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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 1105/2003

New Delhi this the 9th day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Ashok Kumar Aggarwal
R/o 56, Ashok Road
New Delhi

...Applicant

(By Advocate: Shri Dhruv Mehta with
Ms. Shobha, Advocate)

vs.

Union of India through
Secretary
Ministry of Finance
North Block
New Delhi.

.....Respondents.

O R D E R

Justice V.S. Aggarwal:-

Applicant (Ashok Kumar Aggarwal) is an officer of the Indian Revenue Service. He was arrested and detained by the Central Bureau of Investigation for a period exceeding 48 hours. An order was passed under sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, "the Rules") and he was placed under deemed suspension. The applicant preferred OA No. 783/2000. On 17.1.2003, this Tribunal had quashed the order of deemed suspension. This Tribunal, however, held

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that nothing said therein was any expression of opinion regarding the seriousness of the charges and further that quashing of the suspension order will not debar the competent authority from passing a fresh order of suspension in accordance with law, if deemed appropriate.

2. Subsequently, the President passed two orders dated 25.4.2003. By virtue of the first order, the suspension of the applicant was revoked subject to the outcome of the writ petition that is being filed in the Delhi High Court. By another order of the same date, the applicant was again placed under suspension which reads:-

"Whereas cases against Shri Ashok Kumar Aggarwal, Joint Commissioner of Income Tax, Delhi in respect of criminal offences (RC.S-18/ 1999/ E/ 0001 and RC.S-19/ 1999 /E/0006) are under investigation/trial.

Now, therefore, the President in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal), Rules, 1965, hereby places the said Shri Ashok Kumar Aggarwal under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force, the headquarters of Shri Ashok Kumar Aggarwal, JCIT should be New Delhi and the said Shri Ashok Kumar Aggarwal shall not leave the headquarters without obtaining the previous permission of the undersigned.

(By order and in the name of the President)".

3. By virtue of the present application, the applicant seeks quashing of the said orders.

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4. The learned counsel for the applicant contended that the two orders have been passed:-

- (a) without any application of mind;
- (b) more than three years have elapsed since the applicant was arrested and there is no end of the prosecution in sight and, therefore, the applicant cannot be continued to be suspended and further in the impugned orders, the respondents have mentioned two criminal cases against the applicant which are under investigation/trial which shows that correct facts have not been mentioned.

5. We have carefully considered the said pleas. So far as, the argument that there is no application of mind because of the fact that by the same order of 25.4.2003, the earlier order has been revoked and a fresh order of suspension has been passed is concerned, the same is said to be rejected.

6. In the present case, reasons have clearly been given though in brief as to why the respondents deemed it appropriate to suspend the applicant. This was because of two criminal cases having been registered against him. We were informed that in both the cases, report under

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Section 173 Code of Criminal Procedure has been filed before the Special Judge, Delhi but arguments as to if charge has been framed or not have to be addressed and the matter has been delayed for some reason or the other with which we not presently concerned. It is a settled principle of law that it is for the disciplinary authority to consider the facts and circumstances of the case. It is within the domain of the said authority while suspending an officer to consider the gravity of the charges of misconduct or defalcation of the funds or serious acts of omission and commission. The public interest has also to be kept in mind. It is not always necessary that order of suspension of a particular officer must give detailed reasons. Once we have been informed about the two pending criminal cases and, therefore, the authorities deemed it appropriate to suspend the applicant. Reasons are obvious. Therefore, it cannot be termed that the order so passed is without any application of mind.

7. In that event, the learned counsel strenuously pressed the contention that the applicant is under suspension for the past more than three years and, therefore, the order now passed necessarily should be quashed. He relied upon a decision of the Supreme Court in the case of **State of Orissa v. Bimal Kumar Mohanty**, (1994) 4 SCC 126; in the case of **K. Sukhendar Reddy v.**

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State of A.P. and Another, (1999) 6 SCC 257 and a decision of this Tribunal in the case of Bani Singh v. Union of India & Ors. in OA No.833/2000 rendered on 6.2.2001.

8. In the case of Bimal Kumar Mohanty (supra), he was working as a Manager of Orissa State Guest House. The audit reports noted serious financial irregularities, fabrication of records and vouchers besides misappropriation. The appointing authority had ordered an enquiry into the irregularities. The State Administrative Tribunal suspended the order of suspension. It is in this back-drop of the facts that the Supreme Court had considered the said question. In paragraph 13, the law laid down by the Supreme Court was as under:-

"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but

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is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. the suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

Subsequently, the Supreme Court had set aside the order passed by the State Administrative Tribunal further noting that the exercise of discretion was improper. The facts were totally different but the Supreme Court clearly held that the gravity of the offence, the public interest, the time taken are all the factors which have to be kept in mind.

9. Similar view was expressed by the Supreme Court in the case of K.Sukhendar Reddy (supra). Therein the investigation had not been completed for many years. The Supreme Court had set aside the order of suspension of the concerned person and had held:-

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"7. 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 investigation. 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 along 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."

This Tribunal in the case of Bani Singh (supra) by and large while setting aside the order of suspension had concluded that there was no chance of tampering of any evidence or witnesses during the criminal trial. This Tribunal concluded that this will depend on the facts of each case. In the said case, the investigation had been completed but the trial was in progress and on the facts, this Tribunal had quashed the suspension order.

10. From the aforesaid, it is clear that there can be no straight-jacket formula in this regard. The facts of each and every case have to

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be taken care of. If there is inordinate delay, the Tribunal can interfere and quash the suspension orders but certain facts necessarily have to be kept in mind while a person is suspended, namely, the nature of the alleged dereliction of duty, the public interest involved therein, the gravity of the misconduct and though suspension is not a punishment but it is only one of the forbidding or disabling provisions to refrain an employee to avail further opportunity to perpetrate the alleged misconduct.

11. What is the position herein? The alleged dereliction of duty so far put is serious. We are not delving into that nor expressing any opinion on that count because the matter has to be adjudged at the proper stage. Though the incident pertains to more than three years back, but still it is admitted that presently report under Section 173 of the Code of Criminal Procedure has been filed in a court of competent jurisdiction. As yet, the argument on the question as to if a charge has been framed or not have to be addressed or that stage has not been arrived. In face of the aforesaid, there is little ground for this Tribunal to interfere. Otherwise also, we have already noted that the earlier suspension order was quashed by this Tribunal. The fresh suspension order is dated 25.4.2003. In that

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event, the ground of delay becomes insignificant as earlier there must be taken to be no order of suspension.

12. Resultantly, the present application being without any merit is dismissed in limine.

(Govindan S. Tampi)
Member (A)

/sns/

(V.S. Aggarwal)
Chairman