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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 269/2003

This the 18th day of December, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A. SINGH, MEMBER (A)

Bani Singh
Dy. Commissioner of Income Tax-Delhi,
D-208, Anand Vihar,
Delhi-110092.

(By Advocate: Sh. V.S.R.Krishna)

Versus

1. Union of India through
Secretary to the Govt. of India,
Ministry of Finance,
Dept. of Revenue,
North Block, New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block,
New Delhi.
3. The Director General of Income Tax (Vigilance),
Dayal Singh Library, Rouse Avenue,
New Delhi.

(By Advocate: Sh. V.P.Uppal)

O R D E R

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA and has impugned an order dated 17.1.2003 passed under Rule 10(1) of CCS (CCA) Rules, 1965 whereby the President in exercise of power under the said rule placed the applicant under suspension with immediate effect as the case is pending against the applicant under Section 13 (2) read with 13 (1)(e) of Prevention of Corruption Act, 1988 in respect of criminal offence which is stated to be under trial.

2. In order to challenge the same, the applicant has alleged that this order has been passed in wilful disregard of the

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order dated 6.2.2001 passed by this Tribunal. It is further stated that respondents have earlier also made the applicant to suffer suspension for more than 6 years from 16.9.96 to 4.12.2002 on the basis of an illegal and arbitrary order for no fault on the part of the applicant.

3. It is further stated that this Tribunal vide order dated 6.2.2001 had already held that the continuance of the suspension is unjustified. It is further stated that no criminal offence is under trial since charges are not framed against the applicant. Besides that it is submitted that though the order states that the applicant has been placed under suspension with immediate effect but the order was served on the applicant in the afternoon of 31.1.2003 and the applicant had been discharging his duties till 31.1.2003 and as such order of suspension has been given retrospective effect which is against law. It is further submitted that it is not necessary and obligatory to place a employee under suspension if a criminal trial is pending. Thus, it is prayed that the order has been passed with malafide intentions, the same is liable to be quashed and the ^{OA} should be quashed and applicant should be directed to be reinstated.

4. Respondents are contesting the OA. Respondents in their reply pleaded that the plea of the applicant that the trial has not yet commenced is false as chargesheet has been filed against the applicant in Court of Special Judge and the trial is under progress. It is further stated that the order of suspension dated 15.10.96 which was passed following the arrest of the applicant by CBI authorities on 29.8.96 and his subsequent detention for a period exceeding 48 hours, was not

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in any manner illegal or arbitrary. In terms of the provisions of Rule 10(2), the applicant was deemed to have been placed under suspension and in terms of the provisions of Rule 10(5)(a) of the said rules, his suspension was to continue till it was revoked or modified by the competent authority. The suspension of the applicant was automatic and the order dated 15.10.96 merely declared and clarified the position in terms of the provisions of Rule 10(2) and 10(5)(a) of the CCS (CCA) Rules, 1965.

5. As regards the order passed by this Tribunal dated 6.2.2001 is concerned, the department submitted that they had challenged order before the Delhi High Court. Delhi High Court had sustained the order of the Tribunal but not on the grounds stated in the Tribunal but on different grounds altogether that is on the ground that deemed suspension as stipulated under Rule 10(2) of CCS (CCA) Rules, 1965 cannot continue beyond the period of detention of employee. The Hon'ble High Court had specifically left it open to the petitioners to consider the desirability of suspension in accordance with law. Since after the passing of the order of Hon'ble High Court the order of the Tribunal has merged in the High Court's order, so order of suspension dated 17.1.2003 has been passed in accordance with provisions of Rule 10(1) of CCS (CCA) Rules, 1965. It is further stated that in terms of the guidelines, it is in wider public interest that person should be charged for corruption should be placed under suspension particularly in a sensitive department like the Income Tax. So it is stated that the suspension of applicant is fully justified and no interference is called for.



5. We have heard the learned counsel for the parties and gone through the record.

7. Counsel appearing for the applicant heavily relied upon the order passed in OA-833/2000 dated 6.2.2001. Applicant after referring the judgment particularly the ultimate para 14 had submitted that the Court had observed that since the investigation by the CBI in the matter against the applicant has been completed and criminal trial is in progress against the applicant in the court, in our view, no ground is available with the respondents to continue the suspension order of the applicant any longer. So based on that court has quashed the orders.

8. Counsel for applicant submitted that this finding arrived at by the Tribunal have not been set aside by the orders passed by the Hon'ble High Court or by Hon'ble Supreme Court. The Hon'ble High Court had sustained the order of Tribunal though on different ground but this finding has not been disturbed by the Hon'ble High Court. Respondents cannot contest this matter again on this issue and could not have passed the fresh order.

9. On the contrary, Sh. Uppal, learned counsel appearing for the respondents submitted that the Hon'ble High court though had sustained the order but the Hon'ble High court had also observed that the submissions made by the learned counsel for the department that the Tribunal has committed an error in as much as no law mandates the authorities to revoke an order of suspension only because the investigation is over. "The learned counsel may be correct." So relying upon these lines as recorded by the Hon'ble High Court the learned counsel for

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the respondents submitted that the High Court itself was of the view that the other submissions raised by the department may be correct but since the High Court had already held in one another case, namely, Rajeev Kumar vs. Union of India that after a man is placed under deemed suspension as per Rule 10(2), the deemed suspension comes to an end the moment the employee is released on bail as it was held in Rajeev Kumar's case. So the High Court further observed that the question raised by the petitioners (department) in the instant case is academic in nature in as much as judgment of the Tribunal can be sustained on another ground.

10. Learned counsel for respondents further submitted that the issues raised by the department for continued suspension after the commencement of trial has not been discussed at all by the Hon'ble High Court. Similarly, before the Hon'ble Supreme Court these contentions were not discussed as the department had already passed fresh orders as permitted by the Hon'ble High Court. So the Hon'ble Supreme Court had also ordered that separate order has separate cause of action. Thus, the plea of the respondents that respondents could continue the applicant to remain on suspension once the trial as commenced has not been discussed. But as regards the orders of the Hon'ble High Court as well as that of Tribunal has been set aside and the Hon'ble Supreme Court in Union of India vs. Rajeev Kumar attached with the case of applicant, Bani Singh, after discussing the various provisions of Rule 10 of CCS (CCA) Rules had held that "another plea raised relates to suspension for a very long period with the same result the suspension is valid. The plea is clearly untenable. The period of suspension should not be unnecessarily prolonged but

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if plausible reason exist and authorities feel that the suspension needs to be continued, merele because it is for a long period that does not invalidate the suspension".

11. Counsel for respondents submitted that even Hon'ble Supreme Court had observed that if plausible reasons exist then the suspension can be continued.

12. Counsel for respondents further contended that the order passed by the Tribunal was sustained because of the provisions of Rule 10(2) and not on the reasoning given by the Tribunal. This order passed by the Hon'ble Supreme Court definitely says that the prolonged suspension can be there, if plausible reasons exist but the fact remains that the order passed by this Tribunal merges into the orders passed by the Hon'ble High Court and the orders passed by the Hon'ble High Court ~~and~~ ~~the orders passed by the Hon'ble High Court~~ merges into the orders passed by the Hon'ble Supreme Court. But Hon'ble High Court as well as the Hon'ble Supreme Court both have not discussed the plea regarding continued suspension. But the fact that Hon'ble High Court had permitted the department to pass a fresh order go to show that the respondents were at liberty to pass fresh order for any plausible reasons as observed by the Hon'ble Supreme Court also. Hence, the order dated 17.1.2003 is justified.

13. We have given our anxious consideration to the pleas raised by the respective parties. Undoubtedly, the order passed by the Tribunal was challenged before the Hon'ble High Court by the department. Though the Hon'ble High Court had sustained the order of the Tribunal on a different ground but while sustaining it had also observed that the pleas taken by

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Mr. Bhardwaj, counsel for petitioner before the Hon'ble High Court may be correct. So the question still remains open whether the applicant can be continued to on suspension since his trial is pending. The observation of the Hon'ble Supreme Court that it is immaterial even if there is prolonged suspension so long plausible reasons exist for a valid suspension is also there. So we find that it is not open to the applicant to rely upon the observation made by the Tribunal to challenge the order in question. A applicant has to show sufficient reasons which may be in his favour and against the department for prolonged suspension. The reasoning given by the Tribunal while quashing the earlier order of suspension will not assist the applicant to raise the plea only on the basis of the observations made by the Tribunal. The matter has to be examined afresh.

14. Now coming to the facts, it is an admitted case that applicant is facing trial under Section 13(2) and 13(1)(e) of the Prevention of Corruption Act 1988. Allegation against him are possession of assets disproportionate to his known source of income. The case has been registered against the applicant for corruption. In this background, we have to see whether there are any plausible reasons to keep the applicant under continued suspension.

15. In this regard, we may mention that since the applicant is facing trial under the Corruption Act itself and he is to be posted in a sensitive department of Income Tax, so it would not be in the public interest to revoke the suspension and allow him to continue to work in the Income Tax department. The guidelines on the subject quoted in the order passed earlier by this Tribunal also go to show that continuance in the office is against the wider public interest, then an employee can be continued under suspension particularly when

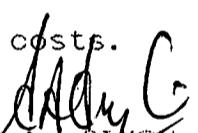
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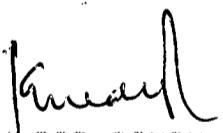
an employee is involved in a corruption case and the continuance of the applicant in the office of Income Tax department will also seriously affect discipline in such an organisation where a person can be said to be prone to corruption again.

16. Counsel for applicant had also taken a plea that the order of suspension is retrospective in nature as the same has been issued on 17.1.2003 whereas the same has been served on the applicant on 31.1.2003. Meaning thereby applicant was suspended on 31.1.2003 in stead of 17.1.2003. In ~~view~~ view this contention of the counsel for applicant has ~~not~~ merits because this order has to take effect only from the date it has served on the employee and it appears that the order has been issued from the Department of Revenue, Central Board of Direct Taxes and has been sent to the applicant by speed post though the same may have been served on applicant on 31.1.2003 but it was to take effect from the date it had been served. It cannot be said that applicant has been suspended with retrospective effect.

17. Hence, we find that this contention of the applicant has ~~not~~ merits. No other contention was raised. In view of the above discussion, OA has ~~not~~ merits and the same is dismissed.

No costs.


(S.A. SINGH)
Member (A)


(KULDIP SINGH)
Member (J)

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