

Bombay High Court

Durukumar Shambhulal Chandnani vs Hon'Ble Shri Chittahtosh ... on 21 February, 1991

Equivalent citations: 1992 (1) BomCR 23, (1991) 93 BOMLR 71, 1991 (1) MhLj 454

Author: S Manohar

Bench: S Manohar, P Patankar

JUDGMENT Sujata Manohar, J.

1. The petitioner is a Personal Secretary to a Honourable Judge of this High Court on the Appellate Side establishment of the High Court. He has filed this writ petition challenging an order dated 9th January, 1990 of the Chief Justice of Bombay suspending him from service, in contemplation of a Departmental Inquiry against him. This was done in exercise of the powers conferred under Rule 3(1)(a) of the Bombay High Court Discipline and Appeal Rules. The petitioner has also challenged a show cause notice issued thereafter and a charge-sheet issued to him on the ground that since the original suspension order is bad in law, these "consequential" steps are also bad in law.

2. The Bombay High Court Discipline and Appeal Rules are framed in exercise of powers conferred under Article 229 of the Constitution of India. Under Rule 3(1)(a) it is provided as follows :

"3. Suspension.---(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority may place a High Court servant under suspension :

(a) Where disciplinary proceeding against him is contemplated or is pending or xx xx xxx xx."

It is contended by the petitioner that by virtue of this rule he cannot be suspended unless a preliminary enquiry is first held against, him, the statements of various concerned parties are recorded and his explanation is called for. In support of this contention the petitioner relies upon the provisions of Rule 7 of the Bombay High Court Discipline and Appeal Rules, and in particular, on Rule 7(3).

3. Under Rule 7(3) where it is proposed to hold an inquiry against a High Court servant, the disciplinary authority is required to draw up or cause to be drawn up charges as set out in that sub-rule. Under sub-rule (4) these charges are then required to be served on the High Court servant concerned along with the statements and a list of documents and witnesses as set out therein and a written notice is required to be served on the High Court servant asking him to submit within a specified time, a written statement of his defence and to state whether he desires to be heard in person. These provisions relate to the actual conduct of a departmental inquiry. These provisions have no application to a stage prior to the commencement of the departmental inquiry. The contention of the petitioner, therefore, that by virtue of these provisions a preliminary inquiry is mandatory has no substance. The order of suspension clearly sets out that a complaint has been made against the petitioner as set out in the first paragraph of the suspension order. It also sets out that the Honourable the Chief Justice is prima facie satisfied that the allegation contained in the complaint require to be enquired into in a full-fledged departmental inquiry; and thus a departmental inquiry for the alleged misconduct on the part of the petitioner is contemplated. In our view, this order is in accordance with the requirements of Rule 3.

4. The petitioner has relied upon a judgment of the Allahabad High Court in the case of Gyan Swarup Gupta, I.A.S. v. The State of U.P. and others, reported in 1973 All India S.L.J. at page 669. Under the Rules in consideration before the Allahabad High Court the relevant Rule 3(1) of the All India Services (Discipline & Appeal) Rules, 1969 dealt with suspension during the disciplinary proceedings. It set out in express terms that the order of suspension could be passed when it was necessary or desirable to place under suspension a member of the Service against whom such proceeding were started. In view of this Rule, the Allahabad High Court held that unless a disciplinary proceeding is started against the petitioner, he cannot be put under suspension under this rule. This judgment has no application to the Rules which are before us since the rules are quite different.

5. The petitioner also relied upon a decision of the Supreme Court in the case of P.R. Nayak v. Union of India, . This decision also dealt with the same Rule which was before the Allahabad High Court. The Supreme Court said that the rule on which the order of suspension pending disciplinary proceedings was founded, did not postulate an order of suspension before the initiation of disciplinary proceedings. The Government can place under suspension a member of the service only when disciplinary proceedings are started against him. The ratio of this decision also can have no application to the rules before us which are different in nature and which provide for suspension in contemplation of a disciplinary proceedings also.

6. The petitioner also relied upon a decision of the Supreme Court in the case of The Government of India, Ministry of Home Affairs and ors. v. Tarak Nath Ghosh, . After considering the rule in that case, the Supreme Court held that under Rule 7(1) of the All India Services (Discipline and Appeal) Rules 1955, the Government is entitled to place an officer under suspension even before definite charges are communicated to him, when preliminary investigation has been made into his conduct following allegation of corruption or malpractice levelled against him. Looking to the context in which the word "charges" occurred in that Rule, the word was widely interpreted by the Supreme Court to include accusations or imputations against the member of the service. This was while interpreting the phrase, "Having regard to the nature of the charge/charges and the circumstances in any case". The Supreme Court, in this context said that an officer could be placed under suspension even before definite charges were communicated to him. We fail to see how this decision helps the petitioner. The Supreme Court did not say that in all cases where a suspension order is issued in contemplation of a disciplinary proceeding, a preliminary investigation is mandatory. In any case Rule 7 which was considered by the Supreme Court is quite different from the rule which is before us.

7. In the present case, on the basis of the material which was before the Chief Justice, he was prima facie satisfied that the allegations require to be enquired into in a departmental inquiry. He has passed the order of suspension in exercise of powers under Rule 3(1)(a) in contemplation of such a departmental inquiry. In these circumstances we do not see how the order of suspension can be faulted.

8. It was also urged before us that although the order of suspension is dated 9-1-1990, the Departmental inquiry has not been concluded so far. On the expiry of six months from the date of

the suspension order, suspension comes to an end, and/or that it should have been revoked. The petitioner relies upon a circular dated 25th February, 1988 issued by the Government of Maharashtra, General Administration Department in this connection. This circular, inter alia, provides that in respect of a suspended Government servant, it is necessary to complete the investigation by the police or otherwise and file a charge-sheet in a Court of law or in a departmental enquiry within a period of six months. In complicated cases, if the period of six months is not sufficient for completion of investigation, the period may be extended upto 9 months by the Chief Secretary. This period is now extendable upto one year by the Chief Secretary. Any further extension requires prior approval of the Government. If the charge sheet cannot be served within this extended period, the Government servant become eligible for reinstatement. In the first place, this circular has no application to a disciplinary proceeding under the Bombay High Court Discipline and Appeal Rules, Secondly, the circular does not provide for any automatic reinstatement of the suspended Government Servant. A similar instruction of the Andhra Pradesh Government was considered by the Supreme Court in the case of Government of A.P. v. V. Sivaraman, . The Supreme Court has held that when an order continuing suspension is not issued after six months, suspension cannot be held invalid on that ground; and the order of suspension continues till it is revoked. The contention of the petitioner that his suspension has automatically come to an end after six months must be negatived.

9. In any case, in the present proceedings a charge-sheet has already been filed on 13-7-1990 only a few days after the expiry of six months. The petitioner has also filed his written statement on 3-8-1990 raising certain preliminary objections and the departmental enquiry is in progress. We see no reason to hold that the order of suspension has been in force for an unreasonable periods or that it ought to be revoked.

10. It was further submitted that the petitioner should not be kept under suspension because his continuation in office will not hamper the Departmental enquiry and that, at the most, he should be transferred. Looking to the nature of charges in the present case we do not see any reason to intervene. In the premises the petition is dismissed.