

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1084/94
Transfer Application No.

Date of Decision : 28/4/85

Sudhir V. Kolgaonkar

Petitioner

Shri. M.S. Ramamurthy

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri. B. Ranganathan

Advocate for the
respondents

C O R A M :

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

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

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

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

J*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 1084 of 1994

Shri.Sudhir V. Kolgaonkar .. Applicant

Vs.

- | | | |
|---|---|----------------|
| 1. Union of India, through
the Secretary
Ministry of External Affairs
New Delhi. | } | |
| 2. The Director (C&N)
Ministry of External Affairs
New Delhi. | } | .. Respondents |
| 3. The Passport Officer
Nagpur. | } | |

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

Appearances

1. Shri. M.S. Ramamurthy
Advocate
for the applicant.
2. Shri. B. Rangnathan,
Advocate
for the respondents

J U D G M E N T

DATED :

28/4/95

(Per : Shri.M.R.Kolhatkar, Member (A))

In this O.A under Administrative Tribunals Act,
the reliefs claimed are declaration of suspension
dated 18.08.1994 in respect of the applicant as
malafide, arbitrary, contrary to rules and void ab-
initio and to quash and set-aside the same with
direction to reinstate the applicant in service with
all consequential benefits. The facts of the case
are as under :

2. The applicant joined the service of the
Respondents as Lower Division Clerk on 20.5.1968.
He was promoted as Upper Division Clerk in 1977
and as Assistant in the year 1984. He was promoted

as Superintendent and was transferred to Hyderabad as Passport Issuing Authority, where he joined with effect from 9.3.1992. He was transferred to Regional Passport Office, Nagpur in the same capacity as Superintendent by Ministry's order dated 25.3.1994. He was relieved of his duties from Hyderabad vide order dated 31.5.1994. The applicant states that while he was on leave at Bombay, he received the impugned order of suspension dated 18.08.1994, at Exhibit 'A'. The suspension order which is signed by the Director (CNV) & Dy. Chief Vigilance Officer, Ministry of External Affairs, Government of India, New Delhi recites that the competent disciplinary authority ⁱⁿ ~~exercise~~ ^{of} its powers conferred by Rule 10 of the CCS (CCA) Rules, 1965 places the applicant under suspension since the disciplinary proceedings against him are contemplated. The suspension order refers the applicant as Superintendent working in Passport Office at Hyderabad. It is the contention of the applicant that this very fact shows non-application of mind because the respondents should have been well aware that the applicant was transferred at the end of May ¹⁹⁹⁴ from Hyderabad to Regional Passport Office, Nagpur. According to the applicant, he had received commendation certificate in connection with excellent work done by him at the time of meeting of non-aligned co-ordinating bureau held in New Delhi from 15 to 19 April 1986 and received honorarium for that purpose on 06.5.94. He has not received any adverse entries in his Annual Confidential Record. Therefore, the order of suspension is clearly malafide, arbitrary and contrary to rules.

3. The applicant had prayed for interim relief by way of stay of suspension order in the O.A and

he had also filed an M.P 118/95 for the same.

3. The written statement filed on behalf of the respondents by Public Relations Officer in the Regional Passport Office, Worli, Bombay is undated and has been received on 9/3/95. In this written statement, it has been stated that the reference to the applicant as working at Hyderabad office was a clerical/typographical error and the same is being rectified. The respondents incidentally, however, have not enclosed any communication showing that the error has been rectified, which error has the effect of fixing the headquarters of the applicant as Hyderabad during the suspension period although the applicant at the time of suspension was working at Nagpur. Regarding reasons for suspension, it is stated that the applicant is guilty of serious misconduct as ascertained from preliminary enquiry about irregularities committed by the applicant, however no further details relating to the misconduct have been given. Regarding the charge-sheet, it has been stated that the same is under process. The respondents have questioned the right of the applicant to file O.A as he has not exhausted the remedy of filing appeal to the departmental superior.

4. In his rejoinder, the applicant has pointed-out that the written statement having been filed by the Public Relations Officer, who is not authorised to file the same, cannot be considered. The written statement merely denies various submissions and does not give any particulars. The suspension of the applicant is, therefore, in the nature of abuse of power and the applicant has prayed for disposal of O.A by grant of relief prayed for. On 13.3.1995

on receipt of the written statement, the respondents were directed to furnish copy of notification authorising the P.R.O to file the written statement. On the next date^{of hearing,} however, the counsel for the respondents was unable to file the notification as directed by the Tribunal. It is also conceded that till that date, charge-sheet was not issued. We therefore heard the parties.

5. Learned counsel for the applicant invited our attention to the administrative instruction relating to suspension. These can be seen in Chapter II of Swamy's Compilation of CCS(CCA) Rules 1993, at page 176. However, this^{matter} has been exhaustively reviewed in (1987) 2 ATC 828 (D.Mangaleswaran Vs. Commissioner of Income-tax, Tamilnadu & Anr.). The Tribunal noted that although the suspension may be valid initially it may become invalid for non-compliance of the guidelines. The guidelines envisage that public interest has to be the guiding factor in deciding to place a government servant under suspension. While placing the official under suspension, the competent authority should consider whether the purpose can be served by transferring the official from ^{his} post to ^{another} post where he may not repeat the misconduct or influence the investigations, if any, in progress. All cases of suspension have to be reviewed regularly, particularly those where officials are under suspension for more than six months. It is also noted that unduly long suspension causes undue hardship and involves payment of subsistence allowance without the employees performing any useful service to the government. The learned counsel for the applicant has also invited our attention to the following additional case laws :

6.1 In C.L. Bakola Vs. Union of India & Anr. (1989) 10 ATC 75, the applicant^{was} kept under suspension for more than 2 years without filing charge-sheet in a criminal court or no charge sheet has been served on the applicant in disciplinary proceedings, if any, contemplated. The Tribunal quashed the suspension order.

6.2 In M.H. Rahman Vs. Collector of Customs, Madras (1989) 10 ATC 88, the applicant was detained under COFEPOSA and suspended in contemplation of departmental enquiry for alleged abetment in smuggling, but no charge-sheet was issued even after 2½ years of suspension. In such circumstances, continued suspension was held to be unjustifiable.

6.3 In P. Eswar Jitendra vs. GM, Indian Government Mint, Hyderabad & Ors. (1988) 8 ATC 469, it was observed that although suspension by itself is not a penalty, suspension for a prolonged period without issue of a charge-sheet would take penal character. It was noted that the applicant was under suspension for more than a year. The applicant was ordered to be reinstated by the Tribunal.

6.4 In The State of Madras v. K.A. Joseph (AIR 1970 page 155), the Division Bench of the Madras High Court observed that in their view there is a very clear and distinct principle of natural justice, that an Officer is entitled to ask, if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence, and that charges should be framed against him within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a total, arbitrary and unfettered power of placing its officers under disability

and distress, for an indefinite duration. It cannot be accepted by the court nor ^{is} any such claim be supported by any precedent or authority.

6.5 In O.P. Gupta vs. Union of India & Others (1987) 5 ATC 14 which is a Supreme Court case, it has been observed in regard to prolonged suspension of a government officer, that there is no presumption that the government always acts in a manner which is just and fair, and the prolonged period of suspension is actuated with the mala fide intention of subjecting government servant to harassment.

7. In reply, the learned counsel for the respondents reiterated what has been stated in the written statement, namely that suspension of the government officer is in contemplation of the departmental proceedings and the charge-sheet is under process. We are aware of the observations of the Supreme Court that Suspension is not a punishment but is only one way of forbidding or disabling an employee to discharge the duties of office or post held by him and the Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose and the suspension must be a step in aid to the ultimate result of the investigation or enquiry. (1994 SC 2296). However, in another case the apex court has interfered with the order of suspension i.e. in R.C. Sood v. High Court of Rajasthan JT(1994 (7) SC-706, The High Court had suspended a District Judge then working as Registrar on a mere suspicion of forgery in the relevant date in advertisement. No precaution was taken by the High Court to see whether the ink was the same as used by the Registrar in other

parts of the draft, in other words, whether there is any prima facie case of forgery. The Supreme Court held that suspension was wholly arbitrary, unwarranted and violative of Articles 14 and 16 and quashed the same.

8. In the present case, it is seen that the applicant was suspended on 18.8.94 in the context of contemplating an enquiry but this order itself shows non application of mind in as much as even though the applicant was transferred to Nagpur 3½ months prior to the order of suspension, the applicant was treated as an employee of Hyderabad office and his headquarter was fixed at Hyderabad. There is nothing on record to show that the case of continued suspension beyond 6 months has been reviewed by the competent authority. It is an admitted position that there is no criminal case against the applicant. What is contemplated is only a departmental enquiry in the context of certain irregularities. However, there is no whisper regarding the nature of irregularity. We have already observed that the case law ^{es} establish^{es} that even if the nature of irregularity is very serious, prolonged suspension cannot be justified. In fact the circular instructions reproduced in para 11 of D.Mangaleswaran case show that when an official is placed under suspension in contemplation of departmental enquiry, a charge-sheet is required to be served within three months. It is only in a criminal case that a charge-sheet in a Court of law is required to be filed within 6 months. In the instant case, therefore, the respondents ought to have issued the charge-sheet against the applicant within 3 months of the suspension namely on or before

18.11.1994. The respondents have not done so. What is more, the respondents have not ~~cared~~ to place any material before the Tribunal to show why continued suspension of the applicant is justified. We also express our strong disapproval ~~of~~ the manner in which the written statement has been filed under the signature of Public Relations Officer and without showing the authority even when directed by the Tribunal. Such ^a written statement ought to have been filed by the responsible officer in the Ministry of External Affairs.

9. We are, therefore, satisfied that the action of suspending the applicant shows non-application of mind and the continued suspension of the official without any evidence of review shows violation of the guidelines in this regard and is required to be held to be arbitrary. We are therefore satisfied that this is a fit case for interference by the Tribunal and we dispose of the O.A by passing the following order :

O R D E R

O.A is allowed. Order of suspension dated 18.08.1994 is hereby quashed and set-aside. The applicant is directed to be reinstated in service and shall be allowed to join duty immediately on receipt of this order. All emoluments due to the applicant for the period of suspension until reinstatement, in pursuance of this order, shall be determined by the respondents in accordance with rules, within a period of two weeks from the date of receipt of the order. We clarify that if

at a later date, a charge-sheet is served on the applicant in the departmental proceedings and if the gravity of the charges levelled against the applicant warrant any action to be taken, nothing said above will preclude the respondents from taking action as they deem fit in the then circumstances. The applicant would be at liberty to question any order passed against him. There would be no orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J)

J*