

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 046/00220/2019

Date of Decision: This the 30th day of October 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Sri Richard Yimto, IPS
Inspector General of Police (CID), Officiating,
(Under Suspension), Nagaland Police
House No.159, Ward No.8; Lane No.21;
Seiruzha Colony; P.O.CHUMUKEDIMA-797103
District:-Dimapur, Nagaland Applicant

By Advocate : Sri P.Choudhury, Sri M. Chanda & Smt. U. Dutta

-Versus-

1. The Union of India
Through the Secretary, Govt. of India
Ministry of Home Affairs, North Block, New Delhi – 110001.
2. The State of Nagaland,
Represented by the Chief Secretary to the
Govt. of Nagaland, Civil Secretariat Nagaland
P.O.-Kohima-797001; Nagaland
3. Principal Secretary & Home Commissioner
To the Govt. of Nagaland,
Home Department, Civil Secretariat Nagaland;
P.O.-Kohima-797001; Nagaland
4. The Director General of Police,
Govt. of Nagaland, Police Headquarter, Kohima
P.O.-Kohima-797001, Nagaland

.....Respondents

By Advocate: Sri V.K.Bhatra, Sr.C.G.S.C.
Ms.T.Khro, G.A.Nagaland

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):

This O.A. has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:

“ 8.1 The Hon'ble Tribunal be pleased to quash the impugned order No.POL/ESTT-1/11/2018(Pt) dated Kohima the 20th May, 2019 issued by the Respondent Nos.2 and 3 extending the suspension period of the Applicant by another 3 months w.e.f. 08.05.2019 as being illegal, void ab initio and non-est in the eye of law.

8.2 The Hon'ble Tribunal be pleased to declare the Suspension of the Applicant from 24.01.2019 till to date as illegal, void ab initio and nonest in the eye of law.

8.3 The Hon'ble Tribunal be pleased to declare that the suspension of the Applicant from 25.10.2018 till to date as illegal, void ab initio and nonest in the eye of law.

8.4. The Hon'ble Tribunal be pleased to declare that the O.M.No.AR-3/Gen-361/2019 dated, Kohima the 22nd April 2019 issued by the Respondent No.2 as illegal, void ab initio and non-est in the eye of law.

8.5. The Hon'ble Tribunal be pleased to direct the Respondent Nos.2, 3 and 4 to pay the balance of the entire salary which the applicant is entitled under law in the absence of the impugned Suspension order dated 25.10.2018 forthwith.”

2. Brief facts as narrated by the applicant are that he is an I.P.S. Officer holding the rank of I.G.P. (CID) officiating and is presently under illegal suspension as he was falsely implicated in a criminal case under Sections 409/420, IPC, Sections 13(1)(c)(d)

R/W 13 (2) of the P.C. Act, 1988 & Section 22 of the NDPS Act, 1985 as he kept a consignment of seized 6.9 Kg of suspected brown sugar in his official quarter.

3. Grounds for relief as narrated by the applicant is that:-

- (i) That the Applicant had been victimized by the Respondent Nos.2 to 4 by falsely implicating the applicant in criminal case and if the same is directed to be investigated by an independent agency the whole modus operandi of the drug trafficking would come to the light bringing into the fore the real culprits who are facilitating the flourishing the legal trade in drugs. As the applicant was an impediment to those drug cartels, it was thought wise to implicate the Applicant in the false criminal charges which would allow the Respondent Nos.2 to 4 to continue the suspension and by illegally extending the same from time to time thereby deprive the Applicant to continue in the post of IGP (CID) which would act as a safe passage to the drug peddlers.
- (ii) That the Applicant was humiliated and his prestige was brought down by publishing widely in the various newspaper undermining his reputation for the first time in his long service career. Even though the false and frivolous FIR was lodged against the Applicant by the Respondent Nos.2 to 4 on 20.10.2018, the Respondent No.3 was not able to file the chargesheet even after the expiry of 180 days. This clearly reflect the tenability of the criminal case against the Applicant whereby the Applicant had been victimized in the hands of Respondent Nos. 2 to 4.
- (iii) That admittedly, the Respondent Nos. 2 to 4 did not constitute the Review committee within the period of 90 days under Rule 10(6) & (7) of the Rules, 1965 and within 60 days under Rule 3(8) of the Rules, 2015, it was constituted after 179 days of the passing of the impugned suspension order dated 25.10.2018 of the Applicant. The very constitution of the Review Committee by the Respondent No.2 is contrary to law and is non-est in the eye of law and as such could not in any way competent to extend the suspension of the Applicant.

- (iv) That the disciplinary proceeding instituted by the Respondent No.3 on the basis of the show cause notice issued by the Respondent No.4 on 06.09.2018 is yet to commence against the Applicant . As pointed out above the Respondent No.4 is not at all competent to issue the impugned show cause notice to the Applicant under law and the said notice dated 06.09.2018 is void ab initio and could not be acted upon.
- (v) That the Respondent Nos.2 & 3 had even ignored the opinion of the Secretary law and Justice, Govt. of Nagaland whereby it had opined that the suspension of the Applicant could not be extended by the Respondent No.2. The impugned action of the Respondent No.3 in placing the Applicant under suspension for another 3 months from 08.05.2019 would be violative the rights guaranteed to the Applicant under Articles 14, 16, 21 and 300A of the Constitution of India.
- (vi) That the Respondent No.2 could not have constituted the impugned Review committee on 22.04.2019 violating the provisions of Rules, 1965 as well as Rules, 2015 as the Review Committee could only be constituted within 90 days and 60 days respectively from the date of the Suspension Order dated 25.10.2018 for the purpose of extending the period of the suspension period. It is apparent from the records of the case that the said Review Committee was set up much after the expiry of the aforesaid period and as such the Respondent No.2 was not at all competent to constitute the said Review Committee on 22.04.2019.
- (vii) That the Respondent No.3 kept the Applicant under suspension without any extension after the expiry of 90 days from the date of passing of the impugned Suspension Order dated 25.10.2018. The Applicant was kept under illegal suspension from 23.01.2019 till to date when the period of suspension of 90 days expired on 22.01.2019. Admittedly, the Respondent Nos.2 & 3 did not extend the period of suspension by setting up of a Review Committee prior to 22.01.2019. In other words, the suspension of the Applicant beyond 22.01.2019 is illegal and is not at all permitted under law.
- (viii) That the Respondent Nos.2 & 3 by the impugned order dated 20.05.2019 was not competent nor had the jurisdiction to extend the suspension of the Applicant for a further period of 3 months with effect from

08.05.2019. The very constitution of the Review Committee vide O.M. dated 22.04.2019 by the Respondent No.2 is illegal and as such the Review Committee could not have recommended the extension of the period of suspension of the Applicant for a period of 3 months.

- (ix) That the suspension of the Applicant had come to an end on 22.01.2019 and as such the Respondent Nos. 2 & 3 would not be conferred any power under law to extend the period of suspension for a further period of 3 months from 08.05.2019. Since no such order of suspension existed on 08.05.2019 under law, it would not enable the Respondent Nos.2 to 4 to extend the period of suspension of the Applicant by the impugned order No.POL/ESTT-1/11/2018 (Pt) dated Kohima the 20th May, 2019 issued by the Respondent Nos.2 & 3 extending the suspension period of the Applicant by another 3 months w.e.f. 08.05.2019.
- (x) That the impugned Order dated 20.05.2019 issued by the Respondent Nos.2 & 3 whereby the Respondent Nos.2 & 3 had attempted to extend the period of suspension of the Applicant after the expiry of 90 days i.e 22.01.2019. the impugned order of extension was made from 24.01.2019 (i.e 92 days) which could not be done as the impugned suspension of the Applicant had already come to an end under law. Further the impugned order of suspension could not be extended beyond 90 days under the R, 1965 and R, 2015. In fact the present impugned extension of the suspension by another 3 months was done by the Respondent Nos.2 & 3 on 20.05.2019 for 90 days w.e.f. 08.05.2019 and the date 08.05.2019 is a date which also a date after expiry of 90 days from 24.01.2019.
- (xi) That the impugned Order dated 20.05.2019 could not have regularized the period of suspension beyond 90 days of the Applicant by the Respondent Nos.2 & 3 from 24.01.2019 to 07.05.2019 that too retrospectively on 20.05.2019. the impugned order dated 20.05.2019 passed by the Respondent Nos.2 & 3 is void ab initio and contrary to the provisions contained in Rules 1965 and Rules, 2015 and is liable to be quashed by this Hon'ble Tribunal. Even after the expiry of 180 days the Respondent Nos.2 to 3 of the filing of the FIR dated 20.10.2018 the chargesheet in respect of the said FIR against the Applicant was not filed in the competent Court.

4. The respondent authorities have filed their written statement on 29.07.2019. They admitted that the applicant was initially placed under suspension vide order No. POL/ESTT-1/11/2018 (Pt.) dated 25.10.2018 in connection with the State Cell P.S. Case No. 01/2018 dated 20.10.2018 U/s 409/420 IPC read with section 13(1)(C)(d)/13(2) read with section 22 NDPS Act. The suspension was extended for another 3 (three) months w.e.f. 08.05.2019 vide order of Government of Nagaland No. POL/ESTT-1/11/2018 dated 20.05.2019. They also brought out that the suspension against the accused i.e. applicant was in connection with the seizure of 6.9 kgs (approx) of contraband Brown Sugar by Narcotic Cell PS and he has been accused of having directed the OC Narcotic Cell PS to release the two accused and the vehicle without observing the legal process.

5. The respondent authorities also brought out that a team led by Addl. DG (L & O) had seized the contraband items from possession of the applicant under proper seizure memo which the applicant had illegally kept in his official residence.

6. The issue under examination is whether the respondent authorities have the power to put the applicant under suspension vide order No. POL/ESTT-1/11/2018 (pt.) dated 25.10.2018 and also whether the respondent authorities can extend the period of suspension vide order No. POL/ESTT-1/11/2018 dated 20.05.2019 and

to regularize the period after expiry of initial period of suspension and another period of 90 days?

7. During the argument, it was submitted by Sri V.K. Bhatra, Sr. CGSC for Govt. of India that respondent No. 1 i.e. Govt. of India has nothing to say in this case because of the fact that he is adopting the arguments advanced by the Govt. counsel for the State of Nagaland.

8. We have heard Sri P. Choudhury, learned counsel for the applicant, Sri V.K. Bhatra, Sr. CGSC for Govt. of India and Ms. T. Khro, Govt. Advocate for the State of Nagaland.

9. The learned counsel for the applicant has brought out that the respondent authorities are not competent to place the applicant under suspension. However, he has not placed any order in support of this argument. We have gone through the records submitted. It is seen that the suspension order has been signed by Home Commissioner, Govt. of Nagaland based on the report received from Director of Police, Nagaland vide letter No. PHQ/NGO-1/NGO-1/2018/409 dated 17.10.2018, received on 22.10.2018 with regard to seizure of suspected 6.9 Kg. of contraband Brown Sugar by Narcotic Cell at Khuzama Check Gate on 03.08.2018 and involvement of Shri Richard Yimto, IPS, IGP (CID), Nagaland. Accordingly, in the absence of any other specific order, rule or

judicial pronouncement, we are of considered view that the respondent authorities do have the power to place the applicant under suspension as ordered by them on 25.10.2018.

10. The next issue is whether the respondent authorities can review the period of suspension after expiry of 90 days as provided in All India Service (Discipline and Appeal) Rules 1969 or as amended in All India Services (Discipline and Appeal) Rules 1969 wherein it is clearly provided that the initial period of suspension would be 60 days extendable by another 120 days.

11. From the records, it is clear that the Review Committee was constituted vide order No. AR-3/Gen-361/2019 dated 22.04.2019 and order of regularization of the post 90 days period and further extension has been issued vide order No. POL/ESTT-1/11/2018 dated 20.05.2019. The learned counsel for the applicant strongly argued that since the period of suspension has not been extended during the currency of the initial suspension period, the order of suspension automatically lapsed on the date of expiry of the current suspension. He further argued that there is no such provision or rule to regularize the expired period of suspension. Accordingly, office order No. POL/ESTT-1/11/2018 dated 20.05.2019 is bad in law and is not supported by any order/rules and judicial pronouncement. He also submitted a copy of the judgment and order of Hon'ble Apex Court rendered in the case of **Union of India and Ors. Vs. Dipak Mali, (2010)**

2 SCC 222 wherein a ruling has been given that the suspension order does not survive after a period of 90 days unless extended after review within 90 days.

12. Keeping in view of the above, we are of the view that the initial period of the suspension of the applicant has lapsed on 23.01.2019. Accordingly, the office order No. POL/ESTT-1/11/2018 dated 20.05.2019 is hereby quashed and set aside. Along with this, the order No. POL/ESTT-1/11/2018(Pt) dated 08.08.2019 dated also stands set aside.

13. The respondent authorities shall be at liberty to process the case of suspension afresh if required after following the due procedure of law.

14. O.A. stands disposed of accordingly. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)