

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: September 24, 2015

Judgment delivered on: September 28, 2015

+ **W.P.(C) 5145/2015 & CM 9328/2015**

STATE OF TAMIL NADU Petitioner

Through: Mr.Chetan Sharma, Sr. Adv. with
Mr.Sandeep Khurana, Ms.Seemab Ali
Fatima, Advs.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr.Dev P.Bhardwaj, CGSC for R1
Mr.Sudhir Nandrajog, Sr. Adv. with
Mr.Ashwin Kumar, DS, Mr.Gautam
Bhardwaj, Adv. for R2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V.KAMESWAR RAO, J

1. The present petition has been filed by the State of Tamil Nadu seeking the following reliefs:

“a. Quash/set aside the impugned order dated 30.04.2015 passed by Ministry of Home Affairs, Government of India under the signatures of Mr. G.C. Yadav, Deputy Secretary to the Government of India while deciding the statutory appeal filed by the Respondent No.2 herein.

b. direct Respondent No.1 to consider the request of the petitioner for extension of suspension in its letter dated 28.04.2015 and extend the suspension of Respondent No.2 until adjudication of the present Writ Petition.

c. direct Respondent No.2 to report to the Government of Tamil Nadu (Petitioner herein) in as much as she cannot discharge the duties as Additional Director in CBI in view of the order dated 09.05.2014 of the Hon'ble Supreme Court of India in W.P (C) No.309/2014.

d. direct the Respondent No.2 to participate in the inquiry being conducted by Inquiring Authority on the charges framed against her”.

2. As seen from above, the primary challenge in the petition is to the order dated April 30, 2015 passed by the respondent No. 1 on an appeal submitted by the respondent No. 2 under Rule 16 of the All India Service (Discipline and Service) Rules, 1969 ('Rules of 1969', in short) against the order of suspension and disciplinary proceedings passed/initiated by the petitioner, against her.

3. By the impugned order, the respondent No. 1 has allowed the appeal and set aside the order of suspension dated May 8, 2014. Suffice to state, the appeal of the respondent No. 2 is accepted insofar as the order of suspension dated May 8, 2014 is concerned.

4. The case of the petitioner in the petition is, the respondent No. 2 was directly appointed in Indian Police Service as Asstt. Superintendent of Police and at the relevant time, was working as Director General of Police and serving as Chairperson, Tamil Nadu Uniformed Services Recruitment Board, Chennai ('Board', in short). On May 7, 2015, the respondent No. 2 without being relieved of her duties, deserted the post of Chairman of the Board, Chennai, to join as Addl. Director, CBI, New Delhi. The petitioner accordingly passed a suspension order dated May 8, 2014 against the respondent No. 2, noting the

happenings of May 7, 2014 invoking clause (a) of Sub-Rule (1) of Rule 3 of the Rules of 1969. It is also averred that the Supreme Court of India, while hearing Writ Petition (C) 309/2014 filed by Mr. Vineet Narain had restrained the respondents from allowing the respondent No. 2 from discharging the function of Addl. Director, CBI until the next date of hearing. On June 18, 2014, Articles of charge have been framed against the respondent No. 2 under Rules of 1969, wherein, it is inter-alia alleged that the respondent No. 2, while working as Chairman of the Board, Chennai, on May 7, 2014 had left the headquarters to proceed to assume charge as Addl. Director, CBI without getting relieving order of the petitioner and also without properly handing over the charge of the post of the Chairman of the Board and also has signed the relieving form on her own without having received any relieving order from the petitioner, without intimation to the competent authority and without due permission.

It is the petitioner's case that the respondent No. 2 had preferred an appeal petition dated July 12, 2014 to the respondent No. 1 against her suspension. The petitioner had sent its comments on August 16, 2014 to the respondent No. 1 on the appeal petition, submitted by the respondent No. 2 with a request to reject the appeal as it was preferred belatedly without any valid reason and no appeal lies against the charge sheet. On further comments, sought by respondent No. 1. vide communication dated November 28, 2014, the petitioner duly sent the same vide letter dated December 10, 2014. The

petitioner has also taken a stand that the suspension of the respondent No. 2 was extended beyond August 5, 2014 and lastly beyond February 1, 2015 upto to May 7, 2015. On October 16, 2014, the Supreme Court in the hearing of the Writ Petition (C) 309/2014 filed by Mr. Vineet Narain challenging the selection of respondent No. 2 as Addl. Director, CBI, New Delhi, has inter alia directed that, if for any reason, the respondent No. 2 makes any representation before the Central Government for the disposal of the statutory appeal, against the order of suspension, passed by the petitioner, the Central Government i.e. the respondent No. 1 shall consider the said representation in accordance with law as early as possible. It is the case of the petitioner that the extended period of suspension of the respondent No. 2 herein, was to expire on May 7, 2015 on completion of one year period, a proposal was sent on April 28, 2015 to the respondent No. 1 with a request to extend the suspension of the respondent No. 2 herein. The proposal was not considered by the respondent No. 1. It is also the case of the petitioner that as the disciplinary proceedings against the respondent No. 2 could not be completed within a period of one year because of deliberate refusal of respondent No. 2 to participate in the oral enquiry proceedings, the respondent No. 1 ought to have reviewed and extended the suspension of the respondent No. 1 herein. Without considering the request, the respondent No. 1 had passed the impugned order which was communicated to it on May 1, 2015 setting aside the suspension imposed on the respondent No. 2.

5. Mr.Chetan Sharma, learned Senior Counsel appearing for the petitioner

would draw my attention to the letter dated February 7, 2014 of the Deptt. of Personnel and Training, Government of India; letter dated February 11, 2014 of the respondent No. 1 to the Chief Secretary, and also, the letter dated February 24, 2014 of the Deptt. of Personnel and Training to the Chief Secretary, to relieve the respondent No. 2 at the earliest to take up a new assignment in CBI, to contend, that when the DoP&T, Government of India has been calling upon the State Government through the Chief Secretary to relieve the respondent No. 2 for her joining as Addl. Director, CBI there was no occasion for the respondent No. 2 to get herself relieved, by giving the charge to his subordinate officer and leave Chennai and join the post of Addl. Director, CBI which conduct is not in consonance with the instructions issued for getting relieved from the post; which conduct is nothing but, a desertion on the part of the respondent No. 2 and her joining as Addl. Director, CBI is non-est in the eyes of law and she continues to be on the rolls of State of Tamil Nadu i.e. the petitioner herein. He would also draw my attention to the General Financial Rules of 2005 and Fundamental Rules of the Tamil Nadu Government to highlight that the transfer of charge is effected by both the officers i.e. relieved officer/relieving officer by signing the certificate in token of having relieved and also accepting the charge. He has shown the certificate of transfer of charge signed by the respondent No. 2 alone getting herself relieved without taking the signatures of the relieving officer. He also states, it is the statement of respondent No. 2 herself in her affidavit filed before the Supreme Court on May

3, 2014 wherein, she has stated, she is awaiting orders of Government of Tamil Nadu relieving her to join CBI and also that, she has submitted a representation to the Government of Tamil Nadu to relieve her early. In other words, when the respondent no. 2 herself has taken a stand that she has to be relieved by State of Tamil Nadu, the respondent No. 2 could not have herself signed a certificate of transfer to show her relieving without being relieved by the State Government. The respondent No. 2 having violated the instructions, has rightly been suspended pending disciplinary proceedings.

That apart, he has drawn my attention to Annexure P27, which is a communication from the Chief Secretary of the petitioner to the Secretary, DoP&T, Government of India wherein the Chief Secretary has requested the Secretary, DoP&T not to permit the respondent No. 2 to assume the charge of Addl. Director, CBI and even if she has assumed the charge, she be directed to return to Headquarters at Chennai forthwith.

Mr.Chetan Sharma also raised a doubt on respondent No. 2 having actually joined CBI in the forenoon of May 8, 2014 before the order of suspension was issued and communicated to her at her residence in Chennai. In substance, it is his submission that her relieving being non-est, the suspension order dated May 8, 2014 is justified.

6. On the other hand, Mr.Dev P. Bhardwaj, learned counsel appearing for the respondent No. 1 would justify the impugned order, stating that the same has been passed, keeping in view the provisions of Rule 3(1), 17 and 19(2) of

the Rules of 1969, wherein, the respondent No. 1 being the cadre controlling authority had observed that the respondent No. 2 was appointed to the post of Addl. Director, CBI after following the due procedure, being the administrative ministry/the Deptt. of CBI, the DoP&T requested petitioner several times to relieve her in order to assume charge, however, the petitioner did not relieve her. Finally, the DoP&T in view of the instructions regarding implementation of the ACC decision within a month, had vide letter dated 7.5.2014 requested the respondent No. 2 to assume the charge of Addl. Director, CBI immediately and the respondent No. 2 in compliance of the DoP&T letter referred above, assumed the charge, on the forenoon of May 8, 2014 and as she was no longer under the administrative control of the State Government, having joined the CBI which fact has been noted by the Supreme Court, the respondent No. 1 has rightly formed an opinion that the petitioner had no jurisdiction to place her under suspension. He would also draw my attention to Rule 6 of the IPS Cadre Rules, 1954 to say, in such a situation, the Central Government is within right to decide the competency of a Government to pass an order of suspension and the Central Government having decided that the petitioner had no power and competency to suspend the respondent No. 2, no fault can be found.

7. Mr.Sudhir Nandrajog, learned Senior Counsel appearing for the respondent No. 2 would submit that she is an IPS officer of 1980 batch. In the years 2012 and 2013, she had requested the State Government, the petitioner, to place her name on the offer list of centre deputation in view of her personal

problems, as her parents aged above 80 years are living alone in Delhi, needed her support and pursuant thereto, the State Government placed her name in the offer list of 2012 as well as 2013 and the State Government had in fact, forwarded her name along with vigilance clearance for Central deputation in the rank of ADGP. On February 7, 2014, the DoP&T, Government of India communicated to the respondent No. 1 the order of competent authority appointing her as Addl. Director, CBI and requested the respondent No. 1 to take up the matter with the State Government. It is noted, the respondent No.2, vide her letter dated February 10, 2014, requested the Chief Secretary to relieve her. Even after the receipt of the letter dated February 11, 2014 from the respondent No. 1, she on February 25, 2014 made a similar request to the Chief Secretary. That apart, despite several requests of the DoP&T, even thereafter, to the Chief Secretary of the petitioner, the respondent No. 2 was not relieved.

8. Mr.Sudhir Nandrajog, would submit, much stress was laid by Mr.Chetan Sharma on the letter dated February 7, 2014 but, without referring to the letter dated May 7, 2014 of the Under Secretary, DoP&T, Government of India, written to the respondent No. 2, wherein a reference was made to earlier communications, of the DoP&T to the Chief Secretary requesting him to relieve her urgently for taking up the assignment in CBI, and the fact, she had not yet assumed the charge of Addl. Director, CBI, she was called upon to assume the charge as Addl. Director, CBI immediately, and it is pursuant thereto, the respondent No. 2 had, in her communication dated May 7, 2014 to the Chief

Secretary of the petitioner, giving reference to the letter dated May 7, 2014 of the DoP&T, Government of India, signed the certificate of transfer and by handing over the charge to her immediate subordinate officer, left for Delhi by evening flight and assumed the charge of Addl. Director, CBI in the forenoon of May 8, 2014. He would also state, on the assumption of the charge, the respondent No. 2, joined the deputation post under the administrative control of the Central Government. He would also draw my attention to Annexure P-27 a communication of the Chief Secretary of the petitioner to the Secretary, DoP&T wherein, the Chief Secretary himself has mentioned that he had received the letter of respondent No. 2 dated May 7, 2014 only in the later afternoon of May 8, 2014 informing that she was proceeding to New Delhi for assuming the charge of Addl. Director, CBI, to highlight, that, the fact that the order of suspension dated May 8, 2014 was actually passed after she has assumed the charge of Addl. Director, CBI. It is also his submission that the petitioner had no competence, even under Rules, to issue the order of suspension dated May 8, 2014. In support of this contention, he would rely upon Rule 3(1) (a) and Rule 3(1)(b) of the Rules of 1969 which stipulate, if the member of the service serving under another Government a request to that government can be made to place the officer under suspension. In other words, the petitioner itself could not have passed the order of suspension. Further, he would state the suspension can be continued, beyond a period of one year, on the recommendation of the Central Ministry Review Committee.

He also state, the request of the petitioner dated April 28, 2015 to the respondent No. 1 to continue the respondent No. 2 under suspension has rightly not been acceded to by the respondent No. 1. Even otherwise, it is his submission, if there is a difference of opinion, as to which Government would be competent to pass an order of suspension, it will be the view of the Central Government i.e. the respondent No. 1 which would prevail and the impugned order can also be construed as an order in that regard. He also relied upon Rule 6 of the IPS Cadres Rules, 1954 to submit the respondent No. 1 being the Cadre Controlling Authority is competent to decide the issue of competency of a Government to decide the issue of deputation of an officer, and having decided to pass the impugned order, the same need not be interfered. He would also state, the purpose of suspension is to ensure that the officer concerned does not influence the witnesses and obstruct the disciplinary proceedings initiated against him/her. Given the nature of charges framed against the respondent No. 2, the facts being undisputed, they are required to be only analysed, her suspension would also be unjustified without application of mind. He seeks the dismissal of the present petition. He states, that as on date, she is working as Director General, National Crime Records Bureau.

9. Mr.Chetan Sharma, in his rejoinder would primarily reiterate the submissions made earlier. It is conceded by him that the concurrence of the petitioner for respondent No. 2's deputation to the Central deputation stands and also the proceedings against the respondent No. 2 have been completed, though,

without her presence.

10. Having considered the submissions made by the learned counsel for the parties, the only question which arises for the consideration of this Court is whether the petitioner had the jurisdiction to place the respondent No. 2 under suspension vide order dated May 8, 2014. Before I deal with the submissions made by the counsel for the parties, a word on the impugned order dated April 30, 2015. In the said order, the respondent No. 1, narrating the background of the case including the assumption of charge by the respondent No. 2 as Additional Director, CBI, and her suspension by the petitioner was of the following view:

“15. AND WHEREAS, the Central Government have observed that Smt. Archana Ramasundaram was appointed to the post of Additional Director, CBI after following due procedure. Being the Administrative Ministry/Department for CBI, the DOP&T requested the State Government several times to relieve her in order to assume charge in CBI. However, the State Government did not relieve her. Finally, DOP&T, in view of the instructions regarding implementation of ACC decisions within a month, vide its letter dated 7.5.2014, requested Smt. Archana Ramasundaram to assume the charge of Additional Director, CBI immediately. In compliance of the DOP&T's aforesaid letter dated 7.5.2014, Smt. Archana Ramasundaram assumed the charge of Additional Director, CBI, New Delhi w.e.f. 8.5.2014 (Forenoon);

16. AND WHEREAS, the Central Government have also observed that Smt. Archana Ramasundaram joined CBI in the forenoon of 8th May, 2014 and as such she was no longer under the administrative control of the State Government. The Hon'ble Supreme Court in its order of 09.05.2014 in Vinit Narain's case recorded the factum of the officer joining the post of Additional Director, CBI. The Central Government, also observed that there was a difference of opinion whether the

State Government could place her under suspension or they were required to ask DOP&T to do so. Since the officer had joined the CBI on Central deputation on 8.5.2014, the Ministry of Home Affairs under proviso to Rule 3(1)(b) of the AIS(D&A) Rules, 1969 decides that the State Government had no jurisdiction to place her under suspension”.

11. It is the conceded position that the petitioner had given its consent for deputation of the respondent No. 2 with the Central Government, in terms of which, the DoP&T, Government of India, through ACC considered the respondent No. 2's case favourably by appointing her as Additional Director, CBI for a period of four years or till further orders, whichever takes place earlier. The factum of her appointment was conveyed to the petitioner by the respondent No. 1 vide letter dated February 11, 2014. Pursuant to an earlier letter dated February 7, 2014 of the DoP&T, Govt. of India, the respondent No. 2 had requested the Chief Secretary of the petitioner citing the illness of her father, to relieve her to take up the appointment as Additional Director, CBI. I note, through her letter dated February 25, 2014 respondent No. 2 made a similar request. That apart, the DoP&T, Government of India had vide letters dated February 24, 2014, March 10, 2014 and April 10, 2014 had called upon the petitioner to relieve the respondent No. 2. The letter of May 7, 2014 was addressed by the DoP&T, Government of India to the respondent No. 2, calling upon her to assume the charge on the said post. The respondent No. 2, after signing the certificate of transfer of charge on May 7, 2014 (Annexure P-28) left Chennai for Delhi on May 7, 2014 itself and took the charge of the post of

Additional Director, CBI on May 8, 2014 (forenoon). This aspect has not been disputed/denied by the petitioner, and the fact that the letter of May 7, 2014 of the respondent No. 2 was received by the Chief Secretary only in the late afternoon of May 8, 2014 as is clear from the letter dated May 8, 2014 (Annexure P-27), it must be inferred that the order of suspension dated May 8, 2014 was passed only thereafter i.e afternoon and pursuant thereto, a copy of the said order was served at the residence of the respondent No. 2 which aspect is clear from the contents of the appeal of the respondent No. 2 dated July 12, 2014. That being the position, the respondent No. 2, being under the administrative control of the authorities in the Central Government, the petitioner had no jurisdiction/competence to suspend the respondent No. 2 on May 8, 2014 when the respondent No. 2 had already taken up the charge. It is in this regard, the observation of the respondent No. 1 in the impugned order, more specifically, in paras 15 and 16 becomes relevant which have been reproduced above. Rule 3 of the Discipline and Appeal Rules, 1969, which is reproduced below, stipulate that the order placing an officer of the service under suspension, can be passed by the Government under which the officer is serving.

“Suspension – (1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending that Government may –

*(a) If the member of the Service serving under that Government, pass, an order placing him under suspension, or
(b) If the member of the Service is serving under another Government, request that Government to place him under suspension.*

pending the conclusion of the disciplinary proceedings and the passing of the final order in the case:

Provided that, in cases, where there is a difference of opinion,-

*(i) between two State Governments, the matter shall be referred to the Central Government shall for its decision;
(ii) between a State Government and the Central Government, opinion of the Central Government shall prevail”.*

12. The respondent No. 2, as on May 8, 2014 (afternoon) was not serving under the petitioner, the petitioner had no locus/jurisdiction to place the respondent No. 2 under suspension. If there was a difference of opinion, it would be the view of the Central Government which would prevail. The Central Government having taken a view in terms of the impugned order dated April 30, 2015, the said order is proper in accordance with the Rules and need to be upheld.

13. In view of my above conclusion, it may not be necessary to consider and go into the other submissions made by Mr. Nandrajog.

14. During the submissions, learned counsel for the parties agree that the respondent No. 2, as on date, is working as Director General, National Crime Record Bureau. I may only reiterate that the subject matter of the present petition is limited to the issue which forms the subject matter of order dated April 30, 2015 i.e. the suspension of the respondent No. 2. The learned counsel

for the parties concedes, it does not relate to the Articles of Charge issued to the respondent No. 2 or the disciplinary proceedings conducted pursuant to the same.

15. In view of above discussion, I do not find any merit in the writ petition and the petitioner is not entitled to any reliefs as prayed for. The present petition is dismissed.

16. No costs.

CM 9328/2015

In view of the order passed in the writ petition, the application is dismissed as infructuous.

**V. KAMESWAR RAO
(JUDGE)**

SEPTEMBER 28, 2015

akb