

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.063/01353/2018

Order pronounced on: 27.11.2018
(Interim Orders reserved: 26.11.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

V. Kaviyarasan aged 37 years S/o V. Vishwalingam, R/o 3451/2, Sector 38, Chandigarh, Presently posted as Drug Inspector, Government of India, CDSCO, Village Sheetalpur, Tehsil Baddi, District Solan (H.P) 173205, Group (B) Gazetted.

.... **Applicant**

**(BY: MR. HITTAN NEHRA, ADVOCATE WITH
MR. SAURAV VERMA ADVOCATE)**

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Health and Family Welfare, Nirman Bhawan, C-Wing, New Delhi-110001.
2. Director General Health Services, Central Drugs Standard Control Organization, FDA Bhawan, Kotla Road, New Delhi-110003.
3. Sh. B.K. Samantary, Deputy Drug Controller, Village Sheetalpur, Tehsil Baddi, District Solan (HP)-173205.
4. Sh. Basant Mittal, State Drug Inspector, SAI Road Baddi, District Solan, Himachal Pradesh-173205.
5. M/s Redico Remedies, 124, Mandhala, Barotiwala, District Solan, HP-174103 through its CEO Vikramjit Singh Sawhney-173205.

**(BY: MR. RAM LAL GUPTA, ADVOCATE,
FOR RESPONDENTS No.1&2
RESPONDENTS NO.3 AND 4 IN PERSON.
MR. SHAILENDRA SHARMA, ADVOCATE FOR R.NO.5.)**

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Respondents

ORDER (ON INTERIM RELIEF)
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (OA) under section 19 of the Ad0ministrative Tribunals Act, 1985, for quashing the order dated 1.11.2018 (Annexure P-8) vide which he has been placed under suspension, allegedly due to malafide intentions of Respondents, particularly respondents No.3 and 4, and for extraneous considerations and on non-existing facts. In para 9 of the O.A, he has also prayed that during the pendency of the case, operation of the indicated impugned order be stayed.

2. The case was initially listed for hearing on 12.11.2018 and it was adjourned to 19.11.2018 by the Single Bench of this Tribunal. On 19.11.2018, when learned counsel for the applicant argued that the applicant was asked by respondent no.3 to collect sample from a firm which order he complied with but when he approached the premises of the relevant firm, hue and cry was raised and he was not allowed to collect the sample. Rather, on a complaint and under influence of the party, the applicant was placed under suspension by Respondent No.3 itself, vide impugned order, Annexure P-8, without any logic or reason. Noticing these facts, the Division Bench issued notice of motion to the respondents on O.A. as well as claim of applicant for grant of interim relief and case was postponed for 26.11.2018, with the clear understanding that the claim of applicant for interim relief would be heard on the date fixed.

3. However, on 26.11.2018, when the case came up for hearing, the respondents did not file any reply and requested for grant of further time to file reply. When they were reminded that the request of the applicant for stay was to be considered, they produced certain

documents like copies of letters dated 12.9.2018, 23.10.2018 and certain communications which took place through e-mail with applicant to suggest that the applicant had tried to carry out unauthorized inspection of the premises and as such he was placed under suspension pending disciplinary proceedings.

4. We have heard the learned counsel for the applicant and learned counsel for Respondents No.1&2, Respondents No.3&4 in person and learned counsel for Respondent No.6 as well.

5. Learned counsel for the applicant submitted that the applicant is working as a Drug Inspector appointed under Section 21 of the Drugs and Cosmetics Act, 1940 (for short Act of 1940) and his name has been notified by Central Government under notification dated 7.11.2013, to exercise powers and perform duties as specified in Section 21 and 22 of Act of 1940, for whole of India. He was posted in CDSCO, Baddi in 2016. He is duty bound to inspect the drug manufacturing units periodically and also on specific direction issued by superiors from time to time. Every Drug Inspector is required to collect 15 survey sample and 10 legal sample every month as per Email dated 14.3.2017 (Annexure P-2). For legal sample, Drug Inspector is duty bound to follow the procedure provided in Section 23 of Act of 1940, whereas no such procedure is required for Survey Sample. He further submits that as per test report dated 26.9.2018, survey sample of M/s Redico Remedies (Respondent No.5) was found to be of not having standard quality. DGHS, Govt. of India, vide letter dated 8.10.2018, asked office of DDC, CDSCO, Baddi to alert the Inspectorate Staff about the movement of subject drug and take necessary action. Vide letter dated 23.10.2018 (Annexure P-4), marked order dated 8.10.2018, with specific order to draw sample. The applicant went for inspection of premises of respondent no.5, to

draw legal sample on 25.0.2018, and showed his identity proof and orders of superiors. However, the authorities of respondent no.5 misbehaved with him and refused to hand over legal sample on the ground that Drug Inspector, Samant Mittal has ordered not to give the same. The applicant spoke to Respondent No.3 to seek instructions. Meanwhile, Respondent No.4 wrote an email to Respondent no.3, on the ground that the Inspector should have informed State Authority, before carrying out investigation. In a surprise move, Respondent No.3 himself asked explanation of applicant via email as to on whose orders, he went to indicted premises for investigation without information to FDA, Himachal Pradesh. The applicant replied back that as per order of DDCI to draw sample, he had visited the firm, but the firm has refused to supply any sample. In consultation with respondent no.3, applicant issued Form No. 15 as Firm was not cooperating with him and came back to the office. He also submitted a detailed report dated 26.10.2018 (Annexure P-6). A show cause notice dated 26.10.2018 (Annexure P-7) was also issued by applicant to the firm, as to why they failed to comply with the mandate of the relevant Act. However, now the applicant has been placed under suspension, vide impugned order dated 1.11.2018 (Annexure P-8).

6. In support of his plea, that the impugned order is liable to be stayed having been issued with malafide intentions, learned counsel for the applicant argued that vide letter dated 23.10.2018, the applicant was supplied copy of letter dated 23.10.2018 vide endorsement for joint investigation of M/s Ross Robinz Biotech, Solan on 25.10.2018 as earlier joint investigation could not be carried out due to some other work. However, it was sought to be postponed on request of State Authorities vide Email dated 25.10.2018, as Mr. Lovely Thakur, DI,

Solan, was unable to carryout investigation. However, the Firm filed a complaint to State Authorities that applicant tried to carry out unauthorized investigation and also submitted representation to various authorities for taking action against applicant and even certain news items were also published in the news papers that applicant showed high handedness, which the learned counsel submits was an attempt to browbeat the applicant and put pressure upon authorities to take action against him and real issue was lost regarding collection of sample, and applicant was placed under suspension to please the galleries, instead of taking action against the firm for non supply of relevant sample.

7. On the other hand learned counsel for the respondents submitted that applicant was asked to carry out inspection as is written in hand on letter dated 12.9.2018 and that being the position, he could not enter the premises without prior intimation to the State Drug Authorities. This was vehemently opposed by learned counsel for the applicant stating that applicant had gone there to collect the sample only in view of general directions including order of respondent no.3 and respondents are trying to mis-up of two issues which has played havoc with the applicant resulting into placing him under suspension, with malafide intentions of respondents No.3 to 5. Thus, he prayed that since the balance of convenience is in favour of the applicant as such the impugned order, Annexure P-8 be stayed meanwhile.

8. On the other hand, learned counsel for respondents submitted that the O.A. itself can be heard and disposed of on filing of reply for which they seek further time. However, to a query as to why they did not file any reply to prayer of the applicant for interim relief, learned counsels were not able to offer any explanation.

9. One cannot dispute about the power and authority of the respondents to suspend an employee but such power has to be exercised in a proper manner. It is settled law that suspension is not a form of punishment. Suspension order is issued only as an aid to complete the departmental proceedings including for the reason that charged officer should not feel that he can tamper with the evidence and can further do mischief although departmental proceedings are going on against him. This is so held in the judgment of the Hon'ble Supreme Court in the case of ***State of Orissa v. Bimal Kumar Mohanty***, (1994) 4 SCC 126. In any case, as to whether the suspension was warranted or not is to be considered at the time of final arguments of the case and it is not this stage to ponder over the issue, except that we are only dealing with the interim relief of the applicant for stay on suspension order.

10. In view of the sequence of events mentioned above and rival contention of both sides, we are of the opinion that there is a *prima facie* case made out in favour of the applicant for grant of interim relief as he was directed by respondent no.3 to go into premises of the firm to collect sample and then under pressure placed him under suspension, which is not permissible. The balance of convenience is also in favour of the applicant, considering the peculiar facts of this case. Thus, we find that there are sufficient grounds made out to stay the operation of the impugned order, Annexure P-8. Accordingly, operation of impugned order, Annexure P-8 is hereby stayed.

11. Needless to mention that the observations made herein above would not have any effect on ultimate decision of the case and have been made only for the purpose of interim relief.

12. Respondents may file detailed reply to the O.A within four weeks, with copy in advance to the applicant, who file replication, if any, within two weeks thereafter.

13. List for hearing on 24.01.2019.

(P.GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: NOVEMBER 27, 2018

HC*

