

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 11 AUG 1987

APPLICATION NO 269 /87 (F)

W.P. NO _____

Applicant

Shri T.L. James

v/s The Asst Collector of Customs (Preventive)
Mangalore & another

To

1. Shri T.L. James
Old Karnataka Bank Buildings
Capitanio, Kankanaady P.O.
Mangalore - 575 002

2. Shri M.T. Keshava Iyengar
Advocate
'Abhiman'
1288/1, IV West Cross
K.M. Puram
Mysore - 570 004

3. The Assistant Collector of Customs
(Preventive), V Floor, P.V.S. Sadan
Kodiyal Bail, Mangalore - 575 003

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

4. The Collector of Customs
Central Revenue Buildings
P.B. No. 5400, Queen's Road
Bangalore - 560 001

5. The Secretary
Ministry of Finance
Department of Revenue
New Delhi

6. The Chairman
Central Board of Excise & Customs
New Delhi - 1

Please find enclosed herewith the copy of ORDER/xx/

~~ORDER~~ passed by this Tribunal in the above said

application on 5-8-87.

RECEIVED (26/8)

Encl : as above

7. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

R. M. Venkatesh
DEPUTY REGISTRAR
SECTION REGISTER
(JUDICIAL)

0/2

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 5TH DAY OF AUGUST, 1987

PRESENT:

Hon'ble Mr. Justice K.S.Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr.L.H.A.Rego .. Member(A).

APPLICATION NUMBER 269 OF 1987

T.L.James,
Old Karnataka Bank Buildings,
Capitanio, Kankanady P.O.,
Mangalore -2.

(By Sri M.P.Keshava Iyengar, Advocate)

..Applicant.

v.

1. Assistant Collector of Customs
(Preventive) V Floor, P.V.S.Sadan, Kodiyal Bail,
Mangalore-3.

2. Collector of Customs,
Central Revenues Buildings,
P.B.No.5400, Queen's Road, Bangalore-1. .. Respondents.

(By Sri M.S.Padmarajaiah, SCGSC).

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This application has come up for hearing this day, Vice-Chairman made the following:

O R D E R

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. On 7-5-1985 the applicant was working as an Inspector of Customs, Special Preventive (Inspector) at Coondapur of Dakshina Kannada District. On that day, the applicant is alleged to have connived with one Sri Abdul Rehman in smuggling contraband goods. On that basis, the Assistant Collector (Preventive), Mangalore ('ACP') who was one of the officers working in the office of the Additional



Additional Collector, Customs, Mangalore ('Additional Collector') by his order No.C.II/10-A/2/85-D.1 dated 27-9-1985 (Exhibit-A) placed the applicant under suspension pending contemplated disciplinary proceedings against him. Aggrieved by this order, the applicant filed an appeal before the Collector of Customs, Bangalore ('Collector'), who by his order dated 26-2-1987 (Exhibit-C) dismissed the same. Aggrieved by these orders, the applicant has approached this Tribunal on 15-4-1987 for quashing them and for a direction to reinstate him to service with all consequential benefits.

3. The applicant has urged more than one ground against the impugned orders and we will notice and deal with them in due course. In their reply, the respondents have justified the impugned orders.

4. Sri M.P.Keshava Iyengar, learned counsel for the applicant contends that the ACP who was not a disciplinary authority, the head of the office and was not specially authorised by the President by a general or a special order under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules,1965 ('Rules') was wholly incompetent to place the applicant under suspension and, therefore his order was without jurisdiction and illegal and its confirmation by the Collector does not make it legal at all.

5. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents contends that under the Rules as amended by the President on 7-5-1983, the ACP who was a disciplinary authority, was competent to place the applicant under suspension under Rule 10 of the Rules and the order made by him was within his jurisdiction and legal.

6. The order of suspension made by the ACP on 27-9-1985 reads thus:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE (DEPTT. OF REVENUE)
OFFICE OF THE ADDITIONAL COLLECTOR OF CUSTOMS,
P.V.S.SADAN: MANGALORE-3.

C.No.II/10-A/2/85-D.I

Mangalore, Dated 27-3-1985.

O R D E R

Sub:-Estt- Work and conduct of Sh.T.L.James, Inspector of Customs - suspension of - reg.

Whereas a disciplinary proceedings against Shri T.L.James, Inspector of Customs, working at S.G.P.Mulki is contemplated.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule (l) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules,1965, hereby place the said Shri T.L.James, Inspector of Customs, S.G.P., Mulki under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the Headquarters of Shri T.L.James, Inspector of Customs should be office of the Additional Collector of Customs,Mangalore and the said Shri T.L.James shall not leave, the Head quarters without obtaining previous permission of the undersigned.

Sd/- Ayyam Perumal,
Assistant collector (Prev.)
Mangalore."

7. Before the Collector, the applicant who had no legal assistance did not urge that the ACP had no competence to place him under suspension and, therefore, the Collector did not examine and deal with the same. As the question raised by the applicant before us is a pure question of law and touches on the jurisdiction of the ACP, we consider it proper to deal with the same notwithstanding the fact that the same had not been raised before the Collector.

8. The applicant is a Grou-C officer. The appointing authority of the applicant is the Deputy Collector of Customs (Preventive) (Personnel and Establishment) which is equivalent to the rank of an Additional Collector. The ACP is subordinate to them and he



he was not also the head of Mangalore office. He could not therefore exercise the powers of an appointing authority or the powers of the head of Mangalore office.

9. But, in the amendments made on 7-5-1983 to the Rules under the proviso to Article 309 of the Constitution of India, the President had inter alia provided that the Assistant Collector of Customs, in respect of persons serving under him, as one of the disciplinary authorities to impose minor penalties under Rule 11 of the Rules. This amendment had made the ACP as one of the 'disciplinary authorities' to impose minor penalties under the Rules on officials working under him. By this amendment, the ACP had become a disciplinary authority under the Rules to impose one or the other of the minor penalties under the Rules against the applicant who was a Group ~~PC~~ official on the relevant date and thereafter also.

10. Rule 10(l) of the Rules empowering the various authorities to exercise the power to place an official under suspension reads thus:

10.(l) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension:-

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Ser-

Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made."

We have earlier found that the ACP was a disciplinary authority against the applicant to impose minor penalties under the Rules. If that is so, then on the plain language of this Rule, the ACP was undoubtedly competent to place the applicant under suspension, notwithstanding the fact that he was not his appointing authority or the head of Mangalore office.

11. When once an authority becomes a disciplinary authority whether for major or minor penalties, then either the definition of the term 'disciplinary authority' under Rule 2(g) of the Rules or the 'head of the office' under Rule 2(f) of the Rules and Rule 14 of the Delegation of Financial Power Rules of 1973 ('1973 Rules') ~~cannot be read~~ as destroying the conferment of power of suspension under Rule 10 of the Rules. Every one of the Rules must be so read as to effectuate the power conferred on the authority by the Rules only.

12. The term 'any' occurring in Rule 2(g) of the Rules which in the context means all or any of the penalties imposable by the authority under the Rules, on which great reliance was placed by Sri Iyengar does not also destroy the amendment made by the President. We cannot, at any rate, read the term 'any' occurring in Rule 2(g) of the Rules to hold that the ACP was not a disciplinary authority for purposes of Rule 10 of the Rules.

13. In O.M.NO.7/4/74-Estt.(A) dated 9-3-1974, reproduced at para 7 of Swamy's Compilation of CCS CCA Rules (15th Edition), pages 14 and 15, Government had directed as hereunder;



" (7) Empowering all superior officers to suspend their subordinates. - In its report in Personnel Administration, the Administrative REforms Commission had recommended as under:

"53(2) - All Supervisory Officers should be empowered to suspend a subordinate officer (in circumstances disclosing gross dereliction of duty), subject, however, to a review of the order of suspension, within a short time by the next higher authority".

2. This recommendation has been accepted subject to the following modification:-

Only supervisory officers in office located away from head quarters need be specially empowered to suspend a subordinate officer in cases involving gross dereliction of duties. In order to prevent abuse of this power the suspending authority should be required to report the facts of each case immediately to next higher authority, and all such orders of suspension should become ab initio void unless confirmed by the reviewing authority within a period of one month from the date of orders.

3. As the Ministry of Finance etc., are aware under Rule 10 of the Central Civil Services (Classification, Control and Appeal)Rules,1965, the following authorities are competent to place a Government servant under suspension:

- (i) Appointing authority;
- (ii) Any authority to which the appointing authority is subordinated;
- (iii) Disciplinary authority; and
- (iv) Any other authority empowered in that behalf by the President by a general or special order.

4. Supervisory Officers in field offices located outside the headquarters may wherever necessary, be empowered to place officers subordinate to them under suspension, subject to the conditions mentioned in paragraph 2 above, by issuing special orders in the name of the President in pursuance of Rule 10 of the CCS (CCA) Rules,1965".

These instructions on which considerable reliance is placed by Sri Iyengar to contend that the ACP had no competence to place the applicant under suspension, do not in any touch on the conferment of power made to the Rules by the Amendment made on 7-5-1983. We do not also find any inconsistency between these instructions

18. We have earlier noticed that in respect of an event that occurred on 7-5-1985 the ACP had placed the applicant under suspension on 27-9-1985, pending contemplated disciplinary proceedings. But, so far neither the ACP nor any *higher authority* had not even framed and served a charge sheet against the applicant.

19. In their reply or at the hearing, the respondents except pleading that the authorities will now take prompt steps to complete the disciplinary proceedings have not furnished any satisfactory explanation for the delays that have so far occurred in initiating and completing the disciplinary proceedings. We are distressed at the delays by the authorities in not even framing a charge sheet and serving the same on the applicant. Whether the authorities should frame a charge sheet and, if so, serve the same on the applicant and continue the disciplinary proceedings, was for the competent to examine and decide. If a charge sheet is served, then the conduct of the inquiry and its completion will undoubtedly occupy considerable time, can hardly be doubted. But, without doing any of them and indefinitely continuing the applicant under suspension, the authorities had clearly violated the salutary instructions issued by Government in its official memorandum dated 7-9-1985 reproduced at para (9) of Swamy's compilation of CCS CCA Rules. Whether that failure coupled with the claim of the applicant that the authorities had collected all the evidence against him and there was no question of his tampering with the same justifies us to annul the suspension *as* strongly urged by Sri Iyengar, is the next question that calls for our examination.

20. We are of the view that the delays that have so far occurred which are even reprehensible, by themselves cannot be a ground to annul the order of suspension made against the applicant. The grounds on which the applicant was placed under suspension are serious



instructions and the Rules as amended on 7-5-1983. In any event, the earlier executive instructions issued by Government, even if they are in conflict or in derogation of the statutory Rules, then also, they must yield to the Rules and the Rules must necessarily prevail over the former. For all these reasons, we hold that these instructions do not in any way affect the conferment of power made on the Assistant Collector by the President on 7-5-1983.

14. When an authority becomes a disciplinary authority under the Rules, then the question of any special conferment of power by the President either by a general or a special order, does not at all arise. In this view also, the non-conferment of power by a general or a special order on the ACP will not arise and will not also make any difference at all.

15. On the foregoing discussion, we hold that there is no merit in this contention of Sri Iyengar and we reject the same.

16. Sri Iyengar next contends that the ACP and all his higher authorities had slept over the contemplated disciplinary proceeding against the applicant for very nearly two years and, therefore, this is a fit case in which this Tribunal should annul the order of suspension and direct the immediate reinstatement of the applicant. In support of his contention Sri Iyengar relies on the ruling of the Tribunal in ABULLIS KHAN v. THE STATE OF WEST BENGAL AND OTHERS (1986 (3) SLR 16) and the circular instructions of Government issued in O.M.No.221/18/85-AVD dated 7-9-1985.

17. Sri Padmarajaiah contends, that notwithstanding some delay in the initiation and completion of disciplinary proceedings, which were justified, this Tribunal should be loathe to interfere with the order of suspension made on very justifiable grounds, communicated to the applicant by the ACP in his letter No.C.II/10A/2/85-D.1 dated 22-12-1986 (Exhibit-E).

23. In the light of our above discussion, we make the following orders and directions:

- (1) We dismiss this application in so far as it challenges the order of the Collector and the ACP placing him under suspension.
- (2) We direct the respondents to initiate and complete the disciplinary proceedings, if they so decide against the applicant within a period of three months from the date of receipt of the order of this Tribunal. But, if for any reason they fail to do so, within that time, then the respondents are thereafter directed to reinstate the applicant to service and then continue and complete them in accordance with law without any time limit. If the applicant is earlier reinstated to service on the basis of our observations at para 22 supra, then also the time limit set by us for initiation and completion of the disciplinary proceedings against the applicant will not apply.

24. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

25. Let this order be also communicated to the Secretary to Government, Finance Department, Government of India and the Chairman Central Board of Excise and Customs, New Delhi for information and such action as they deem fit in the circumstance.

Sd---

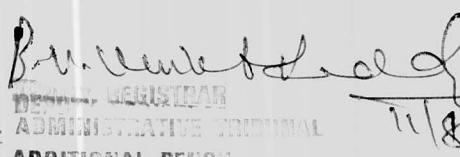
VICE-CHAIRMAN

5/8/1987
"True copy"

Sd---

MEMBER(A)(R) 58-98

np/


DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

serious in nature. The mere remissness on the part of the authorities to take prompt action to examine the case of the applicant for revocation or remissness to frame and serve a charge sheet against the applicant are not justifiable grounds for us to annul the order of suspension. We cannot also hazard an opinion on the facts pleaded by the applicant that all the evidence had already been collected and there was no likelihood of his tampering with the evidence. We are of the view that the observations made in Abdulla's Khan's case were made only on the facts of that case and cannot be read as laying down a universal principle to be applied as a precedent to every case. For these reasons, we cannot uphold the contention of Sri Iyengar. We, therefore, decline to interfere with the order of suspension made against the applicant.

21. We have earlier noticed that nearly 2 years had already elapsed after the applicant was placed under suspension which we have very reluctantly upheld the same. In these circumstances, it is proper to direct the respondents to initiate and complete the disciplinary proceedings, if they so decide with expedition. Sri Padmarajaiah prays for atleast 6 months time for the same. But, we consider it proper to grant a period of three months from the date of receipt of the order of this Tribunal.

22. We need hardly observe that an order of suspension can be revoked by the very authority that made the order of suspension or by a superior authority at any time. The fact that we propose to fix a time limit for completing the disciplinary proceedings against the applicant does not take away the power of the ACP or his superiors to revoke the order of suspension against the applicant if they so decide. Whether they should do so or not is a matter for them to decide.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
II Floor, Indira Nagar,
Bangalore- 560 038.

To

Dated: 12-8-87

1. Shri. Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. Shri. R. Venkatesh Prabhu, Member,
Editorial Committee,
Administrative Tribunal Reporter,
67- Lower Palace Orchards,
Bangalore- 560 003.
3. The Editor,
Administrative Tribunal Cases,
C/o. Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. Delhi Law Times Office,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007 (Rep. by Miss. Alka Kulkarni, Reporter, B'lore.)

(S) M/s JI India Reporter
Congress Nagar,
Nagpur.

Sir,

I am directed to forward herewith a copy of the under mentioned
order passed by a Bench of this Tribunal comprising of Hon'ble

Mr. K. S. Puttaswamy, Vice-Chairman/
Member (3) and Hon'ble Mr. L. H. V. A. Rego Member (A)

with a request for publication of the Order in the Journals.

Order dated 5-8-87 passed in A.Nos. 269/87(CF)

RECEIVED 13/8/87
J. V.
B
14/8/87

O/C

Yours faithfully,

B. V. Venkata Reddy
(B. V. Venkata Reddy)
Deputy Registrar (J).

Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex(CBD), 1st Floor, Near Kankon Bhawan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A , Thorn Hill Road, Allahabad.- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O.102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp. Maharaja College, M.G.Rd., Ernakulam, Cochin-682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur(MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M.Enterprises, Shri Krishna Nagar, Patna- 1.
11. The Registrar, Central Administrative Tribunal, C/o.Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanpura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Bolamundai, Cuttak- 753001.

Copy with enclosure also to:

1. Court Officer (Court I)
2. Court Officer (Court II)

B.V. Venkata Reddy
(B.V. Venkata Reddy)
Deputy Registrar(J).