

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1059/2003

Wednesday, this 29th day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A.Singh, Member (A)

Sh. Someshwar,
S/o Late Sh. Uma Shankar Mishra,
r/o E-4, D-1 Type Flats,
San Martin Puri, Chanakya Marg,
New Delhi-110 021.

(By Advocate: Shri Ashwani Bhardwaj) ...Applicant.

Versus

1. Union of India
Through The Secretary to Govt. of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi.

2. The Under Secretary to Govt. of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi.

(By Advocate: Shri R.N.Singh for Shri R.V.Sinha) ..Respondents

O R D E R (ORAL)

Shri Justice V.S. Aggarwal:

The applicant joined the Indian Revenue Service in 1967. On 7.11.2001, the Central Bureau of Investigation had arrested the applicant pertaining to an offence punishable under Section 7 read with sub-section 13(2) of the Prevention of Corruption Act, 1988, and invoking sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, a suspension order had been passed which reads:

"WHEREAS, a case against Shri Someshwar, Chief Commissioner of Central Excise, Delhi Zone, Delhi, in respect of a criminal offence is under investigation.

AND WHEREAS, the said Shri Someshwar was detained in custody on 7.11.2001 for a period



(2)
exceeding forty eight hours.

NOW, THEREFORE, the said Shri Someshwar is deemed to have been suspended with effect from the date of detention, i.e. the 7th November, 2001 in terms of clause (a) of sub-rule (2) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, and shall remain under suspension until further orders.

BY ORDER AND IN THE NAME OF THE PRESIDENT)"

2. The applicant had earlier preferred O.A.No.258/2003. The same was disposed of at the preliminary hearing stage because pertaining to the question raised by the applicant, no representation had been filed. The Tribunal had directed that if so advised, he may file a representation. Accordingly, the petition was dismissed as withdrawn.

3. The applicant submitted a representation and thereupon the present petition has been filed seeking quashing of the orders suspending the applicant.

4. Keeping in view the sequence of events to be completed, we deem it necessary to mention that during the course of submissions it was pointed that the allegations which pertained to acceptance of bribe of Rs.5 lacs was the subject-matter of the first information report. The respondents had pointed that the investigation has not been completed. The applicant's counsel fairly told us that sanction of appointing authority has also been obtained but perhaps the report under Section 173 of Code of Criminal Procedure, criminal proceedings have not been filed before Sub-Judge. During the course of submissions, learned counsel for applicant contended:

ls Ag — e

(3)

a) the suspension order has been passed invoking Clause (a) of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the suspension is still being continued despite the applicant having been admitted to bail; and

b) the applicant could not be kept under suspension for an indefinite period. In respect of his plea, learned counsel relied upon the instructions on the subject.

4. So far as the first contention of the applicant is concerned, reference with advantage can be made to the decision of the Apex Court in the case of Union of India Vs. Rajeev Kumar, JT 2003 (5) SC 617. Supreme Court had been called upon to adjudicate this controversy keeping in view certain pronouncements by this Tribunal and the Delhi High Court and also by the Allahabad High Court. A Full Bench of the Allahabad High Court in the case of Chandra Shekahr Saxena and ors. Vs. Director of Education (Basic) Uttar Pradesh, Lucknow and anr., 1997 Allahabd Law Journal 963 had concluded when there is an order of deemed suspension passed under sub-rule (2) of Rule 10 of the CCS (CCA) Rules, in the event when the person is admitted to bail it should be considered with fresh application of mind and a fresh order should be passed in this regard. The said judgement of the High Court was followed by a Division Bench of Delhi High Court in the case of Rajeev Kumar. Union of India had challenged the same before the Supreme

USAg ————— e

(11)

(4)

Court. The Supreme Court had set aside the above said judgement concluding that sub-rule (2) of Rule 10 is a deemed provision and thereupon while considering various provisions of the CCS (CCA) Rules held that the logic and reasoning taken by the High Court in the case of Rajeev Kumar is not valid.

5. Once the Apex Court had adjudicated upon the controversy, we have little option but like true soldiers to accept the findings which bind us.

6. Pertaining to the other plea raised at the Bar, our attention was drawn by the learned counsel to the fact that while placing a government servant under suspension, the factors to be kept in view are whether the purpose can be served by transferring the official from his present station to a place where he may not influence the investigation. If the respondents find that the purpose cannot be served by transferring the official from his post to another post, then the respondents are required to record their reasons before placing the official under suspension. Reliance was placed on the instructions of the Government of India dated 15.7.1976, which provides as under:

"(d) In case where an official is deemed to have been placed under suspension under Rule 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as soon as the official is released from Police Custody the competent authority should consider the case to decide whether the continuance of the official under suspension is absolutely necessary or not. If the period of suspension has already exceeded the limit of three months and the competent authority does not find justification to revoke the

Q. Raj

(5)
suspension, in such case he should immediately make a report to the next higher authority, giving detailed justification for continuing the official under suspension."

7. It is on the strength of these facts that it was highlighted that more than six months have passed and still the applicant continues to be under suspension.

8. On the representation of the applicant, the respondents have passed an order dated 17th June, 2003. The reasoning forthcoming reads:

"7. The representation of Shri Someshwar has been considered carefully. It is observed that the contentions of Shri Someshwar that he had no official interaction with Shri Chaturvedi, are not borne out by investigations. However, the complete facts would be known only on completion of investigation by the CBI. So far as revocation of deemed suspension after release of the officer on bail is concerned, it is observed that in the order placing him under suspension it was mentioned that a case against him in respect of a criminal offence is under investigation and that he was detained in custody on 7.11.2001 for a period exceeding forty eight hours. In the order of suspension one of the reasons was that a case in respect of a criminal offence was under investigation. The investigation is yet to be completed. As such the reason for placing the officer under suspension still continues. Although there are instructions that the number of officers under suspension should be kept at bare minimum, the suspension of Shri Someshwar was ordered in view of the grave charges as the bribe amount of Rs.5 lakhs was recovered in the presence of independent witnesses."

9. It clearly shows that the applicant had been ~~arrested~~ ^{suspended} keeping in view the totality of the facts and the gravity of the charge which we have already referred to above. The gravity of misconduct alleged cannot be ignored. We do not hesitate to further add that this Tribunal is not expressing on the merits of the matter but only taking the


lsAg _____

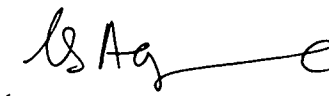
(6)

allegation against the applicant on its face value. When the gravity and the nature of misconduct has been taken into consideration and if the authority in that case proposes that the applicant, for the present, should remain under investigation, we find that this Tribunal should not interfere in the matter.

10. Accordingly, we dispose of the present application holding:

- a) there is no ground for the present to interfere in the order of deemed suspension;
- b) respondents should, in accordance with the instructions, review the suspension order periodically.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/kdr/