
(2012) 07 DEL CK 0710
In the Delhi High Court
Case No : Writ Petition (C) 8460 of 2011

Somnath Ghosh

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2012) 193 DLT 649 : (2013) 2 SLJ 50

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Dinesh Dwevedi, with Mr. Ashish Mohan, for the Appellant;
Chaudhary Shambuddin, for respondent no.1. and Mr. D.S. Mehandru, Adv for
R2, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide instant petition, the petitioner is seeking direction in the nature of Certiorari quashing the suspension order dated 13.01.2011 and extension orders dated 07.04.2011, 08.07.2011 and 04.10.2011. The brief facts of the present case are that in pursuance of advertisement issued for the selection to the post of Managing Director, National Research Development Corporation (hereinafter referred as "NRDC") the petitioner applied for and was offered the said post vide office letter No.DSIR/NRDC/13/2003-04 dated 21.04.2005.

2. The petitioner accepted the aforesaid offer and was accordingly appointed to the post of Managing Director, NRDC is Schedule "C" pay scale of Rs.22,500-600-27,300/- (IDA Pattern) for an initial period of 05 years with effect from 31.05.2005 vide appointment letter dated 27.06.2005.

3. Subsequently, in continuation of the aforementioned letter, vide another letter dated 15.09.2005, the terms and conditions attached to the petitioner's post/appointment were communicated to him. As per the terms of the said letter, the conduct, discipline and appeal rules framed in respect of non-workmen category

and staff would mutatis mutandis apply to the petitioner subject to the modification that the disciplinary authority in case of the petitioner would be the President of India.

4. Mr. Dinesh Dwevedi, learned Senior Advocate, appearing for petitioner submitted that under the NRDC Service Regulations which were made mutatis mutandis applicable to the petitioner vide the aforesaid letter dated 15.09.2005 that, employees of the Corporation were made subject to the Central Civil Services (Classification, Control and Appeal) Rules, 1957. The appointment of the petitioner to the aforesaid post of Managing Director on the terms and conditions as contained in the order dated 15.09.2005 was once again approved by the President vide order dated 08.11.2005 and the post was redesignated as Chairman & Managing Director.

5. The petitioner excelled in performing his duties and responsibilities on the aforesaid post and was accordingly granted an extension vide order dated 28.05.2010, beyond the initial term period of 05 years upto 28.02.2013 i.e. the age of the petitioner's superannuation.

6. The petitioner continued to perform his duties par excellence but was taken by shock when he received an order dated 13.01.2011, which alleged that a case against the petitioner was under investigation and accordingly the petitioner was being placed under suspension with immediate effect in exercise of powers conferred under Rule 10(1) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The order did not give any indication as to what was the nature of the allegations or charges against the petitioner or the details of the alleged case under investigation against him.

7. Learned Senior Advocate submitted that to the knowledge of the petitioner, the respondents have never held any preliminary inquiry or investigation prior to passing the order of suspension. Consequently, the petitioner has been left guessing as to the alleged investigation against him or the allegations or charges against him, if any.

8. The petitioner tried to ascertain the cause for the adverse action taken by the Competent Authority but was unable to do so despite his best efforts. Therefore, the petitioner filed an application under Right to Information Act, 2005. However, vide reply dated 22-23.02.2011, the respondent replied that "as the matter is still under investigation, the information cannot be provided in view of Clauses 8(1) (h) of the RTI Act, 2005.". The petitioner, thus faced with a situation where he was not provided with the information which may form the basis of the suspension order.

9. Consequently, the petitioner wrote a letter addressed to the Minister, Ministry of Science, Technology and Earth Sciences stating in that the possible basis on which the suspension order may have been passed i.e. two articles in little known magazines which were patently false and erroneous. In this regard, the petitioner stated that he had submitted a detailed explanation to the authorities

in respect thereof and the relevant material was already in possession of the CVO, DSI. The petitioner thus, sought revocation of the suspension order passed by the respondent and reinstatement.

10. Learned counsel further submitted that subsequently the suspension order dated 07.04.2011 was extended allegedly on the basis of the recommendation of the Review Committee due to pending investigation of "a case" against him.

11. The petitioner was once again constrained to write a letter dated 20.06.2011 to the Joint Secretary, Department of Scientific and Industrial Research seeking information concerning the alleged charges against him and the basis on which the investigation had been initiated. In response to the aforesaid letter dated 20.06.2011, the petitioner received a cryptic single line response letter dated 19.07.2011 stating that the matter is still under investigation, without providing any of the details sought by him.

12. In the meanwhile, the suspension was once again extended vide order dated 08.07.2011 for a further period of 90 days beyond 12.07.2011 "pending investigation of a case" against the petitioner.

13. Mr. Dwivedi, learned Senior counsel argued that the suspension orders have been passed in the present case under Rule 10(1) of the CCS (Classification, Control & Appeal) Rules, 1965 which, inter alia reads as under:-

10. SUSPENSION:-

(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-

(a) where a disciplinary proceeding against him is contemplated or is pending; or
(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

14. He further submits that a suspension order may be passed under the aforesaid Rule only in the three eventualities provided hereinabove. Therefore, when the suspension order in the present case was passed claiming that a case was under investigation against the petitioner, natural justice would demand that the petitioner is at least informed of the details of the case under investigation against him. Furthermore, the pre-requisite for the exercise of power under Rule 10 in this regard is that there must be a "criminal offence is under investigation, inquiry or trial" against the petitioner. A fortiori, there must be a FIR registered against the petitioner as the stages of investigation, inquiry or trial can only come thereafter. However to the best of the knowledge of the petitioner, there is no FIR against him nor have the respondents informed him of any such FIR.

15. Further, it is submitted that in the event any proceeding is contemplated against the petitioner, he ought to have been informed of the allegations and expeditiously served with the chargesheet as per the dictum of this court in a case of Surjit Singh Chowdhry Ex-Major Vs. Municipal Corporation Delhi, However, the petitioner has been stonewalled at every instance leaving him guessing as to the basis of the suspension till date.

16. Having no option, the petitioner filed an O.A. before the Central Administrative Tribunal (CAT) and upon issuance of notice by the CAT, the respondents filed their respective replies to the applications by taking a preliminary objection of jurisdiction as well as replying on merits. It is worth mentioning here that even in the replies, no details of any case under investigation against the petitioner were disclosed which clearly indicates that the exercise of power of suspension in the present case is malafide and illegal and the suspension order is liable to be set aside.

17. Eventually, the O.A. filed by the petitioner before CAT was withdrawn on jurisdiction. Hence, filed the present petition.

18. Learned Senior counsel further submitted that despite passage of more than 11 months from the date of his initial suspension order, the petitioner has not even been informed of the details of the case against him or the FIR (if any) registered. He has not been provided with any charge-sheet nor does he have any linking of what the charges or allegations against him may be. To the best of knowledge of the petitioner, there is no FIR registered against him, nor have the respondents held any preliminary inquiry or investigation prior to passing the order of suspension.

19. The suspension order did not give any indication as to what was the nature of the allegations or charges against the petitioner nor the details of the alleged case under investigation against him.

20. The petitioner was placed under suspension pending an investigation or in contemplation of inquiry, it was incumbent upon the respondents to expeditiously conclude the investigation or finalize and serve the petitioner which has not been done till date despite a lapse of 11 months from the date of initial suspension order.

21. Ld. Sr. counsel has relied upon a case of Surjit Singh Chowdhry (supra), wherein it has been held as under:-

in these cases, in contemplation and/or during the pendency of disciplinary proceedings as well as during the pendency of criminal trial against the employees. In these cases where the employee is suspended in contemplation and/or pending disciplinary proceedings and such a suspension is prolonged, it may not cause much of a problem. If the enquiry is unduly prolonged due to the reasons attributable to the employer e.g. delay in serving charge-sheet or delay in conducting enquiry, the suspension order can be interfered with and the

department can be directed to revoke the suspension and take back the suspended employee on duties. Reasons are obvious. Since the suspension causes hardship and affects the government servant injuriously, after suspending him it is expected that departmental proceedings are concluded expeditiously which is in public interest as well as in interest of government servant concerned. In public interest because the concerned suspended employee is being paid the subsistence allowance without taking work from him and in the interest of government servant concerned because the continued suspension is causing hardship to him. For these reasons, it is necessary to know the outcome of the charges levelled against such an employee which compelled the employer to put him under suspension in view of the pendency of departmental proceedings. Since the departmental enquiry is initiated by the department, and it is within the control of the department and when delay takes place in concluding the enquiry the blame can be put on the department for such delay and Therefore it can be inferred that the continuation of suspension is not justified. There are many instances where suspension order/ continuation of suspension order are quashed when the departmental enquiry is unnecessarily prolonged.

22. He further submitted that in the aforesaid case, this court concluded as under:-

When the delinquent officer is kept under suspension in contemplation or pending departmental enquiry and the enquiry is delayed unduly by the department, the continuation of suspension becomes bad and can be set aside inasmuch as such a delay in enquiry shows that the suspension was not bonafide.

23. It is submitted that the respondents are unduly prolonging the suspension without even informing the petitioner of the details of the case allegedly pending investigation against him or informing him of the charge against him, the suspension order stands vitiated and is liable to be set aside.

24. Ld. Sr. Counsel provided a communication in letter No.C- 11018/04/2010-DSIR-VIG dated 26.08.2010, in course wherein, it has been stated as under:-

1. Misuse of Angel Funds

NRDC Board in its 201st meeting dated 14.03.2007 (A) approved investment of Rs.30 lakh in M/s. DESS Computers Pvt. Ltd., Mumbai @ Rs.80/- per share. The company is engaged in advanced image management systems and its valuation (net worth) was assessed at about Rs.2.5 Crore.

(B) NRDC Board in its 204th meeting dated 02.05.2008 (C) approved the investments of Rs.30 lakh each in two companies housed in DST supported incubator at IIT- Madras. Investment in M/s. Rope Enterprises (engaged in manufacturing of handicraft items, reporting income in FY10 as Rs.1.37 Crore) with a valuation of Rs.80 lakh (D) was @ Rs.300/- per share and investment in M/s. Uniphore Software System, reporting income in FY10 as Rs.41.66 lakh) with a valuation of Rs.65- 70 lakh (D) was @ Rs.500 per share. Uniphore, vide their

letter dated 29.08.2010 (F/D) had offered to buy lack NRDC shares for Rs.42 lakh (E), a 40% appreciation in 2 years.

Thus, angel funds have been invested by NRDC with due diligence, after holding discussions and meetings with all concerned and with board approvals. It may also be appreciated that the objective of angel funding is to cover the risks involved, and 100% recovery of investment cannot be expected in all cases, although in the long run, NRDC should generate net revenue out of the gross investments made by it in start-ups.

2. Nexus of CMD, NRDC Shri Somenath Ghosh, Shri Sushanto Mitra, Proprietor, GM Associates and Mrs.Tinoo Joshi, IAS (MP Cadre).

A legal opinion was given by NRDC's legal officer on 10/2/2010 vide document ref. NRD/900225/2010 giving clarifications on the MoA/SMoA with GM Associates with reference to the Draft Board Agenda which clarifies the issue of relationship. Since this was not placed on the Board Meeting held on 06/04/2010, the Board had referred the decision on the MoA/SMoA with GM Associates.

Subsequently, NRDC sought legal opinion from external empanelled legal counsel on validity of MoA/SMoA and whether payments could be made to GM Associates. Legal opinion from M/s. J.M. Malia & Co. is at F/H. It states that as per provisions of GRR (Rule 176), if professional fees to be paid is blow Rs.25 lakh, consultants could be selected from single source (provided adequate justification is available to serve the interest of the department), without resorting to inviting expression of interest by publication. Stating MoA signing between NRDC and GMA is only a procedural irregularity, it held the MoA/SMoA valid and recommended that administrative expenses may continue to be paid to GMA, withholding 8% commission till decision of the Board (1).

Strong networking plays an important role in technology transfer and commercialization (main business of NRDC) and NRDC utilized its association with Ms. Tinoo Joshi and Shri Sushanto Mitra, in good intention, to procure business for the organization.

2 a) Mizoram Project on Solar Thermal Demonstration Programme.

It is apparent that the original objective of MNRE project could not be met, partly due to NRDC's inability to raise balance funds and partly due to improper implementation of the project, in association with Mizoorganic Producer Company.

3) VK Manchanda exploits CMD by offering:

ii) DLY Car

Fact

CMD was provided with DLY car in lieu of staff car (currently, NRDC has only three staff cars {as one of the cars was sold off as it was very old and it was incurring high maintenance cost} and the Corporation is not allowed to purchase

new car due to Finance Ministry's austerity instructions), which actually resulted in savings of Rs.5000- 10,000/- p.m. (Ee).

iii) Electric Wiring

Fact

CMD, NRDC is entitled to 2 ACs at his residence and anticipating that he would soon shift to his residence under construction, conducting and wiring for ACs was done. However, when shifting was delayed, CMD reimbursed the cost of the same to NRDC (Ff).

25. Ld. Sr. Counsel has relied upon a case of Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K. Ratnagiri, , wherein it has been held as follows:-

3. The respondent appealed to the Andhra Pradesh Administrative Tribunal. The Tribunal has set aside the suspension order holding that the respondent shall be deemed to be in service from the date of issue of suspension order. The Tribunal, however, has reserved liberty to the Government to transfer him to any other Police Station. It has been held that the order of suspension becomes invalid after the period of six months since the Government did not make a fresh order extending the period of suspension. It has been further stated that the Director General has no power to keep the respondent under suspension pending investigation of the case against him. Both these conditions are rested solely on the scope of Rule 13(1) of the A.P. Civil Service (CCA) Rules, 1963. For immediate reference we may set out the Rule hereunder:

13(1) A member of service may be placed under suspension from service pending investigation or enquiry into grave "charges, where such suspension is necessary in the public interest.

Provided that where a member of a service has been suspended by an authority other than the Government and the investigation has not been completed and the action proposed to be taken in regard to him has not been completed within a period of six months of the date of suspension, the fact shall be reported to the Government, for such orders as they may deem fit.

13.2 to 13.4 xxx xxx xxx

13(5) An order of suspension made or deemed to have been made under this rule may, at any time, be revoked by the authority which made or is deemed to have been made the order or by any authority to which that authority is subordinate.

Rule 13(1) provides power to keep an officer under suspension from service pending investigation or enquiry into grave charges, where such suspension is necessary in the public interest. Proviso thereunder requires the authority who made the order of suspension to report to the Government where the investigation into the charges and the action proposed to be taken against the

officer has not been completed within the period of six months from the date of suspension. Upon receipt of the report, the Government may make such orders as they deem fit having regard to the circumstances or development in the case. Proviso thus imposes only an obligation on the authority to report to the Government, but it does not limit the period of suspension. It does not state that the suspension order comes to an end by the end of six months. It may be noted that the suspension order is not an interim suspension. Nor the Rule 13(1) limits its operation only for six months. Rule 13(5) provides that the order of suspension may, at any time, be revoked by the authority who made or is deemed to have been made the order or by any authority to which that authority is subordinate. That apparently suggests that the order of suspension once made will continue to operate till it is revoked by an appropriate order. Therefore, there appears to be no justification to contend that the order of suspension would not last beyond six months. It has been passed by the competent authority who shall report to the Government if the action is not completed within six months. The Government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority.

This brings us to the second conclusion reached by the Tribunal to invalidate the order of suspension. Precisely, it is also rested on the statutory framework of Rule 13(I) coupled with the terms of the order by which the respondent was kept under suspension. The Tribunal has observed that Rule 13(1) empowers the authority to make an order of suspension pending investigation or enquiry into charges, but not pending prosecution with regard to the charges.

26. Further reliance has been placed upon a case of D.D. Suri Vs. A.K. Barren and Others, wherein, it has been recorded in Para 9 as follows:-

9. Sub-rule 1 of Rule 7 of the Rules provides for the placing under suspension a member of the service against whom any disciplinary proceeding has been initiated. Under that sub- rule without the initiation of the disciplinary proceeding an order of suspension could not be made. Under sub-rule 2 a member of the service who is detained in official custody for a period longer than 48 hours is to be deemed to have been suspended by the government concerned. We shall now read sub-rule 3 of Rule 7.

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 Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

Under the sub-rule aforesaid it is clear that a member of the service can be placed under suspension if against him an investigation, inquiry or trial relating to criminal charges is pending. The expression "investigation", "inquiry", or

"trial" are well-known in the realm of the criminal law under the Code of Criminal Procedure. In the instant case when a First Information Report was filed against the appellant and steps were taken for obtaining a search warrant for the search of his house, investigation within the meaning of Rule 7(3) became pending on and from November 24, 1967. The suspension order, therefore, made on November 28, 1967 was well within the ambit of the power of the government under the said provision of law. Most of the charges levelled against the appellant, and at this stage, we do not know whether they were right or wrong, true or false, were in relation to his alleged acts of corruption and misuse of his official position.

27. Also relied upon a case of *Rajeev Kumar Tyagi v. UOI*, reported as 2007 (4) AWC 3583, wherein, it has been recorded as under:-

9. It is not the case of the respondents that the petitioner has been placed under suspension where a disciplinary proceeding against him is contemplated or pending, therefore Rule 10(1)(a) of 1965 Rules is inapplicable. Similarly the impugned order has not been passed on the allegations of the engagement of the petitioner in activities prejudicial to the interest of the security of the State, therefore Clause (aa) of Rule 10, Sub-rule (1) of 1965 Rules is also inapplicable. This brings us to the remaining Clause (b) of Rule 10, Sub-rule (1) of 1965 Rules, which provides where a case against a government servant in respect of any criminal offence, inquiry or trial is under investigation, he may be placed under suspension. Admittedly, no trial in respect of any criminal offence is pending against the petitioner. The only two things which remain for consideration as to whether any investigation or enquiry in respect of any criminal offence against the petitioner could be said to be pending against him. The petitioner has categorically stated that no F.I.R. or criminal complaint against him has been lodged or registered in any police station, till date. This -fact has not been disputed by the respondents. In order to commence investigation or enquiry of any criminal offence, the first thing wherefrom it would commence is registration of a F.I.R. or a criminal complaint. If neither of two is in existence, it cannot be said that any investigation or inquiry in respect of the criminal offence is going on pursuant thereto, a government servant can be placed under suspension. An investigation or an inquiry in respect to a criminal offence is governed by the provisions of Code of Criminal Procedure-1973 (hereinafter referred to as "Cr. P.C. In *State of Karnataka Vs. Arun Kumar Agarwal and Others*, it was held that "The acts of persons will not be subject of criminal investigation unless a crime is reported to have been committed or reasonable suspicion thereto arises. On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be reasonable basis at all for starting a criminal investigation. However condemnable be the nature or extent of corruption in the country, not all acts could be said to fall in that category.

11. It is true that suspension under Rule 10 of 1996 Rules by itself is not a punishment but when it is governed by the statutory provision and requires the employer to exercise power of suspension in a particular manner and circumstances, the same has to be exercised in accordance therewith and any violation thereof would vitiate the order. The order of suspension is not to be passed in a routine manner but the competent authority is required to consider the gravity of the misconduct sought to be enquired into or investigated and the nature of the evidence placed before the appointing authority and thereafter by application of mind by the said authority. A non-objective and automatic order of suspension cannot sustain in law.

28. Ld. Sr. Counsel for the petitioner further submitted that in reply filed by the respondent no. 1, it has been stated as under:-

3 (i) Report from CVO, National Research Development Corporation (NRDC) vide his letter No.16-National Research Development Corporation (NRDC) (330)/2010 dated 26.08.2010 addressed to Shri A.K. Taneja, Under Secretary, DSIR-on the Central Vigilance Commission (CVC) referred complaint, and

4. That apart from above, response/ clarifications were received in the Department also from CMB, National Research Development Corporation (NRDC), Vide -

(i) Letter dated 20.08.2010 to Dr. K. Jayakumar, IAS, Joint Secretary, DSIR on the projects in Madhya Pradesh; and

(ii) Letter No. NRDC/10DSIR/2010 dated 03.09.2010, to Shri Ashwani Gupta, Scientist "G", Administrative Divisional Head on the complaint forwarded by Sh. Tol Thiruaavalan, MP (Lok Sabha) from Chennai.

5. That the matter was examined in the Department and consequently the CMD, National Research Development Corporation (NRDC) was placed under suspension. The aspect relating to the allegations - (i) that Mr. Sushanto Mitra of GM Associates, being a close associate of Mrs. Tinoo Joshi, IAS and Ex-Principal Secretary, Department of Woman and Child Development (DWCD) Madhya Pradesh, manages projects for National Research Development Corporation (NRDC) and

(ii) Patronage of Mrs. Tinoo Joshi, IAS, Ex- Principal Secretary, MP through whom all MP Projects funds flowed has recently been arrested on corruption charges in MP and is suspended. She was instrumental in getting MORD Rs.9.00 Crores projects sanctioned - has been referred to CBI vide letter dated 25.01.2011.

29. Ld. Counsel has pointed out that in counter affidavit filed by respondent no. 2, in reply to Para C and D of the petitioner, it has been stated as under:-

C-D That the contents of Para C and D are not admitted as correct. It is incorrect that the respondents never held any preliminary investigations against the petitioner before passing order dated 13.01.2011 whereby the Petitioner was

placed under suspension. It is submitted that after preliminary investigations conducted by the department, the matter was referred to Central Vigilance Commission (CVC) and Central Bureau of Investigation (CBI.). While, the CVC has reverted on the issue, the CBI had requisitioned certain documents connected with the issue and is yet to be respond. Considering the seriousness of the issue involving the petitioner, it is not feasible to reveal the details of the case to the petitioner. Further action in the matter would depend upon the view taken after receipt of the response from the both CVC and CBI. The petitioner had been duly informed about the same vide OM dated 02.02.2011 and letter dated 19.07.2011. Since the petitioner is holding the post of Chairman and Managing Director of the answering respondents, keeping in view his high position and that he could influence witnesses and can tamper with the record, he was rightly placed under suspension. The dictum of the case of Surjit Singh Chowdhary supra is not applicable to the case of the petitioner.

30. On the other hand, Ld. Counsel for the respondent No. 1 has submitted that the complaint against the petitioner was referred to CVO initially for investigation. The matter was examined in the Department and consequently, the petitioner was placed under suspension. The aspect relating to the allegations that Mr. Sushanto Mitra of GM Associates, being a close associate of Mrs. Tinoo Joshi, IAS and Ex- Principal Secretary, Department of Woman and Child Development (DWCD), Madhya Pradesh, manages projects for National Research Development Corporation (NRDC) and the patronage of above named i.e. Mrs. Tinoo Joshi through whom all MP Projects funds flowed, has recently been arrested on corruption charges in Madhya Pradesh and is suspended. She was instrumental in getting MORD Rs.9.00Crores projects sanctioned, therefore the case has been referred to CBI vide letter dated 25.01.2011.

31. On the issue mentioned above, the investigation is pending against the petitioner also therefore, the instant petition is pre-matured and let the result of the same be out and only thereafter, if he is aggrieved then only, he can challenge any of the orders passed by the respondent before the appropriate forum.

32. I have learned counsels for parties.

33. Law has been settled in various dictums, as discussed above that any employee can be placed under suspension where a disciplinary proceeding against him is contemplated or pending. Therefore, Rule 10 (1) (a) of 1965 Rules are applicable.

34. Similarly, the impugned order can be passed on the allegations of the engagement of the petitioner in activities prejudicial to the interest of the security of the State, therefore Clause (aa) of Rule 10, Sub-rule (1) of 1965 Rules is also applicable. The remaining Clause (b) of Rule 10, Sub-rule (1) of 1965 Rules, which provides where a case against a government servant in respect of any criminal offence, inquiry or trial is under investigation, he may be

placed under suspension.

35. The only two things which remain for consideration as to whether any investigation or enquiry in respect of any criminal offence against the petitioner could be said to be pending against him.

36. Suspension under Rule 10 of 1996 Rules by itself is not a punishment but when it is governed by the statutory provision and requires the employer to exercise power of suspension in a particular manner and circumstances, the same has to be exercised in accordance therewith and any violation thereof would vitiate the order. The order of suspension is not to be passed in a routine manner but the competent authority is required to consider the gravity of the misconduct sought to be enquired into or investigated and the nature of the evidence placed before the appointing authority and thereafter by application of mind by the said authority. A non-objective and automatic order of suspension cannot sustain in law.

37. Though, it is admitted by the respondents that they initially never held any preliminary investigation against the petitioner before passing the impugned order, whereby the petitioner was placed under suspension. However, it is submitted that after a preliminary investigation conducted by the department, the matter was referred to Central Vigilance Commission (CVC) and Central Bureau of Investigation (CBI.). While, the CVC has reverted on the issue, the CBI had requisitioned certain documents connected with the issue and is yet to be respond.

38. Considering the seriousness of the issue involving the petitioner, it is not feasible to reveal the details of the case to the petitioner. Further action in the matter would depend upon the view taken after receipt of the response from the both CVC and CBI. The petitioner had been duly informed about the same vide OM dated 02.02.2011 and letter dated 19.07.2011. Since the petitioner is holding the post of Chairman and Managing Director of the answering respondents, keeping in view his high position and that he could influence witnesses and can tamper with the record.

39. It is emerged from the response of the respondent No.1 that the matter was examined in the department and consequently the petitioner was placed under suspension. The aspect relating to the allegations that Mr. Sushanto Mitra of GM Associates, being a close associate of Mrs.Tinoo Joshi, IAS and Ex-Principal Secretary, Department of Woman and Child Development (DWCD), Madhya Pradesh, manages projects for National Research Development Corporation (NRDC) and the patronage of Mrs.Tinoo Joshi, IAS, Ex-Principal Secretary, MP through whom all MP Projects funds flowed has recently been arrested on corruption charges in MP and is suspended. She was instrumental in getting MORD Rs.9.00 Crores projects sanctioned-has been referred to CBI vide letter dated 25.01.2011.

40. The present matter being sensitive one and on the corruption charges,

therefore, the petitioner cannot be provided the information during probe period either by the department or the investigating agency.

41. In view of above discussion mentioned above, and after considering the submission of learned counsel for parties, I am of the considered opinion that petitioner holding the post of Chairman and Managing Director, keeping in view his high position and that he could influence the witnesses and can tamper with the records, he was rightly placed under suspension.

42. Therefore, at this stage, I am not inclined to interfere with the impugned order passed by the respondents. Consequently, instant petition is dismissed with no order as costs.