HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE TWENTY SECOND DAY OF MAY

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO: 8185 OF 2020

Between:

1. A.B. VENKATESWARA RAO, IPS (AP-1989)
   Father Name Late Balaswamy
   Age 55, R/o 303, Krishna Meadows, LIC Colony Vijayawada, Andhra Pradesh

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh rep. by its Chief Secretary to the Government, Secretariat, Amaravathi, Vijayawada, Andhra Pradesh.
2. The Director General of Police (HoPF), Government of Andhra Pradesh, Mangalagiri, Guntur District, Andhra Pradesh State.
3. Union of India, rep. by its Secretary to Govt. of India, M/o. Home Affairs, New Delhi.

...RESPONDENTS

Counsel for the Petitioner(s): MADHAVA RAO NALLURI

Counsel for the Respondents:

The Court made the following: ORDER

*** HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

AND

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

+ WRIT PETITION No.8185 of 2020

% 22.05.2020

A.B. Venkateswara Rao, IPS (AP-1989)
S/o Late Balaswamy, Aged: 55 Years,
R/0 303, Krishna Meadows, LIC Colony,
Vijayawada, Andhra Pradesh.

... Petitioner.

Vs.

$ The State of Andhra Pradesh,
Rep., by its Chief Secretary to the Government,
Secretariat, Amaravthi, Vijayawada,
Andhra Pradesh and two others.

... Respondents

! Counsel for the petitioner : Sri B.Adinarayana Rao, Senior Counsel appeared on behalf of Sri Madhava Rao Nalluri, counsel for petitioner.

! Counsel for the Respondent No.1&2 : Advocate General

! Counsel for the Respondent No.3 : Smt. M. Indrani

< Gist:

> Head Note:

? Cases referred:

1) (1994) 4 SCC 126
2) (2013) 16 SCC 147
3) (2015) 7 SCC 291
4) (2018) 17 SCC 677
5) 2019 SCC Online SC 1549
6) (2008) 16 SCC 14
7) (2003) 6 SCC 675
8) AIR 1966 SC 81
9) 2015 (6) ALD 694
10) 2014 (1) SCC 524
11) AIR 1964 SC 477
12) 2019 (13) SCC 558
13) AIR 1994 SC 2296
14) (1969) 3 SCC 864
15) AIR 2014 SC 2258
16) (2016) 4 ALD 666
17) (1971) 1 SCC 734
18) (1993) 2 SCC 327
19) (1980) 2 SCC 471
20) (1994) 2 SCC 617
21) (2001) 1 ALD 229
22) (2004) 3 SCC 75
23) (1961) 1 SCC 325
24) 1966 Suppl SCR 311

25) (1977) 1 SCC 131
26) (1978) 1 SCC 405
27) (2004) 4 SCC 714
28) 2007 (4) ALD 707
29) (2013) 4 SCC 301

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.8185 of 2020

ORDER: (per Hon'ble Sri Justice D.V.S.S.Somayajulu)

This writ petition is filed by the present petitioner seeking the following reliefs:

> "..to issue an appropriate Writ Order or Direction more particularly one in the nature of
>
> (i) writ of *Certiorari* calling for the records relating to OA.No. 020/0149/2020 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the order dated 17.03.2020 made therein,
>
> (ii) to issue a Writ of *Mandamus* declaring G.O.Ms.No.18 General Administration (SC.D) Department dated 08.02.2020 issued by the 1st respondent keeping the petitioner under suspension under Rule 3 (1) of the India Service (D & A) Rules, 1969 as illegal arbitrary and in violation of Articles 14 and 16 of the Constitution of India,
>
> and
>
> (iii) consequently direct the 1st respondent to reinstate the petitioner into service with all consequential benefits"

The petitioner before this Court is an IPS Officer, who is working in the rank of Director General of Police. He was suspended by the first respondent on certain grounds. Before suspension, he was relieved of his duties as Director General of ACB. He reported to the General Administration Department

on 31.05.2019. Since then, he was not given any posting for a considerable period of time. Thereafter, he was suspended from service on 08.02.2020. He questioned the said order of suspension by filing OA.No.020/0149/2020 before the Central Administrative Tribunal, Hyderabad. The same was heard on merits and dismissed *vide* order dated 17.03.2020. Questioning the same, the present writ petition is filed for the reliefs mentioned above.

This Court has heard Sri B.Adinarayana Rao, learned Senior Counsel appeared for the petitioner. The learned Advocate General appeared for the first and second respondents. For the third respondent/Union of India, Smt. M.Indrani, learned standing counsel appeared and argued the matter.

Counter affidavit of the first respondent has been filed along with the material papers. The third respondent's counsel supported the arguments of the learned Advocate General.

Petitioner's case:

Sri B.Adinarayana Rao, learned senior counsel for the petitioner, pointed out the sequence of events that took place between 30.05.2019 and 08.02.2020. After the new Government for the State of Andhra Pradesh assumed Office, the petitioner, who was serving as Director General, ACB was transferred and not given any posting whatsoever from May, 2019 onwards. Thereafter, the learned senior counsel points out that on 02.02.2020, the Director General of Police writes to the Additional Director General, CID to investigate and submit a report with regard to some alleged irregularities in a tender

relating to the procurement and finalization of certain equipment. This investigation is entrusted by the Additional Director General, CID to a Deputy Superintendent of Police, who completed his enquiry within three days and sent a report dated 06.02.2020. On 07.02.2020, the Director General of Police sent the report of the enquiry to the State. On 08.02.2020, based on the report, the petitioner was suspended. The learned senior counsel points out that the sequence of events clearly reveal that the entire action is vitiated with malice; was done with undue haste and is also not according to the Rules. The petitioner is a member of All India Services and as per the learned senior counsel, a close reading of the All India Services (Conduct) Rules, 1968 (for short 'the 1968 Rules') and the All India Services (Discipline and Appeal) Rules, 1969 (for short 'the 1969 Rules') would reveal that the action taken is not as per the Rules. The learned senior counsel also argues that the petitioner was working in the Intelligence Department, which is the user-department of the equipment that was sought to be procured by the Government of Andhra Pradesh. He points out that the petitioner or the Intelligence Department is not the tender approving Authority or the actual procuring agency. As per him, the tender finalisation etc., was not done by the petitioner. The procurement was to be done through the State Trading Corporation, which is an independent Government of India undertaking. He points out that at various stages, committees comprising of Senior Officers were involved in the preparation of the tenders and also the finalisation of the same. The

petitioner's role in this was only to request for the procurement of the equipment. He contends that as the head of the Intelligence Department, in view of the of the acute threat perception in the State of Andhra Pradesh from the Maoists etc, the petitioner followed up the matter. He also contends that in the preliminary report and in the latter suspension order etc., it is stated that the petitioner's son is the local franchisee of the successful bidder in the contract. Relying upon the preliminary enquiry report he submits that the contract that was given to the supplier through the STC was cancelled by the DGP on 24.12.2018. The letter, in which the petitioner's son involvement was allegedly pointed out, is dated 22.03.2019, which is long after the cancellation of the contract itself. He argues that the petitioner' son's role is not at all established. The learned senior counsel also points out that the contract itself has been cancelled without any pecuniary loss to the State. He contends that there was no irregularity whatsoever and that no monetary loss was caused to the State.

Relying upon the provisions of the 1968 Rules, the learned senior counsel argues that the definition of member of a "family" is very clear and categorical. According to him, a son or a daughter, who is wholly dependent on the Officer, is alone considered as a member of the family. He points out that there is virtually no material before the State to come to a conclusion that the son, who was supposed to be involved, is actually "dependent" on the petitioner. He points out that the said individual is financially independent since a number of years and is not at all dependent upon the

petitioner. Relying upon the provisions of the 1969 Rules, the learned senior counsel points out that the suspension of a member of All India Services in terms of Rule 3(1) of the 1968 Rules, can only be made if the "circumstances exists" and the State is satisfied that it is "necessary and desirable" to suspend an Officer. Therefore, the learned senior counsel argues that an order of suspension should not be passed for the mere asking and should be passed upon (a) the circumstances of the case considering the gravity of the alleged offence; (b) satisfaction of the State; and (c) also the need or desirability to place the Officer under suspension. None of these are present in this case as per him. It is his contention that the Service Rules provide for a very strict time frames/method for the suspension and also for completing the entire enquiry etc. He points out that till date, the charge sheet has not been served although three months have elapsed since the petitioner was suspended. The time bound manner, in which the suspension is to be imposed and the enquiry is to be completed has not been followed at all as per the learned senior counsel. He also points out that although the Government of India, which gave its consent for the suspension in terms of the prevalent Rules, directed the State to serve the charge sheet by 07.04.2020, the same is not done. The learned senior counsel relies upon the following cases to argue that the order of suspension was not passed in terms of Rules and after considering the material available etc.,.

1. ***State of Orissa v. Bimal Kumar Mohanty[1],***
2. ***Union of India (UOI) and Anr. v. Ashok Kumar Aggarwal[2],***
3. ***Ajay Kumar Choudhary v. Union of India (UOI) and Ors.[3],***
4. ***State of Tamil Nadu v. Promod Kumar, IPS and another[4],*** and
5. ***P.Chidambaram v. Directorate of Enforcement[5]***

Relying upon the case law, he submits that even though a suspension is not a punishment, still it has its own implications and ramifications, particularly, for a high ranking Officer. He points out that the State did not consider the facts and circumstances of the case and on non-existent grounds it had passed the order of suspension. The learned senior counsel submits that neither the satisfaction that is necessary for placing the Officer under suspension nor the necessity or the desirability are actually spelt out or are clear from the order. He points out from the facts that there is a clear non-application of mind, particularly, with regard to the satisfaction and the desirability. He also argues that there should be "material available" with the State to come to a conclusion that the circumstances exist to suspend an Officer. It is his contention that the material should also be available for recording the satisfaction and the desirability of continuing the

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[1] (1994) 4 SCC 126
[2] (2013) 16 SCC 147
[3] (2015) 7 SCC 291
[4] (2018) 17 SCC 677
[5] 2019 SCC Online SC 1549

Officer under suspension. The learned senior counsel contends that in the case on hand, there is no material to come to any conclusion nor is the satisfaction present. Desirability is also absent as per him. He also points that the satisfaction that is necessary in the case of this nature is to be based upon some objective standards and material and it cannot be purely subjective. The learned senior counsel, in all fairness, submits that he is not asking the Court to go into the merits and demerits of the entire case, which he says the petitioner will defend in the appropriate forum. According to him, because of the

non-application of the mind, because of the failure of the State to decide on the suspension as required under law and as the action is vitiated, he is compelled to seek the remedy. He points out that this Court can and must examine the issues raised and decide whether there is material etc., to place the petitioner under suspension. As per him, the Court has the power to see the material to decide the issues raised. Coming to the order passed by the Central Administrative Tribunal also, the learned senior counsel points that the order suffers from a lack of reasons. He points out that the Tribunal did not examine whether there is a *prima facie* case or any material available to come to the conclusion that it did. He also argues that the petitioner's role in the selection of the tenderer is not visible from the available record. These facts, according to him, were not considered by the Tribunal. He also draws the attention of this Court to the order passed by the Tribunal, more particularly, paras 28 to 30 thereof to argue that there

are no clear reasons, which would justify the passing of the order. He also argues that the review committee formed to extend the suspension also consists of Director General of Police and the Chief Secretary who were also involved in the order of suspension. He also contends that they have also not applied their mind to the facts and circumstances of the case.

Relying on ***P.Chidambaram***'s case (5 supra), learned senior counsel submits that the attempt of the respondents to present documents in a sealed cover should not be permitted and that if any such documents are to be considered, he should be given an opportunity to rebut the same. Lastly, relying on the Bench decision of the High Court of Madras in WA.No.3161 of 2019, the learned senior counsel meets the submission of the Advocate General that the prayers in the writ petition, namely a *Certiorari* and a *Mandamus* are not maintainable. He further relies upon ***Deepak Bajaj v. State of Maharashtra***[6]***, Surya Dev Rai v. Ram Chander Rai***[7] and lastly, ***Dwarka Nath v. Income Tax Officer, Special Circle, D-Ward, Kanpur***[8] to argue that the prayers in the writ petition are correct.

Hence the learned Senior Counsel prays that the writ petition should be allowed.

Case of the respondents:

In reply to this, the learned Advocate General argues with his usual elan basing on the material available that for a case

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[6] (2008) 16 SCC 14
[7] (2003) 6 SCC 675
[8] AIR 1966 SC 81

of malice under law, to be established, there should be clear and categorical pleadings of *mala fides* against specific named individuals. He also points out that in the array of parties, none of the Officers against whom allegations or *mala fides* are made, are personally shown as *eo nominee* parties. He also states that *certiorari* is not a first appeal and that this Court cannot go into an analysis of the available material as if it is a first appeal to come to a conclusion that the order is vitiated etc. The sum total of the material that is available is enough according to the learned Advocate General to justify the findings of the Tribunal and also to justify the suspension.

The learned Advocate General submits that the norms in the tender were tweaked, certain specifications were reduced in order to benefit one particular firm and this was done; as per him; at the petitioner's behest. He also points out that this is not a case of absolute lack of material. The learned Advocate General argues that once there is some material to come to a conclusion, the adequacy of the said material should be judged in the duly constituted enquiry and not by this Court. Even otherwise, the learned Advocate General points out that even if the petitioner has any private interest as per the amended Rules, he is guilty of misconduct. The learned Advocate General also points out that even after the cancellation of the contract, the petitioner actively pursued the State to review the cancellation order. This by itself, as per the learned Advocate General, is enough to show the personal interest in the matter. He also points out that the rank and reach of the petitioner are the factors, which justifies the

extension of the suspension. He argues that since the petitioner is in a very high position in the department, he will have the reach to influence the process of enquiry. Therefore, he argues that keeping him out of Office and in suspension, is a compelling need. The learned Advocate General also argues that the Central Government/Union of India approved the suspension and that review committee considered the need to keep the petitioner under suspension. All of these would show that there is application of mind and that the State took all the stipulated legal steps. Relying upon ***Buddana Venkata Murali Krishna v. State of A.P. and Ors.***[9], ***Ratnagiri Gas and Power Pvt. Ltd. v. RDS Projects Ltd. and Ors.***[10], ***Syed Yakoob v. K.S. Radhakrishnan and Ors.***[11], ***Pratap Mehta and Ors. v. Sunil Gupta and Ors.***[12], ***State of Orissa v. Bimal Kumar Mohanty***[13], ***A.K.K.Nambiar v. Union of India***[14], ***Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.,***[15] , ***A.Krishan v. State of A.P.***[16], ***Government of India, Ministry of Home Affairs v. Taraknath Ghosh***[17], ***S.A.Khan v. State of Haryana***[18], ***State of Punjab v. Gurdial Singh***[19], ***State of Haryana v. Hari Ram Yadav***[20], ***Andhra Pradesh State Forest Development Corporation Ltd., Employees***

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[9] 2015 (6) ALD 694
[10] 2014 (1) SCC 524
[11] AIR 1964 SC 477
[12] 2019 (13) SCC 558
[13] AIR 1994 SC 2296
[14] (1969) 3 SCC 864
[15] AIR 2014 SC 2258
[16] (2016) 4 ALD 666
[17] (1971) 1 SCC 734
[18] (1993) 2 SCC 327
[19] (1980) 2 SCC 471
[20] (1994) 2 SCC 617

Union v. Government of Andhra Pradesh, Environment, Forests, Science and Technology (Forest II) Department[21], and ***Union of India v. Amrit Lal Manchanda***[22], the learned Advocate General argues that malice is not made out; that sufficient material is available and that this Court should not go into the merits or demerits of the matter to come to any conclusion about the adequacy of the material. He points out that as all the procedural safeguards were followed and the enquiry is yet to be completed, this Court should not interfere in the same at this stage. He points out that the Central Administrative Tribunal applied itself to the issues on hand and came to its own conclusions. The reasons in the order are neither perverse nor irrational. He also points out that in the entire writ petition, it is not averred that the order of the Central Administrative Tribunal contains any errors, which are apparent on the face of the record. Therefore, he submits that the writ petition seeking a *certiorari* should be dismissed. He points out that both a writ of *certiorari* and a writ of *mandamus* as a consequent prayer does not also lie. It is his contention that the petitioner should face the enquiry, which should be allowed to reach its logical conclusions. In order to avoid the comment about the sealed cover procedure, the learned Advocate General sent his copies of the file to enable this Court to examine the same if it wanted.

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[21] (2001) 1 ALD 229
[22] (2004) 3 SCC 75

Therefore, the learned Advocate General supports the order passed and prays that the writ petition should be dismissed.

Rejoinder:

In the rejoinder, the learned senior counsel reiterates the submissions and states that the writ petition is maintainable and that if the order is passed contrary to the Rule position and the settled law, this Court must interfere. He again reiterates that the petitioner is entitled to an order as prayed for.

Determination:

This Court after hearing both the learned counsel, (who have taken great pains and put in a lot of effort) notices that there is no strict dispute about the sequence of events as they have occurred or about the facts. The primary caution sounded by the learned Advocate General that this Court should not go into the depth of the issue and decide whether the material available is enough to impose the punishment or not is also a submission that is weighing with this Court at this stage. The adequacy of the material to impose a punishment or to suspend an employee in the opinion of the learned Advocate General is a factor that should be left to the Disciplinary Authority alone. This Court is conscious of the fact that there is thin line on which this Court is treading at this stage of the hearing. The law is very well settled on the aspect of judicial review of such actions and need not be repeated here. Equally important to note is the case law of the manner in which such decisions must be reviewed.

a) In ***Rohtas Industries v. S.D. Agarwal***[23], while dealing with the formation of an opinion and discussing ***The Barium Chemicals Ltd. v. The Company Law Board***[24]**,** the Hon'ble Supreme Court held as follows:

> "The formation of the opinion is subjective but the existence of the circumstances relevant to the inference is a *sine qua non*".

While approving the opinion of their Lordships Hidayatullah and Shelat, the Supreme Court held that the existence of circumstances in question is open to judicial review though the opinion is not.

(b) In ***Narayan Govind Gavate v. State of Maharashtra***[25], the Hon'ble Supreme Court held that even a subjective opinion must be based on some material to pass the tests Courts impose.

(c) In ***Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi***[26], the Supreme Court clearly held that the order alone must be seen/examined and not the subsequent affidavit or explanation.

(d) In ***State of U.P. and Ors. v. Johri Mal***[27] at para 30, it was held that evaluation of facts by the decision maker is necessary to a limited extent to scrutinise the decision making process.

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[23] (1961) 1 SCC 325
[24] 1966 Suppl SCR 311
[25] (1977) 1 SCC 131
[26] (1978) 1 SCC 405
[27] (2004) 4 SCC 714

(e) In ***R. Ramachandra Rao (Died) v Syndicate Bank***[28] it was held in para-37 that the Court can see if the condition precedent for exercising jurisdiction is present or not.

(f) What is a *prima facie* view that is to be seen in such cases is spelt out in ***Nirmala Jhala v State of Gujarat***[29]**.**

(g) Both the learned counsel have also relied upon the case of ***Bimal Kumar Mohanty*** (1 supra). In para 11 of the said judgment, it was mentioned as follows:

> "11. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending

[28] 2007 (4) ALD 707
[29] (2013) 4 SCC 301

employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry."

Similarly, in ***Ashok Kumar Aggarwal*** (2 supra), at paras 21, 22, it was held as follows:

"21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong *prima facie* case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong *prima facie* case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the **gravity of the alleged misconduct** i.e. serious act of omission or commission and the **nature of evidence** available. It cannot be actuated by **mala fide, arbitrariness,** or for

> **ulterior purpose.** Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong ***prima facie*** case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc."

Lastly, in the judgment reported in ***A.K.K.Nambiar's*** case (14 supra), which is relied upon by the learned Advocate General, the Constitution Bench of the Hon'ble Supreme Court of India held as follows:

> "10. The appellant contended that the report of the Central Bureau of Investigation was made mala fide. The appellant appeared before the investigation authorities. We are not concerned with the correctness and the propriety of the report .We have only to examine whether the order of suspension was warranted by the rule and also whether it was an honest exercise of powers. The order of suspension satisfied both the tests in the present case." Emphasis supplied.

Therefore, from a conspectus of the case law that is mentioned above, it is clear that the Court must see whether the order of suspension was warranted by the Rule and whether it was an honest exercise of power. The subsequent cases, which are mentioned above, state that the order should be passed taking into consideration the gravity of the misconduct, the nature of the evidence and ultimately, the application of mind. The need and necessity for keeping

the Officer under suspension is also a factor that should be kept in mind by the Officer who suspended the employee. The material relied upon to come to a subjective conclusion also can be examined by the Court. The order of suspension and the material before the Authority can be examined to decide whether the decision making process is an honest exercise or not.

In the case on hand, the petitioner has come to Court with a very specific plea in the writ petition, which is mentioned in ground (1) of the grounds of challenge. Relying upon the Rule, they state that the "circumstances satisfaction, necessity or desirability" are not considered. The gravity of the charges were also not considered. This is spelt out in sub-para (1) of para 10 of the grounds in the writ. Similarly, in sub-paras (2) and (3) of para 10, it is stated that the Tribunal did not notice that the condition precedent for keeping the Officer under suspension is also not considered. The need for the satisfaction of the Officer being kept under suspension is also not considered as per sub-para 10(3). In sub-para 10(4), the sequence of events are described. In sub-para 10 (e), it is mentioned that except one letter dated 22.03.2019, there is no tangible evidence to connect the petitioner's son to the tender. The definition of the member of the family is also mentioned in this para to argue that the petitioner's son does not satisfy the definition. It is also mentioned that there is no evidence to connect the petitioner to the tender finalisation.

In this writ petition, a counter was filed, wherein the stand of the State was spelt out. A rejoinder is also filed, wherein it is reiterated by the petitioner that there is a non-application of mind and that the law on this subject, which prescribes the pre-conditions for placing the petitioner under suspension were overlooked. It is also urged that the petitioner's son is not the CEO of the Indian franchisee and that there is no evidence to support the case.

Order of the Central Administrative Tribunal:

At the outset this Court proposes to look in the order passed by the Tribunal, which is impugned in the writ petition.

In the original application - OA.No.020/149/2020, which was filed before the Tribunal, specific issues are raised as the grounds for the relief. Paragraph 5(a) 5(i) and 5(j) of the original application filed before the Tribunal raise specific grounds about the suspension order that has been passed. The same are denied in the counter filed before the Central Administrative Tribunal in paragraphs 10, 18 and 19. A rejoinder is also filed, wherein in para 8, the grounds are spelt out. It is again reiterated that the petitioner was not the sole Officer involved, that he was merely the head of the indenting wing and not solely responsible for the alleged scaling down the requirements or the so-called tweaking of the tender condition and that it is collective effort etc. The lack of evidence about the role of son is again pointed out.

A reading of the impugned order shows that one of the three main grounds urged is that the order of suspension cannot be passed without the charge sheet being issued.

In the opinion of this Court, the Tribunal rightly went into the Rule position and basing on the Rules came to a conclusion that an Officer can be placed under suspension even if disciplinary proceedings are pending or contemplated.

The other two grounds that were seriously argued are about (a) the justification for the suspension (para 28 of the impugned order); and (b) the satisfaction being based on material (para 29 and 30).

After hearing the submissions of both the learned counsel and considering the case law, this Court notices that the Tribunal in the light of the issues raised should have considered whether there was *prima facie* material available with the respondents for coming to a conclusion about the need for suspension. The process of decision making and the material available should have been examined by the Tribunal. The petitioner has gone on record stating that the investigation that is carried out is not at all proper. He also pleaded that there is no objective assessment of the material. He pointed out that on the basis of the vague allegation, he was suspended. It is also specifically averred that the suspension should not have been ordered as there is no possibility of the petitioner interfering with the enquiry. This was denied in the written statement/counter that was filed. The role of the son was also highlighted by the State which was denied by the petitioner. In the light of those pleadings and the documents that are filed before the Tribunal, its order has to be examined to decide its intrinsic merit.

Para 28 of the impugned order deals with justification. However, a reading of para 28 of the impugned order shows that the Tribunal did not even discuss about the need or the necessity for keeping the Officer under suspension was made out. In the course of the submission, learned Advocate General argued that as the petitioner was a senior Officer, he would have access to the material and witnesses; that there is a chance that he can influence the course of the enquiry. However, a reading of the para 28, does not show that the existence of such an apprehension was made out or noticed by the Tribunal. Even the Tribunal did not also refer to any *prima facie* averment in a document or elsewhere, which would support the submission of the State that there is a likelihood of the petitioner influencing the enquiry. The fact that the petitioner is a senior IPS Officer cannot lead to an irresistible conclusion that he would influence the future course of the enquiry and/or hamper the same. There should be some link, however tenuous, for this conclusion to be drawn. In the opinion of this Court, the same is lacking in the order of the Tribunal.

In paragraphs 29 and 30, the Tribunal also discussed about the availability of material for placing the Officer under suspension. The Tribunal pointed out that judicial review can extend to verifying the existence of the material and not the adequacy thereof. In para 30, the Tribunal said that there is certain material pertaining the procurement of the equipment, but whether any irregularity has taken place or not can only be examined in the enquiry. Therefore,

the Tribunal came to a conclusion that it cannot be said that there is no material. This finding has to be examined in the light of the case law that has been cited.

For a Court or a Tribunal to come to a conclusion that the order of suspension is justified, there should be material about (a) the gravity of the misconduct; (b) some evidence placed before the Authority; and (c) an application of mind by the Authority; and (d) necessity for placing the Officer under suspension. Unless these factors are satisfied, in view of the judgements of the Hon'ble Supreme Court of India cited above, the Tribunal cannot come to a conclusion about the correctness of the suspension order. The case law on the subject which is mentioned above does not preclude or prohibit a Court or Tribunal from looking into the material. Unless such an exercise is carried out the Court or Tribunal cannot arrive at a conclusion about the correctness of any impugned action or order.

The Tribunal held that sufficiency of evidence is for the Disciplinary Authority to decide, but in the opinion of this Court, the Tribunal was bound to look into the existence of the material and find a link; at least, *prima facie* between the petitioner's role/actions and the finalization of the tender etc., in favour of the "favoured" supplier which would lead to a justification of the suspension. In fact, in para 21 of the ***Ashok Kumar Aggarwal's*** (2 supra) case, it is stated that there should be a strong *prima facie* case against the petitioner, which would lead to punishment as detailed and also a consideration of all the available material. This necessarily

entails some examination of the material to establish the petitioner's specific role. This aspect has not been discussed by the Tribunal in paragraphs 29 and 30.

This Court also notices that the "reasons" for the conclusion (which would enable this Court to come to a conclusion whether there was justifiable material) are lacking in the impugned order. Reasons would indicate the connection between the material and the conclusion. The thought process of the Court will be in the reasons. The failure to give reasons in the opinion of this Court vitiates the order of the Tribunal. The reasons would have enabled this Court to appreciate the conclusions of the Tribunal.

Order of Suspension – G.O.Ms.No.18 dated 08.02.2020:

A prayer is also made in the writ petition to issue a writ of *Mandamus* declaring the order of suspension as illegal and arbitrary. In view of the detailed submissions made and to come to a conclusion about the correctness of the order passed by the Tribunal and for the purpose of the two prayers, this Court is now proposing to go into the issue of the suspension order dated 08.02.2020.

The impugned order dated 08.02.2020 under which the petitioner was placed under suspension reads as follows:

> "2. Now, therefore, in exercise of the powers conferred under Rule 3 (1) of the All India Services (Discipline and Appeal) Rules, 1969, the Government of Andhra Pradesh hereby place the said Sri A.B. Venkateswara Rao, IPS (A.P:1989), Director General of Police, under suspension in public interest with immediate effect, pending initiation of disciplinary proceedings."

Prior to this, a memo dated 03.02.2020 bearing R.C.No.237/H2/2017-20 was issued by the Director General of Police requesting the Additional Director General, CID to enquire into the matter thoroughly and submit a report. The Additional Director General, CID, ordered a Deputy Superintendent of Police to conduct the enquiry. A report of the said preliminary enquiry dated 06.02.2020 is placed before this Court. The submission of the learned counsel for the petitioner is that this preliminary enquiry is just an eye wash, issued with malice, that it does not consider the rule position, does not record the satisfaction required or the facts and circumstances of the case. On the other hand, the learned Advocate General submits that since this is a preliminary enquiry, it can only have *prima facie* conclusions and that after the collection of the evidence and other material, the final enquiry will be conducted.

While appreciating the submissions made, this Court which is bound by the case law cited above will have to see if the material that was available was enough for the Appointing Authority to pass the order of suspension. In ***Bimal Kumar Mohanty's*** case (1 supra), the Hon'ble Supreme Court said that the nature of the evidence placed before the Appointing Authority, the gravity of the misconduct, application of mind and the need or necessity to pass an order of suspension must be clear. In ***Ashok Kumar Aggarwal's*** case (2 supra), the Hon'ble Supreme Court held that there should be a strong *prima facie* case (against delinquent) leading to a major penalty

punishment. The Authority should take into consideration all the available material and lastly, the Authority should decide whether it is advisable to allow the delinquent to continue to perform his duties or his retention in Office is likely to hamper the enquiry. In ***A.K.K.Nambiar'***s case (14 supra), the Constitution Bench held that the suspension should be warranted by the rules and it should be an honest exercise of power.

A reading of the order of suspension states that the Government has carefully examined the report of the Enquiry Officer. Relying upon this and the subsequent confirmation of the order of suspension by the Central Government as warranted by the Rules, the learned Advocate General argued that there is an application of mind. However, the submission of the leaned Senior Counsel detailed above and the issues raised in the writ merit a further examination of the facts and submissions.

The preliminary report dated 06.02.2020 alone is being considered at this stage as this is the basis for the impugned suspension order.

Para 2 of the report shows that a process of procurement was initiated in 2017-18 and demonstration was witnessed by a team of Officers at the BSF Camp, New Delhi on 31.01.2017. Thereafter, a team of Officers including the Director General of Police and the petitioner visited Israel along with a technical consultant in April, 2017 and came to a conclusion that the equipment is useful. Later, in June, 2017, a proposal was submitted to the Government to procure the equipment. The

Government and the Ministry of Human affairs approved the same and the actual procurement was given to State Trading Corporation. The Deputy General of Police constituted a purchase committee (which according to the preliminary report, did not consist of certain members). The tender was floated twice, but due to lack of bidders and other reasons, the same was cancelled. Thereafter, a third revised tender was given for re-floating. As per this report certain remarks and suggestions made by Senior Officers were overlooked and the tender was pushed through hastily by altering the tender conditions. Thereafter, four bids were received but three bidders were disqualified.

The first conclusion reached in the enquiry report is that three out of the four bids are merely supportive bids from people "who do not appear to have adequate experience". It is also mentioned that as per the letter dated 22.03.2019, the son of the petitioner is the local franchisee. Therefore, the first conclusion reached is that the procurement of the finalisation of the bid is not done properly.

In the second conclusion, bullet points are given which are a cryptic reproduction of the paragraphs in the report. In the ultimate conclusion, it is said that no technical person or user was included in the purchase committee or the technical committee. Lastly, it is concluded that the petitioner's son was a representative of the successful bidder. Therefore, Rule 4(3)(a) of the 1968 Rules was flouted as per the report. It was ultimately concluded that the irregularities were wilfully done for pecuniary gain by making payments to purchase the

equipment. Based on this, the Appointing Authority suspended the petitioner.

As pointed out by the learned counsel appearing for the petitioner, the 1968 Rules, which are mentioned in the preliminary report were not considered by the Appointing Authority. Rule 4(3) (a) of the 1968 Rules is as follows:

> "4(3)(a) No member of the Service shall in the discharge of his official duties, deal with any matter relating to, or award any contract in favour of a private undertaking NGO or any other person, if any members of his family is employed in that private undertaking or NGO under that person or if he or any member of his family is interested in such private undertaking or NGO or other person in any other manner."

The definition of a member of a family in Clause 2(b) is as follows:

> "2.(b) 'member of family', in relation to a member of the service, includes— (i) the wife or husband as the case may be of such member, whether residing with (such member)2 or not, but does not include a wife or husband separated from the member of the Service by a decree or order of competent court; (ii) the son or daughter or the step-son or step-daughter of such member and wholly dependent (on such member) but does not include a child or step-child who is no longer in any way dependent (on such member) or of whose custody the member of the Service has been deprived by or under any law; …."

Therefore, it is contended by the learned senior counsel for the petitioner, that the son or daughter who was not dependent on the petitioner cannot be considered as a member of the family.

Apart from that, as he pointed out, the procurement began in the year 2017, the work was entrusted to STC for

floating the tender, the then Director General of Police constituted a purchase committee, the demonstrations were witnessed on 31.01.2017; later, a team visited Israel in April, 2017 to conclude about the suitability of the equipment. Thereafter, since the tender floated twice was not successful, another tender was floated, scaling down the specifications etc. However, he points out that the *prima facie* role of the petitioner in tweaking/reducing or changing the conditions of the contract/tender is not mentioned. This is apparent from the report. Even otherwise, as can be seen from the report, he points out it is merely said that three out of the four bidders "do not appear" to have adequate experience and are suspected to be involved for the purpose of the tender only. The tender was also cancelled as per the preliminary report itself on 24.12.2018. There is no mention about the monetary loss in the preliminary report. Ultimately, the participation of the son is highlighted without any clarity of the exact role played by him. The learned senior counsel submits that the reasons for the disqualification of three bidders, for the cancellation etc., are also not clearly mentioned.

The ultimate conclusions of the preliminary report are that (a) the specifications, parameters were changed to suit some vested interest and (b) the son of the petitioner gave a demonstration of the equipment.

This Court in line with the judgments cited above has examined the submissions made and the documents. The gravity of the misconduct and the nature of evidence are matters which should weigh with the Appointing Authority to

decide on the suspension. Similarly, there should be a strong *prima facie* case at this stage to come to a conclusion that the delinquent is likely to be imposed major penalty. If, the available material before the Appointing Authority for passing the order of suspension dated 08.02.2020 is examined, it does not lead to a conclusion that the petitioner himself was solely responsible for reducing the specifications, parameters, payment conditions etc.,. The preliminary report does not specify that the petitioner alone had an important role in the reduction of the parameters, payment conditions etc. The exact role of the son is not mentioned particularly as the earlier visits of the Officers to Israel etc., are mentioned. The reasons for the disqualification of the three bidders; their bids etc., are not mentioned. The gravity of the offence, in the opinion of the Court, is not clearly considered and a strong *prima facie* case in line with the decision in ***Ajay Kumar Choudhary's case (3 supra)*** is not *ex facie* visible in the suspension order. Therefore this Court opines that there is no material to justify the placing of the petitioner under suspension. This Court also holds that the "circumstances" and the "satisfaction" as needed under the rule in question are not present.

Next point to be seen is about the continuation of the suspension. The petitioner was initially suspended on 08.02.2020 as required under the Rules. The same was also approved by the Government of India. Therefore, it was argued that there is application of mind by the State. This Court has noticed the case law on the subject and the same was referred to more than once in this order already. The

need to keep an Officer under suspension and to continue his suspension is necessary if there is a likelihood of the Officer impeding the progress of the investigation or the enquiry. The Authority should consider all the available material to come to a conclusion that it would not be desirable to keep the delinquent in Office, since he is likely to hamper or frustrate the enquiry.

Therefore, apart from a strong *prima facie* case, there should be satisfaction based on some material to come to a conclusion that the Officer should likely to hamper or frustrate the enquiry. This is what is mentioned as "necessity or desirability" in the Rule. In the case on hand, this Court does not find any whisper anywhere in the material before the Authority that there is every likelihood of the petitioner hampering the investigation or the enquiry. If the judgement of the Hon'ble Supreme Court is taken into consideration, it clearly says that the Authority should take into account all the available material before reaching the conclusion. Therefore, in the opinion of this Court, there should be some material to justify the finding that the Officer should be kept/continued under suspension. The records of this case do not disclose any such reasonable apprehension or likelihood, which is based on some material.

The other question that remains is the role of the son in the tender finalisation. Both the learned counsel have taken great pains to draw the attention of this Court to the definition of a family, conflict of interest rule etc. The learned senior counsel appearing for the petitioner has argued that the

purchase of the equipment was mooted in June 2017, that various committees were constituted and that teams of Officers have participated in the finalisation of the tender. A Government of India undertaking called STC floated the tender. The tender floated was cancelled twice and that ultimately, a final tender was floated. Even the final tender committee dated 26.06.2018 was attended by a number of Officers and not merely the petitioner and that the son's alleged role is only borne out by a letter dated 22.03.2019, which is long after the cancellation of the tender dated 24.12.2018.

The first and foremost submission of the learned Senior Counsel is that the son is independent of the father and will not fit into the definition of a member of the family. He states that this is asserted in the writ petition etc.,. Therefore, learned Senior Counsel argued that the role of the son is inconsequential. At this stage, this Court cannot go into this aspect in detail, particularly as no material is available to show the financial independence of the petitioner’s son. This Court is only assessing the available material before the first respondent-Authority for passing the suspension order. As pointed out earlier, the Authority is bound to sift through the available material to come to a conclusion that there is a strong *prima facie* case available against the delinquent. If the report that is placed before the Appointing Authority is examined (the report of the preliminary enquiry of the Deputy Superintendent of Police), it does not talk of the presence of the son in the initial meetings, tender finalization, visits etc. Only after discussing the third tender, it is mentioned that the son

of the petitioner is the local franchisee. The basis for this is a letter dated 22.03.2019. In view of this, this Court has to conclude that assuming that the son was involved as a local franchisee, the link between the tender, the reduced tender conditions etc., and the influence of the petitioner in these aspects to favour his son's firm are not *prima facie* spelt out in the material before the Appointing Authority. While the amended service Rules on which the learned Advocate General relies upon show that if there is a private interest, the petitioner was duty bound to disclose the same, still the fact remains that the preliminary enquiry report states that the award of the contract in which a member of the family is involved is a misconduct. This is the only Rule relied upon in the preliminary enquiry. Even otherwise the existence of a "private interest" is a matter that is not borne out of the available record. The role of the son at the earlier stages i.e., before 22.03.2019; his presence on 23-3-2019 in a meeting conducted by the MHA and its impact on the issue is still to be investigated/determined. However, the available material as on 08.02.2020 is not conclusive for forming an opinion of a *prima facie* case particularly against the petitioner.

Both the learned counsel have drawn the attention of this Court to the letter dated 22.03.2019, which is filed as a material paper by the petitioner. This discloses the role/presence of the son according to the respondents. This is referred to in the preliminary report. This Court notices its letter dated 22.03.2019 is after the cancellation of the tender on 24.12.2018 by the Director General of Police. The link

between this meeting dated 27.02.2019 which was held in MHA Delhi and the finalisation of the tender dated 05.10.2018 is not visible *prima facie*. The cancellation of the tender dated 24.12.2018 is not in dispute. This is referred to in the preliminary enquiry report. The letter dated 22.03.2019 given by the Director of the Ministry of Home Affairs is also referred to in the preliminary report dated 06.02.2020. The Appointing Authority, in the opinion of this Court, should have examined these two records in conjunction to come to a *prima facie* conclusion about the role of the son. This was unfortunately not done. The minutes dated 26.06.2018, which are also referred to in the preliminary investigation report, were also filed as a material paper. They show that a team of eight (8) Police Officers and two representatives of the company participated in the deliberations. Presentations were also made. Some clarifications were also sought. Thereafter, the committee recommended to the Inspector General of Police, Intelligence and SIB to prepare revised tender conditions. These aspects should have also been considered by the first respondent-State in deciding the petitioner's role.

Therefore, this Court is of the opinion that the Authority before whom this preliminary enquiry report dated 06.02.2020 was placed did not consider the material in its proper perspective to come to a conclusion that the suspension is justified.

The case law cited by the learned counsel on both sides includes the case of ***Bimal Kumar Mohanty*** (1 supra), which itself clearly said the nature of the evidence placed before the

Appointing Authority and the application of mind should be considered while passing an order of suspension and also for continuation of the suspension. In the opinion of this Court, the Appointing Authority did not actually consider the material in the proper perspective in order to come to a conclusion that the petitioner can be kept under suspension. This also leads to a conclusion about non-application of mind.

Learned Advocate General also relied upon letter dated 28.03.2019, which is filed by the petitioner to contend vehemently that even after the cancellation of the tender, the petitioner was still pursuing with the State and the Director General of Police to award the tender to the firm in which his son is interested. This letter dated 28.03.2019 is a material paper that is filed by the petitioner. In this letter the last para reads as follows:

> "It is humbly submitted that the cancellation of the Purchase Order may kindly be reviewed or at the least, entire process may kindly be reinitiated immediately by the Office of the Director General of Police, Andhra Pradesh, to urgently procure the required items mentioned in the cancelled Purchase Order, following procedures as deemed fit."

While this Court is of the opinion that this letter dated 28.03.2019 is not a part of the material that is considered in the preliminary investigation and was not a letter that was considered by the Authority in passing the impugned order, still, in view of the fact that the learned Advocate General relied upon this letter (which is pleaded in the counter filed as a ground to show the petitioner's interest), this Court answers

the submission by stating that a reading of the penultimate paragraph shows that the petitioner wanted the State to "procure the required items mentioned in the cancelled purchase order following procedures as deemed fit". It does not lead to an irresistible conclusion at this stage that the petitioner was still pursuing the old tender only. This issue is however left open for the Disciplinary Authority to decide.

The learned Advocate General also relied upon the amended Service Rules to contend that a person, who has a "private interest" is duty bound to disclose the same. This Court does not wish to enter further into this controversy of conflict of interest since the State/Authority did not rely upon this amended definition to place the petitioner under suspension. Learned Advocate General also took great pains to argue that malice is not established and that the allegations of malice are often made easily without being proved. He also pointed out on the basis of settled case law that in cases of malice, the person/officer concerned should be added as *eo* nominee party. Relying upon the cause title, the learned Advocate General pointed out that none of the Officers were added in-person nor is there the required standard of pleading to prove malice. This Court agrees with the said submissions, but this Court is of the opinion that on this ground the Writ need not be dismissed. Apart from malice there are other issues raised like the rule position, failure to consider the material, failure to establish the petitioner's role in reducing the specifications etc.,. which merit consideration.

The Learned Advocate General also relied on two interim reports which were proposed to be filed in a sealed cover. They are referred to in the counter affidavit. This Court does not wish to rely on the same for the conclusions. Since privilege is not claimed and as they are not furnished to the other side, relying on them is not called for more so in view of the fact that subsequent events cannot be used to justify the suspension order. The material available and the examination of the same, in the opinion of this Court, is sufficient to arrive at the conclusions.

Conclusions:

Rule 3 of the 1969 Rules, talks of suspension. The factors, which are necessary for placing an Officer under suspension are (a) the circumstances of the case, (b) the nature of the charges, and (c) satisfaction, necessity and desirability.

This Court is reiterating that for an Officer to be placed under suspension, by virtue of a plain language interpretation of this case, the Authority should be satisfied basing upon the circumstances of the case, the evidence collected till then and the nature of the charges that the Officer should be placed under suspension. Therefore, there should be some material for the Appointing Authority to come to a conclusion about the nature of the charges and the circumstances of the case. The further satisfaction for keeping the Officer under suspension and/or continuing him should also be based on some material.

While, at this stage, there is no necessity for clear or what is called adequate proof, still in the opinion of this Court there should be some material available. In fact, the Hon'ble

Supreme Court of India has said that there should be a strong *prima facie* case against the delinquent. This, therefore, implies that the satisfaction reached by the Authority for suspending a delinquent or keeping him under suspension should be based on some objective material and cannot purely be subjective. The cases cited above including ***Bimal Kumar Mohanty and Ashok Kumar Aggarwal*** (1 and 2 supra) lend support to this. Even the Constitution Bench decision reported in ***A.K.K.Nambiar's*** case (14 supra) states that the order of suspension should be (a) warranted by the Rule (b) and must be an honest exercise of power. The Court can only come to a conclusion about the honest exercise of power or of the suspension being as per the Rule, when the material examined by the Authority before suspending the Officer is seen by the Court and not otherwise. As mentioned above, Rule 3 warrants examination of the circumstances of the case, nature of charges and/or the necessity or desirability of placing an Officer under suspension. In the opinion of this Court, the suspension order in this case does not meet the stipulation of the Rule itself (Rule 4(3)(a) of the Conduct Rules 1969) nor does it meet the tests that are prescribed/laid down by the Hon'ble Supreme Court in the decided cases, particularly ***Bimal Kumar Mohanty, Ashok Kumar Aggarwal and A.K.K.Nambiar*** (1, 2 and 14 supra).

Hence, this Court is of the opinion that the Appointing Authority-first respondent did not have adequate material by the date of the order of suspension to come to a conclusion that

the petitioner himself was responsible for floating the tender, for choosing the supplier, for making the changes in the tender and/or that the son was instrumental in awarding the work or that he played a big role in the changes. This Court is only commenting about the material placed before the Appointing Authority-first respondent for the suspension only for the purpose of disposal of this Writ Petition. The Appointing Authority did not also call for or examine records to record the satisfaction of a *prima facie* case etc.,. The preliminary enquiry report was the only document considered.

(b) This Court has already spelt out its conclusions with regard to the findings of the Central Administrative Tribunal in the order impugned. The justification for placing the Officer under Suspension and/or continuing him in suspension are not really discussed by the Tribunal.

The link however slender and/or tenuous between the material and the conclusions should be established. Otherwise, the dicta of the Hon'ble Supreme Court that the Appointing Authority should find a strong *prima facie* case would become meaningless. A strong *prima facie* case would imply that there is some material available linking the delinquent solely to the charges, particularly for the grounds urged. The sole document available (dated 06.02.2020) before the Appointing Authority, who passed the impugned order, did not establish the same. The Central Administrative Tribunal, in the opinion of this Court, did not consider the issue of *prima facie* case as mandated in ***Ashok Kumar Aggarwal's*** case (2 supra). The Tribunal did not also consider the law as laid down

in ***Bimal Kumar Mohanty's*** case (1 supra) and look into the nature of the evidence that is placed before the Appointing Authority. The Tribunal also did not decide whether the material was enough for an objective satisfaction, meaning an application of mind by the Authority. These aspects should have been considered by the Tribunal in the O.A. The same were not done.

(c) The order of suspension is also not warranted by the Rule, which as mentioned earlier talks of the circumstances of the case, nature of the charges etc., and the satisfaction to be reached. The conclusions of the first respondent-Appointing Authority also are not based on adequate materials. Non-application of mind is visible from the failure to consider the materials in line with the settled law.

Therefore, this Court holds that the petitioner is entitled to the prayers made.

The learned Advocate General raised an issue about the prayers of a writ of *Certiorari* and a *Mandamus* being made together. The case law cited by the learned counsel for the petitioner in WA.No.3161 of 2019 of the Madras High Court (***M.Rajendran v. Govt of India***), ***Ashok Kumar Aggarwal*** (2 supra) ***and Surya Dev Rai*** (7 supra) are applicable to the facts and circumstances of the case. The distinction between the writ of *Certiorari* and the supervisory jurisdiction is also slowly being obliterated. However, under Article 226 of the Constitution of India, a person is entitled to seek a number of reliefs. Article 226 of the Constitution of India itself uses the words "for any other purpose" after describing the types of writs

for enforcement of fundamental rights, which clearly shows that more than one writ can be prayed for. A combination of prayers is also necessary in the present situation. The facts and circumstances of this case would mean that if the order in the O.A. is set aside, the petitioner would be driven to a further round of litigation if *Certiorari* alone is granted. Any order passed by this Court should not be an empty formality. Courts exist to do justice between the parties and not to drive the parties to multiple rounds of litigation. In order to do complete justice between the parties, this Court is of the opinion that in the facts and circumstances of the case, after setting aside the order in the O.A., the petitioner should not be driven to another round of litigation and therefore, an order directing him to be reinstated into service while continuing with the enquiry is appropriate in the facts and circumstances of the case.

However, it is made very clear that all the opinions that are expressed in the order are for the purpose of disposal of the writ petition only. The material before the Authority for passing the order of suspension is essentially considered for reaching the conclusions. This will not preclude or otherwise come in the way of the respondents carrying out their own further investigation as advised into the matter for the purpose of the enquiry. This order will not come in the way of the Enquiry Officer coming to his/her own independent conclusion in the matter based on the material and the law, without being influenced by this order or the opinions expressed.

A note of caution and a direction is also given to the petitioner also not to in anyway interfere or hamper the process of enquiry, investigation etc.,. He should maintain a very strict distance from the investigation/enquiry and should not in any way attempt to keep in touch with any of the witnesses proposed to be introduced or come in the way of the investigating/enquiry Officers. It is made clear that if there is any infraction, the State is entitled to take appropriate action.

In view of the fact that the Service Rules provide for timely completion of the enquiry, the respondents are directed to strictly adhere to the time schedules fixed by the relevant Rules and complete the enquiry in all respects in a time bound manner.

This Court records its appreciation for the efforts undertaken by the learned Senior Counsel Sri B.Adinarayana Rao and the learned Advocate General Sri S. Sriram.

While allowing the Writ Petition, the following order is passed: –

1. The order dated 17.03.2020 in OA.No.020/0149/2020 is quashed.

2. The order dated 08.02.2020 in GO.Ms.No.18 GAD issued by the first respondent keeping the petitioner under suspension is held to be illegal, arbitrary and is set aside. Consequently, the first respondent is directed to reinstate the petitioner into service with all attendant/consequential benefits, monetary and otherwise.

3. The respondents shall complete the enquiry against the petitioner strictly as per the extant Rules in a time bound manner.

There shall no order as to costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

D.V.S.S.SOMAYAJULU, J

LALITHA KANNEGANTI,J

Date:22.05.2020.

Note: LR Copy to be marked.
B/o
KLP