

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

Dated: 16 NOV 1994

APPLICATION NO: MA 503/94

APPLICANTS:-

v/s.

Chief Secretary (in OA 760/94)
Govt of Karnataka,
Vidhan Soudha & Anr.

RESPONDENTS:-

J. Alexander.

To

1. Sri: D. Raja Shekarappa, Govt Advocate,
Advocate General's Office, KAT, Unit,
Commercial Complex, Indira Nagar,
Bangalore - 560038.
2. Sri: M. R. Naik, Advocate,
No. 46, Sixth cross, Gandhi Nagar,
Bangalore - 560009.

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER/~~ passed by this Tribunal in the above
mentioned application(s) on 16 November, 1994

Issued on

16/11/94
R.

O/c

for

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

In the Central Administrative Tribunal

Bangalore Bench

Bangalore

MA 503/94 in

Application No. 760 of 1994.

J. Alexander vs. Govt of Karnataka & another.

ORDER SHEET (contd)

Date	Office Notes	Orders of Tribunal
		<p><u>Orders on MA 503/94</u></p> <p>VR(MA)/ANV(MS)</p> <p><u>11/11/94.</u></p> <p>For the reasons stated in the MA 503/94 time for disposal of the representation of the applicant is extended till the end of November, 1994, as prayed for.</p>

Sd/-

M(J)

Sd/-

M(A)

TRUE COPY

Shri 6/11/94

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore



CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 28 OCT 1994

APPLICATION NO: 760 of 1994.

APPLICANTS:- Mr. J. Alexander,
V/S.

RESPONDENTS:- The Chief Secretary, Govt of Karnataka,
and another.

To

1. Sri. Madhusudan R. Naik, Advocate,
No. 46, Sixth Cross, Gandhi Nagar, Bangalore-560009.
2. Sri. M. S. Padmarajiah, Senior Central Govt Legal Counsel,
High Court Bldg, Bangalore-560001
3. Sri. D. R. Rajashekharappa, Govt Advocate Advocate
General's Office, KAT House, Commercial Complex,
Indiranagar, Bangalore-560038.
4. Sri. B. V. Acharya, Advocate General, High Court Bldg,
Bangalore-560001

Recd for Sl No 1
M/s
28/10/94

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

--xx--

Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER~~/ passed by this Tribunal in the above
mentioned application(s) on 28th October 94.

Issued of C
on 28-10-94 Gub

for

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.760/1994

FRIDAY, THE 28TH DAY OF OCTOBER, 1994

SHRI V. RAMAKRISHNAN .. MEMBER (A)

SHRI A.N. VUJJANARADHYA .. MEMBER (J)

Shri J. Alexander,
S/o John Joseph,
aged 55 years,
No.507, Chinmaya Mission
Hospital Road,
Indiranagar,
Bangalore - 560 038.

... Applicant

(By Advocate Shri Madhusudan R. Naik)

Vs.

1. State of Karnataka
by the Chief Secretary to
Government of Karnataka,
Vidhana Soudha,
Bangalore - 560 001.

2. Union of India,
by the Secretary,
Department of Personnel
and Training,
New Delhi.

... Respondents

(By Shri B.V. Acharya, Advocate General assisted
by Shri D.R. Rajashekarappa for R1 and
Shri M.S. Padmarajaiah, Senior Central Govt.
Standing Counsel for R2).

ORDER

Shri V. Ramakrishnan, Member (A):

The applicant, Shri J. Alexander, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, where he has prayed for a direction that the order of the Govt. of Karnataka (Annexure-'A') placing him under suspension as also the order of the

Govt. of India (Annexure-'D') rejecting his appeal against the suspension order should be quashed. He has also prayed for a further direction to the State Govt. for revoking the suspension order and to give him a suitable posting.

2. We admit this application and proceed to dispose off the same on merits.

3. Shri Alexander, a senior I.A.S. officer borne on the Karnataka cadre, was appointed as Additional Chief Secretary and Commissioner and Secretary, Finance, to the Govt. of Karnataka in 1991. He was appointed as Chief Secretary to the State Govt. in 1992. He was transferred as Chairman, Karnataka Appellate Tribunal on 1.12.1992 which took place soon after the present Chief Minister assumed office on 20.11.1992. The applicant was served with a suspension order ^{dtb} 23.3.1993 when he was serving as Chairman, Karnataka Appellate Tribunal.

4. The allegation against the applicant is that when he was functioning as Additional Chief Secretary and Commissioner and Secretary to the Govt. in the Finance Department, he committed certain irregularities in placing orders for purchase of computers from M/s. Classik Computers, Bangalore, and also payment of advance of Rs.1.58 crores to one Shri Gokul Krishna of that firm in violation of the accepted norms of purchase. It is noticed that there are certain observations of the Learned Single Judge of the High Court of Karnataka in Writ Petition No.21340/92, disposed off on the 2nd/3rd December, 1992, wherein, his Lordship Mr. Justice Rajendra Babu had allowed the said Writ Petition quashing inter-alia the State

Govt. order No. DPAR 83 DFR 92, dated 31.3.1992, for purchase of computers from M/s. Classik Computers, Bangalore, and declaring that further action taken thereto in pursuance of such order shall be null and void. The State of Karnataka was directed to take further action as is consequential upon the said declaration. In March, 1993, the State Govt. had filed a complaint with the Central Bureau of Investigation to go into the transaction leading to the Govt.'s purchase order on M/s. Classik Computers and a payment of an advance of over Rs.1.58 crores to Shri Gokul Krishna. The State Govt. also placed the applicant under suspension by its order dated 23.3.1993 which is reproduced below:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Sub:-Suspension of Shri J. Alexander, IAS.,
issue of orders - reg.

GOVERNMENT ORDER NO. DPAR 180 SAS 93 BANGALORE
DATED 23RD MARCH 1993

Whereas it has come to the notice of Government that Shri J. Alexander, IAS., Chairman, Karnataka Appellate Tribunal, Bangalore, while working as Additional Chief Secretary to Government and Commissioner and Secretary to Government, Finance Department, has committed irregularities in placing orders for purchase of 100 Apple Macintosh Computers along with other equipments and other accessories at a total cost of Rs.5.27 crores from M/s. Classik Computers, Bangalore and payment of advance of Rs.1.58 Crores to Shri Gokul Krishna of the said firm in violation of accepted norms of purchase.

Whereas the commission of the acts referred to above constitutes serious misconduct which are in contravention of Rule 3 of the A.I.S. (Conduct) Rules 1968.

Whereas having regard to the circumstances of the case a formal complaint has been filed with CBI and Government is separately examining the question of initiating departmental action against Shri J. Alexander, IAS., Chairman, Karnataka Appellate Tribunal; and

Whereas Government are satisfied that it is desirable to place Shri J. Alexander, IAS., Chairman, KAT, under suspension.

Now, therefore, in accordance with sub-rule 1 of Rule 3 of A.I.S. (Discipline & Appeal) Rules, 1969, Shri J. Alexander, IAS is placed under suspension with immediate effect and until further orders pending enquiry.

During the period of suspension, the officer shall be paid subsistence allowance according to Rule 4 of A.I.S. (D&A) Rules, 1969.

...4...



During the period of suspension, the officer shall not leave the headquarters without the written permission of the State Government under any circumstances.

BY ORDER AND IN THE NAME
OF GOVERNOR OF KARNATAKA

Sd/-

(SIDDARAMAIAH)
UNDER SECRETARY TO GOVT.,
DEPARTMENT OF PERSONNEL &
ADMINISTRATIVE REFORMS.
(SERVICES-I)"

The Govt. of India was also informed of this order by the State Govt. vide their message dated 27.3.1993.

5. Aggrieved by the order of suspension, the applicant approached this Tribunal in O.A.No.340/93. This application was rejected by this Tribunal by its order dated 12.4.1993 on the ground that the applicant had not exhausted the remedy of appeal to the Central Govt. available to him, under law. The applicant was directed to avail himself of the statutory remedy of an appeal and if he was not satisfied with the result, he could approach the Tribunal again. Accordingly, the applicant filed an appeal dated 26.4.1993. The same was rejected by the Govt. of India by its order dated 7/13th December, 1993, as at Annexure 'D'. The applicant filed a representation dated 28.1.1994 to the Govt. of India through the State Govt. requesting for reviewing this order rejecting the appeal. As he was not informed about the result of the review and as he came to know that the representation was not even forwarded to the Govt. of India by the State Govt., he has filed the present application dated 15.4.1994.

6. We find that there is a decision in the State Govt. file passed in February, 1994 to forward the representation for appeal to

the Govt. of India, but, in fact, the same was forwarded only on 18.3.1994 after a letter was received from the applicant to the Chief Secretary. This representation for review was considered by the Govt. of India and was rejected by an order dated 19.8.1994 (Annexure-R2-1). The CBI has since filed a charge sheet against the applicant and the State Govt. and the Central Govt. have issued sanction as required by law for prosecution of the applicant.

7. We have heard Shri M.R. Naik, the learned counsel for the applicant as also the learned Advocate General assisted by Shri D.R. Rajeshkarappa for R-1 and the learned Senior Central Govt. Standing Counsel, Shri M.S. Padmajaiah for R-2. We have also perused the relevant files made available to us by Respondents No.1 and 2.

8. Shri Naik places before us the following propositions:

(A) Is order of suspension-

- i) violative of Rule 3(1) of AIS(D&A) Rules (Rules for short)
- ii) has been made with application of mind, there being no material or circumstance or objective satisfaction of the Govt. to make the impugned order?

And arising out of same proposition, the other facet being extraneous considerations weighed and hence order is arbitrary, discriminatory, an act of legal malice, thus violative of Article 14.

(B) Is order dt.7th December, 1993 (rejecting the appeal by the Govt. of India), being non-reasoned out is unsustainable, is arbitrary and is made without consideration of merits?

(C) Is not the order of suspension at this point of time, having been continued at this length of time unreasonable and unjust?

9. Proposition No.A:-

In support of his contention that the suspension order is violative of Rule 3(1) of the AIS (D&A) Rules, Shri Naik argues that this sub-rule gives power to the Govt. to place under suspension a member of the service against whom disciplinary proceedings are contemplated or are pending, if having regard to the circumstances of



the case, the Govt. is satisfied that it is necessary or desirable to do so. The suspension order dated 23.3.1993 which has been issued under this sub-rule mentions that Govt. is separately examining the question of initiating departmental action against Shri Alexander. According to Shri Naik, this is different from a situation where disciplinary proceedings are contemplated against Shri Alexander. He also urges that departmental action need not necessarily be in the form of disciplinary proceedings. It could, for example, take the form of calling upon the applicant to make good to the Govt. any loss arising out of the transaction without resorting to disciplinary proceedings. Shri Naik submitted that the applicant was not aware of the consideration of the case leading to issue of the suspension order and he requested that we should call for the file in this regard. The State Govt. made available the relevant file and we have seen the noting of the Chief Secretary dated 23.3.1993 which recommended to the Chief Minister that Shri Alexander should be placed under suspension and this was approved by the Chief Minister on the same day. The noting of the Chief Secretary was read out to Shri Naik. The noting refers to the fact that the Govt. had filed a complaint with the C.B.I. in respect of the Govt.'s purchase order on M/s. Classik Computers and payment of an advance of Rs.1.58 Crores to Shri Gokul Krishna. It goes on to state that the perusal of the complaint would reveal that Shri Alexander was substantially involved in the entire process which resulted in deviation from the rules and a hasty and improper purchase. As it was alleged that Shri Alexander was involved very substantially in the transaction, the need for placing him under suspension was also examined. We may extract para 3, 4 and 5 of this note:

"3. Normally, an officer will be placed under suspension only if there is fear that his continuing will result in a miscarriage of justice. However, it is also necessary, particularly

with high ranking officers, that a message be sent that impropriety will not be tolerated. No one can accuse the Government of having been hasty in this matter because it is more than three months since the Chief Minister wrote to the Union Home Minister and the Union Minister of State for Personnel asking that the CBI take up the investigation and now its having agreed to do so, our study of the file discloses the complete involvement of this officer in the case. This study has resulted in the filing of our formal complaint and in my view, it is sufficient to place Shri Alexander under suspension.

4. I, therefore, recommend that he be suspended immediately.

5. Shri Alexander is an IAS Officer and the suspension will be done under the All India Service Rules. Within 45 days, from the date of suspension, we are required to frame the Article of Charges, and if we fail to do so, we have to seek the Central Government's consent to extend the period of suspension. In the instant case, it is possible that the CBI will file its charge sheet within 45 days. If it fails to do so, because of its investigation involving other parties or for any other reason, we will frame the Article of Charges based upon the records available with us and the complaint we have already filed with the CBI.

Sd/-
(J.C. LYNN)
CHIEF SECRETARY TO GOVT.
23.3.1993"

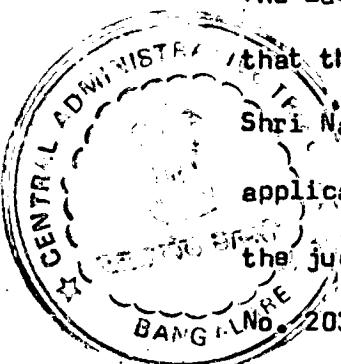
10. After he was apprised of this noting, Shri Naik submitted that noting reveals that the decision to place the applicant under suspension was ^{taken} solely in view of the complaint lodged before the CBI. Shri Naik urges that the entire examination was in the context of an investigation relating to a criminal charge and the Govt. should have taken recourse to Rule 3(3) subject to fulfilment of the requirements laid down in that sub-rule. The decision to place the officer under suspension on 23.3.1993 under sub-rule 3(1) which requires contemplation of disciplinary proceedings shows that there was no application of mind on the part of the Govt. In this context, Shri Naik draws our attention to the observation of the Supreme Court in the case of P.K. Naik Vs. Union of India AIR (72) SC 544 and contends that the Supreme Court had observed therein that such rules have to be strictly construed and if any of the requirements spelt out in the rule is not complied with, the order is liable to be struck down.



He says that the noting in the file did not contain any decision to initiate disciplinary proceedings against Shri Alexander. Even the order of suspension referred only to "separately examining the question of initiation of disciplinary proceedings" and this is not the same as contemplation of disciplinary proceedings. Shri Naik, while agreeing that contemplation does not mean a final decision on the file to initiate disciplinary proceedings contends that in the present case, there was no honest or bonafide or serious consideration as to the need for starting disciplinary proceedings. According to him, the noting makes it clear that what was intended was that if the CBI does not file a charge sheet within 45 days, the Govt. will frame the Article of Charges, in view of the provisions of the All India Services Rules. According to Shri Naik, this substantiates the contention that the Govt. did not make any honest or serious examination as to the justification of the disciplinary proceedings, but, merely wanted to take certain steps for the sake of superficially complying with the provisions of the rules. Shri Naik avers that this is certainly not contemplation of disciplinary proceedings and as such, the impugned order made under Rule 3(1) is unsustainable.

11. Shri Naik further argues that the suspension order was made without proper application of mind. There is no doubt a reference to the purchase of computers and payment of advance which according to the Govt. constituted serious mis-conduct on the part of Shri Alexander. But, no material was available with the Govt. to arrive at such a decision except for the fact that the Hon'ble High Court had set aside the award of contract in a public interest petition on the ground that the same was in violation of the accepted norms of purchase and was hastily awarded. He claims that there was no other material with the Govt. by which it could have come to an objective finding as to the

necessity or desirability of placing an officer under suspension. Shri Naik refers in this regard to a number of court decisions. He contends that the only material available with the Govt. was lodging of a formal complaint with the CBI for investigation and it was routinely assumed that the CBI would request for an order of suspension. He further argues that the said order was not for the purpose of preventing anything which would impede the investigation/ or departmental proceedings. It was also not done so as to prevent misuse of power by the applicant or for facilitating investigation or as a step in aid of departmental proceedings. Its only purpose, Shri Naik alleges is to keep the officer out of a job. Learned counsel seeks to support his contention that there was no bonafide contemplation of departmental proceedings by the subsequent conduct of the Government. The applicant was served with a notice dated 3.5.1993 indicating the articles of charges against him as also the statement of imputation of misconduct in support of articles of charges. Shri Alexander submitted his defence statement on 1.6.1993. After this date, the applicant had heard nothing from the Government. The lack of follow-up action, according Shri Naik, amply demonstrates that there was no bonafide contemplation of disciplinary proceedings. Shri Naik also refers to a letter dated 10.12.1992 written by the applicant to the Govt. requesting the Government to appeal against the judgement of the Learned Single Judge in Writ Petition No. 20340/ 92 and to give an opportunity to the applicant to explain his position before the Government before it takes any view on the issue. The Government had not noticed this representation while issuing the impugned order. Shri Naik claims that this also substantiates his stand that there was non-application of mind by



the Govt. while taking the drastic step of placing the officer under suspension. Shri Naik also mentions that the Govt. seems to have been influenced by political pressures and other extraneous considerations. He stated that there was a demand in the Legislative Assembly on 23.3.1993 by some Hon'ble Members to place Shri Alexander under suspension. The Chief Minister, while pleading in the House that he should not be pressurised into taking any hasty action nevertheless proceeded to order the suspension of the applicant on the same day. Shri Naik submits that this was done as a result of extraneous pressure. The learned counsel argues that all this will show that there was legal malafides which makes the impugned order unsustainable. Shri Naik also alleges that the Govt. had discriminated against the applicant and states that some others who were charged with more serious offences were not placed under suspension and where they were suspended, their suspensions were not continued.

12. In the pleadings, the applicant has also sought to justify his action in placing the order for purchase of computers as also payment of the advance to M/s. Classik Computers. He has referred to the role of the High Powered Committee which initially decided to get the opinion of individuals and organisations with experience in computerisation, regarding the usefulness of Apple Computers in the light of their actual experience, and after getting the response from these organisations and taking into account the fact that Apple Macintosh have developed computers which could take command and process information in regional languages decided in its meeting held on 2.7.1992 to place the matter before the Cabinet. The applicant submits that the cabinet considered the matter on 3.7.1992 and approved the proposal to purchase 100 Apple Macintosh Computers from M/s. Classik Computer Systems and ratified the action taken earlier to place the orders with this firm as also the grant of an advance to them.

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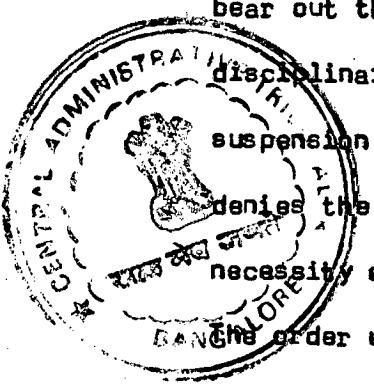
Applicant says that the entire exercise was done by him with the bonafide intention of getting for the State, computers of internationally accepted quality and reputation with capacity for processing data and taking commands in English and Kannada. The State Govt. R-1, has however, controverted the version given by the applicant and has questioned the manner of presentation of the matter before the Cabinet and the rationale for making advance payment to Shri Gokul Krishna.

As has been stated earlier, the Learned Single Judge of the High Court of Karnataka had gone into this transaction on a public interest petition and had made some observations. A complaint has been lodged with the CBI which has submitted a charge sheet before the Court. We are concerned in the present application with the justification for the suspension order and we do not propose to go into any contention touching the merits of the enquiry to be held by the department and also the prosecution which has already been launched against the applicant.

13. The learned Advocate General refutes the contentions of Shri Naik that the suspension order is violative of the rules. He submits that when the suspension order was issued on 23.3.1992, it was done by virtue of the powers available under Rule 3(1) of the Rules. A complaint has been lodged by the Chief Secretary vide his letter dated 19.3.1993 addressed to the Director, Central Bureau of Investigation. The same was registered by the CBI on 31.3.1993. The First Information Report with the CBI has shown the date and time of report as 31.3.1993 at 15.30 hours. The Advocate General states that Rule 3(3) of the Rules can come into play where an investigation, enquiry or trial relating to a criminal charge is

pending. In the present case, the investigation commenced from 31.1.1993 which is subsequent to the day the orders of suspension were issued viz., 23.3.1993. The Advocate General contends that the Govt. had rightly decided that the suspension should be ordered under sub-rule 1 of Rule 3 which requires contemplation of disciplinary proceedings. The examination of the case leading to the issue of suspension order, according to the Advocate General, brings out the fact that the Govt. did contemplate disciplinary proceedings against Shri Alexander. The Advocate General controverted the submission that there was no application of mind. He says that it is not a fact that in a hurry to place the applicant under suspension, the Govt. had mechanically referred to Rule 3(1), when in fact, the materials available before it would warrant action, if at all, under sub-rule 3 of Rule 3. He also states that in the present case, there are special features which have to be taken into consideration. The learned Single Judge of the High Court of Karnataka had made certain observations while allowing the public interest petition and quashing the Govt. order seeking to purchase computers from M/s. Classik Computers and declaring the relevant contract to be null and void and un-enforceable and directed the State Govt. to take such further action as is consequential upon such a declaration. The Advocate General contends that the State Govt. had not only a right but also a duty to look into the judgment. After doing so and after due consideration, the State Govt. filed a complaint before the CBI by a letter dated 19.3.1993 which has been registered by the CBI on 31.3.1993. After the lodging of the complaint with the CBI, the matter was further examined and the Govt. decided to place Shri Alexander under suspension. The Advocate General argues that rule 3(1) requires contemplation of disciplinary

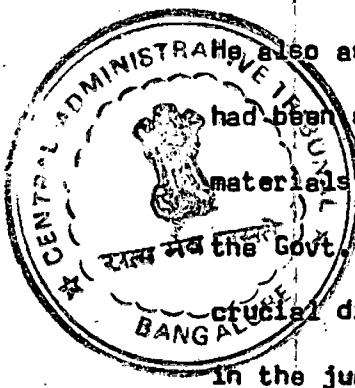
proceedings which means that the Govt. should seriously consider initiating such proceedings and it is not necessary that a final decision should have been taken in this regard before taking recourse to the power available under Rule 3(1). The noting of the Chief Secretary shows that the disciplinary proceedings against Shri Alexander were, in fact, contemplated and the wording in the suspension order that the "Govt. is separately examining the question of initiating departmental action" is not violative of Rule 3(1). The reference in the order that a formal complaint has been filed with the CBI highlighted the gravity of the offence. The learned Advocate General submits that the reference to the departmental action in the particular context of the case was clearly intended to mean disciplinary proceedings. The applicant was also served with the articles of charges and the statement of imputation of misconduct by a notice dated 3.5.1993. The Respondent No.1 have produced before us the State Govt. file dealing with this matter and the Advocate General submits that the file will show that the Govt. were serious with regard to the disciplinary proceedings, but, on 4.4.1994, decided not to continue parallel disciplinary proceedings since sanction for prosecution had already been accorded. All this will bear out the argument that the Govt. had, in fact, contemplated disciplinary proceedings, when the decision to place the officer under suspension was taken on 23.3.1993. The learned Advocate General also denies the allegation that there was no objective finding as to the necessity or desirability of placing Shri Alexander under suspension. The order was issued in the context of contemplation of disciplinary proceedings and not merely because the CBI would conduct an investigation. It was not based on a mere assumption that the CBI would request for order of suspension. The lodging of the complaint with the CBI giving a number of details would demonstrate that the concerned authorities of the Govt. had applied their mind. To our query as to how the representation of Shri Alexander dated 10.12.1992



referred to by Shri Naik was dealt with, the Advocate General says that the relevant file is not available, as presumably it has been taken away by the CBI. In any case, according to him, the request of Shri Alexander seems to have been only for filing an appeal against the judgment of the Learned Single Judge and that he should be heard before the Govt. takes a decision relating to filing of an appeal. The Govt. had decided not to file an appeal, but, the applicant had preferred a writ appeal limiting to challenging some uncomplimentary references stated to have been made against him. The Advocate General argues that the applicant had not produced a copy of the letter dated 10.12.1992 nor has he taken it as a serious contention in his pleadings and the fact that the Govt. chose not to give him a personal hearing before deciding not to file an appeal would not in any way vitiate the order of suspension. The Advocate General also denies the contention that the impugned suspension order was issued on account of political pressure and extraneous considerations. It was the right of the Hon'ble Members in the Assembly to express their feelings on a matter of public importance. The Hon'ble Chief Minister had not committed himself in the House that he would suspend the applicant. On the other hand, he emphatically stated that he would not be allowed to be pressurised or coerced by them on this issue, but, assured them that all action that is appropriate in the circumstances of the case would be taken. The Advocate General submitted that this bears ample testimony to the fact that the Chief Minister had not ~~suspected~~ ^{submitted by} to any political pressure. However, after the file was put up to him with the views of the Chief Secretary that evening, he accepted the recommendation that on merits, the applicant should be suspended.

14. The Advocate General also has brought to our notice that after a decision was taken in early April, 1994, not to proceed with parallel disciplinary proceedings, the question as to whether an addendum should be issued to the main suspension order incorporating sub-rule 3 along with sub-rule 1 was examined. But, no decision has so far been taken. Advocate General, however, argues that as the disciplinary proceedings have only been postponed and not dropped, there is no legal infirmity in continuing with the original order of suspension dated 23.3.1993. He also does not agree that the applicant was subjected to any discrimination in as much as he was suspended while some others against whom there were criminal charges were not subjected to the same treatment. He contends that facts in each case will differ. The applicant has to demonstrate that persons similarly placed and involved in the same transaction had been dealt with differently and he has not done so.

15. The learned Advocate General, further reminds us that this Tribunal does not sit as a Court of Appeal and while undertaking judicial review, it can go into the decision making process, but, should not substitute its judgment to that of the concerned authority.


He also asserts that the cases cited by Shri Naik where the suspensions had been set aside by the Courts are those where there were no materials. In the present case, there are ample materials justifying the Govt.'s action. The Advocate General submits that, in fact, the crucial difference in this case is that the materials are contained in the judgment of the learned Single Judge of the High Court.

16. We have bestowed our earnest consideration to the submissions made by both parties. The first question that arises is whether

the ingredients stipulated in Rule 3(1) of AIS (D&A) Rules have been satisfied in the present case. We may extract the relevant portions of Rule 3(1):

"If, having regard to the circumstances in any case and where Articles of Charges have been drawn up, the nature of the charges, the Govt. of a State or the Central Govt., as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the service, against whom disciplinary proceedings are contemplated or are pending, that Govt. may pass an order placing him under suspension ... pending conclusion of the disciplinary proceedings and the passing of final order in the case."

As such, the prerequisites for taking recourse to Rule 3(1) are that : (a) disciplinary proceedings should be contemplated against the officer to be placed under suspension and (b) that Govt. should be satisfied that having regard to the circumstances of the case, it is necessary or desirable to take such a step.

17. As to the meaning of the term "contemplation", it is agreed by both sides that it is not necessary that there should be a final decision on the file to initiate disciplinary proceedings. What is required is that there should be a serious consideration as to the need for initiating disciplinary proceedings. The learned counsel for the applicant contends that there was no honest or bonafide consideration for taking up disciplinary proceedings and as such it does not amount to contemplation. Shri Naik contends that the order of suspension prefacing the fact of a formal complaint having been filed with the CBI is indicative of the circumstances of an investigation or enquiry relating to a criminal charge. According to him, the suspension order has been issued solely on this consideration. Rule 3(3) of the Rules gives power to the Govt. to place under suspension a member of the service against whom an investigation, enquiry or a

trial relating to a criminal charge is pending subject to fulfilment of the conditions laid down in that sub-rule. The present order, however, has been issued under Rule 3(1) which requires contemplation of disciplinary proceedings. Shri Naik contended this is not a case which can fall under the category of Rule 3(1) and the impugned order is bad being violative of the relevant statutory rule.

We have gone into this contention and find that the order of suspension no doubt refers to the fact of a complaint having been lodged with the CBI. The Advocate General contends that this reference is only to highlight the gravity of the offence in respect of which disciplinary proceedings against the officer were contemplated and it was not meant that the suspension was ordered only on account of the fact that a complaint had been lodged with the CBI. The relevant portion of the suspension order reads as follows:

"Whereas having regard to the circumstances of the case a formal complaint has been filed with CBI and Government is separately examining the question of initiating departmental action against Shri J. Alexander, IAS., Chairman, Karnataka Appellate Tribunal."

This wording supports the contention of the Advocate General.



Shri Naik argues that the noting of the Chief Secretary referred to earlier mentions that if the CBI does not file the charge sheet earlier, the Articles of charges will be framed based upon the records available with the Govt. and the complaint already filed with the CBI. According to Shri Naik, the Chief Secretary's noting dated 23.3.1993 should be construed not as a bonafide consideration for starting disciplinary proceedings, but more as a matter of form to superficially comply with the Rules.

We are unable to agree with the contention of the learned counsel in this regard. The Chief Secretary, while discussing the alternative ^{option} of filing of a charge sheet by the CBI within

45 days had specifically mentioned that if the CBI fail to file the charge sheet, the State Govt. will frame the articles of charges based on the records available with the Govt. and the complaint which had already been filed with the CBI. The complaint lodged by the Government with the CBI is very detailed and the Chief Secretary's note dated 23.3.1993 also shows that the "study of the file discloses the complete involvement of the officer in the case". This clearly indicates that there were sufficient materials available with the Govt. for proceeding with the disciplinary enquiry and it was not merely for the sake of form that this exercise was to be undertaken. A perusal of the relevant State Govt. file dealing with the matter shows that the notice containing the articles of charges and the statement of imputation of misconduct was served on the applicant on 3.5.1993. The State Govt. had also processed the question of appointing the enquiry officer and presenting officer in June/ July, 1993. In January, 1994, some names as enquiry officer were proposed by the office for consideration. But, it was decided that the question of appointing an enquiry officer would be considered after one month. On 4.4.1994, it was decided by the Govt. that as sanction for prosecution had already been accorded, parallel disciplinary proceedings were not called for at that stage. This subsequent conduct lends credence to the Govt. stand that they had in fact, contemplated disciplinary proceedings when the decision to place the officer under suspension was taken on 23.3.1993. In view of the above, the phraseology used in the suspension order viz., "separately examining the question of initiating departmental action" can be taken to mean contemplation of disciplinary proceedings as required under Rule 3(1).

18. The second requirement under Rule 3(1) is that there has to be satisfaction on the part of the Govt. that having regard to the circumstances of the case, it is necessary or desirable to issue the order of suspension. Such satisfaction has to be objective and has to be exercised in accordance with some norms as this power cannot be exercised in an arbitrary manner. There are instructions of the Govt. of India which are contained in the Dept. of Personnel O.M. No.7/4/74-Estt.(A), dated the 9th August, 1974, which spell out the circumstances and types of cases in which suspension can be ordered. We may extract the relevant portions of this O.M.

"(a) An official may be placed under suspension only in the following circumstances:-

- (i) where the continuance in office of the Government servant will prejudice investigation, trial or any inquiry (e.g., apprehended tampering with witnesses or documents);
- (ii) where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which working;
- (iii) where the continuance in office of the Government servant will be against wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;
- (iv) where preliminary enquiry into allegations made has revealed a prima facie case justifying criminal or departmental proceedings which are likely to lead to his conviction and or dismissal, removal or compulsory retirement from service; and
- (v) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

(b) Even in the above circumstances, an official may be placed under suspension only in respect of misdemeanour of the following type:



- (i) an offence of conduct involving moral turpitude;
- (ii) corruption, embezzlement or misappropriation of Government money, possessing of disproportionate assets, misuse of official powers for personal gains;
- (iii) serious negligence dereliction of duty resulting in considerable loss to Government;
- (iv) desertion of duty; and
- (v) refusal or deliberate failure to carry out written orders of supervisory officers."

We find that the Govt. of Karnataka had also issued an Office Memorandum No.DPAR 13-SDE 85, dated the 3rd July, 1985, which refers to the circumstances under which Govt. servant may be placed under suspension. Para 2 of this O.M. reads as follows:-

"2. Circumstances under which Government servant may be placed under suspension:

- i) where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (i.e. apprehended tampering with witnesses or documents);
- ii) where continuance in office of the Government Servant is likely to seriously subvert discipline in the office in which the Government Servant is working;
- iii) where a Government Servant is prosecuted for any offence committed in the course of his duty involving moral turpitude;
- iv) Corruption, embezzlement or misappropriation of Government money or money of a foreign employer under whom the Government Servant has worked on deputation or otherwise, possession of disproportionate assets, misuse of official powers for personal gain.
- v) serious negligence and dereliction of duty resulting in considerable loss to Government and to the foreign employer while the Government Servant had worked on deputation.
- vi) return to duty after unauthorised absence.
- vii) refusal, or deliberate failure to carry out written orders of superior officers."

When we see the contents of the complaint lodged by the Chief Secretary with the CBI dated 19.3.1993 read with the noting of the Chief Secretary to Chief Minister dated 23.3.1993 referred to earlier, it is reasonable to take the view that the allegations against the officer are such that more than one circumstance laid down in these O.Ms has been satisfied and that the type of ^{written} 17 misdemeanour charged is also such that it can be brought ^{into} the ambit of sub-para (b) of the Govt. of India O.M. dated 9.8.1974. We, accordingly, hold that this prerequisite has also been satisfied.

19. Shri Naik refers to the decision of the Supreme Court in the case of P.R. Naik Vs. Union of India (AIR (1972) S.C. 544). He submits that even though this decision was rendered when Rule 3(1) of the Rules was not amended to include contemplation of disciplinary proceedings, the principle laid down by the Apex Court that such provisions should be strictly construed is relevant for the present case also. He refers in particular to the following observations in para 18 of this judgment. "The fact that these prejudicial consequences automatically flow from the impugned order under the rules also lends support to our view that the clear and explicit language of

Rule 3 must not be so strained to the appellants prejudice as to authorise an order of suspension on the mere ground that disciplinary proceedings against him are contemplated. The precise words of Rule 3 are unambiguous must be construed in their ordinary sense.

The draftsperson must be presumed to have used the clearest language to express the legislative intention, the meaning being plain. Courts cannot scan its wisdom or Policy". It is the case of the learned counsel that we have to construe strictly the wording of Rule 3(1). According to ^{him} there was no bonafide consideration for initiating departmental proceedings and there was no contemplation of disciplinary proceedings as laid down in that sub-rule. The fact that a complaint has been lodged with the CBI cannot empower the Govt. to take action

under sub-rule (1) as the relevant sub-rule would be (3) which requires that an investigation relating to a criminal charge should be pending. In any case, as the CBI registered the FIR only on 31.3.1993, no criminal charge was pending on the day the suspension order was issued. Shri Naik, therefore, argues that the suspension order is unsustainable.

We do not find any force in this contention of Shri Naik. Even if it is held that the provisions of these rules should be strictly interpreted, in our view, the requirements of sub-rule 3(1) are satisfied in the present case as we have already held that there was "contemplation" of disciplinary proceedings and the satisfaction of the Govt. as to the need for placing Shri Alexander under suspension was objective and was in conformity with the relevant guidelines. The case referred to by Shri Naik is not of any help to the present applicant.

20. The learned counsel for the applicant emphatically stated that the impugned order was made without application of mind. The suspension order refers to placing orders for purchase of 100 Apple Macintosh computers and payment of advance in violation of accepted norms of purchase and that the same constituted serious misconduct. Shri Naik contends that no material was available with the Govt. to arrive at such a conclusion and that excepting for the fact that the Hon'ble High Court has set aside the award of contract on a public interest petition, there was no other material to form the opinion leading to the satisfaction of the Govt. as to the need for placing the officer under suspension. Shri Naik says that the only material available with the Govt. for passing the impugned order was lodging of a formal complaint with the CBI for investigation. He further

argues that the Govt. seems to have assumed that the CBI would request for an order of suspension. According to him, the impugned order was not for the purpose of facilitating the investigation or for conduct of the disciplinary proceedings or to prevent misuse of power by the applicant and that its only purpose was to keep the officer out of a job. Besides, the applicant's letter dated 10.12.1992 addressed immediately after the judgment of the Hon'ble High Court requesting for appealing against the said judgment and to give him an opportunity to explain his position before Govt. takes any view on the issue was not even noticed when the impugned decision was arrived at. This, according to Shri Naik, also reveals non-application of mind. He alleges that the considerations of political expediency, political pressures and other extraneous considerations had come into play. This constitutes legal malefides making the impugned order unsustainable. Shri Naik also refers to a number of Court decisions which throw light on what is non-application of mind, what are the relevant instructions to satisfy the necessity or desirability for suspension and what could be termed as extraneous considerations. He cites in this regard, the following cases:-



1. A.K. Veeramani Vs. State of Kerala - (1974) KLT 630;
2. Turem Deoga Vs. Union of India - (1994) 26 ATC 400;
3. S.A. Khan Vs. Union of India - (1994) 26 ATC 642;
4. State of Orissa Vs. Vimal Kumari Malathi - (1994) 4 SCC 126 and
5. K. Lakshmanan Vs. State of Kerala (O.A.No.1779/91, disposed off on 26.5.1992 by Ernakulam Bench of this Tribunal).

21. The contention of Shri Naik that no material was available with the Govt. to support the allegation that the supply order and payment of advance was in violation of accepted norms of purchase does

not stand scrutiny. The complaint lodged with the CBI vide Chief Secretary's letter dated 19.3.1993 is quite exhaustive and refers to the various Govt. instructions, the role of the High Powered Committee, Technical Advisory Panel, etc. The submission of Shri Naik that no material was available with the Govt. and that the suspension order was issued mechanically on receipt of the High Court judgment is thus not borne out by facts. The observations of the Learned Single Judge of the High Court were specific and the contents of the complaint lodged with the CBI does show that the Govt. had gone into this question. It has been argued that the only reason for placing the officer under suspension was lodging of a formal complaint with the CBI for investigation. We had earlier examined this aspect and we agree with the stand of the Advocate General that the State Govt. did in fact contemplate disciplinary proceedings against the officer and a reference to the complaint with the CBI in the suspension order was only to demonstrate the seriousness of the charge. We also do not find merit in the contention that the Govt. had routinely assumed that the CBI would request for an order of suspension and that the order was not intended to facilitate the investigation and or departmental proceedings. We have already held ^{that} the suspension order can be brought within the ambit of Rule 3(1) as there was contemplation of disciplinary proceedings and the order could be brought within the framework of the guidelines issued by the Govt. of India and the Govt. of Karnataka in this regard. No doubt, the Chief Secretary in his note dated 23.3.1993 to the Chief Minister has not specifically referred to the relevant guidelines. But, he has stated in his note that "it is necessary, particularly, with high ranking officers that a message be sent that impropriety will not be tolerated." The nature of complaint against the officer and this observation would bring it within the scope of the guidelines which lay down the circumstances in which the officer can be placed under suspension.

22. Shri Naik also has referred to the letter dated 10.12.1992 of the applicant regarding filing an appeal against the High Court judgment. A copy of this letter dated 10.12.1992 has not been produced. We agree with the Advocate General that the Govt. need not give an opportunity to the applicant to explain his position before taking a decision in this regard and that the omission to do so would not vitiate the suspension order. The applicant also has not been able to establish that the impugned order was issued on account of political pressure or extraneous considerations. As pointed out by the Advocate General, the Chief Minister did not commit to any course of action on the floor of the House when there was a demand by some Hon'ble Members to place Shri Alexander under suspension. We find no reason to disagree with the version given by the Respondents that the Chief Minister took a decision in this regard, later that evening, when the file was put up to him with the views of the Chief Secretary and that he accepted the recommendation that on merits that the applicant should be suspended.

23. We have gone into the cases cited by Shri Naik and their relevance to the present application.

In Veeramani's case, the Court had observed that the Govt. had been influenced by extraneous considerations and they had not applied their mind to the questions involved and that the order was passed merely because of political pressure. In that case, Shri Veeramani, a senior Police Officer was placed under suspension on the ground that he was the seniormost officer present in the spot where there was use of force by the Police. The Court held that the order did not state that it has been passed in exercise of any statutory powers. The Court also observed that the conclusion was

irresistible that there was no material before the Chief Minister for any misconduct by Shri Veeramani. The facts in the present case are quite different and Veeramani's case does not assist the applicant.

In Turam Deoga's case, the Court had observed that the allegation of the applicant that the suspension was the outcome of the Minister's wrath for not appointing some candidates according to his wishes was not denied by the respondents. In the case of S.A. Khan, the Tribunal had held that the inference drawn from the attendant circumstances and departmental records that the applicant's suspension was not done by bonafide exercise of power. These two cases are not of any assistance to the applicant.

The Supreme Court had held in the case of State of Orissa Vs. Vimal Kumari Malathi that an order of suspension should be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority. Further, such authority should apply its mind to the above aspects and decide whether it is expedient to keep an employee under suspension. It would not be as an administrative routine or an automatic order to suspend an employee. The Court had further held that each case must be considered depending upon the nature of the allegations, gravity of the situation and the indelible impact it creates on the service in the continuance of the delinquent employee. Further, it should not be actuated by malafides, arbitrary or for ulterior purposes. The suspension must be a step in aid to the ultimate result of the enquiry. The authority should keep in mind the public interest of the impact of the delinquent continued in office. These observations of the Hon'ble Supreme Court will not help the stand of the present applicant, as we have held that taking into account the facts of the case, the suspension order was in conformity with the relevant guidelines and was not arbitrary.

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In Lakshmanan's case, the Ernakulam Bench of the Tribunal held that the order of suspension was passed on ex-parte and incomplete enquiry during which the applicant was kept thoroughly insulated and that Govt. had no other material apart from the enquiry report. It, therefore, held that suspension in that case was not based on reasonable and fair grounds. In the present case, Hon'ble High Court of Karnataka had dealt with a public interest petition and had made some observations. The applicant was one of the respondents in that case. The complaint before the CBI also indicates that the relevant records were examined to substantiate the allegations. It was observed by the Tribunal and affirmed by the Supreme Court in Lakshmanan's case that there was no material before the State Govt. to pass the order of suspension. Such is not the position in respect of the present application.

24. In the light of the foregoing discussions, our answer to the first proposition is that the order of suspension was not in violation of Rule 3(1) of AIS (D&A) Rules, and that the same was made with due application of mind and on objective satisfaction of the Govt. We also hold that there is nothing to substantiate the allegation that extraneous considerations weighed with the Govt. for making the impugned order.

Proposition (B):

25. The applicant has also prayed for quashing the order of the second respondent, viz., Govt. of India, which has rejected his appeal against the order of suspension issued by the Govt. of Karnataka. The main ground urged by Shri Naik against this order of Govt. of India, dated 7/13th December, 1993 (as at Annexure 'D' to the application) is that it is not a speaking order and has not decided on merits

the relevant issues raised. Shri Naik further submits that this order being a quasi judicial order on a statutory appeal is amenable to judicial review and should give the reasoning for taking the decision and the decision in the absence of reasons will have to be termed arbitrary. The Respondent No.2, Govt. of India, submit that it is not a fact that the appeal was rejected without due consideration. Respondent 2 assert that this order is warranted on the basis of facts and circumstances of the case and consideration of the entire matter by the competent authority and it is a well considered decision after examining each and every point raised by the applicant along with the comments of the State Govt. It is further submitted that the whole exercise is in accordance with the Rule 19(2) of the AIS (D&A) Rules, which is the statutory rule dealing with consideration of appeal by the Central Govt.

26. At the direction of the Tribunal, the Respondent No.2, had made available to us the records relating to disposal of the appeal and review petition filed by the applicant to the Central Government but had claimed privilege under Section 123 of the Indian Evidence Act to bar its production for the perusal of the applicant or his Advocate. Shri Naik initially contested the question of privilege and stated that such a claim in respect of documents pertaining to quasi-judicial decisions is liable to be rejected. He also cited the decision of the Supreme Court in S.P. Gupta Vs. Union of India (AIR (1992) SC 149). Subsequently, however, Shri Naik did not press his initial request that the records should be made available to him to enable him to assist the Court. He requested us to go through the records and if we are satisfied regarding the manner in which the appeal was dealt with, he would have nothing more to say. We note the submission of Shri Naik. We have accordingly gone through the relevant file of the Govt. of India No.105/4/93-ABD-I of the Department of Personnel and Training. The appeal of Shri Alexander was

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forwarded to Govt. of India by the State Govt. with their comments in June, 1993. We note from this file that on receipt of the appeal the matter was considered in depth at various levels of the concerned department. The factual position as also each of the ~~contents~~ ^{contentious} of the applicant and the comments of the State Govt. thereon were gone into in detail. As there was a reference in the appeal petition to the filing of a public interest writ petition before the High Court of Karnataka, the Govt. of India, obtained a copy of the judgment of the Karnataka High Court and went into the same. The rule position and the existing instructions of the Govt. regarding the circumstances in which an officer could be placed under suspension were taken into account. The appeal was finally rejected at the appropriate level. The subsequent review petition filed by Shri Alexander against the rejection of the appeal was also considered carefully by the department and this was also rejected. On a perusal of the file, we find that the examination of the case has been done on the basis of materials available with the Govt. of India and after proper consideration of the relevant rules and instructions. We are satisfied that this has been done in an objective manner and we cannot fault the decision making process of Respondent 2 in this regard. It is true that the order rejecting the appeal does not give the reasons for such rejection, but the noting in the file makes it abundantly clear that the matter was gone into carefully and the decision was arrived at after proper consideration of all the relevant aspects.

27. We, therefore, hold that the order of Respondent 2, dated 7/13th December, 1993, is not arbitrary and it was made after due consideration of merits. Our ^{finding of} ~~find on~~ Proposition (8) is that the order of Govt. of India rejecting the appeal has to be upheld.

Proposition C:

28. Shri Naik brings out the fact that the applicant has been under suspension for over 18 months and argues that the continued suspension of the applicant is unjust and unreasonable. He states that even though suspension is not a punishment, it entails certain consequences detrimental to the person concerned. Such consequences should be arrived at strictly upon fulfilment of the conditions embodied under the statutory rules and orders. Shri Naik states that as the CBI has since submitted a charge sheet and investigation has been completed, it is no longer necessary to continue the order of suspension. He also claims that the charge sheet filed by the CBI does not accuse the applicant of any crime except criminal conspiracy and that there is no charge or allegation that the applicant had benefitted by the award of contract. He pleads that the prolonged order of suspension is demoralising. He also alleges that some others who have been accused of more serious charges than the applicant have been reinstated in service and the suspension in their cases have been revoked. Shri Naik submits that the State Govt. having set itself a yardstick ^{for} in exercise of its discretion to revoke the suspension is required to exercise such discretion uniformly. He quotes the example of some officers whose suspension has been revoked and also refers to some newspaper reports which according to him would show that differential treatment is meted out to officers and that the State Government is adopting a discriminatory approach.

29. In his reply, the Advocate General submits that a review as to the need for continued suspension of Shri Alexander was done after about six months after the issue of the initial order. He makes available to us the relevant file. He states that it will be seen from the file that on 28.9.93, the Chief Secretary wrote to the

Director, CBI asking for his advice as to whether Shri Alexander's suspension should be revoked or not in the light of the information the investigation has thrown up. The Director, CBI by his reply dated 5.11.93 advised that in view of the position of investigation obtaining at that time the suspension of Shri Alexander may not be revoked. This was put up to the Chief Minister by the Chief Secretary on 10.11.93 and the Chief Minister agreed that Shri Alexander's suspension should be continued. On 8.1.94, Shri Alexander while submitting his review petition to the Govt. of India through the Chief Secretary, Karnataka had mentioned in his covering letter that as he had been under suspension for more than 9 months and as the CBI had completed its field investigations, the State Government themselves could revoke his suspension and requested accordingly. While examining this request, the Chief Secretary in his note dated 5.2.94 advised the Chief Minister that his suspension should continue in view of certain discussions he had with the Director, CBI. The Chief Minister approved this recommendation by his order dated 10.2.94. Again on 17.3.94, Shri Alexander wrote to the Chief Secretary appealing to the State Government to reinstate him in service. When this request was examined, the Chief Secretary at his level decided on 22.3.94 that at this stage the question would not arise as the CBI had sent its investigation report and sought for his prosecution. Shri Alexander wrote a further letter on 1.8.94 to the Chief Secretary where he had alleged discriminatory treatment as the State Government had allowed certain other officials against whom there were serious charges to be reinstated in service. He also stated that he had only two years of service left and a criminal trial with a large number of witnesses and six accused persons from different categories would naturally take a long time. He made one more request to the Chief Secretary to reinstate him in service pending trial as was

done in the case of some other officers. This letter was replied to by the Chief Secretary by a d.o. dated 8.8.94. We may quote an extract of this reply which is relevant for the present case:

"You have argued that suspension should be lifted in your case as has been done in that of some others. You are aware of the high level to which you have risen as compared with those other officers who were under suspension. You have been Chief Secretary of the State. The decisions you took for which you have been placed under suspension were taken by you in the dual position of Additional Chief Secretary and of Finance Commissioner of the State Government. Reinstating an officer at this level would necessarily require him to be given the responsibility and authority commensurate with his seniority. It is a moot point as to whether this can be done when one takes into account the seriousness of the matter for which you have been charge sheeted."

The Advocate General submits that these records will show the need for continued suspension of Shri Alexander was in fact reviewed on a few occasions. He also denies that the applicant was subjected to discriminatory treatment.

30. Rule 3 (7) of the All India Services (Discipline & Appeal) Rules provides that an order of suspension shall continue to remain in force until it is modified or revoked by the authority competent to do so. Rule 3(7) (c) states that an order of suspension made or deemed to have been made under these Rules may at any time be modified or revoked by the authority which made or deemed to have made the order. Sub-rule 7 of Rule 3 of All India Services (Discipline and Appeal) Rules is identical with the provisions contained in Rule 10(5) of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Government of India have issued instructions emphasising the fact that even though suspension may not be considered as a punishment, it does constitute a very great hardship for a government servant and in fairness to him, it is essential to ensure that this period is

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reduced to the barest minimum. The Department of Personnel, Govt. of India had in their O.M. dated 9.8.1974 had clearly enjoined that all cases of suspension should be reviewed regularly, particularly those ^{where} officials are under suspension for more than six months and wherever it is found that the official can be allowed to resume duties by transferring him to another post, orders should be issued for revoking suspension and allowing the official to resume duties with further directions as may be considered desirable in each individual case. This O.M. further stipulates that in order to keep the period of suspension to the barest minimum, the competent authority should take all possible steps to file a charge-sheet in a Court of Law where an official has been placed under suspension on account of a Court case or serve the charge-sheet if disciplinary proceedings were contemplated, within three months from the date of suspension. These instructions are periodically reiterated by the Government of India and they will equally apply to the officers of All India Services also.

31. From a perusal of the file and from the submissions made by the Advocate General, it is clear that after 10.2.94, the State Government had not undertaken a proper review of the need for continuance of suspension of Shri Alexander. The authority who has to pass final orders on this issue is the Hon'ble Chief Minister. He had approved the continuance of the suspension by his order dated 10.2.94. The subsequent decision on 22.3.94 was not taken at the Chief Minister's level when the request contained in Shri Alexander's letter dated 17.3.94 was examined. The d.o. letter from Shri Alexander dated 1.8.94 to the Chief Secretary was replied to by the Chief Secretary by his letter dated 8.8.94 without taking the orders of Chief Minister. This reply is not specific but gives the impression

that the reinstatement was not felt advisable. The State Government have not shown any material to indicate that any subsequent review was conducted by them. It is, therefore, evident that the last effective review of the case was done only on 10.2.94. It is clear from the file that the State Government had not adhered to the relevant instructions enjoining periodical review of such cases.

32. Shri Naik submits that the prolonged suspension would demonstrate that the government had not given a fair treatment to the applicant. In the rejoinder filed by the applicant, there is a reference to the case of Shri Kempaiah, IPS and Shri Maheshan, IAS. It is claimed that the investigating/ prosecuting agency had made a specific request for placing these officers under suspension but no action was taken by the Government. There is a reference to the case of one Shri Guru Prasad, Inspector General of Police who was suspended on charges of murder but was reinstated in service pending trial, as also the case of one Shri Srivastava, IPS. It is also mentioned that Shri Ashok, KAS has been charge sheeted for cheating, forgery etc. and is facing trial but has been reinstated. The rejoinder submitted by the applicant also refers to certain news-papers report which allege discriminatory treatment among different officers.

33. The Advocate General submits that the facts in each case differ and that the applicant has not established ⁶¹ that officers involved in the same transaction have been treated differently, as according to him, this alone can substantiate the charge of discrimination. The Advocate General points out that the applicant is not placed in the same position as the other delinquents. He states that the charge against the police officers was in the context of custodial death. The Advocate General also refers to the case of one Shri Bulla Subba Rao who was placed under suspension by the State Government but whose appeal against

the suspension order was allowed by the Central Government. In that case, the State Government had necessarily to reinstate this officer in service.

34. We do not propose to take any note of news-paper reports. As regards the cases of other officers referred to in the rejoinder, we do not know the details of such cases. The State Government, however, has not denied the contention that some senior officers who were facing trial for serious offences have been reinstated. It is expected that while considering every such case, the State Govt. would have gone into the merits taking into account the gravity of the offence, the nature and extent of the involvement of the officials and other relevant attendant circumstances. So far as Shri Alexander is concerned, it is clear that such a review has not been undertaken for quite some time, particularly after the investigation has been completed.

35. The question that needs determination is the effect on the initial suspension order of the failure to conduct periodical reviews as required by the instructions.

36. Shri Naik refers to various judicial pronouncements which according to him point out to the need for reinstatement if the order of suspension is continued for a long time. He refers to the case of State of Himachal Pradesh vs. B.C. Thakur 1994 (27) ATC 567. In that case, the decision of the State Administrative Tribunal to set aside the suspension order was upheld by the Supreme Court as the suspension was continued for nearly two years without substantial progress in the departmental enquiry. In the case of Shri Alexander, the CBI has submitted the charge-sheet and the present stage is one of enquiry into a criminal charge as the Court is still to frame the charges. In the case of Dr. Vellaiani Arjunan vs. State of Kerala (1988 (2) SLJ 159) the Kerala High Court held as

unjustified, continuance of suspension of an official who was due to retire shortly in respect of charges where no serious penalty could be imposed and no effective action was taken to hold the enquiry. The facts in the present case are quite different. In the case of K. Rajasekaran vs. Chairman, Central Board of Direct Taxes decided by the Madras Bench of this Tribunal on 25.1.1988 (1988 (7) ATC 727), it was held that the administrative instructions issued by the Government for periodical review of suspension and expeditious disposal of disciplinary proceedings are binding on all departmental authorities. In that case, the applicant's case was reviewed once only after six months whereas he was kept under suspension for more than three years and the Tribunal held that the suspension was rendered invalid. The same Bench of the CAT in P. Sathyahernath vs. Collector of Customs (1988 (7) ATC 548) had set aside the suspension order on the ground that the suspension was continued beyond the time limit prescribed in the departmental rules. It further held that the Government should have gone into the question of transfer of the applicant instead of suspension if there was an apprehension that he might hamper investigation or tamper with evidence.

Shri Naik contends that in the light of these Court decisions, the continued suspension of the applicant is not in order as it is lacking in fairness and the suspension order should be revoked.

37. The specific question as to whether failure on the part of the government to review the order of suspension would make the suspension order illegal was gone into by the Supreme Court in the case of Govt. of Andhra Pradesh vs. V. Sivaraman decided on January 12, 1990 (1990 SCC L&S 443). The Supreme Court while examining the instruction 18 issued under Andhra Pradesh Civil Services (CCA) Rules (similar to the Central Government instructions) observed in paras 4 & 5 of the judgement as follows:

"4. The case of the respondent before the Tribunal was that the suspension order dated March 21, 1988 was served on him on April 6, 1988 and it could be operated only for 6 months i.e. up to October 6, 1988. The government has not reviewed his suspension nor continued by a fresh order and as such he should be deemed to be in service from October 6, 1988. The Tribunal has accepted that case with an observation:

"Failure on the part of the government to review the order within six months period as required under Instruction 18 in Appendix VI to the APCA (CCA) Rules rendered the suspension order non est after six months. The government has limited powers to extend the suspension period but that has to be done during the period of suspension being in force and any order issued subsequent to the expiry of six months cannot have retrospective effect since the rule does not permit for extending suspension with retrospective effect."

NJ

Before us, counsel for the State contended and in our opinion very rightly that the view taken by the Tribunal is plainly erroneous and unsustainable. First, the government instructions on which the Tribunal rested its conclusion, do not seem to have any statutory force; second the order of suspension after a period of six months would not become non est giving an automatic right to reinstatement in service. Our attention has not been invited to any provision of law conferring such right on a government servant who has been placed under suspension pending enquiry of a case against him. Where the rules provide for suspending a civil servant and require thereof to report the matter to the government giving out reasons for not completing the investigation or enquiry within six months, it would be for the government to review the case but it does not mean that the suspension beyond six months becomes automatically invalid or non est. The only duty enjoined by such a rule is that the officer who made the order of suspension must make a report to the government and it would be for the government to review the facts and circumstances of the case to make a proper order. It is open to the government to make an order revoking the order of suspension or further continuing the suspension. The order of suspension however, continues until it is revoked in accordance with the law. In the present case, on December 6, 1988, the government has made the order as follows:

"Government have examined the case of Sri V. Sivaraman, Assistant Labour Officer, Nellore, who is under suspension pending finalisation of the ACB case against him and have decided that he shall continue to be under suspension in public interest. The next review will be taken up at the end of six months from the date of issue of this memo or until the finalisation of the ACB case against him, whichever is earlier."

5. This is not a retrospective suspension order but an order further continuing the suspension. The conclusion of the Tribunal to the contrary proceeds on the wrong assumption that the first order of suspension has come to an end by the expiry of six months. Such an assumption is apparently unsustainable. There was no prescribed period of suspension in the first order. As we have already indicated it does not come to an end after six months. It continues till it is revoked, though it is necessary to review the case once in six months in the light of the Instruction 18 contained in Appendix VI of the APSC (CCA) Rules and the circular of the Chief Secretary dated February 13, 1989."

It is therefore the settled position at present that failure to conduct a regular review does not render the initial order of suspension illegal nor does the order become non-est.

38. In view of this position, the failure to conduct regular reviews in this case has not automatically rendered invalid the initial order of suspension dated 23.3.93. We would, however, like to emphasise that the relevant instructions as also considerations of equity and fairplay require that the need for continuance of suspension of the officer should be reviewed periodically. The State Government's failure to conduct an effective review after February, 1994 would show that they have been remiss in complying with the instructions, more particularly when there were specific requests from Shri Alexander for reinstating him in service on various grounds, including the fact that the State Government had taken the view that the prosecution in a Court of Law is not a bar for reinstatement in service in some other cases. We, therefore, direct the State Government (R1) to conduct a comprehensive review of the applicant's case in the light of all relevant materials including those envisaged in the guidelines and take a decision as to whether it is necessary to continue the suspension of Shri Alexander in the present context. Shri Alexander is at liberty to file a detailed representation in this regard. If he chooses to file such a representation, he should do so within a fortnight from today and the State Government will conduct a review and dispose of any such representation.

NJ

by a speaking order within two weeks from the date of receipt of such representation. Even if there is no such representation, the State Government on their own should undertake a comprehensive review and the decision flowing from such a review as to whether or not a suspension has to be continued has to be taken within one month from the date of receipt of a copy of this order. We answer proposition 'C' as above.

39. In the result, we dispose of the present application with the following observations/ directions:

(a) We hold that the order dated 23.3.1993 of 1st respondent, namely, State Government of Karnataka (Annexure-A) conforms to the requirements of the relevant rules and guidelines and as such the same has to be sustained.

(b) We also uphold the order dated 7th/ 13th December, 1993 of the 2nd respondent, Govt. of India (Annexure-B) rejecting the appeal filed by the applicant.



(c) As the 1st respondent had not conducted the regular reviews as to the need for continued suspension of the applicant, we direct the State Government of Karnataka to conduct a review taking into account all relevant materials and to take a decision within one month from the date of receipt of a copy of this order as to the necessity or otherwise at present of the suspension of the applicant. If Shri Alexander files a representation seeking reinstatement in service, the State Government should dispose of the same by means of a speaking order within two weeks from the date of receipt of such a representation.

(d) We make no order as to costs.

Sd/-
(A.N. Vujjanaradhy)
Member (J)

ppp/TCV

TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

Sd/-
(V. Ramakrishnan)
Member (A)