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**Central Administrative Tribunal
Principal Bench**

OA NO. 2423/2003

New Delhi, this the *19th* day of April, 2006

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Smt. Chitra Chopra, Member (A)

Shri Lakshmi Chand
S/o Shri Harbans Singh
R/o D-297, Ram Prastha,
Ghaziabad (UP).Applicant

(By Advocate: Shri G.D. Gupta, Sr. Counsel with Shri S.K. Gupta)

-Versus-

Union of India through
Secretary
Government of India
Ministry of Finance
Department of Revenue
North Block, New Delhi.Respondent

(By Advocate: Shri V.P. Uppal)

O R D E R

By Mr. Shanker Raju, Member (J) :-

Applicant seeks quashing of suspension as well as quashing of disciplinary proceedings initiated vide Memo dated 11.05.2000 apart from challenging order passed on 02.04.2004 continuing the suspension on review for further period of 180 days.

2. Applicant working as Assistant was placed under suspension on 16.07.1999 in contemplation of disciplinary proceedings. Applicant represented against the order of suspension. When the suspension was not revoked, he preferred an OA No. 264/2000 before the

Tribunal challenging continued suspension. Meanwhile applicant was served with a charge memo for a major penalty issued under Rule 14 of CCS (CCA) Rules, 1965 on 11.5.2000. OA No. 264/2000 was disposed of as withdrawn on 22.08.2000 with liberty to proceed in accordance with law. The memo was responded to through reply dated 19.5.2000.

3. In OA No. 2423/2003 filed by the applicant challenging suspension order, having been informed that chargesheet was issued in May, 2000 and having taken cognizance of appointment of enquiry officer in August, 2000, the Tribunal vide its order passed on 21.10.2003, observed as under:

"4. At this stage, we are indeed not disputing the preposition that if there is undue delay, this Tribunal in an appropriate case will quash the suspension order.

5. In the present case however, as we are informed that the enquiry officer has since been appointed and no further steps are being taken.

6. When rights of the respondents are not likely to be affected, at the admission stage we only direct that enquiry should be proceeded and completed within six months from today. In case the compliance of the direction is not effected, the applicant would be at liberty to seek revival of the present petition.

7. So far as revocation of suspension is concerned, we hope that there is a periodic review in accordance with the rules. Even if it has not been done, the concerned authority i.e. respondent no. 1 would in accordance with the instructions review periodically the suspension. O.A. is disposed of."

4. If one has regard to the above, in the wake of continued suspension, which is delayed, the Tribunal was satisfied as to appointment of the enquiry officer and further steps to be taken in the disciplinary proceedings, and at the admission stage, a direction had been issued to proceed and complete the enquiry within six months from 21.10.2003. It is, however, observed to review the suspension of the applicant periodically as per rules and instructions. Accordingly, orders passed from time to time also took into consideration the criminal prosecution launched against the applicant where sanction was accorded in 2003, the review of the suspension was undertaken by the respondents with a stipulation of suspension also on the ground of applicant being prosecuted by the CBI under the provisions of Indian Penal Code and Prevention of Corruption Act. The aforesaid is being challenged in the present Original application.

5. Learned Senior counsel Shri G.D. Gupta stated that the implication of order passed by the Tribunal on 21.10.2003 in OA No. 2423/2003 whereby six months time had been accorded to the respondents to proceed and complete the enquiry which comes to April, 2004, having not completed the proceedings, the same stands abated. Learned counsel would also contend that once Santa Singh and J.C. Chopra, who had been alleged of the same charges, had been re-instated from suspension whereas a similar treatment having not been meted out to the

applicant smacks of arbitrary and discriminatory action by the respondents, which is violative of Articles 14 & 16 of the Constitution of India.

6. Learned counsel would contend that the respondents have been apprised of the order passed on 21.10.2003 yet having not filed any MA for extension and no challenge to the aforesaid would be deemed quashing of the proceedings and as the suspension, initially resorted to, was on account of contemplated proceedings has to come to an end and for want of a separate order on account of criminal case placing applicant under suspension under Rule 10(i)(b) of the Rules *ibid*, review of the suspension issued on 2.4.2004 and thereafter is also nullity in law.

7. Learned counsel of the respondents Shri Uppal vehemently opposed the contentions and stated that it is only the substance not the form of the order which is relevant and placing reliance on a decision of ***State of Sikkim vs. Dorjee Tshering Bhutia & Ors.***, 1991 (4) SCC 243, it is contended that if source of power is traceable, it cannot be set aside in a different yardstick. The same view has been reiterated on the basis of the decision of the Apex court in ***Union of India vs. Rajiv Kumar***, JT 2003(5) SC 617.

8. Learned counsel would contend that by an order dated 29.03.2006, being prosecuted for criminal offence and on account of pending disciplinary proceedings,

applicant's suspension has been reviewed and extended for 180 days beyond 29.3.2006. As regards abatement of proceedings, learned counsel would contend that once there is no stipulation in the order passed by the Tribunal on 21.10.2003 as to the implication of abatement of the enquiry the order, being passed ex parte, cannot be read to infer that failure to complete proceedings would culminate into its abatement. Learned counsel relied upon the decision of the Apex court in **U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. vs. Sanjiv Ranjan**, 1994 (SCC) L&S 67, to contend that court cannot interfere in suspension on delay in the enquiry after filing chargesheet. It is also stated by relying upon a decision of the Apex court in **State of Orissa through its Principal Secretary, Home Deptt. vs. Bimal Kumar Mohanty**, 1994 SCC (L&S) 875, that when a person like applicant is accused of heinous offence where his integrity is in question, on sanction to prosecute, his suspension cannot be revoked.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. A decision of the Tribunal is not a statute. It cannot be read as it is. The ratio decided by the decision is to be derived from the point in controversy, the cause of action, its adjudication as held by the Apex court in **Bharat Forge Co. Vs. Uttam Nakara**, 2005 (SCC) L & S 298.

11. A Full Bench of the Tribunal in **J.M. Burman vs. Union of India & Ors.**, 2004 (2) ATJ 340, while discussing the scope of failure to comply with the order of the Tribunal within the time prescribed and its effect rendering order illegal, the following observations have been made:

"14. Learned counsel for the applicant relied upon the decision of the Supreme court in the case of M.L. Sachdev vs. Union of India & Anr. (1991)1 SCC 605. The Supreme Court was considering a controversy where there was non-compliance of the directions of the Supreme Court to constitute a Commission under M.R.T.P. Act, 1969 for filling up the post of Chairman and Members within a specified time. The extension of time had not been prayed or granted. The Supreme Court held that this was disobedience to the directions of this court.

15. It is settled principle in law that the ratio decidendi of the decision of Apex court would bind, but otherwise it may be confined to the facts of the case. As we have referred to above in the case of M.L. Sachdev (*supra*) the sole controversy before the Supreme Court was as to if the said person had committed a contempt of the court or not. The said decision had nothing to do with the present controversy before us. It must, therefore, be held to be distinguishable.

16. Our attention has also been drawn towards another decision of the Supreme Court (1997) 4 SCC 430. In the said case also, the Apex Court came heavily on the State of Bihar for not taking action for giving explanation of delay, but it was not the controversy raised or considered that if after the time prescribed has lapsed, the Disciplinary Authority/Appellate Authority can or cannot pass such an order. Therefore, the said decision also is having little impact on the controversy before us.

17. When the rules prescribe the filing of the appeal, in that event the concerned authority has the sanction of law to pass the order. Mere delay of 2/3 months

will not take away the said right to hold that on that ground that said order should be quashed.

18. We have already referred to above basic principles. We reiterate that if there is no inordinate delay which causes prejudice, in that event the Disciplinary Authority/Appellate Authority does not become functus officio and can pass the appropriate order unless there is a clear direction otherwise. In that view of the matter, we over-rule the decisions of the Lucknow Bench, Cuttack Bench and Calcutta Bench mentioned above and we answer the question referred to this Full Bench as under:

"When there is a failure to comply with the order passed by the Tribunal within the time prescribed, the authorities can pass the appropriate order. It will not render the order so passed to be illegal and not binding unless there is inordinate delay which causes prejudice to the concerned person."

12. If one has regard to the above, in its grammatical and literal construction, harmoniously the applicant approached the Tribunal in OA No. 2423/2003 with a challenge to the suspension order and with a legal backdrop of non-completion of proceedings and delay thereof, the basic stress was for revocation of suspension and in this view of the matter taking cognizance of the fact that the enquiry officer has since been appointed and no further steps are taken thereof, without effecting the rights of the respondents, at the admission stage, without putting the respondents to notice, a direction issued to proceed and complete the enquiry within six months, the revival of the present OA on non-compliance has been ordered.

13. In the present OA, which has been revived by way of amendment, a challenge has been made to the disciplinary proceedings on the ground of abatement.

14. It is trite law that in a judicial order directions of the relief accorded has to be interpreted on the basis of specific directions issued and cannot be inferred or implied. Whatever has not been directed cannot be granted. By ordering completion of enquiry within six months no directions had been issued as to consequence thereof which inter alia includes abatement of the proceedings. For want of such directions, we cannot now deem abatement of the proceedings as by holding the proceeding, we do not find any prejudice caused to the applicant except non-revocation of his suspension which has now been continued on review having regard to pending criminal prosecution against him. The revival of the OA has been with a view to enable the applicant to re-agitate the issue of quashing of the continued suspension.

15. The Full Bench decision (Supra) holds a precedent as to non-deeming quashing of the proceedings on the action of the respondents not adhering to the time limit. Had there been a direction as to the abatement of proceedings on non-completion of the enquiry within six months, the applicant would have been within his right to contend quashing of abatement. In the course of enquiry applicant having been granted sufficient opportunities in compliance of principles of natural

justice and laid down procedure and rules, no prejudice has been caused to him.

16. As regards suspension, once there is a pending chargesheet against the applicant on the ground of his alleged involvement for LTC advance etc. for which he is also being prosecuted, the re-instatement of the applicant would not be in consonance with law.

17. As regards continued suspension on account of prosecution of the criminal case, though the orders passed on 2.4.2004 and 29.03.2006 reviewing the orders continuing the suspension of the applicant takes cognizance of the prosecution launched against the applicant by the CBI, yet we have taken a view in OA 2261/2005 in **R.C. Bakshi vs. Union of India**, where on acquittal in a criminal case of corruption, a continued suspension on pending criminal trial has been observed to be against the Memorandum of DoP&T dated 21.7.1980 and in consonance with rule 10 (5) (b) of the Rules ibid and following observations have been made:-

"18. Another provision of rule 10 of the Rules ibid, which have been amended in 2003, as contained in Rule 10(6)& (7) of the Rules, 1965, provides that in no event the suspension would exceed 90 days and thereafter it has to be reviewed and at best, it has to be continued for another 180 days.

19. It is impermissible for the respondents to continue the suspension at a stretch without passing any order under Rule 10 (1)(b) as suspension, which has now been extended to 180 days as per the amended Rules ibid, is passed in review. This cannot be

justified as without jurisdiction under Rule 10(5)(b) of the Rules, 1965. Though the power exists, the same can be exercised in any manner but if there is no jurisdiction to pass such an order under Rule 10(5)(b), as interpreted by the Apex Court in **Rajiv Kumar's case** (supra), the suspension resorted to on account of a criminal trial on a deemed basis, culminates on acquittal of the applicant and automatically comes to an end. At that point of time, FR 54 B to treat the intervening period as per rules have to come in operation.

20. Nothing precluded the respondents when both these criminal cases were registered at the time the order was passed placing the applicant under suspension to incorporate the factum of criminal trial in criminal case under disproportionate assets. Having failed to do so, the order passed now assailed is not in tune with Rule 10(1)(b) of the Rules, 1965 and for want of an order passed under Rule 10(1)(b) the period of suspension has to be regulated accordingly.

21. In the result, for the foregoing reasons, the present OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to deem the applicant as reinstated in service w.e.f. 26.6.1997 and thereafter decide the period of suspension in the light of decision of the Apex Court referred to above and FR 54 B, within a period of two months from the date of receipt of a copy of this order. The applicant would be accorded all the consequential benefits within the aforesaid time. However, it shall not preclude the respondents from passing an order under Rule 10("1)(b) of CCS (CCA) Rules, 1965, if so advised."

18. However, if one has regard to the above, nothing precludes the respondents to issue a separate order of suspension under Rule 10(i)(b) of the Rules ibid to continue the applicant under suspension on account of

criminal cases. However, the revocation of suspension will not occasion till the proceedings are culminated.

19. Another angle, which has to be probed into, is that certain officers like J.C. Chopra and Santa Singh, who had been proceeded for the charges along with applicant and also figuring in the criminal prosecution, their suspension has been revoked by the respondents being similarly circumstanced though the applicant had also fraudulently received amount of LTC like others not considering revocation of his suspension without any reasonable basis and object sought to be achieved is an infraction to the principles of equality enshrined under Article 14 of the Constitution of India. However, to revoke the suspension on discrimination, it is for the respondents to consider this aspect of the matter.

20. In the result, for the foregoing reasons, we dispose of the present Original Application with a direction to the respondents to re-examine the request of the applicant for revocation of suspension and his plea of discrimination i.e. differential treatment is meted out to his counter parts equally placed, and pass a reasoned and speaking order, within two months from the date of receipt of a copy of this order. No costs.

Chitra Chopra
(Smt. Chitra Chopra)

Member (A)

S Raju
(Shanker Raju)
Member (J)

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