
(2016) 03 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17429 of 2015

A. Kishan

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

All India Services Act, 1951 — Section 3

Citation : (2016) 03 AP CK 0016

Hon'ble Judges : Nooty Ramamohana Rao and Anis, JJ.

Bench : Division Bench

Advocate : K. Sudhakar Reddy, for the Appellant; B. Narayana Reddy, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—1. This writ petition is instituted by a member of the Indian Forest Service, calling in question the correctness of the orders passed by the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 832 of 2014 instituted by him for quashing the order of suspension passed by the State Government vide G.O. Ms. No. 342 General Administrative Department dated 13.05.2013 as the same is contrary to Rule 3(1)(b) of The All India Services (Discipline and Appeal) Rules, 1969.

2. Sri K. Sudhakar Reddy, learned counsel for the writ petitioner would submit that the petitioner belongs to Indian Forest Service of 1990 batch and while he was working as the Conservator of Forests, he was placed under suspension through the orders contained in G.O. Ms. No. 342 General Administration (SC.D) Department dated 16.05.2013. However, the said order has not been confirmed by the Central Government within the maximum period of 90 days allowed for the said purpose. Hence, the said order shall not be treated as valid in view of the clear language employed in Rule 3(1)(b) of The All India Services (Discipline and Appeal) Rules, 1969. It was also contended that the report as is required in terms of Rule 3(6)(A) of the aforementioned rules is also not placed before the

Central Government. The Central Administrative Tribunal, it is urged, without any serious application has declined to grant the relief prayed for and instead thrown the writ petitioner to the mercy of the State Government.

3. Sri B. Narayana Reddy, learned Assistant Solicitor General would contend that, since no confirmation is solicited by the State Government, order of confirmation of the order of suspension has not been passed by the Central Government. However, the State Government has sent a report on 04.06.2013 for information of the Central Government in terms of Rule 3(6)(A) of the aforementioned rules and since the same does not require any confirmation from the Central Government, no specific orders have been passed. Since the State has not sought for any approval, the Central Government has not passed any approval order.

4. Before proceeding further, it is apt to take note of the first three paragraphs of the order passed by the State Government in their G.O. Ms. No. 342 General Administration (SC.D) Department dated 16.05.2013, which runs as under:

"Whereas, it was brought to notice of the Government of Andhra Pradesh that Sri A. Kishan, IFS(90), while working as Managing Director, Andhra Pradesh Women's Co-operative Finance Corporation, Hyderabad has misused his official position to create and issue FDR illegally and fraudulently in the name of the Corporation and collected deposits from the general public and siphoned off the entire amount.

2. And, whereas, a case against Sri A. Kishan, IFS(90), formerly Managing Director, Andhra Pradesh Women's Co-operative Finance Corporation, Hyderabad and presently Conservator of Forests (MIS), office of Principal Chief Conservator of Forests (HoFF), Andhra Pradesh, Hyderabad in respect of the above criminal office is under investigation/inquiry.

3. Now, therefore, Government of Andhra Pradesh, in exercise of the powers conferred under sub-rule (3) of Rule 3 of All India Services (Discipline & Appeal) Rules, 1969, hereby place the said Sri A. Kishan, IFS(90), formerly Managing Director, Andhra Pradesh Women's Co-operative Finance Corporation, Hyderabad and presently Conservator of Forests (MIS), office of Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad under suspension with immediate effect pending inquiry/investigation."

5. Thus, the composite State Government of Andhra Pradesh passed the aforementioned order placing the writ petitioner under suspension under Sub-Rule (3) of Rule 3 of The All India Services (Discipline and Appeal) Rules 1963, as, the alleged involvement of the petitioner in criminal offence is under investigation/inquiry. It is the validity of the above order which is the principal question that engaged the attention of the Central Administrative Tribunal in O.A. No. 832 of 2014 as well as in this writ petition.

6. The Central Government, exercising the power available to it under Subsection

(1) of Section 3 of the All India Services Act, 1951, and after consultation with the State Governments, made The All India Services (Discipline and Appeal) Rules, 1969 (henceforth referred to, for brevity as "Rules"), Rule 2(c) defined the expression "Government" as meaning, in the case of a member of the Service serving in connection with the affairs of the State, the Government of that State. It is not in dispute that the writ petitioner is a member of the All India Service serving in connection with the affairs of the composite State of Andhra Pradesh at the relevant point of time. Rule 3 of the Rules dealt with the matters concerning with suspension of a member of the Service. There are several sub rules therein. Each one of them has provided for and taken care of one contingent situation or the other. Sub Rule (1) thereof has set out that, if, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State 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 pass an order placing him under suspension. Thus, Sub Rule (1) deals with a situation where disciplinary proceedings either are contemplated or/are actually pending against a member of the Service, and having regard to the circumstances of the case or gravity of the nature of the charges, the Government of a State if it thinks it necessary or desirable, to place a member of the Service under suspension, it may do so. There are two provisos added to this sub rule. The first proviso would set out that the Chief Secretary to the Government, the Director General of Police and the Principal Chief Conservator of Forests, who are the heads of the respective Services, shall not be placed under suspension without obtaining prior approval of the Central Government. Since, great emphasis is placed on the second proviso by the learned counsel for the petitioner, it is appropriate to refer to it as it is.

"Provided also that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government."

(Emphasis is played now)

7. The above proviso makes it clear that where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension and a further period of 45 days as may be specified by the Central Government, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central

Government. The effect of this proviso is that, when the State Government places a member of the All India Service under suspension against whom disciplinary proceedings are contemplated, the necessary disciplinary proceedings should be initiated within a period of 45 days by framing an appropriate charge(s) against such a member of the Service or the order of suspension should be confirmed by the Central Government. Thus, the second proviso will not get attracted where disciplinary proceedings are already initiated against a member of the All India Services, but however, taking the gravity of the nature of charges so framed, the Government of the State considers later in point of time that it is expedient or desirable to place such an officer under suspension. The proviso will get attracted only in cases where the State Government exercises the power of placing the member of the Service under suspension upon contemplation of disciplinary proceedings against such a member, but not when they are already initiated. By virtue of the sweep of the proviso, as soon as a member of the Service is placed under suspension, pending contemplation of disciplinary proceedings, such disciplinary proceedings must get initiated in real quick time after the member of the Service is so placed under suspension, for which an initial period of 45 days, followed up by a further period of 45 days specified by the Central Government for reasons to be recorded in writing is the outer limit prescribed. Otherwise, the order of suspension should get confirmed by the Central Government. The effect of this proviso is intended to act as a check against any possible arbitrary exercise of power by the Government of the State against a member of the All India Services under the guise of contemplated disciplinary proceedings to prolong the period of suspension of such a member of the service. A check is imposed upon any such period of suspension passed by the Government of State upon contemplation of disciplinary proceedings against a member of the service. The obligation is to make the Government of the State translate its action into initiation of disciplinary proceedings or seek confirmation from the Central Government of the order of suspension, so that, the Central Government will be in a position to examine the entire matter independently in a proper perspective and only in the event that it concurs with the opinion of the Government of the State that the member of the Service, requires to be placed under suspension pending contemplated disciplinary proceedings, it would confirm the order of suspension, but not otherwise. Thus, against any unjust action of suspension member of service can find a source for correcting the error of judgment indulged in by the State Government.

8. Sub Rule (1A) contemplates a situation where a member of the All India Services engages himself in activities prejudicial to the interests of the security of the State, in such an event, he can be placed under suspension. Sub Rule (1B) has set out that the period of suspension of a member of the Service on charges other than corruption shall not exceed one year and the inquiry shall be completed and appropriate order shall be passed within one year from the date of suspension, failing which the suspension order shall automatically stand

revoked, whereas, Sub Rule (1C) contemplated that the period of suspension of a member of the Service on charges of corruption shall not exceed two years and the inquiry shall be completed and appropriate order shall be issued within two years from the date of suspension, failing which the suspension order shall automatically stand revoked.

9. Sub Rule (2) deals with a situation where a member of the Service gets detained in official custody whether on a criminal charge or otherwise, for a period longer than forty eight hours, he shall be deemed to have been suspended by the Government concerned. Thus, Sub Rule (2) deals with a fiction resulting from out of detention in custody by a member of the service whether on a criminal charge or otherwise for a period exceeding 48 hours.

10. Whereas, Sub Rule (3) of Rule 3 deals with altogether a different situation. Since, it will have a bearing upon the controversy in the instant case, it reads as under:

"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 be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a [member of the Service] or is likely to embarrass him in the discharge of his duties or involves moral turpitude."

(Emphasis is brought out)

11. The above Sub Rule deals with a situation where an investigation, inquiry or trial relating to a criminal charge is pending against a member of the All India Service, at the discretion of the Government he may be placed under suspension till the termination of all proceedings relating to that charge, if the charge is connected with his position as a member of the All India Services or if the charge involves moral turpitude. Now, a look at the order passed by the State Government through their G.O. Ms. No. 342 General Administration (SC.D) Department dated 16.05.2013 has clearly brought out that there were serious allegations against the writ petitioner that while he was working as a Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation, Hyderabad, has misused his official position to create and issue FDRs illegally and fraudulently in the name of the Corporation and collected deposits from the general public and siphoned off the entire amount. Prima facie, the criminal charge relates/connected to his official functioning. Fraudulent creation of Fixed Deposit Receipts and siphoning off funds certainly contain an element of moral turpitude. Therefore, in respect of the above criminal offences, the conduct of the writ petitioner is under investigation and inquiry. Hence, the Government of the composite State of Andhra Pradesh has invoked the power available to it under Sub Rule (3) of Rule 3 of the Rules and placed the writ petitioner under suspension, but it did not invoke the power available to it under Sub Rule (1) of Rule 3 of the Rules. Therefore, the contention canvassed by the writ petitioner

that the order of suspension passed by the State Government through their G.O. Ms. No. 342 General Administration (SC.D) Department dated 16.05.2013 is not valid beyond the maximum period of 90 days contemplated by the second proviso incorporated under Sub Rule (1) of Rule 3 of the Rules is a totally misconceived contention. The said proviso added to Sub Rule (1) has limited applicability. It would get attracted only in the event where the Government of the State has placed an officer under suspension when disciplinary proceedings are contemplated against such an officer. The second proviso to Sub Rule (1), either content wise or contextually, has no application when an order is passed by the Government of the State under Sub Rule (3) of Rule 3. Inasmuch as, Sub Rule (3) can be invoked only when investigation, inquiry or trial relating to a criminal charge is pending against a member of the All India Service, he can be placed under suspension. Therefore, the areas covered by the sweep of Sub Rule (1) of Rule 3 and the one covered by Sub Rule (3) of Rule 3 are totally dissimilar and distinct contingencies, which bear no relationship with each other. Hence, the second proviso under Sub Rule (1) of Rule 3 cannot, by any stretch of imagination, be made to cover a case falling under Sub Rule (3) of Rule 3 of the Rules.

12. This apart, Sub Rule (3) makes it very clear that a member of the service in respect of whom an investigation, inquiry or trial relating to a criminal charge is pending, may be placed under suspension, at the discretion of the Government, until the termination of all proceedings relating to that charge, if the charge is connected with his position as a member of the Service, or it is likely to embarrass him in the discharge of his duties or involves moral turpitude. Sub Rule (3), therefore, contemplated for the period of suspension to last until such time all the proceedings relating to the criminal charge get terminated. Thus, the rule making authority is obviously conscious that, when a member of the All India Service is placed under suspension, because of pendency of investigation/inquiry/trial relating to a criminal charge, there cannot be a fixed time frame that can be prescribed for the period of suspension to last. The reason is not far to seek. The Government of the State will have no control over the period that might be taken for completion of the investigation/inquiry/trial. At best, the Government of the State can only urge for a quick completion and expect the proceedings in that regard to come to a quick end. When the Government of the State has no direct control over the proceedings, no outer time limit could have been possibly conceived or provided for accomplishing any such task.

13. We are, therefore, clearly of the view that the contention canvassed by the petitioner that the Central Government having not confirmed his suspension within the maximum period of 90 days, reckoning from 16.05.2016, the order of suspension shall be treated as not valid is absolutely without any merit and it is a misconceived one.

14. Continuing the thread of unravelling the situations contemplated by various Sub Rules under Rule 3, we need to notice that under Sub Rule (4) provides that

when a member of the All India Service gets convicted for a criminal offence, and is not dismissed or removed forthwith, upon such conviction, once again a fiction is incorporated by deeming such a member to have been placed under suspension from the date of such conviction provided the sentence of imprisonment exceeds 48 hours.

15. Sub Rule (5) of Rule 3 deals with a situation where a member of the All India Service has been imposed with a penalty of dismissal, removal or compulsory retirement from service, but however, the same is set-aside in appeal or on a review, and the case is remitted for further inquiry or action, in such a situation, the member of the All India Service shall be deemed to have been placed under suspension from the original date of punishment of dismissal/removal/ compulsory retirement.

16. Sub Rule (6) talks of a similar contingency. The difference in between Sub Rule (5) and Sub Rule (6) being Sub Rule (6) talks of intervention of Court by setting-aside the order of punishment and the disciplinary authority is of consideration that the circumstances of the case warrant to hold further enquiry against such a member.

17. Sub Rule (6A) contemplates a detailed report of the case to be forwarded to the Central Government ordinarily within a period of fifteen days of the date on which the member of the Service is either suspended or is deemed to have been suspended, as the case may be.

18. In the instant case, the learned Assistant Solicitor General has clearly brought out that such a report has been submitted to the Central Government on 04.06.2013. Since Sub Rule (6A) specified the time limit by using the expression "ordinarily", no exception need be taken with regard to the report submitted against the petitioner by the Government of the State on 04.06.2013, which actually fell a couple of days beyond the fifteen days period. Hence, the State Government, in the instant case, complied with the requirement of Sub Rule (6A).

19. Sub Rule (7) sets out that an order of suspension made or deemed to have been made under Rule 3 shall continue to remain in force until it is modified or revoked by the authority competent to do so and any such suspension may be modified or revoked by the authority which made it at any time also.

20. Sub Rule (8) talks of the review of an order of suspension.

21. Clearly, the Central Administrative Tribunal has missed to notice the distinction between various contingent situations contemplated and provided for under various Sub Rules of Rule 3 while deciding O.A. No. 832 of 2014 instituted by the petitioner herein.

22. We, do not find any merit in this writ petition and it is accordingly dismissed, but however, without costs.

23. Consequently, miscellaneous applications pending if any shall also stand

dismissed.