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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.793/96.

Date of Judgement : 30.7.1996.

Between

P.J.R.Sekhar

.. Applicant

And

1. The Govt. of India,
Min. of Finance,
Dept. of Revenue,
Rep. by its Secretary,
New Delhi.

2. Commissioner of
Central Excise & Customs,
Basheer Bagh,
Hyderabad.

.. Respondents

Counsel for the Applicant .. Shri V.Pattabhi

Counsel for the Respondents .. Shri N.R.Devaraj,
Sr. CGSC

C O R A M

Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman

Hon'ble Shri H.Rajendra Prasad : Member (A)

Judgement

(Oral Order as per Hon'ble Shri Justice M.G.Chaudhari,
Vice-Chairman)

The respondents have filed the reply. The applicant has filed a rejoinder. Heard the learned counsel for the applicant and the learned Senior Standing Counsel for the respondents Shri N.R.Devaraj at length.

2. The applicant challenges the order of suspension dated 17.10.95 passed by the President of India in exercise of powers under sub-rule (1) of Rule 10 of the CCS(CCA) Rules, 1965. The counter shows that the order was passed as disciplinary proceedings were contemplated to be initiated against the applicant under Rule 14 of the CCS(CCA) Rules. A charge-sheet has already been issued under Rule 14 on 6.2.96 and the enquiry is in progress.

- 2 -

3. The contention of the applicant firstly is that the order of suspension has been passed without proper application of mind to the relevant material and is therefore vitiated. Secondly it is contended that the charge levelled against him in the disciplinary proceedings is extremely vague and false and that it would not justify continuance of the suspension of the applicant till the enquiry is over. The continuance of the suspension is therefore arbitrary. Thirdly it is contended that no reply has been given to the representations seeking revocation of the order and thus there is violation of rules and executive instructions. It is also sought to be contended that the whole exercise of suspending the applicant and initiating disciplinary proceedings against him is a result of bias.

4. The applicant is holding the post of Dy. Commissioner of Customs and Central Excise. On the date on which the impugned order was passed he was posted at Bhubaneswar. On a representation filed by him and at his request he had been allowed to change the headquarter to Hyderabad to the Office of Commissioner of Central Excise and Customs. However, his suspension has been continued. It is submitted by the applicant that the continued suspension causes great demoralisation to him and puts him to humiliation and the same is opposed to natural justice and fairplay. It is contended that there is thus violation of Articles 14, 16 and 21 of the Constitution.

5. All the above contentions have been vehemently urged by Shri V.Pattabhi, learned counsel for the applicant.

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6. The counter affidavit filed by the respondents states that on the basis of certain complaints received against the applicant involving misconduct an enquiry under Rule 14 has been initiated against him. The impugned suspension order was passed in contemplation of the disciplinary enquiry. It is also stated that the suspension was reviewed in accordance with the rules and it was decided to continue the suspension and allow the applicant to receive the subsistence allowance. Shri N.R.Devaraj, learned Senior Standing Counsel for the respondents on instructions stated that the second review was ^{made in June 96} ~~stated for September, 1996~~ and it was decided to continue him on suspension. Whatever that may be, the fact remains that the suspension is continued. It is true that the applicant had filed representations on 9.12.95 and 20.12.95 against his suspension to the Secretary, Ministry of Finance, Govt. of India and had prayed for revoking the suspension. It was contended in the second representation that he should have been given an opportunity before issuing the order of suspension.

7. We do not think that any preliminary enquiry is contemplated requiring opportunity to be given to a Govt. servant to show cause against the proposed action of suspension. Rule 10 of the CCS(CCA) Rules empowers the appointing authority to place a Govt. servant under suspension where a disciplinary proceeding against him is contemplated or is pending. It is true that such an exercise of powers must be based on some plausible material and must be passed after application of mind to the relevant facts and material. Since the impugned order is passed under Rule 10(1) it has to be assumed that the relevant material was considered by the President of India before issuing the order. That is probablised from the fact that a

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charge-sheet under Rule 14 has been issued after the order of suspension was passed. It cannot therefore be said that the President has no jurisdiction to issue the order or that its issuance is vitiated.

8. The rules relating to suspension contemplate periodic review. From the counter it appears that a review had been undertaken after the representation of the applicant was considered. That the representation was considered is obvious from the order dated 7.3.96 although it has not specifically referred to the question of suspension or the representation in that behalf. The fact ^{however} therefore remains that the respondents do not appear to have informed the applicant their decision to continue the suspension after review nor any reasons as to why that decision was taken. That however makes no difference in substance as what we are asked to look at is the continued suspension. The failure to give any reply to the representation can only imply that it has been rejected.

9. Now the question is as to whether there is any valid ground to continue the suspension. Once it is conceded that under Rule 10(1) such power can be exercised, the next question is as to whether there is any ostensible justification for continuing the suspension. The very fact that a disciplinary enquiry has been initiated should, in our view, suffice to satisfy the latter requirement.

10. It is not possible to go into the question whether the allegations levelled against the applicant in the enquiry under Rule 14 are false or so vague as they cannot result in the charge being proved because the said enquiry is not the subject matter of the O.A. Secondly a charge is framed on the basis of *prima facie* material and it would not be possible to reflect on the merits of that enquiry at an interlocutory stage. That therefore cannot be a ground to hold that the order of suspension is not based on any rational ground.

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11. We find it difficult to appreciate as to how Article 21 of the Constitution or Articles 14 and 16 can be brought into the picture. Shri V.Pattabhi argued that Article 21 of the Constitution enshrines protection of life and personal liberty and that implies a right to live with dignity and since the order of suspension results in causing humiliation to the applicant it amounts to violation of the guarantee ensured under Article 21 of the Constitution. The words "right to live with dignity" are not contained in the Article. The Article aims at protection of life and personal liberty and not the manner in which a person is to live. However, it has been held by the Supreme Court that right to livelihood is an integral facet of the right of life. Even assuming for the sake of argument that right to live a dignified life can be placed on that footing, the question, however, is whether the said right as claimed by the applicant has been deprived to him. It depends upon the nature of the act that is complained. The act complained is that he has been placed under suspension. That could be done under the Service Rules. A Govt. servant is bound by the Service Rules. Under the guise of right to live with dignity it would not be open to a person to contend that the Service Rules should not be applied to him. Since on merits we find that the order of suspension made in exercise of powers was under the statutory rules we cannot consider it as an act violative of Article 21. The question of violation of Articles 14 and 16 does not arise. For the very same reason the question of violation of natural justice and fairplay cannot arise.

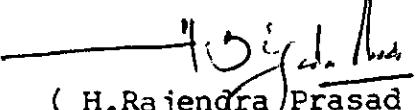
12. The learned counsel for the applicant strongly relied on a decision of the Hon'ble Supreme Court in the case of R.C.Sood Vs. High Court of Rajasthan reported as 1994 Supp.(3) S.C.C.711. On the facts of that case

it was held that the suspension pending the enquiry was arbitrary, unwarranted and violative of Articles 14 and 16 of the Constitution. However, that view was taken after the disciplinary enquiry had been ~~concluded~~ ^{concluded} and on merits their Lordships have found that the same could not be sustained. Eventually, their Lordships were pleased to quash the entire disciplinary proceeding held against the petitioner in that case as also the order of suspension. The ratio that follows from this decision with respect is that where an order of suspension pending enquiry is found to be the product of arbitrariness or where there is absence of material on record to justify the same it cannot be sustained and would be violative of Articles 14 and 16 of the Constitution. As discussed so far, we are not satisfied that in the instant case on facts it can be held that exercise of powers under Rule 10(1) has been arbitrary or without absence of any material. Since the suspension was ordered in contemplation of a disciplinary enquiry to be initiated which has been initiated it follows that the material referred to in the charge memo was available for consideration of the President of India when the order of suspension was passed. We do not think that it is our function to assess or evaluate the said material at this stage to find out the veracity of the complaint. It is the function of the disciplinary authority and suffice it to say that it is not a case where it can be said that there was no material at all ^{and} ~~on the basis of which~~ the suspension order could ^{not} have been passed. The counter also refers to material facts. Truth or otherwise of those facts we are not supposed to go into at this stage. Eventually, therefore, it is the decision of the ~~President of~~ ^{comptroller} authority India who had after review of the suspension order decided to continue the same. Simply because the decision to

continue the suspension was not communicated that does not vitiate the decision taken to continue the suspension. Therefore, we find it difficult to interfere with the order of suspension at this stage when the disciplinary enquiry is in progress. Relief is therefore refused.

13. Rule 10(5)(a) provides that an order of suspension continues to remain in force until it is modified or revoked by the authority competent to do so. Clause (c) of sub-rule (5) provides that the order can be modified or revoked by the authority which made it at any time. It is ultimately for the competent authority to consider whether the order of suspension which has continued since 17.10.95 till today and as the disciplinary proceeding is in progress as also that the headquarter of the applicant has been changed it should be continued further. To consider this aspect it is not necessary to wait for the next review of the suspension order. The applicant may file a fresh representation which may be dealt with appropriately by the competent authority. We are inclined to make this observation because the grievance of the applicant is that his representation was not replied and we also find that that aspect has not been adequately clarified by the respondents in their counter affidavit. They have although referred to their order dated 7.3.96 it is silent about the merits of the representation against the suspension.

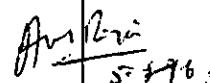
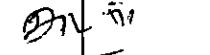
14. Since the O.A. is heard on merits, the same is finally disposed of as dismissed. No order as to costs.


(H. Rajendra Prasad)
Member (A)


(M.G. Chaudhari)
Vice-Chairman.

Dated: 30.7.1996.
Dictated in Open Court.

br.


Amrit Singh

Dr. D.N. Singh

DA. 793/96.

To

1. The Secretary, Govt. of India,
Ministry of Finance, Dept. of Revenue,
New Delhi.
2. The Commissioner of Central Excise and Customs,
Bahseerbagh, Hyderabad.
3. One copy to Mr. V. Pattabhi, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. Copy to ~~xxxxxxxxxxxx~~ All Reporters as per standard list
of CAT. Hyd.
7. One spare copy.

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23/8/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 30/7/1996

ORDER/JUDGMENT

M.A./R.A/C.A.No.

in
O.A.No. 525/96 793/96
T.A.No. (W.P.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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