

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Original Application No. 256/2002

Alok Gupta
S/o Dr. S.P. Gupta,
Defence Estate Officer,
Rajasthan Circle
P-21 Tulsi Marg,
Bani Park
Jaipur.

: Applicant.

rep. by P.C. Jain : Counsel for the applicant.

- verses -

1. Union of India through Secretary,
Ministry of Defence,
Government of India
South Block
New Delhi.

2. Director General,
Defence Estates,
Ministry of Defence
West Block IV
R.K. Puram,
New Delhi.

3. Director (Works)
to the Government of India
Ministry of Defence,
South Block, New Delhi.

: Respondents.

rep. by Mr. Bhanwar Bagri
Mr. Sanjay Pareek : Counsel for the respondents.

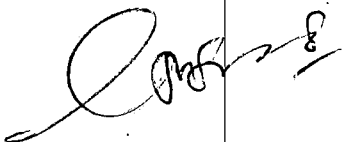
CORAM : The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member

Date of the order: 27.09.02

Per Mr. Justice G.L.Gupta

ORDER

The applicant calls in question the order
dated 24.5.2002, whereby the Director (Works)
(the 3rd respondent herein), placed the applicant
under suspension in exercise of powers conferred by



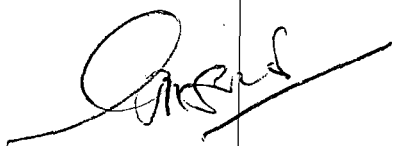
Sub-rule (1) of Rule 10 of the CCS(CCA) Rules, 1965 on the ground that disciplinary proceedings are contemplated against the applicant.

2. The applicant was posted as Defence Estate Officer, Ambala in June 1999 and he was transferred as Defence Estate Officer, Rajasthan Circle, Jaipur in July 2001. It is stated that to the utter surprise and shock of the applicant, the 3rd respondent has issued the impugned order dated 24.5.2002, without specifying any exceptional reason for resorting to issuance of such an order. It is averred that the guidelines and principles for suspending an employee have not been kept in view while issuing the impugned order. It is further stated that when the applicant had already been transferred from Ambala, there could not be any justification for placing him under suspension. It is prayed that the suspension order be quashed and the applicant be allowed to join on the present place of posting with immediate effect.

3. In the reply filed on 31.7.2002, preliminary objections have been taken. It is stated that the applicant has not exhausted the remedies available to him under the CCS(CCA) Rules 1965 as he could have filed an appeal, review or revision petition before the competent authority. It is further stated that the applicant had worked at Ambala for 2 years and during that short spell, he had committed serious irregularities. Stating that



the suspension order has been issued in "public interest" it is pointed out that the applicant with ulterior motive and also by flouting the statutory provisions mutated a highly valuable immovable public property in favour of Shri R.P.S. Siddhu. It is further stated that the immovable property which was mutated in favour of Shri R.P.S. Siddhu, is situated in hilly contonment area, Kasauli, which falls within the jurisdiction of Defence Estate Officer, Ambala Circle, Ambala Cantt. The applicant first mutated the said property in favour of A.S Sekhon, on 20.10.99 and then within 15 days he mutated the same in favour of Shri R.P.S. Siddhu on 5.11.99 ignoring the statutory provisions, Rules and Regulations. It is averred that the public property known as Massonic Lodge could neither be sold to private individual nor the Defence Estate Officer was empowered to make mutation of such property without the proper approval of the Ministry of Defence. It is pointed out that every transfer of property is required to be reported within one month to the G.O.C. in C, whereas this case has been submitted for transfer after more than 27 years and the applicant ~~showed~~ undue haste in carrying out the mutations within 15 days. It is further stated that when unauthorised constructions were going on, the C.E.O suggested to the applicant to take action under Public Premises (Eviction of unauthorised occupants) Act, 1971 and to initiate action for terminating the lease, but the applicant



avoided to take action on one or the other ground in order to help Shri R.P.S. Siddhu. It is also stated that the competent authority asked his explanation vide letter dated 31.1.2002 and the applicant submitted his reply on 2.5.2002, and after that the competent authority issued the suspension order. It is further stated that the competent authority on receipt of prima facie record, made objective assessment and in view of the gravity of the matter placed the applicant under suspension. It is also the case for the respondents that the order issued by the competent authority is well within the ambit of guiding principles for the issuance of suspension order. It is stated that Shri R.P.S. Siddhu, Ex-Chairman of Punjab Public Service Commission, in whose favour the applicant had recorded mutation, has committed massive fraud. It is also stated that the matter had been referred to Central Vigilance Commission for C.B.I. enquiry.

4. In the rejoinder the applicant has reiterated the facts stated in the O.A. He has denied that he had violated the statutory provisions while recording mutation. It is stated that no evidence has been placed by the respondents to show the involvement of the applicant with Shri R.P.S. Siddhu.

5. The respondents have filed replica to the rejoinder.

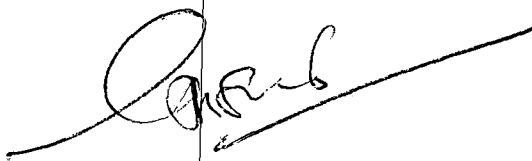


6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. Mr. P.C. Jain, learned counsel for the applicant, contended that the guidelines have not been followed while issuing the suspension order and the order suffers from malafides. His contention was that no "public interest" was involved when the impugned order was issued, in as much as the applicant was already transferred from Ambala Circle and he had no access to tamper with the evidence. He canvassed that the mutation did not help Shri Siddhu in establishing his title since it was only a fiscal entry.

Placing reliance on the cases of (i) R.C. Sood vs. High Court of Rajasthan (1994 (3) SCC 711) (ii) Smt. Sawami vs. Smt. Inder Kaur and others (AIR 1996 SC 2823) (iii) Beni Ram Kushwaha vs State of Rajasthan and others (2001 (3) ~~MLN~~ 717) (iv) Dr. B.M. Bohra vs. State of Rajasthan (1991 (1) RLR 383) Mr. Jain prayed that the suspension order be quashed.

8. On the other hand, Mr. Pareek learned counsel for the respondents, contended that the scope of judicial review in such matter is very limited and the Court should not interfere in the matter unless there is clear evidence of malafides. He urged that the applicant was hand in glove with Shri Siddhu, the then Chairman of Punjab Public



Service Commission (PPSC for short) and in order to help him, he not only mutated the land in his name but also allowed the unauthorised constructions to go on despite a request by the other officers for taking steps to stop the unauthorised constructions. In this connection he relied on some cases which will be referred ^{to} /hereinafter.

9. We have given the matter our thoughtful consideration. Before we consider the matter on merits it is appropriate to know the legal position profounded by the Hon'ble Supreme Court with regard to the scope of judicial interference in the matter of suspension.

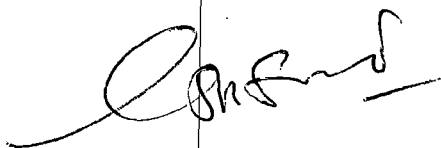
10. In the case of State of Orissa vs. Bimal Kumar Mohanty (AIR 1994 SC 2296) their Lordships have observed that Courts must consider each case on its own facts and no general law could be laid down in that behalf. It was further observed that suspension is not a punishment but is only one way of forbidding or disabling an employee to discharge the duties of office or post held by him. Their Lordships have further observed that the Tribunal cannot be justified in interfering with the order of suspension if serious allegations of misconduct are alleged against an employee. It is profitable to read paras 12 and 13 of the report hereunder:

" It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of



ommission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or posts held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by malafides arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

13. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending enquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with in this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.

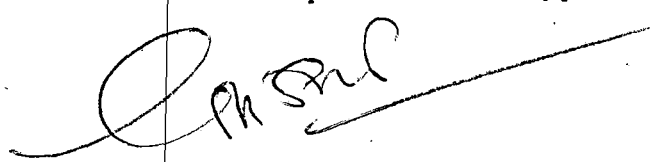


In the case of U.P. Rajya Krishi Utpadan
Mandi Parishad and others vs. Sanjiv Rajan

(1994 SCC(L&S) 67), it was held that whether an employee should or should not continue in office, is a matter to be assessed by the authority concerned and the Tribunal or Court should not interfere with the order of suspension unless it is found to have been passed malafidely and without there being prima facie evidence on record connecting the employee with the misconduct in question. The relevant observations at para 10 of the report are read hereunder:

"In matters of this kind, it is advisable that the concerned employees are kept out of mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed malafide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the present case, before the preliminary report was received, the Director was impressed by the first respondent employee's representation. However after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no conclusions to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record..... "

So also in the case of Secretary to
Government, Prohibition and Excise Department vs.
L.Srinivasan (1996 SCC L&S 686), their Lordships did not approve the interference by



the Tribunal in the matter of suspension. It was observed that the Member of the Tribunal exceeded his power of judicial review in quashing the order of suspension.

In ~~the~~ case of Upendra Mishra vs. the Principal Chief Conservator of Forest and another (RLR 2000 (3) 789), a Division Bench of the Rajasthan High Court consisting one of us (Justice G.L.Gupta) held that an employee can be suspended pending disciplinary action or even if the same is to be contemplated. In the above case, R.G. Sood's case (supra) relied on by the learned counsel for the applicant, was considered and explained.

11. It is evident that the scope of judicial review in the matter of suspension is very limited and the order of suspension can be interfered with only when it is shown that it suffers from malafides and without being prima facie evidence connected the employee with the alleged misconduct.

12. The facts, which have appeared on record, indicate that it is alleged that the applicant with ulterior motive flouted the statutory provisions when mutated the highly valuable immovable property in favour of Shri R.P.S. Siddhu, the then Chairman PPSC. It is also stated that the C.E.O. had suggested to initiate action against Shri Siddhu, under the Public Premises (Eviction of unauthorised Occupants) Act, 1971 but the applicant avoided such an action and allowed the unauthorised construction to continue.



13. Keeping in view the gravity of the alleged misconduct, there cannot be any justification for quashing the suspension order. It is nowhere stated in the grounds of the O.A that the order of suspension has been passed with mala fide intention. What is stated is that the order of suspension is likely to damage reputation of the applicant and he may be deprived of consideration for promotion to the next higher grade. In our opinion, on these grounds, the order of suspension cannot be quashed.

14. It may be that the applicant has been transferred to Jaipur but that cannot be a sufficient ground to quash the suspension order looking to the nature of the misconduct alleged.

15. Much emphasis was laid by Mr. Jain on the point that mutation of a property does not confer title on the land holder but it relates to fiscal matters. In these proceedings we are not concerned with the value of the property mutated. What is alleged against the applicant is that he acted in undue haste manner in recording the mutation in favour of Shri R.P.S. Siddhu, and allowed the unauthorised construction on the most valuable land. The case of Smt. Sawarni (supra) does not help the applicant.

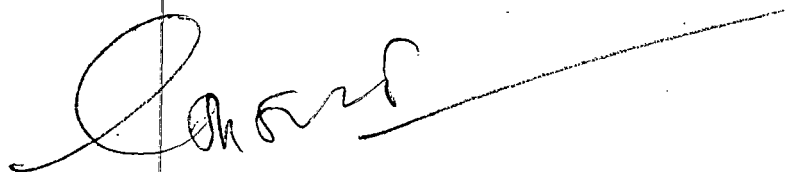
16. The case of R.C. Sood (supra), it may be stated, was decided on the peculiar facts. It was

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noticed by their Lordships that the Full Court of Rajasthan High Court, in its meeting held on 21.10.94 passed a resolution on the basis of a report of a Committee of 2 Judges, placing R.C. Sood under suspension pending enquiry. Their Lordships of the Supreme Court perused the entire record of the Rajasthan High Court. It could not be satisfied that the said R.C. Sood had himself made correction in the draft notification. Further it could not be satisfied by the Counsel for the Rajasthan High Court and the officer-in-charge present before the Court that there was any one who could get the benefit of the correction made in the draft notification. In these circumstances, their Lordships quashed the order of suspension.

There is clear allegation against the applicant which is based on documentary evidence in the form of mutation entry. Before the impugned order was issued, the applicant was asked to explain the circumstances under which he had ordered mutation. After considering his explanation, the order of suspension was passed. In our opinion the case of R.C. Sood does not help the applicant in any manner.

The case of Beni Ram Kushwaha (supra) was also decided on its peculiar facts. In that case, the delinquent was charged with supervisory negligence only and the circumstances were in favour of the Writ Petitioner. It was evident that soon after the misappropriation by UDC working under him was detected, the Writ Petitioner had lodged F.I.R. It was also

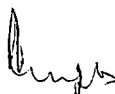


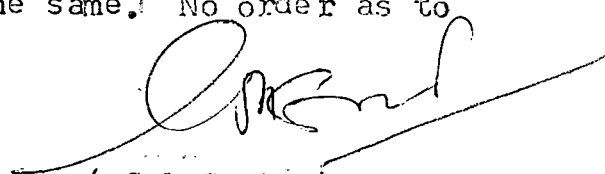
noticed that the petitioner had been suspended in January 2000 but the charge sheet had not been issued till the date of hearing of the matter by the High Court in July 2001. In these circumstances, their Lordships had set aside the order of suspension.

As to the observations in the Single Bench decision in the case of Dr. B.M. Bohra it may be stated that the applicant in the instant case has been placed under suspension after holding a preliminary enquiry. Not only that, even the Central Vigilance Commission had recommended initiation of disciplinary proceedings for imposition of major penalty against the applicant, which fact is evident by Annex. R.5. It also cannot be said that the guidelines for suspending an employee have been totally ignored.

17. In the instant case, the competent authority has taken a decision keeping in view the nature of misconduct. We do not think it a fit case in which interference is called for in the order of suspension. It is significant to point out that it is not a case of long period of suspension.

18. Having considered the entire material on record, we find no merit in this O.A. which is liable to be dismissed. We dismiss the same. No order as to costs.


(A.P. Nagrath)
Administrative Member


(G.L. Gupta)
Vice Chairman

jsv.