
(1971) 03 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 1089 of 1969

R.K. Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-03-1971

Acts Referred:

Citation : (1971) ILR Delhi 254

Hon'ble Judges : T.V.R. Tatachari, J; Narain Andley, J

Bench : Division Bench

Advocate : G.L. Sanghvi, K.V. Gupta, B.N. Sen, A.B. Saharia, O.P. Malhotra and D.K. Sinha, for the Appellant;

Judgement

S.N. Andley, J.

(1) The petitioner, R. K. Gupta, challenges the order dated August 21, 1969 passed by the President of India placing him under suspension with immediate effect from the aforesaid date. The order has placed a further restriction on the petitioner by prohibiting him from leaving New Delhi which has been specified as his headquarters without the previous permission of Mr. K. Rajaram who has signed the order as the Deputy Secretary to the Government of India in. the Ministry of Industrial Development, Internal Trade and Company Affairs (Department of Industrial Development).

(2) The petitioner was functioning, at the time of his suspension, as a Development Officer in the Directorate General of Technical Development. At the relevant time the Director General of Technical Development was Dr. B. D. Kalelkar. The Union of India; the aforesaid Mr. K. Raja Ram and Dr. B. D. Kalelkar are respondents Nos. 1 to 3, respectively.

(3) The order of suspension is challenged on the ground that it was passed mala fide, the allegations of mala fide being mainly against respondent No. 3, and on the ground that it was not authorised by rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It may be stated that according

to the counter affidavit filed by respondent No. 2, the aforesaid order was passed under clause (b) of sub-rule (1) of rule 10 of the said Rules. The order is in these terms :-

"NO.14/12/69-Vij Government of India Ministry of Industrial Development, Internal Trade and Co. Affairs (Dept. of Industrial Development). New Delhi, the 21st August, 1969. Order Whereas a case against Shri R. K. Gupta, Development Officer, Directorate General of Technical Development, is under investigation. Now, Therefore, the President, in exercise of the powers conferred by sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, hereby places the said Shri R. K. Gupta under suspension, with immediate effect. It is further ordered that during the period that this order shall remain in force the headquarters of Shri R. K. Gupta, Development Officer, Directorate General of Technical Development, shall be New Delhi and the said Shri R. K. Gupta shall not leave the said headquarters without obtaining the previous permission of the undersigned. By order and in the name of the President. sd/- (K. Raja RAM) Deputy Secretary to the Govt. of India Copy to Shri R. K. Gupta, Development Officer, D.G.T.D., New Delhi, Orders regarding his subsistence allowance will be issued separately. sd/- K. Raja RAM."

(4) The reason for the suspension order as appearing on its face is that a case against the petitioner was under investigation but the details and the nature of the case or the investigating agency are not disclosed. Nor is it stated that the investigation is in respect of a criminal offence. The relevant part of rule 10 of the said Rules is as under :-

"10(1)The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, may place a government servant under suspension: (b) Where a case against him in respect of any criminal offence is under investigation enquiry or trial."

(5) It is clear that the order of suspension can be justified under clause (b) only if a case in respect of any criminal offence against the Government servant concerned was under investigation, enquiry or trial. The respondents rely upon the pendency of an investigation.

(6) The petitioner was selected by the Union Public Service Commission and was appointed on March 31, 1964, as a Development Officer in the Ministry of Industrial Development, Internal Trade and Company Affairs, hereinafter referred to as "the Ministry", and started functioning as such in one of its Departments known as the Directorate General of Technical Development. The petitioner alleges that between 1966-68, he was dealing with the Electrical Switchgear Industry in the Electrical Directorate and had to deal with Messrs. Jyoti Switchgear Limited and Messrs. Jyoti Limited. .It is the petitioner's case that he and the Industrial Adviser in this Directorate made recommendations for the rejection of applications made by these two companies for an industrial license

but respondent No. 3 recommended the case to the Ministry because he is alleged to have personally known the Directors of these two companies and to be interested in them. It is further alleged that because of his aforesaid recommendations the petitioner incurred the extreme displeasure of respondent No. 3 as a result of which he was transferred from the Switchgear Industry to the Cable Industry in October, 1968. The petitioner alleges that when he came to the Cable Industry he found that there had been large, scale abuse of import licenses for raw materials by various firms including Messrs. Asian Cables whom respondent No. 3 wanted to favor. This misuse was reported by the petitioner to the Industrial Adviser who was his immediate superior and who, on December 24, 1968, brought the misuse to the notice of respondent No. 3 and the Secretary of the Ministry advising deterrent punishment to be meted out to the firms for misuse of the import licenses. It is alleged that the cable manufacturers threatened the petitioner and respondent No. 3 became further annoyed with the petitioner for bringing to light the unlawful activities of Messrs. Asian Cables, amongst others. Because of this annoyance, respondent No. 3 transferred the petitioner from the Cable Industry on January 25, 1969 without assigning any reason. The Industrial Adviser is alleged to have written a note to respondent No. 3 on January 28, 1969 to hold up the transfer orders. Respondent No. 3 is alleged to have sent a letter to the Chief Controller of Imports and Exports to issue licenses to the Cable Manufacturers in February, 1969 pending investigation into complaints of import violations against them and to have taken relevant files away from the petitioner. On receiving a reminder from the Ministry of Petroleum and Chemicals enquiring about the latest position of the cases relating to alleged misuse by the cable manufacturers, the petitioner requested respondent No. 3 to return the files to him but the files were reported to be missing. In the absence of the files, the petitioner, under the directions of the Industrial Adviser, sent circulars to the defaulting firms to send detailed information about their transactions in the imported raw materials and this action of the petitioner is alleged to have further annoyed respondent No. 3. Thereupon, and at the instance of the cable manufacturers, respondent No. 3 is alleged to have again transferred the petitioner on March 26, 1969 from the Cable Industry against which transfer the petitioner protested. Since the petitioner did not fall in line with the wishes of respondent No. 3 the latter is alleged to have sent a false information to the Central Bureau of Investigation on May 16, 1969 that the petitioner was possessed of assets which were disproportionate to his means in that he had constructed a house valued at Rs. 75,000 on a plot of land bearing No.K-15 in New Delhi South Extension Part I, New Delhi, which had been purchased earlier for Rs 14,000 and had acquired another plot of land No. B/124 in Model Town, Faridabad valued at Rs. 6,750 in the name of his wife and had also acquired other assets in his name and/or in the names of his dependants. This report led to what is relied upon by the respondents as the first case which was pending investigation against the petitioner. Thereafter, the petitioner came to know on June 3, 1969 that respondent No. 3 had permitted diversification to Messrs. Asian Cables in March, 1969 in secret which was objected to even by the

Industrial Adviser who wrote to the Secretary of the Ministry. But in spite of these objections and at the instance of respondent No. 3 Messrs. Asian Cables were again granted import license for 1969-70. These irregularities committed by or at the instance of respondent No. 3 were the subject matter of Questions in Parliament in August, 1969. when events proceeded with some rapidity. It is alleged that respondent No. 3 came to know about the Questions in Parliament on August 15, 1969 and about the Call Attention Notice on August 19, 1969. On the latter date, respondent No. 3 served a memorandum at about 4.00 P.M. on the petitioner calling upon the petitioner to submit his Explanation within two hours with respect to an alleged statement of an Upper Division Clerk, Babu Lal Verma, that a certain file which had been given to the petitioner by the aforesaid clerk did not contain some of its pages when it was returned. On August 20, 1969, it is alleged, a regular criminal case No. 24 of 1969, was registered against respondent No. 3 by the Central Bureau of Investigation u/s 5(2) of the Prevention of Corruption Act, 1947 in relation to the alleged favors shown by respondent No. 3 to Messrs. Asian Cables. As a result, it is alleged that respondent No. 3 became infuriated with the petitioner and got him suspended through respondent No. 2 by the impugned order on August 21, 1969.

(7) On September 9, 1969, the petitioner filed Civil Writ Petition No. 899 of 1969 in this Court to challenge the order of suspension and the respondents to this writ petition were the Union of India; the Minister of Industrial Development; respondent No. 3; Col. V. P. S. Menon, Industrial Adviser and the Chief Controller of Imports and Exports, A Division Bench of this Court (Kapur and Ansari, JJ.) issued a notice to show cause why the petition be not admitted. In reply counter affidavits were filed by Mr. N. N. Wanchoo, Secretary of the Ministry; respondent No. 3 and the Industrial Adviser. Rejoinders to these affidavits were filed by the petitioner. The Division Bench dismissed the writ petition on September 18, 1969 in limine holding that the petition involved disputed questions of fact. The petitioner went to the Supreme Court but his petition for special leave was dismissed on October 13, 1969. Then it was that the petitioner filed the present petition which was admitted on December 9, 1969, after a show cause notice.

(8) The two main points which have been urged by the petitioner for his prayer for quashing the order of suspension are (1) that it was passed because of the mala fide of respondent No. 3 and at his instance and (2) that it is not authorised by rule 10(I)(b) of the said Rules in as much as no investigation was pending against him in connection with any criminal offence at or prior to the date of the passing of the said order

(9) We will first deal with the question that the order of suspension was passed mala fide. The petitioner alleges that the order of suspension was passed at the instance of respondent No. 3 who bore a serious grudge and animosity against the petitioner and who was bent upon harming the petitioner and ruining his career; that respondent No. 3 had passed misleading information in relation to the allegation of disproportionate assets to the Central Bureau of Investigation so

as to prejudice the case of the petitioner although the petitioner had filed in his office regular returns disclosing the acquisition and the manner of acquisition of these assets which had been scrutinised in the office in the normal course; that respondent No. 3 was responsible for the unwarranted delay in allowing the petitioner to cross the efficiency bar: that the petitioner had reported against the cable manufacturers, including Messrs. Asian Cables, recommending that the issue of licenses to them be held up pending investigation there by incurring the displeasure of respondent No. 3; that respondent No. 3 had allowed diversification to Messrs. Asian Cables in spite of the protest of the petitioner and that respondent No. 3 had persuaded respondent No. 2 to pass the order of suspension. Substantially, there fore, the allegations of mala fide are against respondent No 3 alone but it is urged that the order of suspension having been passed at the instance of respondent No, 3 should be struck down as mala fide. It is apparent from a letter dated August 18, 1969 written by respondent No. 3 to the Secretary of the Ministry (Mr. N. N. Wanchoo) that the relations between the petitioner and respondent No. 3 were, to say the least, not cordial. In this letter respondent No. 3 states :-

"AS you are aware, Col. V. P. S. Menon and Mr. R. K. Gupta have been after me just because I have removed R. K. Gupta from the Cable Industry since series of complaints of corruption were received against Mr, R. K. Gupta by all of us including the Minister, Our Minister felt that it was advisable to remove Mr. Gupta from the charge, of the Cable Industry. Even in the case of Jyoti Limited file, I have no doubt that the photostats must have been provided by Mr. R. K. Gupta. Since nothing came out of that complaint, Mr. Gupta according to me seems to be now trying to use this fraudulent method for maligning me and the Ministry officials."

(10) There is material on the record to indicate that respondent No. 3 was mala fide disposed towards the petitioner and no serious argument has been addressed to us on behalf of respondents Nos. 1 and 2 that it was not so. No argument was addressed on behalf of respondent No. 3 as, though he had filed a counter affidavit, he was not represented by counsel nor did he appear personally at the final hearing presumably because he had retired from service in the mean time. In view of the fact that the order of suspension was passed by respondent No. 2 as directed by the Secretary of the Ministry, as appears to be the case, the mala fides of respondent No. 3 alone would not suffice to strike down the order of suspension unless it is demonstrated that it was passed at the instance of respondent No. 3 The circumstances which immediately preceded the order of suspension may usefully be summarised.

(11) On August 15, 1969, it came to be known that the order of diversification made by respondent No. 3 in favor of Messrs. Asian Cables was going to be the subject matter of questions in Parliament.

(12) On August 18, 1969, respondent No. 3 wrote the letter quoted earlier to the Secretary of the Ministry alleging that the photostat copy of a letter which he

was supposed to have written to Messrs. Asian Cable was a forgery and that these photostats must have been provided by the petitioner.

(13) On August 19, 1969, notice of a Call Attention Motion was tabled in the Lok Sabha with respect to the aforesaid diversification and the passing of a bribe. On this very day, respondent No. 3 issued a show cause notice to the petitioner at about 4.00 P.M. calling upon the petitioner to show cause by 6.00 P.M. of that day with regard to some missing pages from a file which had been taken by the petitioner and this show cause was on the basis of a statement of an Upper Division Clerk (Babu Lal Verma).

(14) On August 20, 1969, the Special Police Establishment, New Delhi, registered a case of corruption against "some officials of the Department of Industrial Development, Ministry of Industrial Development and Company Affairs and the Directorate General Technical Development u/s 5(I)(d) read with section 5(2) of the Prevention of Corruption Act, 1947", on the report of Mr, N. P. C. Naidu, a Member of Parliament.

(15) On August 20, 1969, the Secretary of the Ministry received copy of a letter from the said Babu Lal Verma wherein it was complained that the petitioner had obtained a statement from him which would be contrary to the statement made by him to respondent No. 3 about missing pages of a file referred to earlier. On receiving this letter, the Secretary of the Ministry made the following note:-

"THE attached copy of a letter which has been written by an Assistant in the D.G.T.D. to Shri R. K. Gupta, Development Officer has been given to me by the Director of Administration, D.G.T.D., Shri Kazi. In view of what is stated in this letter I think it is time that action was taken to suspend Shri R. K. Gupta, since it is clear that he is trying to tamper with the evidence of witnesses in a case and that action in this regard is very reprehensible. I, Therefore, recommend for Minister's approval that action to suspend Shri Gupta may be ordered. Sd..00 N. N. Wanchoo 20-8-1969."

(16) Following upon this note and the endorsement thereon by the Minister, the impugned order of suspension was passed by respondent No. 2 on August 21, 1969

(17) In the above note, the Secretary has stated that it was time that action was taken to suspend the petitioner on the ground that he was trying to tamper with the evidence of witnesses in a case and that such action was very reprehensible. The words "it is time" indicate that the letter of the Upper Division Clerk to the Secretary was merely one of the circumstances which persuaded the Secretary to recommend the petitioner's suspension which recommendation was accepted by the Minister who has initialled this note. It is possible that the letter of respondent No. 3 dated August 18, 1969 may also have been in the mind of the Secretary but even so, it cannot be said that this letter alone was the cause of the Secretary's recommendation for suspension. It cannot, Therefore, be said that the suspension of the petitioner was at the instance of respondent No. 3.

(18) Reliance has been placed by the petitioner on the case *Ramji Lal Ram Lal and Another Vs. State of Punjab and Others*,), the appeal against which was dismissed by the Supreme Court on October 12, 1970. But in our view this decision will not help the petitioner. In this case a notification had been issued during the pendency of an appeal taking away the right of pre-emption with respect to a sale. This notification was challenged also on the ground of mala fides alleging that it had been issued by suppression of material facts by certain officers relating to the finding of the Courts: in the litigation between the parties. In answer it was urged on behalf of the Government that there was no person in the Government who was concerned with the issue of the notification against whom an allegation of mala fide had been made. On this reply it was observed "that Government acts through human agencies and in considering whether a particular action of the Government is mala fide or not, it is the conduct of such agencies, whose duty it is to lead up to such action, which has to be considered and if there are a number of such human agencies which come in with their reports, opinions and recommendations, then the whole process must be considered that leads up to an action by the Government in the shape of issuance of a notification like the impugned notification." That case has no bearing on the present case because the petitioner has failed to show that either the aforesaid letter dated August, 18, 1969 of respondent No. 3 or any other act on his part was the cause of the order of suspension which was ultimately passed by respondent No. 2 on the recommendation of the Secretary of the Ministry which had been accepted by the Minister. We have, Therefore, no hesitation in repelling the petitioner's plea that the order of suspension was mala fide.

(19) The next contention is that the necessary condition precedent to the passing of an order of suspension, namely, the pendency of an investigation in a case against the petitioner in respect of a criminal offence was not satisfied

(20) The respondents' case is that there was such an investigation pending . In the counter affidavit filed by respondent No. 2 it has been stated that the Central Bureau of Investigation was carrying on investigation against the petitioner in respect of three matters, namely, :-

(1) possession of assets grossly disproportionate to his known sources of income;
(2) leakage of information from official documents to unauthorised persons and
(3) tampering with official records and involvement in making a document which appears to be a forged one with the intention of causing harm to the reputation of senior officers.

(21) The petitioner's case is that the so called investigation by the Central Bureau of Investigation into the question of possession of disproportionate assets was not an investigation within the meaning of rule 10 of the said Rules but was merely a preliminary enquiry which was registered for the purpose of verification and this could not be given the status of an investigation It was further his case that no investigation was pending against him on the date of the order of suspension in respect of the other two matters mentioned earlier.

(22) In order to meet the case made in the counter affidavit, the petitioner had applied for production of various documents in respect of which privilege was claimed on behalf of the respondents. In dealing with this question we came to the conclusion that the averments made in the counter affidavit of respondent No. 2 did not amount to saying that any investigation was pending against the petitioner at or prior to the date of the order of suspension with respect to leakage of information or tampering with official records. We will repeat what we said in our order dated November 24, 1970, on the petitioner's application for production of documents:-

"IT is noticeable that respondent No. 2 has not stated categorically or definitely that investigation into all the aforesaid three allegations was pending at or prior to the date when the impugned order of suspension was. passed. The language used in paragraph 48 of the counter affidavit quoted above only suggests; that these investigations were pending on the date when the counter affidavit was affirmed on March 10, 1970, It seems to us that there is some conflict in the suggestion sought to be made by paragraph 11(5) of the counter affidavit quoted earlier and the suggestion sought to be made in paragraph 48 of the said affidavit referred to earlier. It is probably for that reason that respondent No. 2 has averred the sufficiency of even one case being under investigation and it is probably for that reason that Mr. B. Sen, learned counsel for the respondents, stated during the course of his arguments that he will rely only on the pendency, at the time of the passing of the order of suspension, of investigation in relation to the possession of assets grossly disproportionate to the petitioner's known sources of income."

(23) Therefore, the only question which survives on this aspect of the case is whether the so called investigation into the disproportionate assets in the possession of the petitioner was an investigation within the meaning of rule 10(I) (b) of the Rules. On May 16, 1969, the Central Bureau of Investigation registered a report. This report is in the following terms :-

"DELHISPE Cia (II) Branch (Preliminary Enquiry) Registration Report. Cia (II) PENO.3 Date and time of report . . . 16-5-69 to a 4.30 p.m. Place of occurrence with State Delhi and other places. Date and time of occurrence 1969 and before. Name of complainant or informant address . . Source Suspected offence Misconduct. Name and address of the accused . , . . R. K. Gupta Do. D.C.T.D. orgn. Delhi Action taken. P.E. Regd. I.O. Shri G. S. Sharma, Inspector if Pol. SPE/C.I.A.(II)New Delhi.

(24) Information has been received to the effect that Shri R. K. Gupta, Development Officer Delhi in the D.G.T.D."s organisation is a corrupt officer and has by corrupt or illegal means or by otherwise abusing his official position obtained pecuniary advantages for himself and/or others and has constructed a house valued at Rs. 75,000.00 on a plot of land No, K-15 in N.D.S.E, Part I, New Delhi purchased earlier for Rs. 14,000.00 and acquired another plot of land No. B/124 on Model Town valued at Rs, 6,750.00 in the name of his wife and has also

acquired other assets in his name and/or in the name of his dependants which are grossly disproportionate to his known sources of income. As the matter requires a probe this P.E. is being registered for verification. S.S. Roberts,

S.P. S.P.E./C.B.I-/C.I.A. (II) New Delhi. No. 2/3/69 C.W.-1 C.I.A. (II) c. c. to:- 1. Shri D. K. Guba, Deputy Secretary, Ministry of Home Affairs. 2. Shri C. M. Narayan, D.S. C.V.C. New Delhi. 3. Shri M. P. Singh Jt. Dir. (N) C.B.I. 4. Shri P. V. Hingorani, Dy, Inspector General of Police, S.P.E., Zone-1, New Delhi. 5. Shri K. Raja Ram, D.S. M/O Ind. 6. Shri G. C. Sharma, Investigation Officer."

(25) It is described as a preliminary enquiry. Section 154 of the Code of Criminal Procedure which deals with the recording of information relating to the commission of a cognisable offence is not mentioned in this document. After recording the information it is stated that the preliminary enquiry is being registered for verification as it requires a probe. In our opinion, the words "preliminary enquiry"; "probe" and "verification" are significant and go to show that this preliminary enquiry cannot be equated to an investigation as contemplated by section 157 of the Code. Every action taken by the authority competent to investigate into an alleged offence on receiving some information or report cannot be said to constitute the commencement of investigation by the said authority.

(26) The observations contained in the case reported in Air 1915 Madras 312 in re : Nandamuri Anandayya are pertinent. Allying L. stated:

"IT can hardly be contended that every enquiry which a police officer makes must necessarily be an investigation under S. 157. Most investigations are initiated on information recorded under S. 154 and vouched for by the informant. But the police must frequently hear of alleged offences from less reliable sources, e.g. village gossip, or the receipt of telegram which, so far as authenticity goes, stands in no better position. In such cases it is discretionary with the officer to take action or not and, before deciding as to the course to adopt, he may frequently deem it well to make as few preliminary and informal enquiries, as to whether there is anything in what he has heard to render a formal investigation desirably,"

(27) Such initial verification for the purpose of ascertaining the authenticity or genuineness of the information does not amount to commencement of investigation into the alleged offence. The exact point of time when investigation into an alleged offence can be said to have commenced has to be decided on the facts and circumstances of each case. We are of the view that investigation can be said to commence when the investigating authority, after formally recording or registering the information or report and believing or action with the intention of investigating into and detecting the to investigate into the alleged offence by taking some over steps the genuineness of the information or report received by him decides to investigate into the alleged offence by taking some overt steps or action with the intention of investigating into and detecting the alleged offence.

In this context, reference may usefully be made to the following observations of the Supreme Court regarding commencement of investigation in *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, :-

"THUS, under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender. (4) Collection of evidence relating to the commission of offence which may consist of (a) examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filling of a charge-sheet u/s 173."

(28) It seems to us that in the present case the Central Bureau of Investigation itself has made a distinction between "preliminary enquiry" and "investigation" For example, on August 20, 1969, it recorded a First Information Report u/s 154 of the Criminal Procedure Code on the complaint of Mr. N. P. C. Naidu, Member of Parliament, against some officers of the Department of Industrial Development. Ministry of Industrial Development and Company Affairs and Directorate General of Technical Development. It states that a regular case (RC) has been registered: an investigation officer appointed and a copy of this report endorsed to the Special Judge. Delhi. This document indicates that a regular case was lodged against the aforesaid officers and investigation commenced. On the other hand, like the preliminary enquiry registered on May 16, 1969 another preliminary enquiry was registered by the Central Bureau of Investigation on June 26, 1969, against officials of the Directorate General of Technical Development and of Industrial Development. Here also it is stated that a preliminary enquiry is being registered and the Inspector named is detailed to make enquiries. As in the case of the preliminary enquiry registered on May 16, 1969, against the petitioner a copy of this preliminary enquiry also has not been endorsed to the Special Judge. Delhi.

(29) There is no averment on behalf of the respondent detailing the steps that may have been taken by the Central Bureau of Investigation in pursuance of the registration of the preliminary enquiry on May 16, 1969 except that the Central Bureau of Investigation had asked the Directorate to ask the petitioner to complete certain returns sent by it which, it is alleged, the petitioner failed to do. The only other allegation of which notice may be taken is the own allegation of the petitioner, which is neither admitted nor denied in the counter affidavit of respondent No. 2, that the petitioner's house was searched. It is noticeable that although the preliminary enquiry was registered on May 16, 1969 and hearing of the writ petition started in December, 1970, no information has been given by the respondents as to the investigative steps that may have been taken by the Central Bureau of Investigation in the mean time. It is also clear, as stated

earlier, that the preliminary enquiry was assigned to an Inspector for "verification" as it required a "probe". In addition is the fact that a copy of this preliminary enquiry has not been sent to the Special Judge. Delhi, which would have been done if this were an investigation in a regular case.

(30) In our view a preliminary enquiry such as the one which was registered on May 16, 1969 cannot be equated to an investigation within the meaning of rule 10(l)(b) of the Rules. The investigation there contemplated is an investigation pursuant to a first information report registered u/s 154 of the Code of Criminal Procedure. The phraseology employed in the registration of the preliminary enquiry and in the registration to a regular case for investigation reinforces this conclusion.

(31) It is contended on behalf of the respondents that there is no difference between a preliminary enquiry such as the one which was registered on May 16, 1969 and an investigation pursuant to a first information report lodged u/s 154 of the Code of Criminal Procedure. Reliance is placed upon the unreported decision of the Supreme Court dated April 17, 1963 in Criminal Appeal No. 171 of 1961 in re: The State of Uttar Pradesh v. Bhagwant Kishore Joshi. In this case a report was sent to the Superintendent of Police, Special Police Establishment, stating that information had been received through a source that the accused was in the habit of misappropriating" Government money giving seven instances of the acts of misappropriation committed by him and intimating that if proper investigation were made. many more cases of misappropriation would come to light. On receipt of this report, the Superintendent of Police directed a Sub-Inspector of Police to make an enquiry whereupon the railway records were checked and it was found that the information was correct. A report was submitted. Thereafter, the Sub-Inspector applied to the Additional District Magistrate for permission to investigate the case and permission was granted. On these facts the Supreme Court considered the question whether the enquiry made by the Sub Inspector before he obtained the permission of the Magistrate was "investigation" within the meaning of the provisions of the Code of Criminal Procedure. The Supreme Court found that the Sub Inspector verified the allegations contained in the information; saw the relevant railway records and found the information given to be correct and on the basis of the information collected, submitted a report, the Supreme Court observed that even though the Sub Inspector had not given the full details of the enquiry, he had "proceeded to the spot of the offence, ascertained the relevant facts by going through the railway records and submitted a report of the said acts" and on these facts came to the conclusion that the said acts of the Sub Inspector constituted an investigation as defined in section 4(1) of the Code of Criminal Procedure. This conclusion was arrived at by the Supreme Court on the finding that "the information received was clear and precise and the Sub Inspector, on the basis of the said information, went to the spot to investigate into the truth of the allegations and indeed took some of the crucial steps to detect the crime." In coming to this conclusion, the Supreme Court noticed the case reported in Air

1915 Mad312 in re : Nanumuri Anadayya where it had been held that an informal enquiry on the basis of a vague telegram was not an investigation within the meaning of section 157 of the Code of Criminal Procedure. The Supreme Court also reiterated the principle that a vague information or an irresponsible rumour would not in itself constitute information within the meaning of section 154 of the Code or the basis for an investigation u/s 157 thereof and noticed the observations made in the case reported in Air 1958 Mad 368 in re : Rangarajulu describing the three stages a policeman has to pass in a conspiracy case when he "hears something of interest affecting the public security and which puts him on the alert; makes discreet enquiries, takes soundings and sets up informants and is in the second stage of qui vive or look out; and finally gathers sufficient information enabling him to bite upon something definite and that is the stage when first information is recorded and when investigation starts." The decision of a Full Bench of the Kerala High Court reported in ILR 1960 Ker783 in re : The State of Kerala v. M. J. Samuel was noticed and in this case it has been observed that "it can be stated as a general principle that it is not every piece of information, however, vague, indefinite and unauthenticated it may be that should be recorded as the First information for the sole reason that such information was in first, in point of time, to be received by the police regarding the commission of an offence." In our opinion, the afore-cited decision of the Supreme Court would not help the respondents because we are of the view that the Central Bureau of Investigation had merely registered the report for starting an informal enquiry on the basis of information which was received by it from what has been described as "source" with respect to the allegation of disproportionate assets. No facts have been disclosed by the respondents in the present case with respect to the steps taken by the Central Bureau of Investigation after the aforesaid registration to enable us to come to the conclusion that any investigation was launched by the aforesaid Bureau. The respondents have merely stated that the Central Bureau of Investigation had asked the Directorate General of Technical Development to get certain forms sent by it to the Directorate to be filled in by the petitioner. The respondents have not only failed to give details of the search of the petitioner's house but have even disowned the knowledge of it, These facts, alone cannot, to our mind, equate the preliminary enquiry registered on May 16, 1969 to an investigation within the meaning of section 4(1) of the Code of Criminal Procedure which is the sense in which the expression "investigation" used in rule 10(1)(b) has to be understood as such investigation has to be in a case in respect of a criminal offence.

(32) The mere information to the Special Police Establishment resulting in the registration of a preliminary enquiry for verification cannot, Therefore, be equated to an investigation. The information which was registered for a preliminary enquiry on May 16, 1969 merely remains an information and the search was for the purpose of a probe and verification as to the correctness of the information rather than an investigation of the question whether the petitioner had committed a criminal offence. Such a preliminary enquiry cannot

justify the passing of an order of suspension under rule 10(I)(b) of the Rules. The condition precedent to the exercise of the power of suspension was, Therefore, lacking and we quash the order of suspension on that ground.

(33) In the result the writ petition is allowed and we order the issue of a writ to respondents Nos. 1 and 2 directing them to cancel, rescind or withdraw the impugned order of suspension dated August 21, 1969 and to desist from enforcing the same.

(34) At the time of arguments, the petitioner prayed that this Court should also make an order directing the respondent to pass an order for the petitioner to cross the efficiency bar which has been withheld. No such order has been challenged before us nor has any prayer been made in that behalf in the petition. We, Therefore, decline to entertain this argument.

(35) The petitioner will have his costs. Counsel's fee is fixed at Rs. 250.