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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 415 of 2003

New Delhi, this the 1st day of ~~December~~^{January}, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S.A. SINGH, MEMBER (A)

Shri A.K. Malhotra
S/o Late Shri B.L. Malhotra
PO-28C, LIG Flats,
Vishakhapatnam Enclave,
Pitam Pura,
Near ND Block,
Delhi-110088.

...Applicant

By Advocate: Shri S.M. Rattanpaul.

Versus

1. Union of India through
The Secretary,
Ministry of Textiles,
Udyog Bhavan,
Rafi Marg,
New Delhi.
2. The Development Commissioner (Handicrafts)
West Block-7,
R.K. Puram,
New Delhi-110 066.
3. Additional Development Commissioner
(Handicrafts)
Office of the Development Commissioner
(Handicrafts),
West Block No.7,
R.K. Puram,
New Delhi.
4. Shri Ashok Shah
Deputy Director (Vigilance)
Office of the Development Commissioner
(Handicrafts),
West Block No.7,
R.K. Puram,
New Delhi.

..Respondents

By Advocate: Shri K.R. Sachdeva.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant has filed this OA whereby he has challenged an order dated 6.2.2003 according to which the applicant continues to be placed under suspension under Rule 10(5)(c) of the CCS (CCA) Rules because a criminal

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case is pending against the applicant since 1993. The applicant has also challenged order Annexure A-2 vide which he has not been allowed to resume duty. There is another order dated 31.1.2002 Annexure A-3 continuing the applicant under suspension under Rule 10(5)(b) of OCS (CCA) Rules as the same are stated to be arbitrary, unfair, unjustified, illegal and against the principles of natural justice and has prayed for quashing of the same.

2. The brief facts of the case are that the applicant was working as an Assistant Director under the respondents and claims that throughout his service he has been appreciated and has been assigned to look after the legal matters and also to make investigation about 51 cases relating to complaints of misconduct of various officers/officials etc. Because of that the Office Bearers of the Employees Association had become biased and prejudiced against the applicant and they wanted to settle score with him and they had been making complaint against him also, which proved to be false.

3. It is further submitted that in one of such case an employee, namely, Smt. Asha Mehta working at a Training Centre at Haryana under Shri Harish Mathur, the Carpet Training Officer, submitted a claim for her 3 years salary after obtaining a false duty certificate from Shri Mathur. The applicant investigated the same and found that the certificate given by Shri Mathur was false one but one Shri Ashok Shah who had soft corner for Smt. Asha Mehta so much so that he had got her transferred to New Delhi did not like the investigation

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report given by the applicant over the claim of Smt. Asha Mehta and he had become prejudiced against the applicant.

4. It is further submitted that on one such occasion said Shri Shah had asked for certain documents from the applicant orally but when the applicant insisted for a written request Shri Shah again got irritated and became further prejudiced towards the applicant.

5. Similarly Shri Shah's medical claim was rejected so that was another reason that Shri Shah became more prejudiced again with the result that when the applicant had become eligible for second ACP upgradation although no vigilance case was contemplated or pending against him but at the behest of Shri Shah his ACP was not cleared. Even Smt. Mehta had filed a false complaint against the applicant.

6. Thereafter the applicant was subjected to frequent transfers. Thus Shri Shah always wanted to harm the applicant but somehow he got a case registered against the applicant for his performance while functioning as Assistant Director at Service Centre, Allahabad during the year 1990-91 so a charge-sheet dated 13.12.2001 was issued after more than about 12 years about his said performance. Thereafter applicant filed an OA challenging the said charge-sheet. However, the suspension of the applicant was continued under Rule 10(5)(b) because a criminal case against the applicant had been pending since 1993.

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7. Further applicant's suspension was also continued because another departmental proceeding against him was contemplated. However, the order dated 1.2.2002 was stayed by this Tribunal.

8. It is further stated that continuing suspension of the applicant is liable to be quashed on the same reasoning on the basis of which the order dated 1.2.2002 was put to stay.

9. It is further submitted that respondents with some mala fide intention issued two more charge-sheets dated 12.8.2002 and 10.9.2002 to further harass the applicant, as enquiry in those charge-sheets have not been issued. Though suspension has been reviewed but subsistence allowance has not been enhanced.

10. It is further submitted that on 30.12.2002 the Tribunal quashed the charge-sheet dated 13.12.2001 as well as the suspension order.

11. It is further submitted that since the charge-sheet has been quashed so the earlier suspension could not be continued. A representation to that effect was also given when the suspension order dated 13.12.2001 was quashed and thereafter the applicant want to report for duty but he was not given duty.

12. It is further submitted that after the order was passed by this Tribunal the respondents withdrew the charge-sheet dated 13.12.2001 and also the suspension order 13.12.2001. However, they kept in force the order

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dated 31.1.2002 continuing suspension of the applicant under Rule 10(5)(b) of the CCS (CCA) Rules because a criminal case was pending against the applicant since 1993, so now the main prayer of the applicant is to stay his continuing suspension which is continuing since 31.1.2002 under Rule 10(5)(b).

13. As regards the criminal case is concerned applicant pointed out that a FIR was registered on 1.6.1993 when shifting of office was going on and applicant and Shri Mishra was assigned the work of shifting of Central Region Office and Carpet Weaving Training and Service Centre both located at Lucknow from their old office to the Mahanagar Extension, Lucknow. Shri Suryavanshi had lodged a complaint that the applicant and Shri Mishra had abused and beaten Shri Suryavanshi. However, the applicant has been involved in a male fide manner in the said FIR. Shri Mishra has not been suspended till date but the applicant was suspended vide order dated 31.1.2002 because of the same criminal case. Thus there is discrimination against the applicant as Shri Mishra who was the main accused has not been suspended whereas applicant has been suspended.

14. The respondents have restored to pick and choose policy which is not permissible. Respondents have even revoked the suspension order in favour of Shri Prabhakaran who had thrown paper weight immediately on his lady superior officer. Similarly suspension of N.K. Jha was also revoked who was suspended because of serious offences whereas applicant is unnecessarily being continued under suspension.

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15. It is also stated that Rule 10(5)(b) cannot be invoked by the respondents because charges have not yet been framed against the applicant in the criminal case which is pending since 1993 and disciplinary proceedings have commenced earlier so continuing suspension of the applicant is illegal.

16. It is further submitted that since the basic suspension order dated 13.12.2001 has been quashed so suspension cannot be continued and fresh order has to be passed.

17. It is further submitted that suspension is resorted to only when there is apprehension that the accused may tamper with the documentary or oral evidence. If it was not apprehended for the last 10 years that the applicant would tamper with documentary or oral evidence how could he now do so after a lapse of 10 years.

18. Moreover the main accused Shri Mishra has not been suspended whereas the applicant has been suspended.

19. Thus it is stated that the order is liable to be quashed and he should be allowed to joint duty.

20. The respondents are contesting the OA. Respondents pleaded that the background of the applicant is not good. Complaints of various natures ranging from harassment to his subordinate official to exploitation of women employees from accepting grafts from outsiders to seek commission on different payments from employees such

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as embezzlement of Government money to remain absent unauthorisedly has been levied in the complaints. Those complaints were not inquired into so the applicant managed to get scot free despite his confession right from the entry into the department the applicant has been indulging in almost all the enquiries/disciplinary proceedings in one or the other way and used all his weapons to settle his scores. These facts have been observed by the CVC and on the advice of CVC, a charge-sheet dated 13.12.2002 was served upon the applicant so keeping his past record in mind the applicant has been placed under suspension to prevent tampering of records. On a later stage two other charges were found to be, prima facie, sustained against the applicant and accordingly his suspension was extended in both the cases too. The criminal proceedings are still pending and there are some other charges also against the applicant which are under investigation.

21. In so far as the case of Smt. Asha Mehta is concerned, it is quite surprising though in the first part of his enquiry the applicant found Shri Harish Mathur guilty of issuing false certificate in favour of Smt. Asha Mehta on the ground that she had not attended her duty for a long time. But in the second and final part of the enquiry the applicant found no wrong on the part of said Smt. Mehta and strongly recommended regularisation of her absence and payment of all wages for those periods too. Finding the report to be contradictory, the disciplinary authority appointed a team of 3 officers to further enquire into the matter and to arrive at a conclusion. The team examined issue and

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found the report devoid of any merit and in the meantime Smt. Asha Mehta and Shri Harish Mathur have complained against the applicant for seeking bribe which is under investigation.

22. It is further submitted that the applicant just tried to assassin the character of the respondent No.4 knowing the very fact that power to transfer an employee is vested in respondent No.2 only.

23. It is denied that the charge-sheets dated 12.8.2002 and 10.9.2002 are false and arbitrary.

24. The suspension order extended against the applicant belongs to other charges and as per rules required to be continued till the completion of the disciplinary proceedings.

25. It is also submitted that one criminal proceeding and two disciplinary proceedings for major penalty are still pending against the applicant so it is not found in public interest to join duties as his suspension is continued till the proceedings are completed and it has been found necessary to continue the applicant under suspension.

26. Rejoinder was also filed wherein facts reiterated in the OA had been reiterated.

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

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28. The learned counsel appearing for the applicant submitted that though an FIR was lodged against the applicant at the behest of one Shri Suryavanshi on the allegations of commission of atrocities on SC employees and the case is being tried by Special Judge for SC/ST. However, charges against the applicant have been framed under Section 323 IPC and no charge under the special act for dealing with the atrocities on SC has been framed against the applicant rather the charges under those proceedings have been framed against Shri Mishra but he has not been placed under suspension whereas applicant is kept under suspension.

29. It is further pointed out that when co-accused against whom serious charges are there has not been suspended then it is discriminatory and as such the applicant cannot be kept under suspension because of the criminal case.

30. The learned counsel for the applicant has also referred to Swamynews of November, 2002 in case of Rakesh Kumar Sharma Vs. U.O.I. of Jaipur Bench in OA No. 175/2002 wherein it has been observed as under:-

" An employee who is suspended on a criminal charge should not be allowed to remain under suspension till he is finally acquitted after trial".

31. The court had also observed that it is a matter of common knowledge that a criminal case takes years together to conclude as there is a catena of decisions of the Hon'ble Apex Court as well as various High Courts to the effect that if a person has been suspended on a criminal charge, the competent authority

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should not allow him to remain under suspension till he is finally acquitted after trial. If the applicant continued under suspension for an indefinite period, it would amount to wasteful expenditure which can be avoided. The applicant has also referred to a judgment of K. Sukhendar Reddy Vs. State of A.P. and Another reported in 1999 SCC (L&S) 1088 wherein it has been observed as follows:-

" Another vital fact which has come on record is that in the criminal case a number of senior IAS officers, even senior to the appellant, may be found involved but nothing positive or definite can be said as yet as the investigation is likely to take time. The matter is pending with the police since 1.12.1996 when the FIR was lodged at Anakapalli Town Police Station. The investigation has not been completed although about two-and-a-half years have passed. We do not know how long it will take to complete the investigations. That being so, the officer of the rank of the appellant, against whom it has now come out that the disciplinary proceedings are not contemplated, cannot be kept under suspension for an indefinite period particularly in a situation where many more senior officers may ultimately be found involved, but the appellant alone has been placed under suspension, the Government cannot be permitted to resort to selective suspension. It cannot be permitted to place an officer under suspension just to exhibit and feign that action against the officers, irrespective of their high status in the service hierarchy, would be taken".

32. So relying upon this judgment the learned counsel for the applicant submitted that in this very case when Shri Mishra and applicant are involved and charges against Shri Mishra are more serious so why the department has chosen a selective suspension and suspended only the applicant and not Shri Mishra, which cannot be allowed.

33. On the contrary the learned counsel for the respondents submitted that the applicant is being continued under suspension not because of criminal case alone but there are two more disciplinary proceedings

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pending against the applicant which is quite manifest from the impugned order itself whereby the department had withdrawn the charge-sheet dated 13.12.2001 which was quashed vide order in OA 199/2002. However, the order dated 31.1.2002 vide which the applicant was placed under suspension in respect of the charge-sheets dated 17.8.2002 and 19.9.2002 shall remain in force till further orders.

34. Referring to this the learned counsel for the respondents contended that continuing of suspension is not merely because of a criminal case but because of two other disciplinary proceedings which are pending against the applicant so this makes the case of the applicant distinguishably from the case of Shri Mishra.

35. The counsel for the applicant has also argued that under the provisions of Rule 10(5)(b) of the CCS (CCA) Rules, 1965 when the basic order of suspension has been quashed then there can be no order continuing the suspension and thus the exercise of power by the respondents under Rule 10(5)(b) is an illegal exercise of power and this order continuing the suspension should be quashed.

36. On the contrary the learned counsel for the respondents submitted that the provisions of Rule 10(5)(b) contemplate that when a Government servant is suspended or is deemed to have been suspended whether in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the

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authority competent to place him under suspension may for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

37. We have also gone through the provisions of Rule 10(5)(b) and we find that it gives a vast power to the competent authority to pass an order for continuing the suspension and competent authority after recording the reasons in writing can continue the suspension.

38. Admittedly, the applicant was under suspension and thereafter he had committed criminal offence and two other departmental charge-sheets have been issued against him. Those charge-sheets have been issued on 12.8.2002 and 10.9.2002 whereas the judgment quashed the earlier suspension had been passed on 30.12.2002 so while complying with the judgment the department revoked suspension and charge-sheet which was challenged in the OA but the other charge-sheet which was not challenged on the basis of that the applicant can be continued under suspension.

39. The perusal of provisions vesting power with disciplinary authority under Rule 10(5)(b) goes to show that whenever an employee is under suspension and if any other disciplinary proceeding is continuing against him for any other charge, the authority competent to place him under suspension can direct that the Government servant be continued under suspension, so it is immaterial if the earlier suspension order had been

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quashed by the Tribunal. The disciplinary authority in exercise of powers under Rule 10(5)(b) can continue the suspension of the applicant. Moreover, the disciplinary authority had complied with the directions when they revoked the suspension and charge-sheet which was challenged in the OA and disciplinary authority has a right and power to keep the applicant under suspension in exercise of power under Rule 10(5)(b). It is not required that a fresh order is to be passed for suspending the applicant, thus we find that this contention of the applicant has no merits.

40. The perusal of the entire pleadings go to show that the applicant has mainly attacked the suspension order which was issued on the basis of the criminal charge for which he is facing trial before the Special Judge, Lucknow and as such applicant submits that when he has been charged under Section 323 of IPC which is a very minor offence and it is a selective suspension to that extent we may mention that the suspension in this case is not only because of the criminal offence for which the applicant is facing a trial with Shri Mishra. But it is also on the basis of the fact that two charge-sheets which have been issued by the department and disciplinary proceedings on those charge-sheets have to take place.

41. Thus we are of the considered opinion that the department has a right and power to keep the applicant under suspension because of the cumulative effect of the criminal case as well as two other charge-sheets.

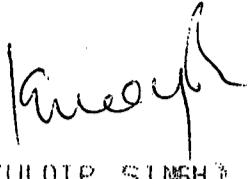


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42. In view of the above, OA has no merits and the same is dismissed. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

Rakesh