arbitrary and unreasonable?

3. By controverting the arguments so advanced by the applicant, the learned counsel for the respondents on the other hand has submitted that because as per the FIR so lodged relating to Criminal Case 20/93 so instituted, the applicant serving as Supervisor Grade-II was caught red handed accepting bribe of Rs.150/- and that being the position it was a case of moral turpitude and keeping in mind the nature of the criminal offence said to have been so committed by the applicant, rightly this suspension order was so passed which was extended from time to time ~~when~~ the matter being reviewed as being felt ~~detimental~~ to the interest of the department revoking the suspension order. The learned counsel for the respondents has further submitted that since his continuance in office was treated against wider public interest and the said suspension order was decided to be continued till conclusion of criminal case as also to administer the policy of department to deal strictly with the officers involved in accepting illegal gratification and involving themselves in corruption in his case accepting a bribe of Rs.150/-. With regard to some of the cases cited in which other suspended employees being, granted the privilege when their suspensions were revoked, on behalf of respondents it is pointed out that those cases ~~etc~~ stood on a different footing and cannot be said to be identical with that of the applicant. Although it will not be out of place to mention that the learned counsel for the respondents has further stated

that though the charge sheet has been submitted, the charge has not been framed against the applicant as yet. It has also been conceded that till today no disciplinary proceeding has been initiated against him for the said offence and that the respondents side have/ not shown the cause for the delay in conclusion of the trial in any way was/ the conduct of the present applicant. It is pointed out that as regards the criminal case pending, the conclusion of the same is not in the hands of the respondents and the subsistence allowance is being paid to the applicant. So there is no question of his in any way facing financial crises. As regards the payments of subsistence allowance to the applicant during the suspension period as ^{revised pay scale} ~~per the~~ / it is submitted by the learned counsel for the respondents that though there was revision of pay scale in the year 1996, for the payment in subsistence allowance on the basis of revised pay scale was not paid to the applicant in the light of the criminal case pending and in support of this contention, it is also submitted that a similar matter was referred to a larger bench in OA-~~569~~ 96 on 20/12/2001 itself and in support of this a photocopy of the order so passed referring the matter to the larger Bench is filed which be kept on record and shall remain as part of the record.

4. From respondents side a reference is made to orders so passed in Udai Narain case decided by Apex Court on 30/3/98 in SC SLJ 1999(1) 93, Civil Appeal No.1829/98 arising out of SLP C/16388/97, in which as submitted it is held that the quashing of the suspension order on the ground that suspension no longer survived during the period when investigation was completed and trial yet to begin.

Revocation of suspension order be not ordinarily revoked in support of this contention on behalf of the respondents a reference is/ made to (1993)24 ATC 386 Children Film Society of India v/s. Sridhar Sharma as it is submitted that the said appeal was allowed and order in appeal was set aside. On this ground and on other grounds so detailed in the written statement so filed on behalf of the respondents, hence the prayer that since this OA so filed has not leg() to stand, the same rather be dismissed.

4. After hearing both the sides lawyers, we have carefully gone through the contentions with/ the documents so filed therein. We have also gone through the written statement so filed with the annexures filed therein and rejoinder so filed to that effect. Certain facts are admitted in the instant case such as suspension of the present applicant initially so ordered vide Annexure E dated 14/3/93. It is also admitted by the learned counsel for the respondents that no disciplinary proceedings has yet been initiated against the applicant for the event which is was the subject matter for investigation of the criminal case bearing no. 20/93 pending in the Court. It is also admittedly the case of the parties that though the charge sheet has been submitted, but charge has not yet been framed and that being the position, no likelihood of the conclusion of criminal trial in the near future.

5. With regard to the relief/reliefs so sought for, however the respondents have challenged the same on the grounds, detailed above. While coming to the reported case so cited by the in ^(supra) respondents U.N. Singh v/s. Union of India/ While going through

the same, it transpires that since Tribunal had revoked the suspension order in the said case in that case on the basis of completion of investigation itself, which was not appreciated. This reported case so cited in our considered opinion is distinguishable with that of the present case. The applicant here challenged the prolonged continuation of the suspension period being extended from time to time mechanically, when it was expected that the suspension to be reviewed after every three months by passing a speaking order assigning reason for their extension of suspension which in the instant case is not so done. As regards reported case so cited by the respondents CFSI v/s. Sridhar Sharma (supra), in that case the revocation of suspension order was set aside in the background of the suspension order being only dated 21/9/90 being revoked on 5/2/93 by the High Court but in the instant case the suspension order is passed on 14/9/93 continuing for eight years and that too without assigning any cogent reason. As regards the argument so advanced on behalf of the respondents that subsistence allowance not to be considered to be given at the revised payscale till conclusion of the criminal case pending and such matter for decisions also being referred to larger Bench in OA 560/96 on 20/12/2001 copy of which is filed, we find that in such situation, it is a matter not to be considered in favour of the applicant for the present.

6. As regard the reported cases cited on behalf of the applicant the same are mainly on the point of discrimination as employees similarly placed their suspension orders have been revoked and as claimed by applicant he has been given step motherly treatment.

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7. In the case of suspension order so passed by the disciplinary authority, it is in the inherent powers of disciplinary authority as to review periodically their cases as to what steps can be taken to expedite the progress of the Court trial or departmental proceedings and as to consider ~~revocation~~ of the suspension order directing to resume duty either at the same station or at a different station, but in our considered opinion also while going through the written statement, it transpires that no such action is indicated, ~~leading~~ to believe that the authorities while reviewing periodically the initial order of suspension at any later date ~~took~~ steps to expedite the progress of the Court Trial in the instant case was not taken. This also ~~yet~~ shows that the applicant was put to undue hardship. It ~~involved~~ also payment of subsistence allowance without the employee performing any useful service during the period of suspension and this aspect has also been totally overlooked by the respondents in the instant case. The respondents in our considered opinion have also not cared to look into the general instructions of suspension as contained in Rule-3(c) and by revoking the suspension for which good number of representations were so filed. The applicant could have been posted to some other station on the equivalent post to avoid any interference by the applicant in the criminal trial not yet concluded but that aspect was also not looked into in the instant case by the concerned authorities. If there was any likelihood of tampering with the evidence by the suspended officer, in such situation instead of continuing prolonged suspension, the man could have been directed to be posted at the equivalent post at a

different station which has also not been taken into consideration in the instant case. Prolonged suspension for more than seven years and order of suspension being extended from time to time without assigning any cogent reason has made out a case as to grant relief to the applicant as sought for consideration for revocation of the suspension order and set aside the same as prayed for. In that light this OA so filed succeeds to the extent as detailed below.

a) The suspension of the applicant in the present case as detailed above stands revoked with a direction to the concerned respondents as to post him at a new place and the posting would be such ^{very} it would not give the applicant much chance to communicate with the public. The transfer to the new place will also deprive him of in any way tampering with the evidence relating to the criminal case so pending against him. Since the applicant happens to be a Supervisor Grade-II the posting to the new place be to the identical post and revocation of the suspension be treated effective from the date of his joining to the new place of posting with also a direction to the respondents concerned as to comply this order within a period of two weeks from the date of receipt of this order. This revocation of the suspension is so passed without prejudice to the merit of the criminal case pending and without in any way entering into the

merit of the criminal case 20/93 in which as per the submission of the parties, charge sheet is submitted but charge has not yet been framed. While after revocation of the suspension of the applicant as per the direction given, the applicant may also be directed as not to leave his place of new posting without prior written permission of the competent authority, during the pendency of the criminal trial against him.

b. The regulation of the pay (arrears) for the suspended period is to be sorted out by the respondents also giving opportunity to the applicant of hearing keeping in mind the absence of the employee if any during the suspended period also ascertaining of the applicant not serving at any other place during that period which be made after the conclusion of the criminal case against the applicant, and the matter relating to the refund of recovery so made out of the subsistence allowance said to have been paid in excess, be also taken into account for consideration by the authority concerned after completion of the criminal trial. Since no direction is being given for the payment of arrears, etc no question of deciding the interest to be claimed on the arrears but from the date of revocation of the suspension order made effective.

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from the date of the applicant joining the new place of posting as directed above, the respondents are also liable as to pay the salary to the applicant at revised pay scale if any as admissible in law.

C. No costs.

I. ante f.
(SMT. SHANTA SHAstry)
MEMBER(A)

B. N. Singh Neelam
(B. N. SINGH NEELAM)
VICE CHAIRMAN

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