

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : GWALIOR

Original Application No.202/0028/2018

Gwalior, this Friday, the 14th day of February, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Indra Prakash Garg, S/o Shri Om Prakash Garg, Aged-37 years,
Occupation – Service, R/o Pandit Shri Govind Ji Ka Bada,
Behind Dev Garh Kothi, Chana Kothar, Kampoo, Laskhar,
Gwalior, Pin – 474001 **-Applicant**

(By Advocate – Shri R.B.S. Tomar)

V e r s u s

1. The Vice Chancellor, Laxmi Bai National Institute of Physical Education, Gwalior Pin – 474002.
2. The Laxmi Bai National Institute of Physical Education, Gwalior Pin – 474002 through its Registrar **-Respondents**

(By Advocate – Shri Nirmal Sharma)

(Date of reserving order : 11.02.2020)

ORDER

By Navin Tandon, AM.

The applicant is aggrieved that he is being kept under suspension even though no memorandum of charges has been issued within a period of 90 days from the date of suspension.

2. The brief facts of the case are that an amount of Rs.25,38,370/- belonging to the respondents was got deposited

in the personal Savings Account of the applicant in 19 transactions. He was placed under suspension on 12.09.2017 (Annexure A-2), which was further extended by 180 days from 11.12.2017 to 08.06.2018 vide order dated 09.12.2017 (Annexure A-1). During the suspension period, his headquarter was designated as LNIPE-NERC, Guwahati. He was issued with a memorandum of charge on 05.01.2018 (Annexure A-7).

3. The applicant has sought for the following reliefs:

“8.1 That, the order annexure A/1 dated 09.12.2017 issued by the respondent may kindly quashed.

8.2 That, the respondent kindly directed revoke the suspension order and permitted to applicant resume his duties in the respondent institution.

8.3 That, the respondent also kindly directed to make substantial allowance to the petitioner immediately as per rule without there being any delay, with the interest 12% p.a.

8.4 That, the respondent kindly further directed not to post or fix the head quarter of the applicant at Guwahati and same kindly consider and posted applicant at Gwalior.”

4. The applicant has submitted that since the chargesheet has not been issued within 90 days from the date of suspension, therefore, as per the law laid down by the Hon’ble Apex Court in the case of **Ajay Kumar Choudhary vs. Union of India**

and another, (2015) 7 SCC 291, suspension order cannot be extended beyond three months.

5. The respondents, in their reply, have submitted that during the suspension period, the applicant was attached to LNIPE-NERC, Guwahati. He gave his joining at Guwahati. On 03.11.2017, he was relieved from Guwahati to Bhopal to report at CBI office. But he has not reported back to headquarter.

6. The applicant was granted several opportunities for filing rejoinder, which was not filed. Accordingly, right to file rejoinder was forfeited.

7. Heard learned counsel for the parties and perused the pleadings and the documents available on record.

8. The main argument of learned counsel for the applicant was that since the memorandum of charge has been issued beyond the period of 90 days of the suspension, further extension of suspension cannot be done. It was informed by learned counsel for the applicant that the applicant was under judicial custody from 24.05.2018 to 18.11.2019. He also confirmed that the applicant is being paid subsistence allowance as per rules.

9. On the other hand, learned counsel for the respondents submitted that the applicant has remained in judicial proceedings for one and half years.

10. We find that the suspension order was issued on 12.09.2017 and it was further extended on 09.12.2017 by 180 days. The memorandum of charges has been issued on 05.01.2018.

11. The Hon'ble Supreme Court in the matters of **Ajay Kumar Choudhary** (supra) have deprecated the practice of Departments to keep the employees under suspension for very long period. In conclusion, it has been held as under:

“21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the

period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

22. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review.”

11.1 Perusal of the above order of Hon’ble Supreme Court does indicate that if the memorandum of the charge is not served within three months then the suspension period should not be extended. However, if the memorandum of charges has been served, a reasoned order must be passed for extension of suspension. It further goes on to add that since in the said case, the appellant has been served with a chargesheet and, therefore, these directions are no longer relevant for him.

12. Taking the same ratio, we find that the memorandum of charges has already been served on the applicant even before he approached this Tribunal. Therefore, those directions of Hon’ble Apex Court are no longer applicable in this case.

13. As far as his attachment with Guwahati is concerned, even Hon’ble Supreme Court in **Ajay Kumar Choudhary**

(supra) has held that the respondent department can take necessary action to keep charged official away from his place of work, if so required. Therefore, we do not find any illegality or irregularity as far as attachment with Guwahati is concerned.

14. From the above, we find that the Original Application is devoid of merit and, accordingly, the same is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-