

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

D.A. NO.

O A. no. 6/89

T.A. NO.

DATE OF DECISION

23/10/89

Petitioner

G. Vedula Rao

Advocate for the  
Petitioner (s)

Versus

Respondent

M. Srinivasulu

Advocate for the  
Respondent (s)

S. C. for I. T.

Case

CORAM

The Hon'ble Mr. D. Srinivas Rao, Member (S)

The Hon'ble Mr. D. K. Chakravorty, Member (H)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. whether their Lordship, wish to see the fair copy of the Judgment?
4. whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1, 2, 4, (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

Yes

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(xx)

D

(xx)

6/9  
BNS  
HVC

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO:6/89

DATE OF ORDER : 23-10-89

Between:

S.B.Ramesh

...Applicant

versus

1. The Chairman, Central Board of Direct Taxes,  
New Delhi. and another

...Respondents

FOR THE APPLICANT : Mr.G.Vedantha Rao, Advocate

FOR THE RESPONDENTS : Mr. M.Suryanarayana Murthy, SC for Income Tax Deptt.

CORAM:

THE HONOURABLE MR.D.SURYA RAO: MEMBER (JUDICIAL)  
AND

THE HONOURABLE MR.D.K.CHAKRAVORTY: MEMBER(ADMN)

(JUDGMENT OF THE BENCH DELIVERED BY SRI D.SURYA RAO: MEMBER  
JUDICIAL)

contd...

(Judgment of the Tribunal delivered by Hon'ble Shri D. Surya Rao, Member(J)).

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The applicant herein is an Income-tax Officer (Group B) who seeks to question the order Con. No. 25/86 dated 5-8-86 issued by the 2nd Respondent placing him under suspension under sub-rule (1) of Rule 10 of the C.C.S. (C.C. & A.) Rules, 1965 on the ground that a disciplinary proceeding is contemplated against him. The applicant also seeks to question the order F. No. C. 14012/1/87, Ad. VI(A) dated 13-7-87 of the Ministry of Finance, Government of India whereby the President of India rejected the appeal filed by the applicant against the order of suspension, dated 5-8-86. The applicant's main contention is that there is inordinate delay in completing the enquiry against him and that prolonged suspension is violative of his rights and is illegal. He contends that after being placed under suspension on 5-8-86, it took for the Respondents, 9 months i.e. till 5-5-87, for the issuance of the charge-sheet. Thereafter it took another month and half for appointment of an Enquiry Officer, namely, by proceedings dated 29-6-87. During the interregnum the applicant had preferred an appeal which was dismissed on 13-7-87. He contends that the preliminary hearing was fixed on 21-9-87 when the applicant was directed to submit the list of additional defence documents and a list of defence witnesses, if any. The applicant submitted the lists of defence documents and witnesses on 19-9-87. He contends that

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the Enquiry Officer, by proceedings dated 21-9-87 held that no comments were received from the Presenting Officer, that the documents and witnesses cited were relevant and that the Presenting Officer should procure the additional defence documents and give inspection to the charged officer within one month. The applicant alleges that till the date of filing the O.A., there is no compliance by the Presenting Officer for supplying the documents despite the applicant reminding the Enquiry Officer every month. He alleges that while the <sup>the</sup> enquiry is not being proceeded with, on 25-3-88, an additional charge-memo was issued by the 2nd respondent making further allegations of misconduct. The applicant submitted a reply on 5-4-88 and by proceedings dated 16-5-88, an Enquiry Officer was appointed. The applicant states that he made a representation stating that there is rivalry between IRS and non-IRS officers in the Department and that, therefore, the officer who had been appointed as Enquiry Officer should not function as such since he is an IRS Officer. He states that the two enquiries are dead-head while the applicant is being indefinitely continued under suspension subjecting to harassment, humiliation, mental agony and social stigma. He contends that the guidelines of the Government of India deprecating prolonged suspension, are not being followed, that the instructions of the Govt. of India are being violated and that prolonged suspension for a period of over two years renders the suspension punitive. He, therefore, seeks a direction that the order of suspension may be set aside, that the applicant be reinstated to duty with arrears of salary and for treating the period of suspension as duty.

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2. On behalf of the Respondents, a counter affidavit has been filed denying the allegations. It is contended that the enquiries could not be completed due to procedural delays. One of the reasons for delay is that the applicant objected to an IRS Officer as being an Enquiry Officer. The enquiry (second enquiry) was, therefore, stayed and the representation of the applicant was forwarded to the reviewing authority which is as per the guidelines. It is contended that the applicant himself is, thereby, not cooperating with the enquiry. So far as the non-supply of documents are concerned, as ordered in the first enquiry, it is contended that the Presenting Officer was transferred and another Presenting Officer was appointed in his place. Hence there was no compliance by the Presenting Officer in the matter of supply of documents. It is further contended that the suspension beyond a year is not illegal, that the reasons for continued suspension were reported to the next higher authority as per the rules and that the suspension had to continue as two charge-sheets were issued for serious irregularities which are yet to be finalised. It is contended that maximum subsistence allowance is being paid to the applicant <sup>and</sup> as such there is no constitutional or other right of the applicant is being violated. It is contended that the suspension is being reviewed periodically as required under the rules and reasons are being recorded for continued suspension. An additional counter affidavit was also filed denying allegations relating to harassment, mental agony and social stigma. So far as the 2nd enquiry is concerned, it is stated that an officer of the Income-Tax Department was initially appointed as the Enquiry Officer and on the applicant's objection,

Shri D. Prakash, Commissioner for Departmental Enquiries, an IAS Officer, was appointed as the Enquiry Officer on 21-3-89 but the applicant has objected to the appointment of even this officer. For these reasons it is prayed in the counter that the Application may be dismissed.

3. <sup>have</sup> We heard Shri G. Vedantha Rao, the learned counsel for the applicant and Shri M. Suryanarayana Murthy, the <sup>Income Tax Department</sup> learned Standing Counsel for the ~~Central Government~~, on behalf of the Respondents.

4. The facts as contained in the Application and the counter and as further submitted during the course of arguments, would show that the applicant was placed under suspension on 5-8-86 under Rule 10 of the C.C.S. (C.C. & A) Rules, as disciplinary proceedings were contemplated against him. This was followed by charge-sheet dated 5-5-87. This suspension order would, under Rule 10(5) (c) of the Rules, continue until it is revoked by an order of the competent authority. It ~~would also be~~ <sup>could also have</sup> been revoked by culmination of the proceedings in his favour. Even during the pendency of the proceedings, the suspension could be revoked pursuant to an order of the appellate authority or by an order of the competent court/tribunal. Though a reference has been given to the filing of the second charge-sheet against the applicant on 25-3-88, this circumstance would not be relevant for the purpose of determining whether the prolonged suspension is illegal or justified. This is because, under Rule 10(5) (b), of the C.C.S. (CC&A) Rules, there must be an order of the competent authority for reasons to be recorded in writing directing that he should continue to be under

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suspension until the termination of the proceedings relating to the subsequent charge-sheet. In the instant case, no order has been placed before us under Rule 10(5) (b) to the effect that the applicant should continue to be under suspension even during the pendency of the proceedings relating to the second charge-sheet dated 25-3-1988. It is therefore, to be presumed that there is no such order. Hence, all that we have to look into in this case is whether there is justification for continuing the applicant under suspension consequent on the order of suspension dated 5-8-86 followed by first charge-sheet dated 5-5-87. The counter of the Respondents discloses that the applicant's appeal was dismissed by the competent appellate authority. The counter also discloses that a periodical review is being conducted by the department for continuing him under suspension mainly on the ground that he committed serious irregularities and that this was the reason for his continuance under suspension. It would, therefore, follow that the rejection of the appeal or the orders directing his continuance under suspension under the orders of review, cannot be treated as passed in violation of guidelines issued by the Government of India in regard to continuous suspension of an employee. However, the point which arises for consideration is whether the respondents have been lax or indifferent to the completion of the enquiry and whether the suspension order is therefore, to be revoked. The law on the subject is that suspension should not be indefinitely prolonged. This is clear from the decision in the case of State of Madras Vs. K.A. Joseph (1969 SLR 691) wherein it was held that an officer was entitled to ask

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if he is suspended from service pending enquiry into misconduct, that the matter should be investigated with reasonable diligence. But it was further held that if such a principle was not to be recognised, it would imply that the executive is being vested with a total, arbitrary and unfettered power for placing an officer under suspension and distress for an indefinite duration. Again in AIR 1967 MP 231 (V.GIDRONIYA Vs. State of M.P.) it was held that an enquiry should not be allowed to drag on and be conducted in a leisurely manner. In 1978 (2) SLR 728 (Gujarat) (J.J.Joshi Vs. State of Gujarat) it was held that unduly delay resulting in prejudice can be challenged. In 1973 (2) SLR 553 (Orissa) (Manasaranjan Das Vs. State of Orissa) it was held that in a case where an enquiry was pending for eight years, the order of suspension has a demoralising effect on the officer. Again in AIR 1971 Madras 170 (Adityaram Vs. Commissioner HR&CIE) it was held that the departmental proceedings started against an employee must be concluded as expeditiously as possible. In O.P.Gupta Vs. Union of India (1987(5) SLR P.288), it was observed that the delinquent officer when placed under suspension, is entitled to represent that the departmental proceedings should be completed with reasonable diligence and within a reasonable period of time. Thus, the law is very clear that there is no absolute right for the Government or the Department to keep its employee under suspension for an indefinite period without valid reasons. The question is whether prolonged suspension of the applicant from 1986 till today is supported by reasonable grounds. While it was argued by the applicant that the prolonged suspension is due to the enquiry being delayed only and solely due to fault of the department, the contention of the

Department is that the applicant had been raising objections to the appointment of various Enquiry Officers and this has caused the delay. It is contended by Shri Suryanarayana Murthy for the Department that the applicant has objected to Shri S.K.Roy who had succeeded Shri Dixit, as Commissioner of Enquiry, <sup>now</sup> in regard to the first enquiry, and so far as the second enquiry is concerned it is contended that initially an IRS Officer was appointed, but the applicant had objected <sup>to him</sup> on the ground that the enquiry must be conducted by a person other than an IRS officer. This was conceded and Shri D.Prakash, an IAS Officer was appointed, <sup>the applicant however</sup> but he again objected to the said officer. This resulted in the second enquiry being stayed. It is, therefore, contended that the applicant is responsible for the delay. In so far as the second enquiry is concerned, it is being prolonged or delayed either due to the fault of the applicant or the department is, in our view, irrelevant. As already stated supra, the applicant has been placed under suspension pending contemplated disciplinary action followed <sup>up</sup> by the charge-sheet dated 15-5-87. These are the relevant proceedings in regard to his being placed under suspension. The subsequent charge-sheet dated 25-3-88 has no relevance in regard to the legality or illegality of the continued suspension of the applicant since there is no order issued under Rule 10(5) of the CCA rules. It is, therefore, necessary, only to look into the question whether the applicant has been responsible for the delay in completing the enquiry in relation to the first charge-sheet dated 15-5-87, or whether the Department is alone responsible for lack of progress in the enquiry.



5. The applicant in his application has specifically averred that the Commissioner of Departmental Enquiries has, as early as on 27-11-87 held that the list of additional defence documents and witnesses submitted by the applicant are relevant and that the Presenting Officer should procure the additional defence documents for the perusal by the applicant, within one month. He alleged that <sup>by</sup> ~~the~~ date of filing of the application viz. 3-1-89 there was no compliance of this direction of the Commissioner of Enquiry. The counter filed on behalf of the Respondents 1 and 2 merely states that the presenting officer who attended the hearing on 21-9-87 was transferred and hence there was no compliance by the presenting officer in the matter of supply of documents. For the purpose of verifying <sup>whether</sup> that even after the transfer, whether there was a compliance with the direction of the Inquiry Officer we had requested the counsel for the Income-Tax Department to produce an extract of the docket sheet in relation to the charge-sheet issued on 15-5-87 to help to determine, as to what is the progress in the matter. Similarly, the applicant was also directed to furnish his version in regard to the delay in furnishing of the required documents. The docket entries of the Commissioner of Enquiry produced and filed on 3-8-89, disclose the progress of the Enquiry, have been upto 21-11-88. This shows that no further documents, as ordered on 27-11-87 have been supplied. All that these docket entries show ~~xx~~ that initially an objection was taken between 10-11-87 and 13-1-88 to the relevancy of the documents, that thereafter one Shri S.K.Roy was appointed as the Enquiry Officer, that the said Sri S.K.Roy, as early as on 16-11-88 directed the Presenting Officer to show the relevant documents to the applicant and that thereafter, the

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applicant has on 21-11-88 sent a letter objecting to the appointment of Shri S.K.Roy as the Enquiry Officer if he belongs to I.R.S. cadre. The chronology of events as filed by the applicant, on the other hand, show that after 21-11-88, again on 5-12-88 and on 5-5-89, the applicant had sought copies of the documents and complained to the Enquiry Officer about the delay in non-supply of relevant documents. He prayed that the charges may be dismissed since there was no progress due to delay of the department in ~~not~~ furnishing the relevant documents. From these facts, it is clear that in so far as the first charge-sheet dated 5-5-87 is concerned, the Enquiry proceedings have not progressed ~~only~~ <sup>only</sup> solely ~~and~~ due to the reason that the department has not furnished the documents which the Enquiry Officer felt relevant. ~~til~~ <sup>up</sup> today. The applicant has, no doubt, raised an objection that if Shri S.K.Roy is <sup>he</sup> an IRS officer should not conduct the enquiry. The department hasnot averred that Shri S.K.Roy is an IRS Officer. The applicant also, thereafter, did not raise any objection to the said Shri S.K.Roy continuing as Enquiry Officer and on the other hand, has been sending repeated reminders requesting that the department should be compelled to do its duty <sup>up</sup> ~~in~~ producing the relevant documents. It is, thus, clear that the delay in completing the first enquiry is not due to the applicant but is <sup>solely</sup> and wholly due to the department not complying with the directions given as early as on 27-11-88 by Shri M.K.Dixit for furnishing copies of the relevant documents to the applicant. Shri Dixit continued as Enquiry Officer for almost a year thereafter namely upto 7-9-88. At no time during this period did the department comply with the direction to give inspection of the documents. As already stated supra,

To

1. The Chairman,  
Central Board of Direct Taxes,  
New Delhi.
2. Commissioner of Income Tax,  
Andhra Pradesh I,  
Hyderabad.
3. One copy to Mr.G.Vedantha Rao, Advocate  
4-3-410, Bank Street, Hyderabad - 500001.
4. One copy to Mr.M.Suryanarayana Murthy, SC for Income Tax Dept.,  
CAT., Hyderabad.
5. One spare copy.

Attn  
DW  
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subsequently also it has not complied with the direction after Shri S.K.Roy took charge. It is, thus, clear that the applicant is not responsible for the delay in completing the enquiry and on the other hand, the Department alone is responsible for the same. To continue to keep the applicant under suspension for an indefinite duration without seeking to have the enquiry completed early would clearly amount to an arbitrary exercise of power. On this ground alone, the suspension order dated 5-8-86 which culminated in the issue of the charge-sheet dated 15-5-87, is liable to be set aside. The applicant is accordingly directed to be reinstated to duty within one month from the date of receipt of this order. So far as the claim for full salary, etc., is concerned, he would be entitled to such payment only after completion of the enquiry against him pursuant to the charge dated 15-5-87 in the event of his being exonerated in terms of FR-54. With these directions, the application is allowed. In the circumstances, there will be no order as to costs.

*D. Surya Rao*  
(D. SURYA RAO)  
Member (J)

*D. K. Chakravorty*  
(D. K. CHAKRAVORTY)  
Member (A)

Dated: 23rd October, 1989.

mhb/

*105/10/89  
D. K. Chakravorty  
3/10/89*

*S. Venkay*  
*Deputy Registrar*