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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-08-2008

Judge : V Bali, C A Chitra

Appellant : Dev Anand

Respondent : Union of India (Uoi) Through

Judgement :

1. Dev Anand, Assistant Post Master General (Vigilance), Delhi Circle, the applicant herein, through present Application filed by him under Section 19 of the Administrative Tribunals Act, 1985, calls in question order Annexure A-1 issued in September, 2007 vide which the applicant on account of his involvement in a criminal case and in contemplation of disciplinary proceedings to be initiated against him, was placed under suspension in view of the provisions contained in sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter to be referred as the Rules of 1965).

The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension, where a disciplinary proceeding against him is contemplated or is pending, or where, in the opinion of the authority aforesaid he had engaged himself in activities prejudicial to the interest of security of the State, or where a case against him in respect of any criminal offence is under investigation, inquiry or trial, as would be made out from the reading of rule 10 of the Rules of 1965.

2. Shri C. Hari Shankar, learned Counsel representing the applicant, contends that in view of DGP&T's order dated 15.7.1976, there are five distinct circumstances delineated, existence of which alone would make the order of suspension permissible or justified, and inasmuch as, the case of the applicant would not fall under any of the five circumstances mentioned in the order aforesaid, the applicant could not be placed under suspension. The five circumstances mentioned in the aforesaid order are as follows: (i) where the continuance in office of the Government servant will prejudice investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents) (ii) where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which he is working (iii) where the continuance in office of the Government servant will be against wider public interest e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption (iv) where preliminary enquiry into allegations made has revealed a prima facie case justifying criminal or departmental proceedings which are likely to lead to his conviction and or dismissal, removal or compulsory retirement from service; and (v) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

3. We have heard the learned Counsel representing the applicant and with his assistance examined the records of the case. We do not find any merit in the only contention of the learned Counsel as noted above.

Concededly, the applicant is involved in a criminal case which pertains to possession of disproportionate assets commensurate to his income.

Even though, the FIR or other relevant documents have not been placed on records, but from the copy of the application filed on behalf of the applicant before Special Judge, Patiala House Courts, New Delhi (page 58-64 of the paperbook), it appears that a case was registered against him in PS CBI Lodhi Colony under Sections 13(2) and 13(1)(e) of Prevention of Corruption Act, 1988 on 31.7.2007, which is under investigation. That the matter is under investigation has been

mentioned by the applicant himself in the application referred to above. It is mentioned that the Special Judge, Patiala House Courts had issued search warrant against the applicant and his relatives in RC-26A- DAI-2007 PS CBI Lodhi Colony and there was indeed a search of his premises. The CBI team searched the premises occupied by the applicant on 2.8.2007 and documents/articles/cash amount were seized from his possession. An amount of Rs. 60000/-, as per the showing of the applicant, was taken into possession by the team which searched his house. The other averments in the application, of course, are with regard to explanation or justification of recoveries made from his premises. In response to the application aforesaid, the CBI filed a reply before the Court of Special Judge, Patiala House Courts, which is also placed on record as Annexure A-10, wherein it is mentioned that case RC DAI-2007-A-0026 dated 30.7.2007 has been registered by ACB Delhi Under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act against the applicant on the allegation that during the period April, 2003 to 30.7.2007 when he was posted as Deputy Chief Post Master/Senior Superintendent of Post, New Delhi, he was in possession of assets disproportionate to the known sources of his income to the tune of Rs. 33,95,000/-. It has further been mentioned that in pursuance of warrant of search dated 1.8.2007 issued by the court, search was carried out at his residential premises, when the aforesaid cash amount and cheque book was seized. It has also been mentioned that investigation of the case is at its initial stage. The reply aforesaid appears to have been filed in the court on 6.11.2007. We are of the considered view that the circumstance delineated at sl. No. (iv) reproduced above, exists in the present case, as, surely, on preliminary enquiry made by the CBI it has been found that the applicant is in possession of assets disproportionate to his known sources of income. It is not only a case where preliminary enquiry into allegations made has revealed a prima facie case justifying criminal or departmental proceedings, but the same are indeed pending against the applicant. That apart, the applicant who is involved in a corruption case cannot possibly urge that his continuance in office of the Government servant is not likely to seriously subvert discipline in office, or the same shall not be against public interest. We are of the considered view that while passing an order of suspension, there would be no requirement to mention existence of any of the five circumstances delineated in

the order dated 15.7.1976.

4. Before we may part with this order, we would like to mention that the applicant is at pains to explain that he is innocent and the case sought to be made out against him has no legs to stand. Surely, this Tribunal cannot possibly comment upon this aspect of the case. So far no chargesheet has been issued against the applicant, as mentioned by the learned Counsel during the course of arguments. If, the applicant may have a case that the charges are frivolous or are against the rules, he has to avail his remedy at an appropriate time. Surely, when no chargesheet has been issued so far, there is no prayer made in the Application for quashing the chargesheet as such. Frivolity of the case against the applicant thus cannot be gone into at this stage.

5. We find no merit in this Application and thus dismiss the same in limine. In totality of facts and circumstances of this case, we, however, direct the respondents to issue a chargesheet to the applicant as expeditiously as possible and preferably within a period of two months from today, as there appears to be some substance in the contention raised by the learned Counsel representing the applicant that the departmental proceedings cannot be delayed in the manner as has been done in the present case. The applicant was suspended in September, 2007 and as per the case set up by him, no charges against him have been framed so far. It is in consideration of this contention of the learned Counsel that we have ordered that if the department may be of the view that the departmental proceedings against the applicant indeed have to be initiated, the chargesheet must be issued within the time frame as mentioned above.

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