

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(3)

O.A. NO: 676/92  
~~XXXXXX~~

199

DATE OF DECISION 21.9.1992

Shri Mohinder Singh Petitioner

Shri G.K.Masand Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. S.K.Dhaon, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*S.K.*  
(S.K.Dhaon)  
Vice Chairman

mbm\*  
mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

DA.NO. 676/92

Shri Mohinder Singh

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon  
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri G.K.Masand  
Advocate  
for the Applicant

Shri P.M.Pradhan  
Advocate  
for the Respondents


ORAL JUDGEMENT

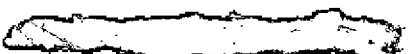
Dated: 21.9.1992

(PER: S.K.Dhaon, Vice Chairman)

The order dated 10.3.1992 purported to have been passed by the President of India in the purported exercise of powers under sub-Rule (1) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, may herein-after refer to as Rules, in contemplation of disciplinary proceedings is being impugned by a Director (Finance & Accounts) in the office of Chief General Manager Telecom., Maharashtra Circle, Bombay.

2. A reply has been filed on behalf of the respondents. Though this application has not been formally admitted as yet, it is being disposed of finally with the consent of the counsel for the parties. The material facts as contained in the application are these. The applicant was promoted as the Chief Accounts Officer in the Senior Time Scale in Group 'A' service with effect from 22.4.1985 and was posted at Gaziabad at the ALT Training Centre. He worked there till 30.7.1990. From 31.7.1990 he was posted as Director (Finance & Accounts) and was transferred to Bombay. It is learnt that on 8.2.1992

the respondents detected a fraud committed by one Shri M.V. Krishnan at ALT, Gaziabad. A part of the period during which the said fraud was alleged to have been committed, was the period, when the applicant was posted as Chief Accounts Officer at Gaziabad. On 14.2.1992 the Chief General Manager of the ALT Training Centre, Gaziabad by means of an Office Memorandum made certain queries from the applicant with a view to investigate into the affairs of the Accounts Branch of ALT Training Centre, Gaziabad. He was shocked to receive the impugned order dated 10.3.1992. Sometime in March, 1992 he preferred an appeal pointing out therein that he was not involved in any manner with any incident which may have necessitated his suspension. He also submitted that his posting at Bombay will not affect any investigation or enquiry to be held at Gaziabad. Having failed to get a reply, he addressed a letter dated 22.4.1992 to the President of India praying that the order of suspension may be revoked. Therein, he also pointed out that till that date he was not served with a copy of the chargesheet. He also asserted that he was not aware of the grounds on which he was kept under suspension. On 16.6.1992 he sent a reminder to the President of India. A Confidential Memorandum dated 17.6.1992 issued by the Vigilance Officer in the Office of the Chief General Manager Telecom, Bombay had been received by the applicant along with a copy of the letter dated 10.6.1992 issued by the Asstt. Director General (Vig.) New Delhi. By the said Memorandum dated 10.6.1992 he was notified that his representation dated 22.4.1992 had been rejected by the Competent Authority. The contents of the said Office Memorandum do not reveal any reasons whatsoever. He was not served with the order passed by the Competent Authority along with the said Memorandum. His appeal praying that the order of suspension may be revoked had been rejected without any application of mind. 



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3. In the reply filed on behalf of the respondents, the material averments are these. A fraud to the tune of about 1.74 crore had been detected. At the relevant time, the applicant was holding most responsible post of Chief Accounts Officer. Being head of the Department, he was responsible for activities in the Accounts Department. He was empowered to exercise his supervisory control over activities of the Department. The fraud took place during the period 1989 to 1991. The fraud took place on account of serious lapses and supervisory negligence on the part of the applicant. "On the basis of the said gravity of allegation which are levelled against Applicant and which are under investigation at various levels including with CBI and Uttar Pradesh Police. The Applicant has been rightly placed under suspension." The matter of fraud is under investigation and the results of the investigation are still awaited as such at this stage it cannot be said that during which period the fraudulent activities were at its maximum. However, it has been revealed that the fraudulent activities have taken place during the tenure of the applicant. During the course of investigation and during the course of preparation of fact finding report the investigating authority has examined the responsibilities and involvement at various sources. The letter dated 14.2.1992 seeking information from the applicant was also part of investigation process and the said enquiries had been made from the applicant during investigation as he was holding most responsible post during the relevant period. The outcome is not known at this stage as to whether the applicant had deliberately suppressed the information or not from the authorities of the Department regarding the said fraudulent activity despite having knowledge of the said fraudulent activity as investigation process is under process at various levels and the result and reports are yet awaited.

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The first information report is lodged with the Uttar Pradesh Police on the date of detection that is on 8.2.1992 and the investigations are initiated by the authorities of Uttar Pradesh Police. The [redacted] CBI [redacted] also requested to conduct a separate investigation process [redacted] and authorities of CBI have started the process of investigation. The said processes are not yet concluded as such it would be contrary to the interest of administration to revoke the suspension of the applicant at this stage under the said circumstances.

4. On 14.2.1992 the Chief General Manager, ALTTC, Gaziabad sent an Office Memo to the applicant making certain queries from the applicant. The subject of the said Office Memo was :- "Investigation into the affairs of the Accounts Branch (ALTTC)." The opening paragraph of the said Office Memo :- "In connection with the investigation being conducted into the Accounts Branch of the ALTTC Ghaziabad, you are required to give your replies to the following questions." In the impugned order it is recited, inter-alia, that whereas a disciplinary proceedings against the applicant "is contemplated", therefore, an order of suspension was being passed. It is an admitted case of the parties that even till today a chargesheet has not been served upon the applicant.

5. The reply filed on behalf of the respondents coupled with the communication dated 14.3.1992 of the General Manager ALTTC, Gaziabad indicates that on or before 10.3.1992, when the impugned order was passed, the process of investigation was on but no conclusion had been arrived at. The reply also indicates that even the fact finding report had not come into existence on the date on which the order of suspension was passed. It was under preparation, according to the respondents.

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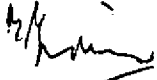
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
6. In sub-Rule (1) of Rule 10 (a) it is provided that the authority concerned may place a Government servant under suspension where disciplinary proceedings against him is contemplated or is pending. We may again note that more than six months have passed since the contemplation of disciplinary proceedings and the chargesheet has not yet seen the light of the day. In sub-rule(1) "the expressions contemplated or pending", are placed in juxtaposition with each other. There appears to be a purpose for doing so. The distance between the contemplation and pendency is not expected to be far. A proximate or rational relationship of time gap between contemplation and pendency is envisaged. To put it differently, the proximity of time between the two acts must not be remote. We may take judicial notice of the fact that the All India Service Rules provide that normally a chargesheet should be given to a delinquent servant within a period of 45 days from the date of passing of the order of suspension on the ground of contemplated disciplinary proceedings. No satisfactory reason has been given in the reply filed on behalf of the respondents to explain the inordinate delay in the giving of the chargesheet to the applicant. This factor, in our opinion, is sufficient to vitiate the order of suspension.

7. We have already emphasized that on the date of the passing of the impugned order the process of investigation was merely on and nothing tangible or concrete was in the hands of the authority passing the order of suspension. We may note that it is always open to the competent authority to pass an order suspending the delinquent servant from service during the pendency of disciplinary proceedings. It is a trite law that disciplinary proceedings commence upon the furnishing of a chargesheet to a delinquent.

8. This application succeeds and allowed. The impugned order of suspension dated 10.3.1992 is quashed.

9. There shall be no order as to costs.

  
(M.Y. PRIOLKAR)  
Member (A)

  
(S.K. DHAON)  
Vice Chairman