

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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Date of Order : 30.4.2001.

Original Application No. 131/1998

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Jitendra Bahadur Mathur S/o Late Shri Raj Bahadur Mathur, Sub Divisional Officer Gr.II R/o 9/918, Malviya Nagar, Jaipur, presently posted in the office of the Defence Estates Office, Rajasthan Circle, Jaipur.

.....applicant.

VERSUS

1. Union of India through the Defence Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General, Defence Estates, Ministry of Defence, West Block IV, R.K.Puram, Sector 1, New Delhi.110066.
3. Director, Defence Estates, Ministry of Defence, Southern Command, Pune 411001.
4. Defence Estates Officer, Rajasthan Circle, P-22, Nala Garden Road, Pani Park, Jaipur.

.....respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.S.K.AGRAWAL, ADMINISTRATIVE MEMBER

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Mr. V.B.Srivastava, Counsel for the applicant.

Mr. S.S.Hasan, Counsel for the respondents.

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PER MR.A.K.MISRA :

The applicant had filed this application with the prayer

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that the impugned suspension order dated 13.1.1997 (Annex.A/1) along with the decision of the appeal dated 24.11.1997 (Annex.A/2), be quashed and set aside. The respondents be further directed that after revoking the suspension order the applicant may be given promotion to the post of Sub Divisional Officer Group - 'A', from the date promotions ^{were} given to his juniors i.e. 17.1.1997 as per the recommendations of the D.P.C.

2. Notice of the application was given to the respondents who have filed their reply.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. It is alleged by the applicant that earlier he filed an O.A. against the impugned suspension order dated 13.1.1997. In that O.A., it was observed by the Tribunal that the applicant should exhaust the remedy of appeal, available to him under Rule 23 (1) of the CCS (CCA) Rules, 1965 (for short 'the Rules'), against the order of suspension. In compliance of the said decision of the Tribunal the applicant filed an appeal before the appellate authority along with copy of the representations. However, the appellate authority rejected the appeal of the applicant vide its order dated 24.11.1997. Hence, the present O.A.

5. It is stated by the applicant that he has wrongly been put under suspension. He had not committed the offence so alleged by the department. The appellate authority without considering various aspects of the case, rejected the appeal of the applicant without any reasons. The applicant had also mentioned certain facts relating to the alleged irregularities etc. and has challenged the suspension order as well as the order of the appellate authority as

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mentioned above. On the other hand, the respondents have stated in their reply that the applicant was associated at every stage in conducting of the auction with Shri Abhijit Gupta and Shri S.K. Bhatnagar, who have been chargesheeted for their involvement in the embezzlement. It is also alleged that a FIR against the applicant and others for the embezzlement was registered by the police and the case is under investigation. The applicant cannot claim innocence in the matter. It is also alleged by the respondents that the departmental inquiry against the applicant is going on and in view of this the order of suspension against the applicant is fully justified. By stating the facts as per his own version, the applicant cannot claim innocence in the matter. Since there is a criminal case pending investigation against the applicant and a departmental inquiry which has been initiated, the question of according promotion to the applicant in terms of the DPC meeting is out of question. The respondents have further stated that the applicant has not been able to make out a case for revocation of suspension and consequently the order of suspension deserves to be maintained as such. The O.A. deserves to be dismissed.

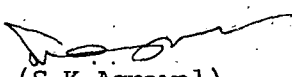
6. We have considered the rival contentions and the facts of the case. From the foregoing facts it is amply clear that the applicant is facing a departmental inquiry. It is stated by the applicant in this behalf that the departmental inquiry was once concluded and a de-novo inquiry is initiated against him which is against the rules and consequently the present suspension order cannot be continued. In our opinion, this is a separate issue whether a de novo departmental inquiry can be started against the applicant in view of the conclusion of earlier inquiry relating to the said charges. The applicant may avail remedies in that regard as per the legal advice given to him.

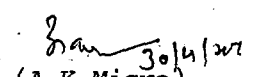
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7. In our opinion, it is an admitted position that the applicant is facing a chargesheet which has been served on him in pursuance of the order passed by the appellate authority dated 24.11.1997, Annex.A/2. It is also not denied that a criminal case was registered against the applicant and was being investigated earlier, about which it is said that the investigation has since been completed however, for filing a challan sanction of the competent authority to prosecute the applicant, is being awaited. As per law a government servant can be placed under suspension for the reasons mentioned in Rule 10 of Sub Rule (1) of the said Rules. Undoubtedly, the applicant is facing a departmental inquiry as well as a criminal case, therefore, at this stage we would not like to debate whether the suspension of the applicant was bad in law. It is the sole discretion of the competent authority to place a delinquent officer under suspension during the pendency of a departmental inquiry and a criminal case. Therefore, no fault can be found therein. In view of this, we do not find any merit in this application.

8. It may not be out of place to mention that the applicant is under suspension since number of years and the inquiry may take its own time to come to a conclusion. Likewise, trial or termination of the criminal case may also take few years, therefore, the concerned competent authority may review further continuance of the suspension of the applicant and take a decision in this regard. To this limited extent, the application can be partly accepted.

9. The Original Application is, therefore, partly accepted and it is hereby ordered that the competent authority shall review the suspension order of the applicant in view of the facts narrated in the order, within a period of three months from the date of communication of the order. The parties are left to bear their own cost.


(S.K. Agrawal)
Adm. Member


(A.K. Misra)
Judl. Member

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