

REPORTABLE
IN THE HIGH COURT OF DELHI AT NEW DELHI
+WP(C) No.2862/2007 & CM Appl. No.10772/2007

Date of Decision: 15.02.2008

#Union of India and Others
!

....Petitioner
Through: Mr.Saleem Ahmed with
Mr.Habibur Rahman, Advocates

Versus

\$Sub Inspector Sanjay Sharma
^

.....Respondents
Through Mr.Sourabh Ahuja,
Advocate

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE VIPIN SANGHI

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

- 1.**The issue raised in this petition relates to applicability of Rule 10 of the CCS(CCA) Rules, 1965 to the officials of the Delhi Police. We may mention at the outset that in view of sub-rules (6) and (7) of Rule 10, suspension of the respondent

herein is set aside. In this petition filed by the petitioners, including the Commissioner of Police, primary contention is that these Rules do not govern the matters of discipline of the employees of the Delhi Police. Rule 10, as it originally stood, was amended vide Notification dated 23.12.2003 published in the Gazette of India dated 3.1.2004 read with corrigendum dated 29.3.2004 published in the Gazette of India dated 4.4.2004. By this amendment, sub-rules (6) and (7) were added thereto, which are given effect to from 2.6.2004. Sub-rules (6) and (7) of Rule 10 are to the following effect:-

“(6) An order of suspension made or deemed to have been made under the rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) Notwithstanding anything contained in sub-rule(5)(a), an order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the

expiry of ninety days.”

2.As per sub-rule (6), an order of suspension made under sub-rule (6) or deemed to have been made under sub-rule (2) is to be reviewed by the competent authority before the expiry of 90 days from the date of order of suspension. While undertaking this exercise of review, suspension order can be extended or revoked. If it is decided to extend the suspension order, such an order of suspension is to be reviewed before the expiry of extended period of suspension. Extension in one go can be for a period upto 180 days at time. Therefore, before the expiry of each extended period of suspension, there has to be subsequent review. In case the initial suspension is not reviewed within 90 days, consequence thereof is provided under sub-rule (7), namely, such an order of suspension shall not be valid after a period of 90 days.

3.In the present case, an FIR was registered against the respondent herein on 3.3.2004 under the provision of the Prevention of Corruption Act alleging that while working as a Sub-Inspector, Police Station Vasant Kunj, New Delhi, the respondent demanded a sum of Rs.5,000/- as bribe from Sh. Om Prakash, complainant, for getting his relatives released on

bail from the Court of Sh.V.P. Vaish, MM, Patiala House Courts, New Delhi, wherein a bail application was listed for hearing on 3.3.2004. He was arrested on the same day and the disciplinary authority, by an order of even date, placed him under suspension with effect from 3.3.2004. This order further stipulated that during the period of first three months of his suspension, he would draw sustenance allowance at a rate equivalent to the leave salary which he would have drawn had he been on leave on half average pay and in addition, dearness allowance based on such leave salary. Vide orders dated 16.11.2004, sustenance allowance of the respondent was increased by 50% of the sustenance allowance already drawn by him under FR-53. This increase was made effective from 3.6.2004, i.e. after the expiry of initial period of three months.

4.On 7.3.2005, i.e. after the expiry of one year period of sustenance, the respondent submitted an application to the competent authority for revocation of the suspension and to reinstate him on the ground that suspension period had prolonged for more than a year. This request was considered and vide communication dated 1.6.2005, the respondent was

informed that his request could not be acceded to 'as per PHQ's instructions'. The respondent thereafter got a legal notice dated 5.1.2006 served upon the petitioner No.2 and as it did not yield any result, he filed OA No.1161/2006 praying for setting aside Office Order dated 1.6.2005 with consequential benefits.

5.The said OA filed by the respondent is allowed on the ground that there was no review of the suspension within 90 days and, therefore, suspension order in the first form could not be sustained in law. The ground on which this petition is filed is that CCS(CCA) Rules have no application to the present case and, therefore, the case could not have been decided on the touchstone of sub-rules (6) and (7) of Rule 10 of the said Rules. It is the case of the petitioners that the suspension of the employees of the Delhi Police is governed by its own rules, namely, the Delhi Police (Punishment & Appeal) Rules (hereinafter referred to as the 'DP(PA) Rules'). The question therefore, falls for determination is as to whether CCS(CCA) Rules are applicable or not and what is the effect of non-review of the suspension orders within 90 days under the DP(PA) Rules. Rule 3 of CCS(CCA) Rules, 1965 deals with

application of these Rules. Clause (e) of sub-rule (1) thereof stipulates that any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions, the said CCS(CCA) Rules would not apply. Therefore, what is to be seen is as to whether there is any special provisions made in DP(PA) Rules with respect to suspension.

6.Before adverting to that, we may note that vide Notification dated 17.12.1980, various rules are made applicable to the employees of Delhi Police who are governed by Delhi Police Act, 1978 and the list of 23 types of rules which are made applicable does not include CCS(CCA) Rules. It is also mentioned that in case there is any conflict between the provisions of rules framed under the Delhi Police Act and the Central Government rules adopted by the said notification, the provisions of the rules framed under the Delhi Police Act shall prevail.

7.The DP(PA) Rules are framed in exercise of powers contained in Section 147 of the Delhi Police Act. These Rules contain elaborate provisions dealing with the subject of 'suspension'. Rule 26 talks of suspension generally. Thereafter, Rules 27 to 29 deal with specific situations. Rule 27 deals with suspension in departmental cases. Rule 28 talks of suspension in judicial cases. Rule 29 deals with suspension in cases of escape of prisoners in police custody. Thus, the entire gamut of suspension is provided in these Rules. Since in the present case suspension of the respondent was the offshot of the criminal proceedings in which he was arrested, apart from taking note of the general provisions contained in Rule 26, it would also be advisable to go through Rule 28. These two Rules are accordingly reproduced below:-

“26. Suspension-(1) Officers of the rank of an Assistant Commissioner of Police and above are authorised to suspend all police officers of subordinate rank. The suspension of an upper subordinate shall be immediately reported to the Deputy/Additional Commissioner of Police.

(2) An officer shall be released from suspension only by the gazetted officer empowered to punish/appoint him.

(3)(i) During the term of such suspension the powers functions and privileges vested in him as a Police Officer shall be in abeyance but he shall continue to be subject to the same responsibilities discipline and penalties and to

the same authorities, as if he had not been suspended.

(ii) A Police Officer under suspension shall be transferred to the lines if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Deputy Commissioner of Police may direct provided that he shall not perform guard duty or any other duty entailing the exercise of the powers or functions of a Police officer, shall not be placed on any duty involved the exercise of responsibility and shall not be issued of with ammunition. A Police officer under suspension shall ordinarily be confirmed to lines, when off duty, but shall be allowed responsible facilities for the preparation of his defence when transferred to the line, lower or upper subordinate shall deposit their kits in the line and shall not wear any article of uniform till they are reinstated or specifically permitted by the Commissioner of Police as contained in sub-rule (iii) of Rule 15 of the Delhi Police (General Conditions of Service) Rules, 1980.

27. xxxxx

28. Suspension in judicial cases.-The cases of suspension during pendency of criminal proceedings or proceedings for arrest, for debt or during detention under a law providing for preventive detention shall be dealt with in the following manner:-

(a) A police officer of subordinate rank who is detained in custody under any law providing for preventive detention or as a result of a proceeding on a criminal charge shall, if the period of detention exceeds 48 hours and unless he is already under suspension from the date of detention, be deemed to be under suspension from the date of detention until further orders. A police officer of subordinate rank who is undergoing a sentence of imprisonment, shall be dealt with in the same manner pending decision on the disciplinary action to be taken against him.

(b) A police officer of subordinate rank against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g. A person released on bail) may be placed under suspension by an order of appointing authority. If the charge is connected with the official position of the Government servant or involves any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course. In the latter case permission of the next higher authority for not suspending the individual concerned shall be obtained.

(c) A police officer of subordinate rank against whom a proceeding has been taken for arrest for debt but who is not actually detained in custody may be placed under suspension by an order of appointing authority only if a disciplinary proceeding against him is contemplated.

(d) When a police officer of subordinate rank who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in circumstances mentioned in clause (b), is reinstated without taking disciplinary proceedings against him his pay and allowances for the period of suspension will be regulated under the relevant Rules."

8. Since the respondent's service conditions are governed by the DP(PA) Rules, Rule 10 of the CCS(CCA) Rules will have no application. Even apart from that, there is no provision akin to sub-rule (6) or (7) of Rule 10 of the CCS(CCA) Rules.

9. Learned counsel for the respondent had, however, submitted that by virtue of Rule 26(2) of the Delhi Police (Appointment & Recruitment) Rules, 1980, the provision contained in sub-rules (6) and (7) of Rule 10 would be applicable. In order to appreciate this contention, we may first note the contents of sub-rule (2) of Rule 26 of these Rules, which read as under:-

“26. Other conditions of service and residuary matters.- (1) xxxxx

(2) In regard to matters not specifically covered by these Rules the police officers of subordinate rank shall be governed by the rules, regulations and other orders applicable to the corresponding grades of civilian employees serving under the Govt. of India.”

10. First of all, this sub-rule is part of Delhi Police (Appointment & Recruitment) Rules and specifies that in regard to matter not specifically covered by those Rules, the rules, regulations and other orders of the Government of India shall be applicable. The present matters does not relate to appointment or recruitment. It relates to a matter of discipline for which DP(PA) Rules are applicable. Moreover, the subject matter of suspension is specifically covered by Rules 26 to 29 and for this reason also Rule 26(2) of the Delhi Police (Appointment & Recruitment) Rules will not be

applicable.

11.It is not that there is no provision made by the Delhi Police regarding review of suspensions. Standing Order No.123 of 89 is issued which deals with suspension. It, *inter alia*, enumerates the circumstances under which a police officer may be suspended. There is a provision about deemed suspension as well. Para 4 of the said Standing Order relates to duration of order of suspension and para 5 deals with speedy follow up action in suspension cases and time limits are prescribed. These provisions do ensure that the suspension order is passed only in those cases where it is absolutely warranted and further that there is a periodical review of the suspension order as well. However, there is no mandate for compulsory review within 90 days of the deemed suspension and no consequence of the nature provided in sub-rule (7) of Rule 10 of the CCS(CCA) Rules is prescribed.

12.The learned Tribunal proceeded on the basis that CCS(CCA) Rules are applicable and on the application of these Rules, which are inapplicable, rendered its judgment. Consequently, we have no option but to set aside such a decision.

13.As already noted above, the respondent was suspended on a serious charge under the Prevention of Corruption Act. In such cases even if the suspension is prolonged for some time because of the pendency of criminal cases, it would not be a fit case where suspension order should be set aside on this ground. While making these observations, we are supported by the judgment of the Supreme Court in Allahabad Bank and Anr v. Deepak Kumar Bhola, **(1997) 4 SCC 1**. In the said case the respondent-employee was suspended pending criminal trial for offences involving moral turpitude. Allegations against him were that of committing forgery and wrongfully withdrawing of money from the bank which he was not entitled to do. The suspension was challenged by the employee which was upheld by the High Court concluding that the mere fact that a person had entered into criminal conspiracy, it could not be recorded that an "offence involving moral turpitude" had been committed and therefore bank had no jurisdiction to suspend the employee in terms of clause 19.3(a) of the First Bipartite Settlement, 1966 as per which suspension could be resorted to only if the charge related to an offence involving moral turpitude. In appeal filed by the

bank, Supreme Court reversed the judgment of High Court holding that the allegation against the employee amounted to moral turpitude. It would be apt to quote para 11 of the judgment which would show that the Supreme Court was not persuaded by the fact that criminal case was pending for ten years. Para 11 reads as under:-

"We are unable to agree with the contention of the learned counsel for the respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted by the CBI which resulted in the filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the Bank, unless he is exonerated of the charge."

14. This Court in Surjit Singh Chowdhry Ex Major v. Municipal

Corporation Delhi (2000), **54 DRJ 749** laid down the guidelines relating to the cases of prolonged suspension as under:

“From the various judgments noted above, one can find different approaches adopted by the Courts depending upon the facts of each case. However, after considering all these cases I have tried to deduce principles governing this subject and I formulate following guidelines relating to the cases of prolonged suspension.

i. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time.

ii. When the delinquent officer is kept under suspension in contemplation or pending departmental enquiry and the enquiry is delayed unduly by the department, the continuation of suspension becomes bad and can be set aside inasmuch as such a delay in enquiry shows that the suspension was not bonafide.

iii. Each case will have to be examined and the legality of the suspension would depend on the facts and circumstances of each case.

iv. The principle mentioned at serial no. i above, relating to delay in departmental enquiry cannot be ipso facto made applicable in the cases where suspension is resorted to

pending investigation/trial of criminal offence.

v. When an officer is suspended pending investigation of a criminal case against him and the investigation is taking long time or after the completion of investigation no proceedings are initiated either in Court or in department and the suspension continues, continuation of such a suspension would be illegal.

vi. When criminal trial is pending in Court of law and the same is taking time to conclude, in such cases also, it would depend on the facts and circumstances of each case as to whether the continuation of suspension should be treated as unjustified or not. Various factors which should be taken into consideration, while examining this question, would include the seriousness of charges leveled against the delinquent employee and where the charges are such that it would not be in the interest of department/institution to allow such an employee to remain in the seat i.e. where such charges are related to the performance of duties of the concerned official, or where charges are very serious and have direct bearing on the performance of duties by the concerned official, the suspension cannot be revoked only on the ground that the trial is prolonged. What is to be seen is as to whether the authority bonafide considered that it was not in public interest to revoke the suspension. If such a consideration is given by the competent authority and after due application of mind competent authority has held the view that it is not in public interest to revoke the suspension, Court will not interfere with such order of suspension. On the other hand where allegations in the charge-sheet filed in criminal Court are not very serious and the trial is unduly delayed, the continuation of their suspension may not be justified.

23. What can be inferred from the approach of

the Courts in such cases is that in those cases where Court found that the charges were very serious like committing forgery or defalcation of money, etc. and it was not in public interest to allow such an employee to join back the duties when he was facing such serious charges particularly keeping in view the nature of duties he was performing having direct bearing on the charges he was facing in criminal Court, even long delay did not convince the Court to quash the suspension and allow the delinquent officer to go back on duty unless he is exonerated of the charge. To put it differently, once the Court found that, keeping in view the nature of charges, it was not in public interest to revoke the suspension, prolongation of the criminal case did not become determinative/influencing factor to set aside the suspension order. Of- course, interference with such matters depends on the facts and circumstances of each case and the division bench of this Court set aside the suspension in the case of K.K. Bhardwaj Vs. Delhi Vidyut Board (supra) even when the allegations of defalcation were leveled against the delinquent officers. However, as against these allegations, the Court was influenced by three factors namely (a) delinquent officials were under suspension for more than 15 years and 12 years respectively; (b) the attitude of CBI had been absolutely callous and it had not assisted the Court inasmuch as no witnesses in the criminal trial has been examined by that time; (c) the allegations were in respect of incident alleged to have taken place in the year 1982 for which charges were framed by the Special Court in one case in the year 1989 and in another case on 5th January, 1998. It was in these circumstances the Court observed that considering the fact that the appellants have been under suspension for so many years and no progress has been made in the criminal cases, the appellants' cannot be asked to await till the disposal of the criminal case.

24. Therefore, no hard and fast rule can be

made and even where the suspension is pending criminal trial, the Court can interfere with the order of suspension. But this course would to be resorted to only where the Court is convinced that such continuation of suspension is doing injury to the concerned officer and it is not in public interest either to keep the delinquent official under suspension."

15.We, therefore, make the rule absolute, set aside the judgment of the learned Tribunal and dismiss the OA filed by the respondent before the Tribunal.

(A.K. SIKRI)
JUDGE

February 15, 2008
HP.

(VIPIN SANGHI)
JUDGE