

Jitender Singh Vs. the Commissioner of Police, New Delhi and Another

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jun-03-2009

Judge : Judges: L.K. JOSHI, VICE-CHAIRMAN, ADMINISTRATIVE MEMBER & THE HONOURABLE DR. JUSTICE DHARAM PAUL SHARMA, JUDICIAL MEMBER

Appeal No. : OA No.2394 of 2008

Appellant : Jitender Singh

Respondent : The Commissioner of Police, New Delhi and Another

Advocate for Pet/Ap. : For the Appellant: M.K. Bhardwaj, Advocate. For the Respondent: Renu George, Advocate.

Judgement :

Dr. Dharam Paul Sharma, Member (J):

The applicant has filed the present application feeling aggrieved of his continued suspension from 21.03.2003. Earlier he had also filed OA-1386/2008 on this ground which was disposed of by this Tribunal vide its order dated 09.07.2008 with the direction to the Respondent No. 2 to consider applicants representation and pass reasoned and speaking order thereon within a period of one month from the date of receipt of a copy of the order. In compliance thereof, the respondents have passed order dated 29.09.2008 rejecting the applicants representation. The present application is directed against the said rejection of representation as well as the order of suspension dated 21.03.2003 (Annexure-II) and rejection of his earlier representation vide respondents communication dated 01.11.2007 (Annexure-III) whereby the applicant was informed that he had to wait till chargers were framed. The applicant also prays for issue of directions to the respondents to reinstate him with all consequential benefits including arrears.

2. The applicant is a Constable in Delhi Police and at the time of passing of impugned order, he was posted at PS Inderpuri. The impugned order was passed in view of his arrest and involvement in a criminal case FIR No.6/2003, under Sections 406, 420, 468, 471, 120-B IPC PS Special Cell (SB), Lodhi Colony, New Delhi. The said case was registered on the complaint of one Shri Paget Singh S/o Shri Ranjit Singh alleging therein that one Dr. Sanjay Kumar Banal cheated rupees five lacs on the pretext of sending him to USA for job along with preparation of passport. The said Dr. Bansal got prepared passport for the complainant Pragat Singh from RPO, Delhi in fake address of WZ-883/1, Narina Village, Delhi where the complainant had never resided. Dr. Bansal neither arranged visa for the complainant nor sent him to USA for job. The cheque given by Dr. Bansal to the complainant was dishonored by the Bank. It is alleged that the applicant herein gave witnesses to the false addresses for the passport of complainant Pragat Singh and certain other persons. On the basis of the witnesses given by the applicant, ASI Om Prakash had submitted his verification report and accordingly, the passport were issued to all of them by R.P.O. Delhi. Both ASI Om Prakash and Jitender Singh the applicant were suspended in these circumstances. However, the suspension of ASI Om Prakash was revoked vide order dated 02.11.2006 and and he was reinstated in service. The applicant Jitender Singh also filed representation

for revocation of his suspension wherein he has, inter alia, taken a plea that ASI Om Prakash, who was also placed under suspension in the same case, was reinstated in service from his suspension. This plea was, however, not accepted by the respondents for the reason that ASI Om Prakash, who was placed under suspension, was reinstated by a different Disciplinary Authority. The correctness of this has been impugned in these proceedings. Earlier also, the applicant had made a representation on 19.09.2007 wherein he also sought parity with ASI Om Prakash and stated that the delay in finalization of the case could not be attributed to him. He had given a long list of persons who were reinstated from suspension during the pendency of criminal cases against them. In response to this, applicant was informed that he had to wait till framing of charges.

3. In his application, the applicant has assailed the legality of the impugned order on the ground, inter alia, that the respondents have not given any reason to establish difference between the case of ASI Om Prakash and the applicant and the impugned order has been passed without application of mind. The act of respondents is in violation of Articles 14 and 16 of the Constitution of India. It has been stated by the applicant that he had no concern with the verification of addresses etc. of the complainant and others who have applied for passports. It was the duty of ASI Om Prakash who was specially deputed for this purpose. The applicant, in no way, can be connected with this work and he has only signed the verification form in good faith. He was not even named in the FIR. His continued suspension is not in accordance with the administrative instructions on the subject as well as the principle enunciated by the Rajasthan High Court in Guman Singh Barath Vs. Stte of Rajasthan and others (2003(1) ATJ 420).

4. At the hearing, the learned counsel for the applicant referred to the impugned order dated 29.09.2008 that has been passed in pursuance to the direction issued earlier in the aforesaid matter. It has been strongly contended that if ASI Om Prakash who was also suspended in the same case, could be reinstated in service as back as two years, there is no reason why the applicant should continue to be under suspension in the same case. The only reason given by the respondents taking the plea is that ASI Om Prakash was reinstated by a different disciplinary authority. The principles governing revocation of suspension are the same and cannot be differentiated for the reason of a different disciplinary authority. If the applicant had to wait till framing of charges before his request for reinstatement in service could be considered, there is no reason why the same approach should not have been followed in the case of ASI Om Prakash. The applicant has been singled out and subjected to hostile discrimination.

5. Strong reliance has been placed on the case of Guman Singh Barath (Supra) where the order of suspension was quashed in the facts of the case as the continued suspension of the petitioner was not considered by the authorities in a proper prospects. It was held, inter alia, that the Disciplinary Authority was adamant throughout that the suspension order could not be revoked merely because the petitioner was facing criminal trial and the disciplinary authority did not apply its mind to any other attending circumstances as the continued suspension was no longer warranted in the circumstances of the case. The applicants counsel strongly contended that even after about six years, the charges have not been framed for no fault of his own. The Administrative instructions in this regard are if the charges are not framed within reasonable time, say one year, the suspension order should be reviewed and if necessary, would be revoked.

6. In the written statement, the respondents have controverted the averments made by the applicant. The representation of the applicant has been duly considered by the respondents and a reasoned and speaking order has been passed in terms of the order passed by this Tribunal on 09.07.2008 in the aforesaid OA-1386/2008. The case of the applicant was reviewed periodically, however, he was not found fit for reinstatement. Furthermore, the matter is governed by the Delhi Police (Punishment and Appeal) Rules, 1980 and the CCS (CCA) Rules are not applicable.

7. At the hearing, the learned counsel for the respondents stated that the charges in the case have been framed. The applicants counsel, however, denied this. When asked to furnish details of framing of charges, the respondents counsel expressed inability to do as the departmental representative present in the court

does not have knowledge of the same. The learned counsel, however, stated that she has been given to understand that the charges have already been framed and the court may pass appropriate orders on this basis.

8. We have given our careful consideration to the respective submissions made by both the parties. We have also carefully perused the records of the case.

9. Rules governing disciplinary cases normally contain provisions regarding suspension of a delinquent employee pending a final decision on the misconduct alleged to have been committed by him. Though different organizations may have their own disciplinary rules, yet there are certain attributes that are common to all cases of suspension. Suspension literally means temporary deprivation of one's office or position. It keeps the suspended employee out of duty temporarily. But it does not bring the employer-employee relation to an end. A suspended person is given subsistence allowance instead of his regular salary. It is not a punishment. It is not among the prescribed penalties under the Rules. Nevertheless, it affects the charged officer adversely and is normally stigmatic whose effect is not easily washed away. It is not necessary to take recourse to suspension in all disciplinary cases. Over a period of time, certain principles have emerged that provide guidance in proper exercise of the power of suspension. It has thus become possible to reckon now certain factors whose presence in a case may warrant exercise of power of suspension. Thus power of suspension ought to be exercised where it is necessary to prevent the charged officer from repeating the misconduct or tampering with material evidence or interfering with preliminary investigation. Suspension is also considered necessary when one is said to have been guilty of moral turpitude. It may be equally necessary to restore public faith in governmental working by exhibiting authorities' determination to firmly deal with cases of corruption and grave misconduct. Different considerations apply in cases of misconduct in the course of official duties and act or omission in personal life leading to criminal proceedings or otherwise. Likely prejudice to office discipline, ongoing enquiry/investigation, public interest and security of the State on account of the delinquent employee continuing in office, ought to be given due consideration while exercising power of suspension. It is, therefore, necessary that power of suspension is to be exercised with great care and caution and not in a routine manner. It must be for valid reasons and ought not to be resorted to where the facts and circumstances of a case do not warrant it. It must be remembered that suspension not only deprives the person from performing his legitimate official function but also puts an unnecessary financial burden on the State exchequer. Therefore, not only that suspension needs to be for valid and justifiable reasons but also it should be reviewed periodically to determine if it needs to be revoked where it may no longer be necessary in the changed circumstances over a period of time. Though no maximum period of suspension is generally prescribed under the rules, yet there is an inherent mandate that the period of suspension be kept to the barest minimum.

10. We may now have a look to the provisions contained in the Delhi Police Act, 1978 and Delhi Police (Punishment and Appeal) Rules, 1980 in this regard. Section 14 of the Act deals with effect of suspension and reads as follows:

14. Effect of suspension of police officer:-The powers, functions and privileges vested in a police officer shall remain suspended while such police officer is under suspension from office. Provided that notwithstanding such suspension such person shall not cease to be a police officer and shall continue to be subject to the control of the same authorities to which he would have been subject if he had not been under suspension.

Rules 26 to 30 of the Delhi Police (Punishment and Appeal) Rules, 1980 deal with the subject of suspension. Clause 27(e) directs that unnecessary suspension shall be avoided as they increase the number of non-effective personnel and also cause hardship to such employee. When a police officer of subordinate rank is kept under suspension for more than six months in connection with a departmental enquiry, Rule 27 (d) provides that the concerned Deputy Commissioner of Police shall obtain prior approval of the Additional Commissioner of Police for his continued suspension. In case of judicial cases where the charge is connected with the official position of the Government servant or involves any moral turpitude on his part, Rule 28 (b)

provides for suspension in such cases as a rule unless there are exceptional reasons for not doing so. The Rule also visualize simultaneously disciplinary proceedings along with judicial cases in appropriate cases.

11. The rules of natural justice require that when a Government servant is placed under suspension, charges against him should be framed within a reasonable period of time and a final decision be taken, if necessary. Under the CCS(CCA) Rules, Administrative instructions have been issued to the effect that in cases involving criminal proceedings against the Government servant, every effort should be made to complete the investigation and file the charge sheet in a Court of Law within three months of the date of suspension and in cases other than those pending in Courts, the total period of suspension viz. both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to these time limits, the Disciplinary Authority should report the matter to the next higher authority explaining the reasons for the delay. Under the Rules, an order of suspension is not valid after 90 days unless it is extended after reasons before the expiry of 90 days. Accordingly, an order of suspension is required to be reviewed by the competent authority on the recommendation of the Review Committee constituted for this purpose. Review Committee are, therefore, constituted for reviewing suspension cases before the expiry of 90 days. The Review Committee may take a view regarding revocation or continuation of the suspension keeping in view the fact and circumstances of the case and also taking into account that unduly long suspension while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. It has been further provided that if a police officer has been under suspension for one year without any charges being filed in a Court of Law and no charge sheet has been issued in a departmental enquiry, he should ordinarily be reinstated without prejudice to the case against him.

12. From the aforesaid, it may be seen that an order of suspension is an executive action that lies within the domain of administrative discretion. The scope of interference by the Court with the order of suspension in the case where a delinquent employee faces criminal charge has been examined in large number of cases. The consensus of opinion in these cases has been that even if a criminal trial takes a long time it is ordinarily (emphasis supplied) not open to the court to interfere in the case of suspension as it is the executive domain of the competent authority who can always review its order of suspension as it has inherent power to do so and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order if satisfied that the criminal case would be concluded after an unusual delay for no fault of the employee concerned. Where the authority fails to exercise its due discretion or exercise it excessively or improperly, the action of the authority is always amenable to judicial review. But such a review is directed not against the decision but is confined to the examination of the decision making process. The judicial function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration. In the ultimate analysis, judicial review depends on the facts and circumstances of each case and to see whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the law of the land.

13. It may be expedient to recapitulate certain cases on this aspect of the matter as cited in the case of Guman Singh Barath (supra) relied upon by the applicant. In State of Orissa Vs. Vimal Kumar Mohanty (AIR 1994 SC 2296), the Honble Supreme Court observed as under:-

.when an appointing authority or the disciplinary authority seeks to suspend an employee 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 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 the 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 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 enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry 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 enquiry 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 enquiry or contemplated enquiry or investigation would be another thing if the action is by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

In Allahabad Bank and Anr. V. Deepak Kumar Bhola(1997 SCC (L and S) 897, the Honble Supreme Court held that in case involving serious charges, for which the sanction of the prosecution in a criminal court has been obtained, suspension order should not generally be interfered. However, the decision of the competent authority should be based on material collected during investigation/inquiry.

Mere pendency of the criminal case is not a ground for suspension as held by the Court in Ashok Gaur Vs. State of Rajasthan and Ors. (1987 (2) RLR 63).In Nand Lal Verma V. State of Rajasthan and Ors. (1989 (1) RLR 63 the Court considered a matter wherein the employee was facing criminal charges and remained under suspension for more than three years. The Court held that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground. Suspension should be made only in a case where there is a strong prima facie case against the employees and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, where the contents of strong prima facie case against him, if proved, would ordinarily result in his dismissal or removal from service. The State should also consider taking into account of all the available material as to whether in a given case, it is advisable to permit him to continue not to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

In Lajpat Rai Vs. State of Rajasthan and Ors., (1992 RLR 619) the Court considered the case where an employee had been put under suspension on account of pendency of criminal case and not only challan had also been filed against him u/Sections 120-B, 420, 467 and 471 read with Section 465 477-A of the Indian Penal Code but his petition u/Section 432 Cr.P.C. had also been dismissed by the Competent Court observing that undoubtedly the signatures of the said employee had been forged by some one else. This Court came to the conclusion that in a case where petitioner does not seem to be responsible at all for the alleged misconduct, the Competent Authority must apply its mind on all the relevant facts and pass an appropriate order. The Court, after considering the evidence on record, came to the conclusion that it was not such a case which may justify the authority to keep the employee under suspension for a prolonged period. Suspension may not be revoked where the employees could interfere with the trial or his retention in office is considered to be injurious to public interest. As he had been suffering from the agony of suspension for last several years and the Disciplinary Authority failed to consider his case objectively, the suspension order was revoked.

In B.K. Sharma v. State of Rajasthan and Ors. (29 ILR (1979) 515) the Court considered the scope of power to suspend and its effect observing that the Rules do not provide for maximum period of suspension, however, the Sate Government has issued various circulars from time to time emphasizing the necessity of keeping a Government servant under suspension for a minimum period for the reason that he is being paid the subsistence allowance without taking capacity as constant mental torture both financial and otherwise is bound to fell upon his nerves.

14. We may now examine the present case in the light of aforesaid settled principles. Admittedly, the

applicant was put under suspension vide order dated 21.3.2003 and the same is not being revoked on the ground that he had to wait until the framing of the charges in the criminal case pending against him. The charges have now been framed against the applicant as submitted by the learned counsel for the respondents at the hearing of the case and yet the respondents have not considered if continued suspension of the applicant is necessary or can otherwise be revoked. In respect of the same matter, ASI Om Prakash was also placed under suspension and he, along with the applicant, are facing common criminal proceedings. The suspension order of ASI Om Prakash has been revoked whereupon he has been reinstated in service about two years back without waiting for framing of the charge as has been insisted upon in the case of the applicant. Furthermore, the involvement of ASI Om Prakash has been on account of lapse committed in connection with the discharge of his official duties, it was not so in the case of the applicant. Notwithstanding that the respondents had never considered the applicant, as well as ASI Om Prakash, as delinquents or guilty of any misconduct whatsoever, otherwise it could have also held disciplinary proceedings against them. Verification in connection with issuance of a passport is not a part of the applicants duties. He had made verification in his personal capacity. The said verification is not made during the course of his official duties. Furthermore, it has not been brought out on record if the applicant was a partner in the commission of the crime by Dr. Bansal. Nor is there any material on record to show if he has made a personal gain by furnishing the verification in question. In the absence of these factors, the applicant could at best be viewed as negligent and made verification in routine without exercising due care and caution. The applicant was not even named in the FIR. Furthermore, both the applicant as well ASI Om Prakash against whom common criminal proceedings are pending, have been involved in the same case. Both were suspended in the same case. ASI Om Prakash has been reinstated in service. However, the applicant continues to be under suspension. He has been under suspension for more than six years. Mere pendency of the criminal case should not be a ground for keeping him under suspension for such a long time. The delay in framing of charges is not attributable to him. It is not sure whether the charges in the said case indeed have been framed against the applicant or the other accused in the case and if, what have been the details thereof including act or omission attributed to the applicant herein. The department has not initiated any enquiry against the applicant. It is not the case of the respondents that the revocation of the applicants suspension would prejudice the case pending against him. The respondents were directed to pass a reasoned and speaking order on the applicants representation by this Tribunal vide its order dated 09.07.2008. In compliance thereof, the respondents passed the impugned order rejecting the applicants representation for the sole reason that ASI Om Prakash was placed under suspension and was reinstated by the different disciplinary authority. This does not seem to be germane to the issue involved in this case. Although the disciplinary authority may be different, nevertheless the respondents were required to consider and decide the submissions made by the applicant in his representation wherein he has not only mentioned the case of ASI Om Prakash, co-accused in the pending criminal case but a large number of cases against the police officers in whose cases the suspension orders have been revoked and reinstatement ordered even during the pendency of the criminal cases some of which are apparently of more serious nature than the case against the applicant. The impugned order does not indicate if these cases were given due consideration by the concerned authority and the reasons for distinguishing the case of the applicant from other cases from which it could have been feasible to discern the basis on which the suspension of the applicant for such a prolonged period is sustained by the concerned authority as warranted and duly called for in the facts and circumstances of the case. The impugned order does not categorically record a finding as to why the applicants suspension was considered necessary until the framing of the charge while his co-accused ASI Om Parkas has been reinstated in service long before that and also in large number of other cases officers have indeed been reinstated in service even during the pendency of criminal cases against them.

15. In the andhra Pradesh State Road Transport Corporation v. State Transport Appellate Tribunal and Ors., 1998(7) SCC 353, the Honble Supreme Court, explaining the exercise of discretionary power, held as under:- The power cannot be arbitrarily or indiscriminatory exercise. The power is coupled with a duty. The authority must genuinely address itself to the matter before it It must act in good faith, must have regard to all relevant considerations and must not be shirked by irrelevant consideration, must not shriek to promote alien to the

letter and spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously.

16. Similar view has been reiterated by the Honble Supreme Court in *Comptroller and Auditor General of India v. K.S. Jagannathan and Anr.* 1986(2) SCC 679.

17. In *Dai-Ichi Karkaria Ltd. vs. Union of India and Ors.* 2000(4) SCC 57, the Apex Court held that the embargo of arbitrariness is embodied in Article 14 of the Constitution. The Authority which has been given a very wide power must consider all relevant aspects governing the questions and issues before it. It must form the opinion on the basis of material before it by application of mind.

18. In *Consumers Action Group and Anr. v. State of Tamil Nadu and Ors.*, 2000(7) SCC 425, the Apex Court held that whenever any Statute confers any power on any authority, howsoever wide the discretion may be, the same has to be exercised reasonably, within the sphere that Statute confers and such exercise of power must stand the test of judicial scrutiny. The judicial scrutiny is one of the basic features of our Constitution. The reason recorded to it discloses the justifiability of exercise of such power.

19. Similarly, in *Praveen Singh vs. State of Punjab and Ors.*, 2000 (8) SCC 633, the Honble Supreme Court held as under:-Arbitrariness being opposed to reasonableness is an ante thesis to law. There cannot, however, be any exact definition of arbitrariness neither can there be any straight jacket formula evolved there for, since the same is dependent on the varying facts and circumstances of each case.

20. Application of mind to the facts and circumstances of the case by the Authority concerned is a mandatory requirement of law. State must act for good reasons and after application of mind to all the relevant factors, such a decision of the State must be specific and cannot be left to be inferred from surrounding circumstances. Nor such a decision be based on irrelevant materials, otherwise the same has to be held to be bad in law for non-application of mind. (Vide *C. Navaneaswara Reddy vs. Government of Andhra Pradesh and Ors.*, AIR 1998 SC 939; *Commissioner of Police, Delhi and Anr. v. Dhaval Singh*, 1991(1) SCC 246; *State of Maharashtra and Ors. v. Ku. Tanuja*, AIR 1999 SC 791 and *Rajat Baran Roy vs. State of West Bengal*, AIR 1999 SC 1661).

21. In view of this, we are of the considered opinion that it is a case of non-application of mind to the relevant facts that vitiated the impugned order. The respondents fail to apply their mind to the attending circumstances referred to above. If the respondents did not apply their mind to the material factors while passing the impugned order, such an order cannot be sustained in law. Refusal to review suspension without giving any consideration to the relevant facts brought on record by the applicant in his representation should be a case of non-application of mind and this suffers from arbitrariness. We are conscious of the fact that in the case of suspension, ordinarily the Court should keep its hands off. That is why on the earlier occasion we directed the respondents to consider the merits of the case and pass a reasoned speaking order in the matter. In spite of that, the respondents do not seem to have applied their mind to the relevant considerations while examining if the applicant's suspension is required to be revoked or not. The case of *ASI Om Prakash*, involved in the same case in which the applicant is involved, is sought to be distinguished for the reason that the former was suspended and reinstated by a different disciplinary authority. If that disciplinary authority has chosen to reinstate *ASI Om Parkas* in service after revoking his suspension in the same set of circumstances, it is all the more necessary for the respondents to follow the same course unless they have very strong reasons for not doing so. This aspect calls for interference by this Tribunal to prevent gross injustice for the impugned order fails to present a fact situation warranting applicant's suspension *ad in finite*. The application thus succeeds and is accordingly allowed. The impugned order is quashed and the respondents are directed to reinstate the applicant in service forthwith. The period of suspension shall be regulated as per the applicable rules at appropriate time. There shall be no order as to costs.