

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00897/2018

Date of Order : 05-02-2019

Between :

Janumula Madhu Babu
S/o Hanumantha Rao,
Aged about 47 years, Occu: SOE,
H.No.10-6-67, Saroor Nagar,
Hyderabad-35.Applicant

AND

1. Union of India rep by its
Secretary to the Government of India,
Vigilance Section, Department of
Atomic Energy, Anushakthi Bhavan,
C.S.M.Marg, Mumbai-400001.
2. The Controller, BARC, Trombay
Mumbai-400085,
3. The Chief Administrative Officer (P),
BARC, Trombay, Mumbai-400085. ...Respondents

Counsel for the Applicant: Mr. P. Ravi Kiran

Counsel for the Respondents : Mr. V. Vinod Kumar, Sr.CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER
THE HON'BLE MRS.NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

(Oral Order per Hon'ble Mrs. Naini Jayaseelan, Administrative Member)

Heard Mr.P.Ravi Kiran, learned counsel appearing for the applicant
and Mr.V.VinodKumar, learned Sr Central Govt., Standing Counsel for the
Respondents.

2. The applicant is a Scientific Officer in the Respondents organization. He had some marital disputes with his wife and was implicated in a Criminal Case under sections 417, 493, 496 of IPC and Section 3(2)(v) of SC/ST POA Act, case was registered against him on 22.1.2018 and he was arrested on 31.01.2018, he was sent to judicial remand for a period of 9 days. Subsequently the Respondent authorities have issued proceedings dated 25.07.2018 and by the said proceedings he was suspended from service with effect from 25.07.2018. Thereafter the order was extended for a period of three months, ie from 26.08.2018 to 23.11.2018. According to him, the applicant was falsely implicated in the Criminal Case. In any event in the said matter the charge sheet is filed. The applicant therefore filed the present OA to declare the action of the Respondents in extending the period of suspension by proceedings dated 24.08.2018 as illegal, arbitrary and consequently to direct the Respondents to revoke the suspension and permit him to attend to the duties at the earliest.

3. It is submitted by the Respondents in their reply statement that the Respondents have not reviewed the suspension order from time to time and therefore the OA for revoking the suspension is not maintainable. It is further contended that the applicant has not made any appeal against the order of suspension as per Rule 23(1)(i) of the CCS (CCA) Rules and has stated that he has not exhausted the departmental remedies. However, the applicant made an application to the Head of Department to revoke the suspension and the same was not considered and the gravity of the offence committed by the applicant, vide order dated 24.08.2018, the suspension

was extended. According to the Respondents, the Police have filed the charge sheet, decision will be taken considering the outcome of the Criminal Case. With the above contentions, the Respondents sought to dismiss the OA.

4. Reliance has been placed by the learned counsel appearing for the applicant on the decision of Ajay Kumar Kumar Choudhary Vs. Union of India through its Secretary and Others [2015 (7) SCC 291] wherein the Hon'ble Supreme Court has held as follows :-

“ 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.”

5. Basing on the above judgment, the Government of India issued office memorandum dated 23.08.2018 which reads as under :-

“2. In compliance of the above judgement, it has been decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge-sheet is not served to the charged officer. As such, it should be ensured that the charge sheet is issued before expiry of 90 days from the date of suspension. As the suspension will lapse in case this time line is not adhered to, a close

watch needs to be kept at all levels to ensure that charge sheets are issued in time.

3. It should also be ensured that disciplinary proceedings are initiated as far as practicable in cases where an investigating agency is seized of the matter or criminal proceedings have been launched. Clarifications in this regard have already been issued vide O.M.No.11012/6/2007-Estt.A-III, dated 21.07.2016.”

6. The Government of India issued another OM dated 21.07.2016 which reads as under :

“2. It is noticed that in many cases charge sheets are not issued despite clear *prima facie* evidence of misconduct on the ground that the matter is under investigation by an investigating agency like Central Bureau of Investigation. In the aforesaid judgement the Hon’ble Court has also superseded the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance.”

7. Mr. V. Vinod Kumar, learned Sr Central Govt., Standing Counsel for Respondents would contend that since Police have filed charge sheet, the Department need not issue any charge memorandum and take it can extend the suspension from time to time by reviewing the same indefinitely. It is the contention of the learned counsel appearing for the applicant that as per the decision of the Hon’ble Supreme Court in the case of *Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another* [2015 (7) SCC 291] and as per the OM dated 21.07.2016 though a Criminal Investigation and charge sheet are pending, the Department is under obligation to issue a charge sheet and it cannot extend the suspension from time to time under the guise of review. The judgment of the Hon’ble Supreme Court in the case of *Ajay Kumar Choudhary Vs. Union of India through its Secretary & Another* and also office memorandum dated 21.7.2016 clearly laid down that the Department is under obligation to issue

a charge sheet within a period of 90 days from the date of suspension order and then it can review the suspension order. Suppose the Criminal Case is not disposed of for a period of five years, the Department cannot keep the applicant under suspension for a period of five years without issuing any charge memorandum. As regards the other contentions that the applicant has to exhaust the alternate remedy available in terms of Rule 23 (i) of CCS (CCA) Rules, 1965, and as per Rule 24(1)(i)(b) of the CCS (CCA) Rules, 1965 and therefore the application shall not be admitted under section 20 of AT Act, 1985, it is satisfied that the applicant has availed of all the remedies available to him under the redressal of grievances.

8. Therefore, even according to Section 20 of the A.T.Act, 1985, there is no absolute prohibition for entertaining an application without exhausting the alternative remedies.

9. Further, in the instant case the applicant submitted representations to the higher authorities to revoke the suspension but those representations were not accepted. Further the Respondents took stand in the reply affidavit that the suspension would be revoked basing on the outcome of the Criminal Case. Therefore, under these circumstances, the OA can be admitted by the Tribunal even if the alternative remedy available to the applicant under the CCS (CCA) Rules, 1965, is not exhausted.

10. For the forgoing reasons, I am of the view that keeping the applicant under suspension without issuing a charge memorandum and by reviewing

the same from time to time for an indefinitely long period is illegal and is liable to be set aside.

11. Consequently the order No.No.VIG-V15/12/2018-VIG-DAE/10795, dated 24.08.2018 by which the suspension is extended is set aside. The Original Application is allowed accordingly. No order as to costs.

(NAINI JAYASEELAN)
ADMINISTRATIVE MEMBER

(JUSTICE R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 05th February, 2019.
Dictated in Open Court.

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