

Supreme Court of India

Govt. Of India, Ministry Of Home ... vs Tarak Nath Ghosh on 12 February, 1971

Equivalent citations: 1971 AIR 823, 1971 SCR (3) 715

Author: G Mitter

Bench: Mitter, G.K.

PETITIONER:

GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS & ORS.

Vs.

RESPONDENT:

TARAK NATH GHOSH

DATE OF JUDGMENT 12/02/1971

BENCH:

MITTER, G.K.

BENCH:

MITTER, G.K.

RAY, A.N.

CITATION:

1971 AIR 823                      1971 SCR (3) 715

1971 SCC (1) 734

CITATOR INFO :

0                      1972 SC 554 (15,16,17,19,63)

ACT:

All India Service (Discipline and Appeal) Rules, 1955, rr. 5(2) & 7-Civil Servant-Suspension-If can be ordered in contemplation of disciplinary proceedings.

HEADNOTE:

Serious allegations of corruption and malpractices had been made against the respondent, a member of the Indian Police Service, serving in the State of Bihar. Inquiries made by the State Government revealed that there was a prima facie case made out against him. He was suspended by an order which stated that disciplinary proceedings were contemplated against the respondent.

On the question whether the suspension of a member of the service can only be ordered after definite charges have been communicated to him in terms of r. 5(2) of the All India Services (Discipline and Appeal) Rules, 1955, or whether the Government is entitled to place him under suspension even before that stage has been reached after a preliminary investigation,

HELD : (1) The fact that in other rules of service there is specific provision for an order of suspension even when

disciplinary proceedings were contemplated, does not mean that a member of the All India Service should be dealt with differently. It would not be proper to interpret the Rules, which from a self-contained Code, by reference to the provisions of other rules even if they were made by or under the authority of the President of India. [718 F-G]

(2) Rule 7 expressly provides for suspension of a member of the service, having regard to the nature of the charges, for the purpose of disciplinary proceedings. The word 'charges' in the rule means accusations or imputations against a member of the service. If the disciplinary authority takes note of the allegation and is of the opinion after preliminary inquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed it would not be improper to remove the officer from the sphere of his activity either by transfer or suspension inasmuch as it may be necessary to find out facts from people working under him or look into papers which are in his custody. Ordinarily when serious imputations are made against the conduct of an officer, the disciplinary authorities cannot immediately draw up the charges and in some cases a considerable time may elapse before the superior authority can come to a conclusion that definite charges can be levelled against the officer. Merely because the order mentions that the disciplinary proceedings were contemplated it cannot be held that the situation in the present case had not reached the stage which called for an order of suspension. In substance, disciplinary proceedings can be said to have been started when complaints about the integrity of an officer are entertained, followed by a preliminary inquiry into them culminating

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in the satisfaction of the Government that a prima facie case has been made out against him for the framing of charges. When the order of suspension itself shows that the Government was of the view that such a prima facie case for launching departmental proceedings has been made out the fact that the order also mentions that such proceedings were contemplated makes no difference. 1721 B-F; 723 G; 724 G-H; 725 B-C]

S. Govinda Menon v. Union of India, [1967] 2 S.C.R. 566, followed.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 2338 of 1968. Appeal from the judgment and order dated March 31, 1965 of the Patna High Court in Misc. Judicial Case No. 1207 of 1964.

Jagdish Swarup, Solicitor-General and B. K. P. Sinha, for the appellants.

B. C. Ghosh, P. K. Chatterjee and Rathin Das, for the respondent.

The Judgment of the Court was delivered by Mitter, J. The question in this appeal is, whether the order of suspension passed on the respondent on July 31, 1964 was properly struck down by the Patna High Court. The facts are as follows. The respondent is a member of the Indian Police Service appointed on 25th January, 1937 and at the material time he was holding the substantive rank of Deputy Superintendent of Police in Bihar. In June 1962 he was posted at Ranchi. He was transferred to Patna and appointed as Special Officer, Political, General and Transport Department on July 23, 1964. The order of which the validity is in question ran as follows :- "Whereas serious allegations of corruption and malpractices have been made against Shri T. N. Ghosh, 1. P., Deputy Inspector General of Police, Southern Range, Ranchi; And whereas the said Shri T. N. Ghosh is also reported to have contravened certain provisions of the All India Services (Conduct) Rules, 1954;

And whereas the enquiries made by the Government of Bihar ;Into these allegations have revealed that there is a prima facie case made out against him;

And whereas disciplinary proceedings in respect of these matters are contemplated against the said Shri T. N. Ghosh;

And whereas the Government of India, after carefully considering the available material, and having regard to the nature of the charges and circumstances of the case, are satisfied that it is necessary and desirable to place the said Shri T. N. Ghosh under suspension Now, therefore, the Government of India hereby place the said Shri T., N. Ghosh, under suspension with immediate effect, until further orders, and direct that the said Shri T. N. Ghosh shall, during the period of suspension be paid such subsistence allowance as is admissible under the rules. By order and in the name of the President of India.

Sd./- K. Sivaraj Deputy Secretary to the Government of India." The respondent addressed a memorial to the Secretary to the Government of India, Ministry of Home Affairs on 24th August 1964 complaining against the above order on the ground that it was not sanctioned by the rules i.e. All India Service (Conduct) Rules, 1954. In particular his grievance was that as there were only allegations against him which had not crystallised into charges an order of suspension could not be made before departmental proceedings were actually started and while they were merely contemplated. He also- asked for communication of the nature of the departmental proceedings which had been started against him within 14 days with a request that the order of suspension be withdrawn in default thereof. It appears that there was no response to this. The respondent filed his writ petition on September 14, 1964 praying for the quashing of the order particularly on the above grounds raised in his memorandum. A counter affidavit to the petition was filed on behalf of the Chief Secretary to the Government of Bihar who was the third respondent in the petition. The averments in the said affidavit were that a report had been made to the Central Government against the petitioner on July 6, 1964 and having regard to the activities of the petitioner it had become necessary to remove him from the field of activities and as such he had been transferred to, Patna after being relieved of his post on July 13, 1964. It was said further that even before the receipt of the suspension order the petitioner had been actually questioned by S. P. Verma, the then

Inspector-General of Police, Bihar as early as February 8, 1964 apprising the petitioner that his activities had attracted the attention of Government. It was admitted that departmental enquiry and investigation into the conduct of the petitioner were still going on and as such charges had not been framed against him. Finally, it was said that the order was not by way of punishment and had been passed pending departmental enquiry into his conduct.

Another counter affidavit was filed on behalf of the Government of India and the Deputy Secretary to the Government of India, respondents 1 and 2 in the petition wherein substantially the same averments were made as in the counter affidavit on behalf of respondent No. 3. A large number of points were canvassed before the High Court which examined the provisions of different sets of rules and relying particularly on the difference in wording of rule 12 of the Central Civil Services Rules which empowered the appointing authority to place an officer under suspension inter alia, where a disciplinary proceeding against him was contemplated or was pending and rule 7 of the All India Services Rules (quoted in extensor hereinafter) it came to the conclusion that the order of suspension was not proper. Further, according to one of the Judges of that Court:

"To allow a member of that (the AR India) service to be placed under suspension without the formal proceeding in started may cause humiliation to an officer of such high rank without any justification whatsoever. "

According to the other learned Judge who took substantially the same view the order of suspension only indicated that disciplinary proceedings against the petitioner were in contemplation and this was not provided for in rule 7. In our view it would not be proper to interpret the provisions of the All India Service (Discipline and Appeal) Rules 1955 by reference to the provisions of other rules even if they were made by or under the authority of the President of India. The All India Services (Discipline and Appeal) Rules 1955 as they stood at the relevant time were a self-contained code-and we have to examine the provisions thereof to find out whether the order passed on the petitioner was justified. These rules were promulgated in exercise of the powers conferred by sub-s. ( 1 ) of S. 3 of the All India Services Act 1951 by the Central Government after consultation with the Governments of the States concerned. They were applicable to members of the Indian Administrative Service and those of the Indian Police Service. Cl. 3 of the Rules provided for penalties which might for good and sufficient reasons be imposed on a member of the service. Suspension is not a penalty covered by this clause. Cl. 4 indicated the authorities who would institute proceedings and impose penalty against mem-

bers of the Services. Cl. 5 which generally dealt with the procedure for imposing penalties provided by the first three sub-clauses as follows "(1) Without prejudice to the provisions of the Public Servants Inquiry Act, 1850, no order shall be passed imposing any of the penalties specified in rule 3 on a member of the Service unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself.

(2) The grounds on which it is proposed to take action shall be reduced to the form-of a definite charge or charges, which shall be communicated to the member of the Service charged together with a statement of the allegations on which each charge is based and of any other circumstances which it

is proposed to take into consideration in passing orders on the case.

(3) The member of the Service shall be required within such time as may be considered by the Government reasonably adequate in the circumstances of the case, to put in a written statement of his defence and to state whether he desires to be heard in person.

(4) to (10) It was only after the written statement was received from the member that the Government might, if it considered necessary, appoint a Board of Enquiry or an Enquiry Officer to enquire into the charges framed against him. Other sub- clauses of this rule laid down generally the procedure which was to be adopted in the enquiry. Rule 7 provided as follows :

"Suspension during disciplinary proceedings.-

(1) If having regard to the nature of the charges and the circumstances in any case the Government which initiates any disciplinary proceedings is satisfied it is necessary or desirable to place under suspend the member of the Service against whom such proceedings are started that Government may-

(a) if the member of the Service is serving under it 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 inquiry and the, passing of the final order in the case 100SupCI/71 7 2 0 Provided that in cases where there is a difference of opinion between two State Governments, the mater shall be referred to the Central Government whose decision thereon shall be final.

(2) A member of the Service who is detained in official custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the Service in respect of or against whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge.' if the charge is connected with his position as a Govt. servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

Under rule 8 a member of a Service who was placed under sus- pension was to be entitled to receive payment from the Government suspending his subsistence allowance as specified therein.

The crucial question in this case is, whether suspension of a member of the Service can only be ordered after definite charges have been communicated to him in terms of sub-cl. (2) of rule 5 or whether the Government is entitled to place an officer under suspension even before that stage has been reached after a preliminary investigation has been made into the conduct of the officer concerned following allegations of corrupt or malpractice levelled against him. To determine this it

is necessary to find out the object of placing a Government officer under "suspension" in terms of the said rule.

'Suspension' according to the Oxford Dictionary means "the :action of suspending or condition of being suspended; the action of debarring or state of being debarred, esp. for a time, from a function or privilege; temporary deprivation of one's office or position". A master can, subject to the contract of service, ask his servant not to render any service without assigning any reason but this would not be by way of punishment and the master would have to pay the servant his full wages or remuneration in such an eventuality. As Halsbury puts it :

"Whether or not the master has power to suspend a servant during the duration of the contract of service depends upon the construction of the particular contract. In the absence of any express or implied term to the contrary, the master cannot punish a servant for alleg-

72 1 ed misconduct by suspending him from employment and stopping his wages for the period of the suspension." (See Halsbury's Laws of England, Third Edition, Vol. 25, Art. 989 page 518).

Rule 7 of the Service Rules expressly provides for suspending of a member of the Service for the purpose of disciplinary proceedings. When serious allegations of misconduct are imputed against a member of a Service normally it would not be desirable to allow him to continue in the post where he was functioning. If the disciplinary authority takes note of such allegations and is of opinion after some preliminary enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed, it would not be improper to remove the officer concerned from the sphere of his activity inasmuch as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the officer concerned as well as to those whose duty it was to make the enquiry to do so while the officer was present at the spot. Such a situation can be avoided either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension. Government may rightly take the view that an officer against whom serious imputations are made should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. Rule 7 is aimed at taking the latter course of conduct. Ordinarily when serious imputations are made against the conduct of an officer the disciplinary authority cannot immediately draw up the charges : it may be that the Imputations are false or concocted or gross exaggerations of trivial irregularities. A considerable time may elapse between the receipt of imputations against an officer and a definite conclusion by a superior authority that the circumstances are such that definite charges can be levelled against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned. There would be nothing improper per se if the rules were to provide for suspension even before definite charges of misconduct had been communicated to the officer concerned. The question is whether the language of rule 7 is so correlated to that of rule 5 as to lead us to hold that the word "charges" in sub-cl. (1) of rule. 7 must

mean a definite charge as mentioned in subcl. (2) of r. 5. It may be that even a case where definite charges have been raised against an officer he may satisfactorily explain the circumstances and the grounds alleged against him in his written statement. It is also possible that after the enquiry is conducted it is found that the charges are all baseless. In principle we can see no difference between the position of an officer against whom definite charges have been framed to which he is required to put in his written statement and a situation where on receipt of allegations of grave misconduct against him the Government is, of opinion that it would not be proper to allow the officer concerned to function in the ordinary way.

The matter is however not *res integra* and there is a series of decisions of this Court which throw considerable light on the power of a master including a Government to suspend a servant or an officer under rules of service or even *de hors* such rules. The law of master and servant including Government servants with regard to suspension of an employee was discussed at some length in *The Management of Hotel Imperial V. Hotel Workers' Union*(1). However rules of service of Government officers did not fall for consideration there. *Champak Lal Chimanlal Shah v. The Union of India*(1) was a case where a temporary Government servant's services were terminated. The case shows, as is well known, that even More a formal departmental enquiry is launched a preliminary enquiry is usually held to find out whether a *prima facie* case is made out against a Government servant. This preliminary enquiry is directed to the collection of facts in regard to the work and conduct of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry under Art. 311 for inflicting one of the three major punishments mentioned therein and such a preliminary enquiry may even be held *ex parte*. In *R. P. Kapur v. Union of India & another*(3) the general principles governing a master and servant were discussed in some detail and it was said "If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his, full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale, of payment during suspension, the payment would be in accordance there with. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry (1) [1960] 1 S.C.R. 476, 482. (2) [1964] 5 S.C.R. 190. (3) [1964] 5 S.C.R. 431, 445.

72 3 into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

There is however a direct authority of this Court in *S. Govinda Menon v. The Union of India*(1). The appellant before this Court was a member of the Indian Administrative Service. He was the First Member of the Board of Revenue, Kerala State and was holding the post of Commissioner of Hindu Religious and Charitable Endowments. On the basis of certain \_ complaints containing allegations of misconduct against the appellant in the discharge of his duties as such Commissioner the Kerala Government instituted certain preliminary enquiries and thereafter started disciplinary proceedings against him and also placed him under suspension under rule 7 of the All India Services (Discipline and Appeal) Rules. One of the grounds urged by the appellant was that the order of suspension

which was dated March 8, 1963 was not in compliance with rule 7 inasmuch as definite charges were framed against him only on 6th June, 1963. On the basis of rule 5(2) it was argued that the word "charges" which occurred in 'this rule and in rule 7 should be given the same meaning and no order of suspension could be passed under rule 7 before the charges in terms of r. 5(2) were framed against him. This was turned down by this Court observing (at p. 582) :

"Rule 5(2) prescribes that the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges. The framing of the charge under Rule 5(2) is necessary to enable the member of the Service to meet the case against him. The language of rule 7(1) is however different and that rule provides that the Government may place a member of the Service under suspension "having regard to the nature of the charge/charges and the circumstances in any case" if the Government is satisfied that it is necessary to place him under suspension. In view of the difference of language in rule 5(2) and rule 7 we are of the opinion that the word 'charges' in rule 7(1) should be given a wider meaning as denoting the accusation or imputation against the member of the Service."

It is worthy of note, that in the order of suspension it was stated as follows "The Government have received several petitions containing serious allegations of official misconduct (1) [1967]2 S.C.R. 565.

against Shri S. Govinda Menon . . . . Preliminary enquiries caused to be conducted into the allegations have shown prima facie that the officer is guilty of corruption. The Kerala High Court has also occasion to comment on the conduct of the officer in their judgment in O.P. 2306 of 1962 delivered on, 12th February 1963.....

The judgment in the above case and the preliminary report of the X-Branch police have disclosed the following grave charges of serious irregularity and official misconduct on the part of the accused officer The detailed enquiry into 'the charges by the XBranch is in progress. The evidence in the case has to be collected from a large number of officers who are subordinate to the accused officer in his capacity as First Member of the Board of Revenue. In the interest of the proper conduct of the enquiry it is necessary that the officer should not be allowed to continue in that post. Having regard to the nature of the charges against the officer and the circumstances the proper course would be to place him under suspension. Shri S.

Govinda Menon I.A.S..... is therefore placed under suspension under Rule 7 of the All India Services (Discipline and Appeal) Rules 1955 till the disciplinary proceedings initiated against him are completed.', It was urged before us that the order of suspension there was different from the one before us. While there is no doubt that the order against the appellant in the above case was far more detailed both with regard to the nature of the charges and to the necessity of placing him under suspension, in substance there is little difference for the purpose of rule 7 of the Service Rules. The order in this case dated 31st July 1964 shows that serious allegations of corruption and malpractices had been made against the respondent and he was also reported to have contravened the provisions of the All India Service Conduct Rules and enquiries made by the Government of



Bihar into the allegations had revealed that there was a prima facie case made out against him. Merely because the order mentioned that disciplinary proceedings were contemplated against the respondent, as compared to rule 7 which contains phrases like "the initiation of disciplinary proceedings" and the "starting of such proceedings" we cannot hold that the situation in the present case had not reached a stage which called for an order of suspension. In substance disciplinary proceedings can be said to be started against an 7 25 officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a prima facie case has been made out against him for the framing of charges. When the order of suspension itself shows that Government was of the view that such a prima facie case for departmental proceedings had been made out the fact that the order also mentions that such proceedings were contemplated makes no difference. Again the fact that in other rules of service an order of suspension may be made when "disciplinary proceeding", were, contemplated" should not lead us to take the view that a member of an All India Service should be dealt with differently. The reputation of an officer is equally valuable no matter whether he belongs to the All India Service or to one of a humbler cadre. It is the exigency of the conditions of service which requires or calls for an order of suspension and there can be no difference ,in regard to this matter as between a member of, an All India Service and a member of a State Service or a Railway Service.

In the result the appeal is allowed but in the circumstances, of the case we direct the parties to pay and bear their own costs.

V.P.S.  
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Appeal allowed.