

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4400/2013

Reserved on: 31.05.2017
Pronounced on: 13.10.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Homi Rajvansh S/o R. K. Rajvansh,
R/o C-93, 2nd Floor, Greater Kailash-I,
New Delhi.

... Applicant

(By Mr. S. K. Gupta, Advocate)

Versus

1. Union of India through
Secretary, Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
3. Smt. Sudha Sharma,
then Director General of Income Tax (Vig.),
now Chairman, Central Board of Direct Taxes,
Department of Revenue, Ministry of Finance,
North Block, New Delhi. ... Respondents

(By Mr. Rajesh Katyal, Advocate)

O R D E R

Justice Permod Kohli, Chairman :

The applicant is in the rank of Commissioner of Income Tax.
He was deputed with NAFED, an Autonomous Co-operative Society,

in the year 2003 and was repatriated to his parent organization in July, 2006.

2. In the year 2005, a public interest litigation was filed in the Hon'ble High Court of Delhi on the basis of certain allegations in NAFED. The Government of India referred the matter to CBI for investigation in view of the allegations made in the PIL. CBI registered various cases against the officials of NAFED including the applicant. It is stated by the applicant that CBI carried out eight searches of the house of the applicant and found no incriminating material. On case being registered, the applicant was granted anticipatory bail. The applicant was also contacted on telephone on 26.09.2011 and asked to come to CBI's office, where he was arrested on the same day in connection with a case where he was not even named as an accused. He was produced before the Chief Metropolitan Magistrate on 27.09.2011, but was immediately released on bail after hearing the facts. The applicant informed the Chief Commissioner of Income Tax, Kanpur as well as the Chairman, Central Board of Direct Taxes of his arrest and consequent release on bail. He submitted his joining on 27.09.2011. It is stated that facing undue harassment, the applicant applied for earned leave on 30.09.2011 for a period of one month and proceeded to pilgrimage to Shirdi via Mumbai and further extended his leave by two months.

While the applicant was on leave, CBI came to arrest him in another case. The wife of the applicant applied for anticipatory bail on behalf of the applicant in other cases. Since the applicant was not in Delhi, non bailable warrants and notices under section 82 Cr.PC were issued against him. CBI requested the department to suspend the applicant on the ground that he remained absconding. The applicant was accordingly placed under suspension vide order dated 21.12.2011(Annexure A-1). It is stated that the order of suspension was not received by the applicant, and when he asked for copy of the same through communication dated 24.05.2012, it was conveyed to him that the same was sent to him on 11.01.2012. Copy of the communication dated 11.01.2012 was also supplied to him. It is mentioned that when the applicant received the communication dated 11.01.2012, it was found that the same was sent at a wrong address of "Greater Noida-I, New Delhi-110048." The said address was not the correct address. The applicant also sought information under the RTI Act, wherefrom it was revealed on the basis of the notings that the applicant was placed under suspension based on the letter of CBI. The relevant noting dated 20.10.2010 reads as under:

"Sub: Suspension of Sh. Homi Rajvansh, CIT, ITATT,
Agra

FR(P.15/C) is a letter dated 30/9/2010 of SP, CBI, ACU-II, New Delhi, informing that a charge-sheet has

been filed on 31.3.2010 against Sh. Homi Rajvansh, CIT, ITAT in respect of CBI case RC AC 2 2006 A 0002 before the Hon'ble Court of Shri O.P. Saini, Spl. Judge, Patiala House, New Delhi.

2. Vide this letter, CBI has requested the Competent Authority to place the public servant under suspension as per CVC guidelines issued vide circular No.000/VGL/70 dated 25.9.2000 (P.16-17/C).

3. On perusal of above facts that criminal and disciplinary proceedings are pending against the officer, a draft note seeking FM's approval for placing Sh. Homi Rajvansh, CIT under suspension as per rule 10(1) of CCS (CCA) Rules, 1965 and for disbursement of subsistence allowance is placed below for kind approval."

3. The suspension of the applicant was accordingly approved by the competent authority on 21.10.2010. The applicant vide his letter dated 09.01.2012 intimated the department regarding his surrender before ACMM, Tis Hazari Court, Delhi. The applicant accordingly moved a bail application on same day before the ACMM. Notices under Section 82 Cr.PC were cancelled and the applicant was granted bail in one of the cases, and in the second case he was sent to judicial custody and later granted bail on 04.05.2012 by the ACMM. It is stated that the applicant has been falsely implicated in the cases. Investigation is stated to have already been completed, CBI has filed charge-sheets/report under Section 173 Cr.PC and the cases are *sub judice*. The applicant has been granted bail in all cases by the

concerned court, and non bailable warrants as also notices u/s 82 Cr.PC have also been cancelled.

4. The review committees constituted approved the suspension of the applicant from time to time. The applicant has accordingly challenged his initial suspension order dated 21.12.2011 and his continued suspension from time to time. The relief claimed in the present OA is reproduced hereunder:

- “(i) quash and set aside the order dated 21.12.2011 (Annexure A-1) and also the orders dated 01.03.2012, 23.08.2012, 13.02.2013 and 02.08.2013 [Annexure A-3 (colly.)];
- (ii) direct the respondents to reinstate the applicant forthwith and award all consequential benefits;
- (iii) may also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

5. In the counter affidavit filed by the respondents, the continued suspension of the applicant is sought to be justified on the ground that the applicant is accused in nine cases, and in one of the case M/s Ritel Impex the investigation by EOW is still in progress. It is also stated that five charge-sheets were issued against the applicant, out of which three charge-sheets all dated 22.12.2006 were quashed by this Tribunal vide order dated 20.08.2010 in OA No.1600/2010 and the remaining two charge-sheets were quashed by

the Tribunal vide order dated 11.02.2011 in OA Nos.2890/2010 and 2887/2010. It is further the case of the respondents that in view of the liberty granted by the Tribunal, five fresh charge-sheets, all dated 11.06.2011 have been issued. The maintainability of the OA is also challenged on the ground of limitation, delay and laches. It is submitted that challenge to the order is barred by limitation. The respondents have further mentioned that the applicant was sent on deputation to NAFED in the post of Executive Director on 15.07.2003. He was entrusted with the charge of Finance and Accounts, Vigilance, Legal, and Insurance as the Divisional Head. Later he was posted as Additional MD on 22.11.2003 and was entrusted with the charge of Finance, Accounts and Taxation and Tie up business (PPP) Divisions. The applicant was repatriated to his parent organization, i.e., Central Board of Direct Taxes on 14.07.2006 vide office memorandum dated 13.07.2006. It is stated that NAFED is a deemed registered Society under the Multi State Cooperative Societies Act, 2002 and is governed by the bye laws of the Society. It is further stated that the applicant being an IAS officer is a Government servant as per the definition contained in rule 2(h) of the CCS (CCA) Rules, 1965.

6. Regarding placing the applicant under suspension, the respondents have admitted that vide letter dated 30.09.2010 CBI had

requested the competent authority to place the applicant under suspension as per CVC guidelines issued vide circular No.000/VGL/70 dated 25.09.2000. Accordingly, a proposal was processed for placing the applicant under suspension. Subsequently vide letter dated 22.11.2011 further clarifications were sought from CBI to enable the competent authority to place the applicant under suspension. CBI forwarded a detailed reply vide its letter dated 29.11.2011. It is further admitted that the applicant was granted bail by the learned CBI Court on 27.09.2011. The applicant was placed under suspension on 21.12.2011.

7. The applicant has also filed a rejoinder reiterating averments in the OA. Additional affidavits have also been filed by the parties.

8. The applicant has challenged his suspension primarily on three grounds -

(i) that the initial suspension of the applicant was on the ground that he evaded his arrest; notice under Section 82 Cr.PC was cancelled by the competent court and the applicant was admitted to bail, hence the very basis for which he was placed under suspension ceased to exist and thus his suspension is liable to be revoked;

- (ii) the suspension of the applicant was merely at the instance of CBI and without application of mind by the competent authority; and
- (iii) that no charge has been framed against the applicant in any of the criminal cases filed against him, and the proceedings in all the disciplinary proceedings initially quashed and later having been stayed, the continued suspension of the applicant is arbitrary, illegal and bad in law and against public interest.

9. During the pendency of this OA the applicant filed additional affidavit dated 21.04.2015 placing on record copy of the judgment dated 21.07.2014, passed by Special Judge (PC Act), CBI-02, Patiala House, New Delhi, whereby the applicant has been discharged in case RC No.2A/2008/CBI/ACU-II/New Delhi, and also the judgment of the Hon'ble Supreme Court in *Ajay Kumar Choudhary v Union of India & others* [(2015) 7 SCC 291]. Reply to the aforesaid additional affidavit was filed by the respondents placing on record copies of letters/orders dated 20.04.2004, 17.09.2004 and 01.10.2004. These letters/orders merely indicate that while the applicant was on deputation with NAFED he was

authorized to attend the routine/urgent matters including MD's daily dak in absence of the Managing Director.

10. When this matter was being heard, with a view to ascertain the latest position vis-a-vis various criminal charge-sheets and the disciplinary proceedings pending against the applicant, both the parties were directed to file their respective affidavits indicating therein the status with regard to the criminal and disciplinary proceedings. Mr. Rajesh Katyal was also directed to produce the record of the review committees held since the date of suspension of the applicant.

11. Vide additional affidavit dated 22.05.2007, the applicant placed on record the details of criminal cases and the departmental proceedings pending against him. Vide separate affidavit dated 26.05.2017, the respondents also placed on record the status of the memorandum of charges issued by the CBDT and the status of the criminal cases. The details filed by the respondents are reproduced hereunder:

Status of charge memorandum issued by the CBDT:

S. No.	Charge Memorandum	Date of issue	Status	Remarks
1	C-14011/76/2014-V&L	03.12.2014	IO/PO has been appointed	Shri Homi Rajvansh during the course of Inquiry proceedings before

				the IO on 13.02.2017 have submitted that 4 charge sheet dated 03.12.2014 have been stayed by the Hon'ble CAT. Copy of the daily order sheet dated 13.02.2017 is enclosed for ready reference (Annexure R-1).
2.	C-14011/77/2014-V&L	03.12.2014	IO/PO has been appointed.	As above
3.	C-14011/78/2014-V&L	03.12.2014	IO/PO has been appointed	As above
4.	C-14011/79/2014-V&L	03.12.2014	IO/PO has been appointed	As above
5.	C-14011/35/2014-V&L	11.06.2014	IO/PO has been appointed	No stay by the Hon'ble CAT
6.	C-14011/37/2014-V&L	11.06.2014	IO/PO has been appointed	No stay by the Hon'ble CAT
7.	C-14011/38/2014-V&L	11.06.2014	IO/PO has been appointed	No stay by the Hon'ble CAT
8.	C-14011/99/2014-V&L	11.06.2014	IO/PO has been appointed	No stay by the Hon'ble CAT
9.	C-14011/40/2014-V&L	11.06.2014	IO/PO has been appointed	No stay by the Hon'ble CAT
10.	C-14011/54/2006-V&L	12.03.2010	IO/PO has been appointed	No stay by the Hon'ble CAT

Status of CBI cases as per the Supdt. of Police CBI/EO-III/New Delhi's letter no.01/Misc./EOU-VII/EI-III dated 30.03.2017 (Annexure R-2)

S. No.	Case No.	Present Status
1.	RC.8/2008/EOU-VIII Delhi u/s 120-B IPC r/w 420-IPC r/w 13(2) r/w 13(1)(d) of PC Act, 1988	Under Trial/Further Investigation
2.	RC.5/2009/EOU-VIII Delhi u/s 120-B IPC r/w 420-IPC r/w 13(2) r/w 13(1)(d) of PC Act, 1988	Under Trial/Further Investigation
3.	RC.6/2010/EOU-VIII Delhi u/s 120-B IPC r/w 406, 420, 467, 468, 471-IPC r/w 13(2) r/w 13(1)(d) of PC Act, 1988	Under Trial/Further Investigation
4.	RC.7/2010/EOU-VIII Delhi u/s 120-B IPC r/w 406, 420, 467, 468, 471-IPC	Under Trial
5.	RC.8/2010/EOU-VIII Delhi u/s 120-B IPC	Under Trial

	r/w 406, 420, 467, 468, 471-IPC	
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From the above details, we find that in four charge-sheets issued to the applicant on 03.12.2014 the proceedings have been stayed by the Tribunal, whereas in other five charge-sheets dated 11.06.2014 and one charge-sheet dated 12.03.2010 even when there is no stay from the Tribunal, the proceedings have not moved forward from the stage of appointment of inquiry officer and presenting officer. One charge-sheet is more than seven years old and all other charge-sheets are almost 2½ to 3½ years old. Insofar as the criminal cases are concerned, in all the pending criminal cases before the trial court no charge has been framed against the applicant. All these criminal cases were registered in the years 2008, 2009 and 2010. As noticed hereinabove, in one of the criminal case RC AC 2 2008 A 0002 dated 10.05.2008, the applicant has been discharged by the Special Judge, Patiala House Courts, New Delhi vide judgment dated 21.02.2014. The applicant has also placed on record judgment dated 04.03.2016 passed by the Hon'ble Delhi High Court whereunder the criminal proceedings initiated against the applicant have been quashed in exercise of the jurisdiction under Section 482 Cr.PC.

12. We have heard the learned counsel for parties at length and perused the record.

13. The applicant was placed under suspension vide order dated 21.12.2011. The suspension order reads as under:

"Order Under Rule 10(1)(b) of CCS (CCA) Rules, 1965

WHEREAS a case against Shri Homi Rajvansh, CIT, ITAI, Agra in respect of a criminal offence is under investigation.

Now, therefore, the President in exercise of the powers conferred upon her by sub rule (1) (b) of Rule 10 of the CCS (CCA) Rules, 1965 hereby places the said Shri Homi Rajvansh under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force, the headquarters of Shri Homi Rajvansh shall be Agra and the said Shri Homi Rajvansh shall not leave the headquarters without obtaining the prior permission of the CCIT (CCA), Kanpur."

It is relevant to note that this suspension was pursuant to the letter dated 30.09.2010 from CBI. From the notings dated 20.10.2010 reproduced hereinabove, we find that the proposal to suspend the applicant was pursuant to the letter of CBI. When the proposal reached the Member (P&V), following observations were made on 06.12.2010:

"A charge sheet has already been filed. DG (V) may pl elaborate, why suspension be made, as the officer will not be in position to scuttle the investigation.

Chairman may also like to see."

These observations were approved by the Chairman, CBDT as also by the Hon'ble Finance Minister. As a result of the above, no action for the suspension of the applicant was initiated. Later, when the applicant was arrested on 26.09.2011 on registration of criminal case against him, another letter dated 29.09.2011 was moved by CBI intimating the department about his arrest. On this letter, clarification was sought as regards the period of arrest. It was clarified that the applicant was arrested and released on bail by the Magistrate in Delhi. Relevant noting on the file reads as under:

"May kindly refer to FR which is a faxed letter from CCIT (CCA), UP (West), Kanpur, dated 3.12.2011 and addressed to Member (P&V) CBDT.

In the above letter it has been stated that:

- 1) Shri Homi Rajvansh, CIT (ITAT), Agra had been arrested by the CBI and later released on bail by Magistrate in Delhi.
- 2) Shri Homi Rajvansh had applied for leave (both Casual and Earned Leave). However, his leave application had been rejected by CCIT (CCA), UP (West) and he was informed that his absence from duty would be treated as unauthorized absence. Despite this, the officer has not been attending office.
- 3) SP CBI, Delhi vide his letter dated 25.10.2011 has informed that Shri Homi Rajvansi is not attending investigation proceedings and that a non bailable arrest warrant has been issued in his name by the Hon'ble Court.

Put up for kind perusal and necessary directions.

Sd/-
DDIT (Vig.), Unit-II

Addl DIT (Vig), Unit-II

In continuation to the above notings, kindly also refer to the letter dated 3.11.2011 (at pages 41-46/c) received from JS (V&L), CBDT forwarding the following letters:

- (a) Letter dated 20.10.2011 (at page 42-43/c) from MD, NAFED and addressed to Chairman, CBDT, in which he has requested that appropriate instructions may be passed to take necessary approval of memorandum of charges against Shri Homi Rajvansh, IRS.
- (b) Letter dated 28.10.2011 (at pages 44-45/c) from Joint Director, CBI in which he has intimated that the officer is not cooperating with investigations and has therefore requested that the officer may be placed under suspension.

Put up for kind perusal and necessary directions.

Sd/-
9-11-11"

The above noting further reveals that it was only on the insistence of CBI that the applicant was placed under suspension, and that too on account of issuance of non bailable warrants. It has been brought on record by the applicant that the applicant had applied for leave and was out of Delhi when the non bailable warrants came to be issued against him in his absence. He immediately approached the concerned Magistrate on coming to know of it, and not only the proceedings u/s 82 Cr.PC were cancelled, the applicant was admitted to bail on the same day, though later he was again arrested by CBI in another case of the similar nature, wherein he was remanded to

judicial custody. From the perusal of the notings, it is evident that the suspension of the applicant was primarily because of issuance of non bailable warrants against him and proceedings u/s 82 Cr.PC, which were cancelled and the applicant admitted to bail. Thereafter, the continuation of suspension of the applicant does not seem to be justified. His continued suspension has been made in the routine manner without due application of mind.

14. We have carefully perused the minutes of the suspension review committee meetings. The respondents have not produced the entire record but only some of the review committee meeting minutes in sealed cover. The review committee held on 19.11.2015 recorded as under:

“Shri Homi Rajvansh was arrested in case RC.8(E)/2010/EOU-VII on 26.09.2011 at New Delhi. It was reported by CBI vide letter dated 28.10.2011 that he was released on bail by the court on 27.09.2011. It was also stated by CBI that Shri Homi Rajvansh was required to be further examined in another case RC 6(E)/2010-EOU-VII, but he was evading the notices issued to him for joining investigations. As per the CBI’s letter, since 01.11.2011, Shri Homi Rajvansh was not available at his residence in Delhi. The CBI also reported that two non-bailable arrest warrants of Shri Homi Rajvansh were issued by the Delhi Court on 22.01.2011 in cases RC.8/2008 and RC 5/2009 but the same could not be executed as his whereabouts were not known. The CBI reported vide letter dated 29.11.2011 that Shri Homi Rajvansh was declared as proclaimed offender on 26.11.2011 by the Court of

ACMM, Tis Hazari, Delhi in RC.8/2008-EOU-VII & RC-5/2009-EOU-VII.

The officer was again sent to judicial custody on 13.01.2012 for a period exceeding 48 hours. A total no. of 10 charge sheets have been filed against the officer."

These recommendations were accepted.

15. The second review committee held on 26.04.2016 records same grounds word-by-word. The committee, however, procured the status of the cases from CBI, and based upon the letter of CBI recorded as under:

"The SP, CBI/EO-III/New Delhi, vide his letter dated 21/25.04.2016 has intimated that:-

- (i) The present status of the cases against Shri Homi Rajvansh is same vide earlier communication (mentioned above) in the matter (emphasis added).
- (ii) It is reiterated that the charges against Shri Homi Rajvansh are very serious in nature and considering his past conduct i.e. he evaded joining investigation for considerably long time, it is very likely that he would misuse his official position in order to influence the witnesses during trial of the cases, if he is reinstated at this stage. It is also to mention here that CBI is considering further investigation in a few of the cases and is likely to file report in the competent court in light of DoPT notification that has proposed to include NAFED officials under the purview of PC Act, 1988.
- (iii) In view of the above stated facts and circumstances suspension of Shri Homi Rajvansh may not be revoked at this stage."

16. In the last review held on 07.04.2017, the review committee observed as under:

“Shri Homi Rajvansh was arrested in case RC.8(E)/2010/EOU-VII on 26.09.2011 at New Delhi. It was reported by CBI vide letter dated 28.10.2011 that he was released on bail by the court on 27.09.2011. It was also stated by CBI that Shri Homi Rajvansh was required to be further examined in another case RC 6(E)/2010/EOOU-VII, but he was evading the notices issued to him for joining investigation. The CBI also reported that two non-bailable arrest warrants of Shri Homi Rajvansh had been issued by the Delhi Court on 22.10.2011 in cases RC.8/2008 and RC.5/2009 but the same could not be executed as his whereabouts were not known.

Apart from the above, the CBI reported vide letter dated 29.11.2011 that Shri Homi Rajvansh was declared as proclaimed offender on 26.11.2011 by the Court of ACMM, Tis Hazari, Delhi in RC-8/2008-EOU-VII & RC-5/2009-EOU-VII. Further, his anticipatory bails in RC-6/2010 & RC-7/2010 were dismissed in the Delhi High Court on 09.11.2011.

The officer was placed under suspension under sub rule (1)(b) of Rule 10 of the CCS (CCA) Rules, 1965 w.e.f. 21.12.2011 vide CBDT's order dated 21.12.2011.”

The committee made following recommendations:

“5. Recommendation of the Review Committee: The Committee considered the facts and circumstances of the case and the report of the CBI. It was ascertained that there are 5 CBI cases pending against the officer which are either under trial or under further investigation. Further several departmental charge sheets have also been issued to the officer.

The allegations against the officer are serious in nature and include entering into criminal conspiracy

with private persons and disbursing funds to the tune of hundreds of crores of rupees to dubious entities causing huge loss to NAFED.

After considering the fact that many CBI cases are there which are either at trial stage or are under investigation, large number of charge memorandums issued by the Department are pending, there are serious charges of misconduct against the officer which may lead to major penalty against the officer and that revocation of the suspension may not be in public interest, the Committee recommends that the suspension of the officer may be **continued for a period of 180 days or until further orders, whichever is earlier.**"

17. From a perusal of all the review committee meetings, we find that on the same basis of arrest of the applicant on 26.09.2011, he was placed under suspension even though his detention was less than 48 hours and could not have attracted provisions of rule 10 (1) (2) of the CCS (CCA) Rules, 1965. In the subsequent review meetings, the judicial custody of the applicant has been made the basis for continuation of his suspension. From the affidavits filed by the parties, particularly by the respondents, as referred to hereinabove, we find that the review committee has extended the suspension in just a routine manner without considering the fact that there has been no progress whatsoever either in the criminal cases filed against the applicant or even in the disciplinary proceedings, and keeping the applicant under suspension will serve no public purpose. The charge-sheets having been filed in all the criminal cases in the

competent court(s) since 2008, 2009, 2010 and lastly 2011, further suspension of the applicant was not required and is thus not justified.

There is absolutely no allegation of any attempt by the applicant of tampering with the evidence. CBI relied upon the CVC guidelines issued vide circular dated 25.09.2000. Relevant guidelines read as under:

“2. It has been provided in para 2.4, Chapter V of the Vigilance Manual, Volume- I, that public interest should be the guiding factor in deciding whether, or not, a public servant should be placed under suspension; or whether such action should be taken even while the matter is under investigation and before a prima-facie case has been established. The instructions provide that it would be appropriate to place a person under suspension if :-

- (i) the continuance of the public servant in office is likely to prejudice investigation, trial or inquiry (apprehending tampering with documents or witness); or
- (ii) where the continuance in office of the public servant is likely to seriously subvert discipline in the office in which he is working;
- (iii) where the continuance in office of the public servant will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the public servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;
- (iv) where the investigation has revealed a prima-facie case justifying criminal/departmental proceedings which are likely to lead to his

conviction and/or dismissal, removal or compulsory retirement from service; or

- (v) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

3. Para 2.5, Chapter V of the Vigilance Manual, Volume-I also lays down that it may be considered desirable to suspend a public servant for misdemeanor of the following types:-

- (i) an offence or conduct involving moral turpitude;
- (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gains;
- (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;
- (iv) desertion of duty; and
- (v) refusal or deliberate failure to carry out written orders of superior officers.

(In case of types (iii), (iv) and (v) discretion should be exercised with care.)"

18. The circumstances indicated under para 2.4 and 2.5 of Chapter V of the Vigilance Manual, Volume-1, must be evident and recorded by the competent authority. From the note-sheets reproduced hereinabove, we find that no such findings/opinion have been recorded by the competent authority while placing the applicant under suspension. The suspension was merely on the basis of the letter of CBI. Even CBI did not mention that the applicant is likely to

tamper with the evidence or do any other act for which his suspension has been necessitated. Reference to the circular in CBI's letter is just in a routine manner without application of mind. The disciplinary authority also merely acted as a post office at the instance of CBI and continued the suspension of the applicant. What public interest has been served by placing the applicant under suspension for a period of over six years is also not disclosed or revealed in the counter-affidavit, except that a number of criminal cases and charge-sheets are pending against the applicant.

19. Mr. Rajesh Katyal, learned counsel appearing on behalf of the respondents, relied upon various judgments. In case of *Union of India v Sanjay Sharma*, reported as 2008 (150) DLT 588 : 2008 (101)DRJ 401, decided by the Hon'ble High Court of Delhi on 15.02.2008, the Hon'ble High Court observed that where suspension is on serious charges under Prevention of Corruption Act, in such cases even if the suspension is prolonged for some time because of the pendency of the criminal cases, it would not be a fit case where suspension order should be set aside on this ground. In *Children Film Society of India v Sridhar Sharma* [1993 (Supp 2) SCC 396], the Hon'ble Supreme Court held that where the charges are of serious nature it is not desirable that the suspension should be revoked. A

similar view was taken by the Hon'ble Supreme Court in case of *Allahabad Bank v Deepak Kumar Bhola* [(1997) 4 SCC 1].

20. On the other hand, Mr. S. K. Gupta, learned counsel appearing for the applicant, referred to the judgment dated 04.03.2016 passed by the Hon'ble High Court of Delhi in Crl. M.C. 3325/2016 titled *Homi Rajvansh v State through CBI*. In the aforesaid case, the applicant had challenged the criminal proceedings initiated against him vide FIR No. RC-EOU-1-2007/E0002 dated 10.12.2007 us 120-B read with Sections 405/408/420/467/468/471 IPC and to quash summoning order dated 07.06.2010 passed by Special Judge, CBI, Delhi in charge-sheet No.03/2010/EOU-1. The Hon'ble High Court recorded following findings:

“53. From a perusal of record it is apparent that decision of diversification was taken by NAFED to meet out its administrative costs and overcome the financial crunch. Discussions made herein above clearly show that the decision of diversification was taken by the Management and in fact, petitioner Homi Rajvansh was never a part of management of Federation. This decision of the Management was to overcome the losses and there was no conspiracy to siphon off funds between the officers working in NAFED or between the officers and the business associates. Keeping this in mind it would be sufficient to say that it was an institutional failure and no mala fide can be attributed to the petitioners for this. The charge sheet has specifically stated that the business associate misappropriated the funds instead of returning them to NAFED. The health and well being of the institution was the need of the hour. The

disbursements made, therefore, cannot be given the color of conspiracy being legitimate authorized transactions. However, though the funds were given with good intentions for making the institution robust and for specific business as per MOU, the diversion thereof by the business associates appears to be with mala-fide intentions. Apparently there were sufficient checks and balances to monitor and control the working of the organization. Complete details of borrowings and disbursements were made available to the Executive Committee, Business Committee and Board of Director. The bona fides of the petitioners are apparent from the facts that the periodic meetings that took place in NAFED in the form of Executive Committee, Business Committee and Board of Director besides and Audit Committees, examined each and every disbursement and none of these have ever imputed the role of the petitioners.

54. In light of the aforesaid discussion, the petitions are allowed and the proceedings emanating from RC-EOU-1-2007-E-2002 are quashed qua the petitioners, Alok Ranjan and Homi Rajvansh only. It is made clear that observation made herein above shall not be taken as finding of this Court qua the remaining accused and the trial court shall proceed against the remaining co accused uninfluenced from the aforesaid observations."

It is accordingly contended that the applicant was falsely implicated by NAFED and CBI, whereas he was never the part of the decision-making and no criminal offence has been committed by him. His contention is that all charges against the applicant are on the similar lines. He has further mentioned that the aforesaid judgment of the High Court has been affirmed by the Apex Court by dismissing the

SLP (Crl.MP No.21328/2016) vide order dated 03.01.2017. Order passed by the Apex Court reads as under:

“Permission to file special leave petitions is granted.

Heard learned counsel for the petitioner.

Delay condoned.

We do not find any legal and valid ground to entertain this special leave petition.

The special leave petitions are, accordingly, dismissed.”

Mr. Gupta also relied upon the judgment of the Apex Court in *O. P.*

Gupta v Union of India [(1987) 4 SCC 328], wherein the Hon’ble Court observed as under:

“15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension as explained by this Court in *Khem Chand v. Union of*

India[1963 Supp 1 SCR 229 : AIR 1963 SC 687 : (1963) 1 Lab LJ 665] is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in *Shorter Oxford English Dictionary*, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means — means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, an order of suspension is not to be lightly passed against the government servant. In the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61 : (1983) 1 SCR 828 : 1983 Lab IC 419] the court held that the expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment *prima facie* tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action. The conditions of service are within the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered

power of placing its officers under disability and distress for an indefinite duration."

"23. The public interest in maintaining the efficiency of the services requires that civil servants should not be unfairly dealt with. The government must view with concern that a departmental inquiry against the civil servant should have been kept alive for so long as 20 years or more and that he should have been placed under suspension without any lawful justification for as many as 11 years, without any progress being made in the departmental inquiry. It should also view with concern that a decision should have been taken by the competent authority to enforce the bar under FR 25 against the civil servant long after his retirement with a view to cause his financial loss. Such a course not only demoralises the services but virtually ruins the career of the delinquent officer as a government servant apart from subjecting him to untold hardship and humiliation. We hope and trust that the government in future would ensure that departmental proceedings are concluded with reasonable diligence and not allowed to be protracted unnecessarily. The government should also view with concern that there should be an attempt on the part of the competent authority to enforce the bar against a civil servant under FR 25 long after his retirement without affording him an opportunity of a hearing. It comes of ill grace from the government to have defeated the just claim of the appellant on technical pleas."

In *Union of India & others v Raj Kishore Parija* [1996 SCC (L&S)

196] the Hon'ble Supreme Court upheld the decision of the Tribunal for reinstatement where the charge-sheet was served after a long delay and the inquiry was not completed even after five years. In *State of H.P. v B. C. Thakur* [1994 SCC (L&S) 835] the Tribunal

quashed the suspension where the same continued for two years without substantial progress in the departmental inquiry. The Tribunal also quashed the charge-sheet. The Hon'ble Supreme Court upheld the order of the Tribunal quashing the suspension, but set aside the order to the extent the charge-sheet was quashed.

21. We have carefully gone through the record and the minutes of the review committees. As noticed by us, CBI vide its letter dated 30.09.2010 requested the competent authority to place the applicant under suspension referring to CVC guidelines reproduced hereinabove. The competent authority did not agree stating that the charge-sheets had already been filed and the officer was not in a position to scuttle the investigation. Later, CBI again wrote letter dated 29.09.2011 seeking suspension of the applicant on the ground that the non bailable arrest warrants were issued against him by the court. The circumstances under which the proceedings under Section 82 Cr.PC were initiated against the applicant followed by non bailable arrest warrants have already been explained by the applicant. The applicant appeared before the competent court, and not only the proceedings under Section 82 Cr.PC were cancelled, even the applicant was admitted to bail immediately. Even when the applicant was arrested by CBI on 26.09.2011 and produced before the Chief Metropolitan Magistrate on 27.09.2011, he was released on bail

immediately. From the notings, it is evident that the applicant's suspension was on account of issuance of non bailable warrants and proceedings under Section 482 Cr.PC and at the instance of CBI, and not for any other reason, which culminated into passing of the suspension order dated 21.12.2011. Once the non bailable arrest warrants were recalled and the applicant admitted to bail, the suspension should have been revoked. The review committees, however, continued the suspension of the applicant from time to time on the ground that the charges are serious in nature. It is relevant to notice that the first charge-sheet against the applicant was filed on 31.12.2008; two charge-sheets on 24.12.2009; one on 31.07.2010,; one in June, 2010; whereas two charge-sheets were filed on 14.12.2011 and 21.12.2011. Allegations against the applicant are similar in nature in all the charge-sheets. The allegations are of cheating and forgery etc. One charge-sheet has been quashed by the Hon'ble High Court of Delhi and the order upheld by the Hon'ble Supreme Court, whereas in another case the applicant has been discharged without trial. Hon'ble High Court while quashing the criminal proceedings examined the allegations and found that the applicant was not part of decision-making and no motive could be attributed to him. In all other cases even after pendency over a period of nine to six years, even charges have not been framed, what to say of commencement of

trial. There is no allegation in the reply filed that the delay in the trials is attributable to the applicant. In three cases filed in the year 2008, 2009 and 2010, although charge-sheets have been filed, but further investigation as indicated in the affidavit dated 26.05.2017 filed by the respondents, has not been completed over a period of seven to nine years. This itself is sufficient to indicate the nature of allegations against the applicant. Similarly, in charge-sheets filed in the disciplinary proceedings, interim stay orders are operating which also establish *prima facie* case in favour of the applicant. Even where the proceedings have not been stayed, inquiries have not been completed since the issuance of the charge memorandum in March, 2010 and June, 2014. There is also not a whisper either in the counter-affidavit or in the additional affidavit attributing the delay to the applicant.

22. Such being the position, the continued suspension of the applicant is wholly unjustified and rather it is harassment to him. No public interest is being served. Applicant is being paid 75% salary without any work. The dictum of the judgment of the Apex Court in case of *O. P. Gupta (supra)* is clearly applicable. Although suspension is not perceived to be punishment, but a prolonged suspension assumes the trappings of punishment to a Government servant. He is not only deprived of the full salary but also has to

suffer in the society, as prolonged suspension definitely casts stigma. The object of the initial suspension was to ensure timely investigation. However, all subsequent reviews, as noticed by us hereinabove, have been ordered on the same ground of seriousness of the allegations. The review committees have acted mechanically without due application of mind. In view of the factual and legal analysis, we are of the considered opinion that the continued suspension of the applicant is totally illegal and unjustified.

23. This Application is accordingly allowed. The impugned suspension order dated 21.12.2011 and all subsequent reviews and continued suspension of the applicant are hereby declared as illegal and unlawful. The respondents are directed to reinstate the applicant forthwith. The period of suspension shall be decided by the respondents in accordance with provisions of Fundamental Rule 54-B.

(K. N. Shrivastava)
Member (A)

(Permod Kohli)
Chairman

/as/