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

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Date of Decision: 20.08.2019.

% **W.P.(C) 3257/2018**

TUSHAR RANJAN MOHANTY

..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA

..... Respondent

Through: Mr. R.V. Sinha with Mr. A.S. Singh
and Mr. Amit Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The petitioner assails the order dated 22.03.2018, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in O.A. No. 4603/2017. The Tribunal has rejected the said Original Application, wherein he had challenged his suspension vide order dated 19.12.2017 in exercise of power under Rule 10(1) of the CCS (CCA) Rules in contemplation of a disciplinary proceeding for a period of 90 days.

2. The charge on which the Disciplinary Proceedings were contemplated is set out in the show cause notice issued to the petitioner. The show cause notice dated 08.01.2018 reads as follows:

“SHOW CAUSE NOTICE

WHEREAS Shri Tushar Ranjan Mohanty working as Deputy Director General in the Department of Empowerment of Persons with Disabilities (Divyangjan) did not obey the orders of the then Secretary dated 27.10.2017 (Reference documents enclosed at ANNEXURE 1) when his proposal for going ahead with the selection process of the post of Chairperson, Rehabilitation Council of India (RCI) was not agreed to by the then Secretary who had clearly instructed that “The department may not proceed ahead once it is indicated that it would be an ACC appointment.” The said Shri Tushar Ranjan Mohanty, in clear violation of the aforesaid instructions, sent a letter to Ms. Stuti Kacker, Chairperson, National Commission for Protection of Child Rights (NCPCR) seeking her consent to be the Chairperson of Search cum Selection Committee. Furthermore, Shri Tushar Ranjan Mohanty sought convenient date and time from Ms. Stuti Kacker for having an interactive session with 8 candidates scrutinized by the Selection Committee. (Reference documents enclosed at ANNEXURE 2). He himself prepared letters for the 4 members of Search cum Selection Committee and endorsed to Chairperson, Search cum Selection Committee and the shortlisted 8 candidates giving particulars of the date, time and venue of the interactive session for the post of Chairperson, RCI.

2. *Now therefore, the said Shri Tushar Ranjan Mohanty is directed to show cause as to why disciplinary action should not be initiated against him for the above mentioned lapses on his part within 15 days of the receipt of this notice failing which it will be presumed that he has no representation to make and necessary disciplinary action will be initiated against him”.*
(emphasis supplied)

3. We are informed that the disciplinary proceedings were held against the petitioner; the Enquiry Officer in his report sought to exonerate the petitioner; the disciplinary authority issued a Disagreement Note to the

petitioner calling upon him to submit his representation – which the petitioner has submitted, and; the matter is still pending consideration before the UPSC as informed by Mr. Sinha, who appears on advance notice.

4. The submission of the petitioner is that though the Disciplinary Authority has the power to suspend an officer in contemplation of a disciplinary proceeding, the exercise of the discretionary power is guided by norms and guidelines. In this regard, he has sought to refer to the instructions contained in Swamy's Manual on Disciplinary Proceedings for Central Government Servants, Ninth Edition, 2003, which contain the following guidelines:

“(1) Guiding principles for placing a Government servant under suspension. – It has been decided that public interest should be the guiding factor in deciding to place a Government servant under suspension, and the Disciplinary Authority should have discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a Disciplinary Authority may consider appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory:-

(i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as there is a public scandal and it is necessary to place the Government servant under

suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where allegations have been made against the Government servant and the preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

Note (a). – In the first three circumstances, the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a prima facie case is made out.

Note (b). – Certain types of misdemeanor where suspension may be desirable in the four circumstances mentioned, are indicated below:-

- (i) any offence or conduct involving moral turpitude;*
- (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official power for person gain;*
- (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;*
- (iv) desertion of duty;*
- (v) refusal or deliberate failure to carry out written orders of superior officers.***

In respect of the type of misdemeanor specified in Sub-clauses (iii), (iv) ad (v), discretion has to be exercised with care.

(G.I., M.H.A., Letter No. 43/56/64-AVD, dated the 22nd October, 1964.]” (emphasis supplied)

5. He also draws attention to Clauses 6.3.1 – 6.3.5 of the Vigilance Manual, Volume I, Chapter VI, which deals with suspension. The said

clauses read as follows:

“6.3.1 A Government servant may be placed under suspension when a disciplinary proceeding against him is contemplated or is pending; or where, in the opinion of the Competent Authority, he has engaged himself in activities prejudicial to the interest of the security of the State; or when a case against him in respect of any criminal offence is under investigation, enquiry or trial.

*6.3.2 The suspended Government servant retains a lien on the permanent post held by him substantially at the time of suspension and does not suffer a reduction in rank. **However, suspension may cause a lasting damage to Government servant’s reputation even if he is exonerated or is ultimately found guilty of only a minor misconduct. The discretion vested in the competent authority in this regard should, therefore, be exercised with care and caution after taking all factors into account.***

6.3.3 It may be considered whether the purpose would not be served if the officer is transferred from his post. If he would like to have leave, that might be due to him, and if the competent authority thinks that such step would not be inappropriate, there should be no objection to leave being granted instead of suspending him.

6.3.4 Public interest should be the guiding factor in deciding whether or not a Government servant, including a Government servant on leave, should be placed under suspension; or whether such action should be taken even while the matter is under investigation and before a prima-facie case has been established. Certain circumstances under which it may be considered appropriate to do so are indicated below for the guidance of competent authorities:

(i) Where continuance in office of the Government servant will prejudice investigation, trial or any inquiry (e.g., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where a preliminary enquiry into allegations has revealed a prima-facie case justifying criminal or departmental proceedings which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service

6.3.5 In the circumstances mentioned below, it may be considered desirable to suspend a Government servant for misdemeanors of the following types:

(i) an offence or conduct involving moral turpitude;

(ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gains;

(iii) serious negligence and dereliction of duty resulting in considerable loss to Government;

(iv) desertion of duty;

(v) refusal or deliberate failure to carry out written orders of superior officers. In respect of the type of misdemeanor specified in sub-clauses (iii), (iv) and (v), discretion should be exercised with care.” (emphasis supplied)

6. Mr. Mohanty submits that, in the present case, it was not necessary for the respondents to suspend the petitioner because he had been repatriated vide office memorandum dated 14.12.2017 to his parent cadre i.e. Ministry of Statistics. Thus, there was no possibility of the petitioner, in any manner, influencing any witness or tampering with any evidence in respect whereof

disciplinary proceedings were contemplated. Mr. Mohanty further submits that he was on leave till 26.12.2017 when the suspension order was issued on 19.12.2017, since he had suffered bereavement on account of the demise of his mother and had, therefore, taken leave. The suspension order, therefore, was made effective from 26.12.2017 i.e. the date on which he was required to report for duty. Mr. Mohanty, therefore, submits that his suspension was illegal, it having resorted to *de hors* the guidelines taken note of hereinabove.

7. Mr. Mohanty has also argued that while allowing O.A. No. 1224/2018 – whereby his continued suspension – after the expiry of the first spell of suspension of 90 days, was quashed on 31.05.2018, the respondents have not passed an order in terms of Rule 54B of the Fundamental Rules to decide as to how the period of suspension should be treated. Mr. Mohanty submits that, thus, the said period of 90 days is liable to be treated as spent on duty and in this regard he has sought to place reliance on the decision of a Division Bench of this Court in ***Vijay Kumar Aggarwal v. Union of India & Anr.***, W.P.(C.) No. 916/2007, decided on 14.12.2010, which has been affirmed by the Supreme Court in SLP No (Civil No.) 6393/2012, decided on 06.10.2015.

8. We are not inclined to examine the aspect as to how the first spell of suspension period of 90 days should be treated in these proceedings, since this aspect was not raised before the Tribunal. We leave it to the petitioner to agitate his rights, if any, arising from the order passed by the Tribunal in O.A No. 1224/2018 in appropriate proceedings.

9. The Tribunal has considered the aforesaid submission of the petitioner. The Tribunal takes note of the fact that the petitioner was holding the post of Deputy Director General and was having easy access to all Government offices. To prevent him from exploiting his position, his suspension was necessary.

10. The substance of the allegation against the petitioner was that he disregarded the specific written orders of his superior, and went ahead with the process for recruitment to the post of Chairperson Rehabilitation Counsel of India, contrary to such specific orders.

11. For the purpose of determining whether an employee should be suspended or not, it is the nature of allegation which has to be looked at, on the assumption that the said allegations are correct. The allegation against the petitioner being that he was disobeying the specific written orders of the superior and going contrary to them, we are of the view that the Disciplinary Authority was justified in suspending the petitioner so as to prevent damage to the administration on account of such alleged exhibited tendency and perceived insubordination. The right of the Disciplinary Authority to suspend an employee has to be exercised in a reasonable manner. At the same time, the exercise of such discretionary power cannot be constricted into a straight jacket.

12. The guiding principles relied upon by Mr. Mohanty, which have been extracted in paragraph 4 hereinabove state that public interest should be the guiding factor in deciding whether to place the Government servant under suspension, and the Disciplinary Authority should have discretion to decide

this taking all factors into account. The said guiding principles enumerate the circumstances which may be considered by the Disciplinary Authority while arriving at its decision as to whether, or not, the Government Servant should be suspended. The guiding principles themselves state that the circumstances enumerated should not be taken as mandatory. Pertinently, one of the circumstance that the Disciplinary Authority should take into account, and be guided by, is whether the continuance in office of the Government Servant is likely to subvert discipline in the office in which the public servant is working. The allegation made against the petitioner in the show cause notice quoted hereinabove is that of serious subversion of discipline.

13. Note (b) contained in the guiding principles quoted in paragraph 4 enlists certain type of misdemeanour, where suspension may be desirable, inter alia, involving serious subversion of discipline in the office where the public servant is working. One of the misdemeanours enumerated in Note (b) is refusal or deliberate failure to carry out written orders of the superior officers. This is the precise allegation made against the petitioner in the show cause notice, on the basis of which the disciplinary proceedings have been held against him.

14. The extracts from the Vigilance Manual taken note of in paragraph 5 hereinabove also recognize the principle that public interest should be the guiding factor in deciding whether, or not, a Government Servant – including a Government Servant on leave, should be placed under suspension. The discretion vested in the Competent Authority to suspend a Government Servant, no doubt, has to be exercised with care and caution

after taking all factors into account. In the present case, though the petitioner had been relieved and sent back to his parent department and he was on leave when the suspension order was issued, the allegation made against him was that he had gone contrary to the express orders issued by his superiors in the matter of selection to the post of Chairperson, Rehabilitation, Counsel of India.

15. Paragraph 6.3.5 extracted hereinabove from the Vigilance Manual (paragraph 5) enlists some of the misdemeanours when it may be considered desirable to suspend a Government Servant. Refusal or deliberate failure to carry out written orders of superior officers is one such misdemeanour. No doubt, in such cases of misdemeanour, the discretion to suspend should be exercised with care, and it could be argued that the petitioner need not necessarily have been suspended. However, merely because a different view may be a possible view, is no reason to conclude that the exercise of discretion by the competent authority in the matter of suspension of the petitioner was illegal. The Court cannot lose sight of the fact that it is not the Disciplinary Authority who has the obligation to rein in discipline. The prevalent atmosphere/ situation in the office at the relevant point of time, when suspension was resorted to, is also not perceivable by the Court. There is no reason to assume that the Disciplinary Authority did not act in accordance with the guidelines and the Vigilance Manual. It is not the petitioner's case that the same was actuated by malice, or that the competent authority had not passed the suspension order. Neither the Court nor the Tribunal can substitute its own view with that of the Disciplinary Authority, since the Disciplinary Authority exercised its discretionary power by

looking into the allegations made against the petitioner.

16. We are, therefore, not inclined to interfere with the impugned order.
Dismissed.

17. We, however, make it clear that the observations made by us hereinabove have been made for the purpose of examining the legality of the impugned order and the order of initial suspension of the petitioner, and we have not examined the allegations of misconduct made against the petitioner. The Disciplinary Authority, therefore, shall not be guided by any observation made by us in this order while finalizing the Disciplinary proceedings against the petitioner.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

AUGUST 20, 2019

N.Khanna