Union of India and Another Vs. Ashok Kumar Aggarwal

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Court : Delhi

Decided On : Sep-17-2012

Judge : Pradeep Nandrajog &Amp; Manmohan Singh

Appeal No. : W.P.(C) No. 5247 of 2012

Appellant : Union of India and Another

Respondent : Ashok Kumar Aggarwal

Judgement :

Pradeep Nandrajog, J.

1. Order dated June 01, 2012 allowing OA No.495/2012 filed by the respondent has been questioned by the petitioners.

2. Continued suspension of the respondent has been quashed with a direction that the respondent be reinstated with legally admissible consequential benefits, and the latter direction would obviously mean that the respondent would be entitled to be paid wages for the work done when he joins and not that he would be entitled to the difference in wages receivable and the subsistence allowance paid during period of suspension, and to this extent the apprehensions expressed by the writ petitioners as if the writ petitioners have to pay back-wages is incorrect.

3. The respondent, a 1985 batch officer of the Indian Revenue Service was suspended as per order dated December 28, 1999 which was quashed by the

Central Administrative Tribunal vide order dated January 17, 2003 when OA No.783/2000 filed by the respondent was allowed, but with liberty granted to the appellants to pass a fresh order after considering all the relevant facts. The respondent was once again suspended on April 25, 2003; challenge whereto failed.

4. That was the end of the issue pertaining to the respondent being suspended.

5. But, law requires continued suspension to be reassessed every six months and when the continued suspension orders started hurting the respondent by the year 2010 inasmuch as by said year he had remained suspended for 10 years, he filed OA No.2842/2010 before the Central Administrative Tribunal questioning the decisions taken to continue with his suspension, which application was decided by the Central Administrative Tribunal on December 16, 2011, noting that 12 years had lapsed and certain important aspects of the matter pertaining to the respondent's continued suspension were ignored when the decision was last taken to continue the suspension. Exhaustive directions were issued to the Special Review Committee, which considers matters pertaining to continued suspension, warranting the committee to reconsider the matter in the context of the directions issued by the Tribunal. The reason was that these points which were urged by the respondent were ignored by the Special Review Committee. The Tribunal permitted the Committee to obtain the view of CBI with respect to the representation made by the respondent against his continued suspension.

6. Reconsidering the matter, vide order dated January 12, 2012, but before obtaining comments from the Central Bureau of Investigation, the Review Committee passed an order on January 12, 2012 recommending continued suspension of the respondent and the said order simply records till paragraph 8 thereof the history of the litigation fought by the respondent and thereafter the opinion in paragraphs 9 and 10 as under:-

"9. Whereas, taking into account all facts and circumstances, the Competent Authority is of the view that it is not feasible to pass a reasoned and speaking order considering all points raised in the impugned CAT's order at this juncture. As directed by the Tribunal, the order under consideration may be passed after the

CBI’s report is received.

10. Accordingly, the Competent Authority has decided to continue the suspension of the officer, meanwhile, ………….”

7. Thereafter, on receiving comments from CBI the Committee passed another order on February 03, 2012, till paragraph 8 whereof though with some change of words, same facts pertaining to the history as were recorded in the order dated January 12, 2012 were re-noted and thereafter in paragraph 10 the comments received from CBI were noted. The operative part of the order, in paragraph 10 reads as under:-

“Whereas, taking into all facts and circumstances including the facts and comments construed in the CBI’s report, the Competent Authority has decided that suspension of the officer may be continued

8. This led the respondent to file OA No.495/2012 before the Central Administrative Tribunal.

9. By a well considered and a well reasoned decision spanning 50 pages, the Central Administrative Tribunal has quashed the decision taken by the Special Review Committee, and since we agree with the decision of the Tribunal on each count, we refrain from penning a lengthy decision, but would highlight, and thereafter deal with the submissions urged by learned counsel for the petitioner which were premised on the decisions reported as 2006 (6) AD (Delhi) 749 Medical Council of India v. K.K.Arora and Anr. And 1997 (4) SCC 1 AllahabadBank and Anr. v. Deepak Kumar Bhola.

10. It was held in the two decisions that mere prolonged suspension by itself is no ground to quash the suspension if the offence alleged against the delinquent involves a serious moral turpitude; suspension is not a punishment and lastly even if there is a remote likelihood of the misconduct being repeated it would justify a continued suspension.

11. There is no quarrel with the aforesaid legal principles, but then, facts of each case have to be considered.

12. The first and the foremost taint found by the Tribunal, and as per us, which is fairly serious is the abdication of duty by the Special Review Committee evidenced from the fact that the order dated February 03, 2012 has, after narrating the historical facts of the case with reference to the past litigation up to paragraph 9, followed by verbatim copying the views of CBI in paragraph 10, the so called reasons are to be found, in the words noted in paragraph 6 above. The order reads:-

“Shri Ashok Kumar Aggarwal, JCIT (85042) was placed under suspension vide this Ministry’s Order F.No.C- 14011/7/2000-VandL dated 25.04.2003.

2. Whereas, facts of the case are that the CBI registered two criminal cases against the officer - (i) RC S18- 1999/E-001 for criminal conspiracy and wrongful confinement by Shri Ashok Aggarwal and (ii) RC S- 19/1999/E-0001 for possession of disproportionate assets. In both cases, prosecutions have been sanctioned and are pending trial. Charges have been framed by the Court of Special Judge - Delhi vide order dt. 17.12.05 in RC S18 1999 E 0001 and another in RC S-19/1999/E- 0001.

The officer was arrested on two occasions once on 23.12.1999 and subsequently on 19.10.2000. On both occasions, he remained in custody for a period exceeding 48 hrs and was accordingly placed under suspension. Suspension order against the officer was quashed by the CAT on 17.1.03, leaving the decision to pass a fresh order as appropriate based on facts of the case. As the allegations against Shri Aggarwal in both cases were serious, he was again placed under suspension under Rule 10(1) of CCS (CCA) Rules 1965 vide order dated 25.04.03.

3. Whereas, Departmental Proceedings against the officer were initiated and two charge-sheets vide F.No.C- 14011/7/2000-V and L dt-13.9.2001 and 01.12.2006 were issued. Inquiry Officers were appointed on 25.01.2001 and Presenting Officers were appointed on 12.02.2002 in both departmental proceedings. I.O’s report was examined holding Articles I, II, III and V as partly proved and Article IV as not proved. The same along with CO’s representations thereon were considered by the DA and the articles of charge except Article IV were taken as partly proved. The case was referred to the UPSC after collecting all the requisite

particulars but before that the Hon'ble CAT (PB), New Delhi has quashed the two charge-sheets issued to the officer in its common order dated 24-02-2010 in OA No.456/2009. The SLPs have been filed and are pending before the Apex Court. The Criminal Proceedings against the officer have also been stayed by the Supreme Court.

4. Whereas, the undisputed facts emerge that the officer was placed twice under suspension on the basis of facts investigated and recommended by the CBI. The suspension of officer has periodically been reviewed keeping in view all facts and circumstances of the case including serious allegations made against the officer and the CBI's reports.

5. Whereas, the officer had filed an OANo.2842/2010 seeking relief for quashing and setting aside his suspension. Vide order dt.16-12-2010, the Hon'ble Tribunal held, "If the view of the review committee and that of the competent authority may still be to continue the suspension of the applicant, speaking order in that regard shall be passed. Reasons although in brevity may be stated, but the points raised by the applicant, and as mentioned above, shall have to be met."

6. Whereas, an MA bearing No.59/2012 in OA No.2842/2010 seeking extension of time of six weeks was filed to enable the Competent Authority to comply with the impugned CAT's order as the consultation with CBI was mandatory. The Tribunal during the hearing on 09.01.2012 disposed it off directing the department to dispose off the matter by 14.01.2012.

7. Whereas, in terms of DoPandT's Notification GSR No.2 (F.No.11012/4/2003-Estt.(A) published in the Gazette of India dated 03.01.2004 read with that Department's O.M. dated 07.01.2004 and the CAT, PB's order dtd 16-12-2011 in OA No.2842/2010 read with order dtd 09-01-2012 in MA No.-59/2012 in OA No.-2842/2010, review of suspension in this case was due on or before 14.01.2012.

8. Whereas, the Competent Authority reviewed the suspension of Shri Ashok Kumar Aggarwal based on the recommendation of the Review Committee, as provided in Government of India's DOPandT notification GSR No.2 and DOPandT's OM No.11012/4/2003-Estt.(A) dated 07.01.2004 and after carefully

considering all the facts and circumstances of the case including the CAT, Principal Bench's order dtd. 09.01.2012 in MA No.59/2012 in OA No.2842/2010 and the CBI's report and had passed an order F.No.C-14011/7/2000-VandL (Vol.VI) dtd 12-01-2012 to continue the suspension of the officer.

9. Whereas, the Competent Authority vide order dtd 12- 01-2012 was of the view that it was not feasible to pass a reasoned and speaking order considering all points raised in the impugned CAT's order at that juncture. Therefore, it was decided that the order under consideration might be passed after the CBI's report is received.

10. Whereas, the CBI has sent a report dtd 27-01-2012 in form of Para-wise comments on order dtd 16-12-2011 in OA No.2842/2010, which is re-produced below-

"Para-wise comments on the Order dated 16/12/2011 in OA No.2842 of 2010 by CAT, Principal Bench, New Delhi, in respect of issues relating to CBI.

1. Para No. 1 to 4. No comments.

2. Para No.5 The contention of the applicant Shri Ashok Kumar Aggarwal as quoted in the Hon'ble CAT Order, regarding the reply received from Federal Department of Justice and Police, Berne, Switzerland, to the LR sent by CBI, is factually not correct. The contents of the said LR execution report have been misinterpreted and misrepresented by Sh.Ashok Kumar Aggarwal.

3. Para No.6 The contention of the applicant Shri Ashok Kumar Aggarwal as quoted in the Hon'ble CAT Order, regarding the sending of relied upon material including statements of witnesses, to the sanctioning authority by CBI for grant of sanction for prosecution against him is factually not correct. It may be noted that at present the issue is subjudice in the Hon'ble Supreme Court of India vide SLP No.7601 of 2007 filed by CBI. Hence it cannot be concluded that the sanction order is invalid.

3(i). No comments are being offered regarding the other contention of Shri Aggarwal relating to clubbing of his income and assets with that of his family members since the case is under trial.

4. Para No.7 It is true that CBI has been consistently of the opinion that the suspension of Shri Ashok Kumar Aggarwal should not be revoked.

5. Para No.8 The observation by the Hon'ble CAT do not relate to CBI.

6. Para No.9 The contention of the applicant Shri Ashok Kumar Aggarwal as quoted in the Hon'ble CAT Order, regarding the forgoing and/or not referring to the vital documents which came to light during investigations, is factually not correct. However, since the cases are under trial, no comments are being offered regarding the issue.

7. Para No.10 The observations by the Hon'ble CAT do not relate to CBI.

8. Para No.11 and 12 As observed by the Hon'ble CAT, SLPs are pending in the Hon'ble Supreme Court of Indian in both the cases against Shri Ashok Kumar Aggarwal and the matters have not come up for final adjudication yet. Hence, no comments are being offered.

9. Para No.13. The observations by the Hon'ble CAT deo not relate to CBI.

10. Para No.14 The contention of the applicant Shri Ashok Kumar Aggarwal as quoted in the Hon'ble CAT Order, regarding the exclusion of information relating to LR from Swiss Authorities in the SP's report is factually incorrect. It may be noted that the said LR was mentioned in the list of documents attached to the SP's report sent by CBI to Ministry of Finance for sanction of prosecution against Sh.Aggarwal. Moreover, this issue was examined by Shri P.Chindambaram, the then Finance Minister vide his noting dated 18/6/2005 available in F.No.16/1/99-Ad.I-C. In the said note, the then Finance Minister has written "I am, therefore, satisfied that the sanctioning authority had before it all the material relied upon by CBI while sanctioning prosecution. I am also satisfied that the allegation made by Shri Ashok Kumar Agarwal that crucial documents were not considered by the sanctioning authority is not tenable."

11. Para No.15 As stated above at analysis of Para No.5, the contention of the applicant Shri Ashok Kumar Aggarwal as quoted in the Hon’ble CAT Order, regarding the reply to the LR sent by CBI, is factually not correct. The contents of said LR execution report have been misinterpreted by Shri Ashok Kumar Aggarwal.

12. Para No.16 The contention of the applicant Shri Ashok Kumar Aggarwal as quoted in the Hon’ble CAT Order that the statements of witnesses or documents relied upon in the Charge Sheet against him, were not sent to Ministry of Finance for prosecution sanction is factually incorrect. This is indicated by the Hon’ble Minister’s noting quoted above and further, as stated earlier, at present the issue is subjudice in the Hon’ble Supreme Court of India vide SLP No.7601 of 2007 filed by CBI.

13. Para No.17 It may be noted that the legal opinion of the Ministry of Law on the validity of two sanction orders dated 21/06/2002 and 26/11/2002 has been withdrawn vide M/o L and J (LA) I.D. Note FTS No.2378/LS/2011 dated 8.8.2011. It was communicated in the said I.D. note that the matter was re-examined by the Department of Legal Affairs and it was found that entire facts of the case were not brought to the notice of the Secretary Law before the afore-mentioned legal opinion was issued to the Department of Revenue.

14. Para No.18 The observations by the Hon’ble CAT regarding the reviews of suspension of Shri Ashok Kumar Aggarwal carried out from 22/06/2008 to 15/07/2010 do not relate to CBI as the observations are based on the notings of the Income Tax Department.

14(i) On the observation of Hon’ble CAT regarding chances of tampering with evidence by Shri Ashok Kumar Aggarwal, it may be mentioned that he is a very resourceful accused who has been filing several petitions against CBI and its officials in Hon’ble Delhi High Court and Hon’ble Supreme Court of India. Till now, he has filed as many as 27 petitions in the above two courts and has not allowed any meaningful progress in the trails of both the criminal cases against him. He also got complaint cases registered against the Investigating Officer of the two cases.

14(ii) Shri Ashok Aggarwal has even been laying hands on the official documents/information of Ministry of Finance in an unauthorized manner which is evident from the noting dated 27.12.2005 of Shri P.Chidambaram, the then Hon'ble Finance Minister, recorded in File No.16/1/99-AD.I-C wherein he as stated-

"8. I am disturbed to see Shri A.K.Aggarwal has access to files. He has annexed photocopies of a number of documents, which, normally should not be in his possession. Revenue incharge of the files and ensure that Shri Aggarwal has no access to the documents.

9. Besides there is no reason why Shri Aggarwal, who is suspended officer, should frequently visit North Block, I wonder who gives him appointments and how he is allowed to enter the office without an appointment."

14(iii) In the facts and background discussed above, there is every likelihood that in the event of his reinstatement at this stage. Shri Ashok Kumar Aggarwal may manage to further prolong the trial of the two CBI cases against him by agitating one issue or the other on frivolous counts. As such, CBI is of the considered view that his reinstatement at this stage is unwarranted and will adversely affect the trial of the two serious CBI cases against him."

11. Whereas, taking into all facts and circumstances including the facts and comments construed in the CBI's report, the Competent Authority has decided that suspension of the officer may be contined.

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

13. There are just no reasons!

14. The Tribunal has further noted that its order dated December 16, 2011, required the Competent Authority to keep in view not only the report of CBI but even the contentions put forward by the respondent. The Tribunal has referred to paragraphs 13, 14, 15 and 16 of its order dated December 16, 2011 (refer paragraphs 28 to 34 of the impugned decision) and has brought out that specific directions issued by it to keep into account such facts which were relevant have

once again been ignored.

15. Learned counsel for the petitioners could not bring to our notice anything contained in the impugned orders or even the comments received from CBI which were considered by the Competent Authority which would be in compliance with the directions issued by the Tribunal vide its order dated December 16, 2011; and suffice would it be for us to add that the impugned orders are containing just no discussions at all. A conclusion has been noted, sans any reasons.

16. We would highlight that the record of the petitioners containing notings after the Tribunal had passed the impugned order would reveal that the Special Review Committee met on July 24, 2012 and recommended that respondent's suspension be revoked and he be posted to a non-sensitive post. We may also note that a day prior thereto i.e. on July 23, 2012 the Department of Legal Affairs in the Ministry of Law and Justice has rendered a four page opinion taking a view that keeping in view the fact that the order dated February 03, 2012 was in total violation of the Tribunal's order dated December 16, 2011, there is hardly any chance for a Writ Court to interfere, and regretfully we find that a writ petition has been filed.

17. On the subject of a civil servant being accountable for his acts during discharge of official duties, none can deny his being accountable; but it also has to be kept in mind that the process of accountability cannot be stretched indefinitely, i.e. it should not become a process where the probity of the civil servant is not being tested but it is his patience which is being tested.

18. No doubt, delay in completing departmental proceedings is by itself is no grounds to quash a suspension order, but at the same time, the issue of delay has to be factored along with such other contentions which the suspended civil servant projects with reference to the facts. It then becomes the duty of the decision making authority to take an informed decision, which would mean to take note of the admittedly relevant facts and circumstances, which in this case are the six facts and circumstances, highlighted by the Tribunal in its order dated December 16, 2011, all of which do not find a mention in the decision which has been quashed by the Tribunal, and for which we would only state even CBI has failed to comment upon; resulting in an uncanny feeling generated in a judicial mind: that

neither CBI nor the department has an answer to the same.

19. We accordingly dismiss the writ petition in limine and while so doing we allay the fears in the mind of the petitioners to pay back-wages.

20. No costs.