

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1495 / 1995

Date of Decision: 13th SEPTEMBER 96

TAPAS NEOGY

Petitioner/s

MR. G K MASAND

Advocate for the
Petitioner/s

V/s.

U.O.I. & ORS

Respondent/s

MR. V.S. MASURKAR

Advocate for the
Respondent/s

CORAM:


Hon'ble Shri

B.S. HEGDE, MEMBER (J)

Hon'ble Shri

P.P. SRIVASTAVA, MEMBER (A)

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


MEMBER (A)

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI-1

O.A. No. 1495 / 95

DATED: THIS 13th DAY OF SEPTEMBER, 1996

Coram: Hon. Shri B.S. Hegde, Member (J)
Hon. Shri P.P. Srivastava, Member (A)

Tapas Neogy

residing at Government Quarters,

Daman and working as Architect

Planner, Department of Planning and

Architecture, Moti Daman 396220

till he was placed under suspension

(By Adv. Mr. G.K. Masand)

..Applicant

V/s.

1. Union of India through

the Secretary in the Ministry
of Urban Development, Nirman Bhavan,
New Delhi

2. Secretary in the Ministry of

Home Affairs, New Delhi 110001

3. Administrator

Union Territory of Daman & Diu

and Dadra Nagar Haveli,

Administrator's Secretariat,

Daman 396220

..Respondents

(By Adv. Mr. V.S. Masurkar,

Central Govt. Counsel)

ORDER

(Per: P.P. Srivastava, Member (A))



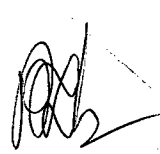
ORDER

(Per: P.P. Srivastava, Member(A))

The Applicant was working as Architect Planner in the Administration of Daman and Diu. He was placed under suspension on 10.9.93. Against this order the Applicant had come to the Tribunal through O.A.No. 1089/93 which was disposed of by the Tribunal on 2.9.94. The Applicant filed another O.A. No.1361/94 challenging the initial order of suspension dt.10.9.93 along with order dated 1.9.94. During the pendency of this O.A. the Respondents passed another order dated 28.3.1995 by which the Applicant was placed under suspension with immediate effect under Rule 10(1) of C.C.S. (C.C.A.) Rules, 1965, since the earlier order dated 10.9.1993 gave the reasons for placing the applicant under suspension as 'Contemplated Disciplinary Proceedings' and the order dated 28.3.1995 was in respect of 'Criminal Offence'. This Tribunal held that in view of the above position the suspension order dated 10.9.93 does not survive and the O.A. was allowed and the period from 10.9.93 to 28.3.95 was treated as on duty.

2. In the present O.A. the applicant has come to the Tribunal challenging the suspension order dated 28.3.95 and the Appellate order dated 22.2.96, Exhibit B, by which the appeal against the suspension order was rejected by the Administration.


3. Ld. Counsel for the Applicant has argued that the Applicant was placed under suspension



from September 1993 and he is not on the job. The Administration therefore decided to take disciplinary action but later on changed their mind and decided to file criminal charges against the applicant. However, nothing has been done for filing the case against the applicant in the court of law uptill now. The inaction on the part of the respondents has resulted in the continued suspension of the Applicant and therefore it will be in the fitness of things if the applicant is taken back on duty pending action being taken against him.

4. The Id. Counsel for the applicant further submitted that the FIR has been lodged by the Respondents against the applicant in three cases viz., RC 64(a)/93-Bom dt. 29.9.93; RC 65(a)/93-Bom dated 29.9.93 and RC 66(a)/93-Bom dated 29.9.93. After filing of these FIRs no further action has been taken by the respondents. The Counsel states that the applicant be taken back to duty as about 3 years have lapsed even from the date of filing of FIR.

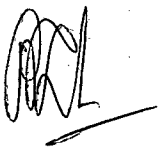
5. Id. Counsel for the Applicant has also argued that the Respondents in their order dated 22.2.96 which is the appellate order under challenge, it is mentioned that sanction against the applicant has been issued u/s.197 of Cr.P.C. for prosecution. In view of the fact that the sanction under sec. 197 of Cr.P.C. has been issued for prosecution it may be safely presumed that the investigation is



completed. If the investigation is completed the administration should have no difficulty in putting back the applicant on duty pending investigation of the Court cases as the applicant would not be in a position to tamper with any evidence in view of the fact that the investigation has already been concluded and sanction for prosecution has been issued.

6. Ld. Counsel for the applicant has also brought out that he had raised many points in his appeal but the Appellate Authority has passed the order in a mechanical way without touching upon the various issues raised by the Applicant. The Ld. Counsel for the applicant has also argued that the CBI has never sought the suspension of the applicant.

7. The Ld. Counsel for the Respondents when has argued that the Applicant was suspended in 1993 it was contemplated to take disciplinary action against the applicant. However, considering the seriousness of the offence it was decided to launch prosecution against him and therefore the Administration issued the impugned order dated 28.3.95. In the order dated 28.3.95 it was also mentioned that sanction u/s. 197 of Cr.P.C. and S. 19(1)(c) of the Prevention of Corruption Act, 1988 to prosecute the applicant had also been issued.

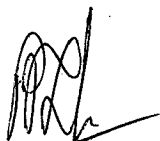


The case of the applicant's suspension was reviewed and an order has been passed on 1.1.1996. The order on review of suspension has been placed at Exhibit R-IV, wherein it has been mentioned that after sanction order two more cases (i) No.RC-65(A)/93-BOM and (ii) No.RC-66(A)/93 BOM have been investigated by the C.B.I. The order also mentioned that sanction has already been issued in case No.RC-65(A)/93-BOM. The order also mentioned that in view of the above multiplicity of cases initiated by the CBI and the serious charges levelled against him the order of suspension would continue till further orders.

8. Ld. Counsel for the respondents also submitted that in view of the seriousness of the charges the order of the Administrator continued with the suspension and is an administratively correct order and there is no illegality in issuing such an order.

9. Ld. Counsel for the Respondents has brought to our notice the Supreme Court judgment in CHILDREN FILM SOCIETY OF INDIA Vs. SRIDHAR SHARMA, (1993)24 ATC 386, wherein the Supreme Court has held in para 9 as under:

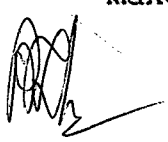
"9. Secondly, we have perused the charge-sheets that have been filed against the respondent in the court of the Special Judge Greater Bombay under the provisions of the



Indian Penal Code and the Prevention of Corruption Act. It is, we think, proper only to say this, without prejudicing the case of either party, that the charges relate to the performance of the respondent's duties and are of a very serious nature. Having regard thereto, it is not desirable that the suspension order should be revoked so that the applicant is compelled to take the respondent back into service pending the disposal of the criminal cases against him."

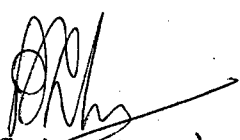
10. Ld. Counsel for the respondents also submits that the subsistence allowance of the applicant has been reviewed by the competent authority and vide order dated 18.3.1996 the Subsistence Allowance has been increased by 50% of the Subsistence Allowance admissible at the time of his suspension.

11. We have perused the record and considered the arguments advanced by the Ld. Counsel for the parties and we are of the view, that since the charges are serious and administration has decided to prosecute the applicant it would not be desirable to interfere in the suspension order. The plea of the applicant that insufficient time has passed and no action has been taken has some weightage and therefore we advise that the administration should make sincere efforts to expedite the case. It has



been brought to our notice that although the sanction for prosecution in the case of the applicant has been issued, sanction to prosecute Accused No.1 Narayan Divekar has not been issued from the Government of India. Mr. Narayan Divekar is an IAS officer and Government of India's sanction has not been received in his case so far. It is a matter of concern for us that even when the investigation in atleast one case has been completed the case has not been proceeded further and the charge sheet has not been filed for want of sanction against Accused No.1. These observations of ours must be conveyed to the concerned authority under Government of India for expediting decision for finalisation of this case. It is also directed that the case of the applicant's suspension should be reviewed by the competent authority as per rules from time to time and applicant informed of the outcome.

12. The O.A. is disposed of with the above directions. There would be no order as to costs.


(P.P. Srivastava)
Member(A)


(B.S. Hegde)
Member(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.111/96 in DA.NO.1495/95

Dated this the 21st day of July 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Tapas Neogy

... Applicant

V/S.

Union of India & Ors.

... Respondents

Tribunal's Order


PR In this Review Petition the Review
Petitioner ^{has} sought review of the order passed by
the Tribunal wherein the Tribunal has held that
"since the charges are serious and administration
has decided to prosecute the applicant, it would
not be desirable to interfere in the suspension
order." The Tribunal had further observed that
"the plea of the applicant that sufficient time
has passed and no action has been taken has some
weightage and therefore we advise that the adminis-
tration should make sincere efforts to expedite the
case." The Tribunal had further observed that the
sanction has not been issued by the Government of
India.


2. The Review Petition is against the Tribunal's
order wherein the Tribunal has decided not to interfere
with the order. ^{of suspension} The applicant has not brought out any
new material in the review petition which was not avail-
able at the time of hearing of the case. In Para 7 of
the Review Petition, the review petitioner has brought

PR

out certain arguments to show as to how the judgement of the Tribunal is wrong. However, in none of the arguments which have been raised in Para 7 the applicant has been able to show any error apparent on the face of record. What the applicant has brought out in that para is why the decision of the Tribunal is wrong. The grounds taken in this para would form part of an appeal against the order of the Tribunal but do not constitute error apparent on the face of the record.

3. Therefore, in view of the restricted jurisdiction of the review petition, we do not see any reason to interfere with the orders which have already been passed by the Tribunal. The Review Petition is, therefore, dismissed.


(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

mrj.

Order/Judgement despatched
to Applicant/Respondent (s)
on 24.7.92

29/11