

LIBRARY

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A. NO. 1848 OF 2018

IN THE MATTER OF:

An application under Section 19
of the Central Administrative
Tribunal Act, 1985;

AND

IN THE MATTER OF :

Shri Sandeep Kumar Dikshit,
aged about 42 years, by
occupation - Superintendent of
CGSt & C. Ex., residing at 437A,
Patrapara Road, Purasree
Patrapara, Chandannagar,
Hooghly, West Bengal-712136

.....Applicant

-Versus-

1. Union of India, Service through
the Secretary to the Government
of India, Ministry of Finance,
Department of Revenue, North
Block, New Delhi-110001.
2. The Principal Chief
Commissioner of CGSt & C. Ex.,
Kolkata, CGST Bhavan, 180,
Rajdanga Main Road,
Shantipally, Kolkata-700107.
3. The Commissioner of CGST & C.
Ex., Haldia Commissionerate,
7th Floor, M. S. Building,
Custom House, 15/1, Strand
Road, Kolkata-700001.

[Signature]
Respondents

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

O.A/350/1848/2018

Date of Order: 4.12.2018

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Sandeep Kumar Dikshit
Vs
Central Excise and Customs

For The Applicant(s): Mr. A. K. Manna, counsel
For The Respondent(s): Mr. A. Roy, counsel

O R D E R

Per: Dr. (Ms.) Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal in second stage litigation, primarily challenging the extension of his suspension order beyond 3 months and praying, in particular, for the following relief:

- "a) An order holding that extension of suspension beyond three months is not sustainable and the orders passed therefor on 19.06.2018 (for 180 days) and 07.12.2018 (for 90 days w.e.f. 17.12.2018) are liable to be quashed ab initio;
- b) An order quashing the impugned order passed by Respondent No. 3, rejecting the applicant's appeal, dated 28.06.2018.
- c) An order directing respondent to reinstate the applicant forthwith with all consequential benefits;
- d) An order directing the respondent authorities to treat the applicant herein service after expiry of 90 days of the initial suspension order, dated 22.03.2018;
- e) An order directing the respondent authorities to provide production of relevant documents.
- f) Any other order or further order/orders as the Hon'ble Tribunal may deemed fit and proper."

2. Heard both the ld. counsel, examined pleadings, documents on record and considered the rival contentions. Written notes of arguments have been furnished by both parties, citing various judicial pronouncements in support.

[Signature]

3. The applicant's submissions, as articulated through his ld. counsel is that the applicant was appointed as an Inspector for the Central Excise department in October 2005. He was thereafter promoted as Superintendent on 06.09.2017. The applicant was served with a suspension order dated 22.03.2018 under Rule 10 of the CCS CCA Rules 1965 on contemplated charges. Such suspension has been extended repeatedly thereafter without furnishing any reasons thereof in violation of DOPT OM 23.08.2016 issued in implementation of Hon'ble Apex Court's judgment in **Ajay Kumar Choudhury vs. Union of India and Another (2015) 7 SCC 291.**

The applicant had approached this Tribunal earlier in O.A 137/2018. In compliance of the directions of the Tribunal, thereupon, the respondent authorities disposed of his pending appeal by rejecting his prayer and by further extending his period of suspension. As no memorandum of charge has been served on the applicant despite continuous extension of his suspension period, the applicant has approached this Tribunal praying for quashing of the same.

The applicant has advanced the following grounds in his support:

- a) As laid down by Hon'ble Apex Court in the matter of **Ajay Kumar Choudhury (supra)**, and, as implemented by DOPT in their OM 23.08.2016, continuous suspension on contemplated charges beyond 3 months without serving any charge sheet is violative of the judicial ratio as well as the DOPT OM.
- b) That, in O.A 915/2018 (**Navneet Kumar vs. UOI**), the Principal Bench of this Tribunal, had, while issuing its order dated 02.04.2018, held that extension of suspension beyond 3 months without service of charge sheet was liable to be set aside and the suspension order has

been revoked by the respondent authorities in respect of 2 Group 'B' officers despite the fact that the suspension against one Group "A" officer was continued. In the case of the applicant, his suspension is being renewed on the grounds of pendency of suspension against one group "A" officer. The conduct of the respondent authorities is therefore discriminatory, invidious and dichotomous.

c) The applicant herein has already been transferred much before the alleged incident, and, as a result, he has hardly any scope to subvert the process of investigation and/or enquiries in the matter in which the charges are being contemplated against him.

4. The respondent authorities, in their reply, as well as in their written notes of arguments, have disputed the claim of the applicant by arguing as follows:

(a) Three rogue departmental officers, namely, Shri Vikash Kumar, Deputy Commissioner, Shri Sandeep Kumar Dixit, Inspector (the applicant) and Shri Kishley, Inspector, have been issued notices of suspension on grave allegations that, these officials had been involved in smuggling of over 200 MT of Red Sanders valued in excess of Rs. 100 crores. That these rogue officers had formed a syndicate to collectively engage themselves in smuggling of prohibited goods, particularly, Red Sanders culminating in multiples cases of drawback frauds amounting to Rs. 5.5. crores.

Deputy Commissioner, Shri Vikash Kumar, suspended since 10.11.2017, continues to remain under suspension, and, his suspension orders has been renewed on the last occasion, for period of 180 days w.e.f 02.08.2019. The other officer, Shri Kishley has already been suspended w.e.f 21.12.2017 and his suspension was last renewed for 90 days w.e.f 13.08.2019. The applicant herein, was placed under suspension vide

suspension order dated 22.03.2018 for a period of 90 days and before the completion of the period of 90 days, the authorised committee renewed the order of suspension, upon which, the Disciplinary Authority extended such order of suspension for further period of 180 days, vide order dated 19.06.2018. Subsequently, the said suspension was reviewed from time to time and extended vide orders dated 07.12.2018, 12.03.2019, 22.05.2019, 08.08.2019 and 06.11.2019, respectively.

b) Vide orders dated 06.11.2019, the applicant's suspension has been extended till 08.12.2020 and the draft charge sheet in respect of the applicant has been forwarded to the office of the Director General of Vigilance, Customs and Central Excise, New Delhi on 03.12.2018 itself along with reminders thereof and, that once the clearance of the office of the Director General is received, the charge sheet would be formally issued to the applicant herein.

c) Shri Vikash Kumar, Deputy Commissioner, who is also allegedly involved in such smuggling and who also has remained suspended, had approached the Principal Bench of this Tribunal in O.A 3505/2018. The Principal Bench of the Tribunal had disposed of the matter on 14.12.2018, dismissing the O.A. and directing the respondent authorities to make endeavours to issue the charge memo within a period of three months from the date of receipt of the order.

d) As the case against Shri Vikash Kumar, Shri Kishley and the applicant has been termed by the Board as "composite" case, the allegations against the applicant cannot be segregated and viewed independently. Accordingly, his suspension continues under Rule 10 of the CCS (CCA) Rules, 1965.

e) Shri Vikash Kumar, while filing the O.A 3505/2018 before the Principal Bench of this Tribunal, had relied upon the judgment of Ajay

Kumar Choudhury (supra) and the Principal Bench, upon discussing the ratio in **Ajay Kumar Choudhury (supra)** and its applicability in the case of Shri Vikash Kumar, had dismissed the O.A.

Respondents would also rely on the judgement of the Hon'ble High Court of Uttarakhand in Special Appeal No. 576 of 2019 (**Naresh Chandra vs. State of Uttarakhand and Others**) as well as on the judgment of Hon'ble Delhi High Court in W.P (C) 8134 of 2017 in the matter of **NCT of Delhi vs. Dr. Rishi Anand**, where the Hon'ble High Court, having discussed the ratio in **Ajay Kumar Choudhury (supra)**, had dismissed the prayer of the applicants.

5. Ld. counsel for the applicant would robustly advance his counter arguments as follows:-

- i) There is no pending investigation against the applicant which calls for issuance of suspension order under Rule 10-(1) (a) of CCS CCA Rules, 1965.
- ii) Rule 10 (1)(a) of the CCS (CCA) Rules 1965, precedes the term "government servant" with the article "a", implying that the case of each and every officer has to be adjudged separately, depending on his misconduct and suspension of all officers cannot be treated in composite fashion.
- iii) While Shri Vikash Kumar and Shri Kishley were suspended on 10.11.2017 and 21.11.2017 respectively, the applicant was only notified of his alleged involvement by a supplementary show cause notice on 18.5.2017.
- iv) As the applicant, despite such supplementary show cause notice, had been promoted to the grade of "Superintendent" on 06.09.2017, it can be safely inferred that the applicant had the requisite vigilance clearance prior to such promotion. The issuance of suspension order on

the applicant on 22.03.2018 was hence a clear case of afterthought of the respondent authorities.

v) The Review Committee has not taken into account the DOPT OM dated 03.07.2015 as well as that dated 23.08.2016 issued in the context of implementation of the ratio in **Ajay Kumar Choudhury (supra)**.

vi) That the supplementary SCN dated 18.05.2017 has been challenged in WP. No. 290/2018.

vii) Ld. counsel for the applicant would further place reliance in O.A 1672/2018 in the case of **Pranabananda Bala** to highlight, that the suspension orders imposed upon Shri Vikki Kumar, a Group -B officer in **Navneet Kumar (supra)**, and that on **Pranabananda Bala** has been withdrawn. According to Ld. Counsel, even if suspensions continue to be effective with respect to certain Group A officers and other group B officers, a neutral group B officer such as the applicant, should not be unnecessarily involved in a composite case, and his suspension deserves to be revoked.

viii) Ld. Counsel would reiterate that the ratio in **Ajay Kumar Choudhury (supra)** categorically states that suspension cannot be extended for 90 days, if no charge sheet has been issued as in the case of the applicant.

ix) In the case of **Vikash Kumar (supra)**, certain criminal cases were pending against him which led to renewal of his suspension. Accordingly, the fact that, Shri Vikash Kumar's suspension was extended and O.A was dismissed by the Principal Bench is not applicable in the case of the applicant without assessing his individual role in the alleged matter.

(x) Similarly, the ratio in **Dr. Rishi Anand (supra)** does not find support from subsequent judgment of the Hon'ble Apex Court, in the matter of

lal h

State of Tamil Nadu vs. Pramod Kumar IPS & Anr. 2018 AIR (SC) 4060 and also in WP Civil 899108/17 (R. Daniel Madhukar v. UOI) in which the High Court of Kerala passed its judgment on 11.07.2017 relying essentially in Ajay Kumar Choudhury (supra), especially para 14 thereof.

x) That, as a court of inferior jurisdiction cannot limit the implications of order of the Hon'ble Apex Court the Principal Bench/Hon'ble Delhi High Court's orders cannot override the ratio of Ajay Kumar Choudhury in their judgements.

6. The principal issue before us is to decide on the legality of the decision of the respondent authorities in extending the suspension period of the applicant.

7.1. At the outset, we would refer to the minutes of the review committee held on 22.05.2019 for review of suspension of Shri Sandip Kumar Dikshit, Superintendent, and the applicant in the instant O.A. The said minutes are reproduced as herein:

" C.No. II(8)01/Vig./Haldia/2018 "

Minutes of the Review Committee Meeting held on 22/05/2019 at 11-30 hrs in the chamber of Commissioner of CGST & CX, Haldia Commissionerate, G.S.T. Bhawan, 3rd Floor, 180, Shanti Palli, Rajdanga Main Road, Kolkata – 700107 for review of Suspension of Shri Sandeep Kr. Dikshit, Superintendent

As per sub-rule (6) of Rule 10 of the CCS (CCA) Rules 1965, a review Committee has been formed as approved by the Disciplinary Authority (Commissioner of CGST & CX, Haldia CGST & CX Commissionerate) comprising of Commissioner of CGST & CX, Haldia Commissionerate, Commissioner of CGST & CX, Kolkata North Commissionerate & Addl. Commissioner of CGST & CX, Haldia Commissionerate for review of suspension of Shri Sandeep Kumar Dikshit, superintendent. In this context a meeting was held on 22.05.2019 at 11.30 hrs. in the Chamber of Commissioner of CGST & CX, Haldia Commissionerate, G.S.T. Bhawan, 3rd Floor, 180, Shanti Palli, Rajdanga Main Road, Kolkata – 700107 to review the suspension of Shri Sandeep Kumar Dikshit, Superintendent as the extension of suspension is going to expire on 14.06.2019. The meeting was presided over by the Commissioner of CGST & CX, Haldia Commissionerate and attended by other two members of the Review Committee.

Brief facts of the case:-

The Additional Director General, DRI, Kolkata Zonal Unit issued a Show Cause Notice bearing DRI F.No.DRI/KZU/AS/ENQ-13/2016/773-784 dtd. 18.05.2017 wherein it has been

h.s.b

alleged that Shri Sandeep Kumar Dikshit, Inspector, DRI, KZU, Kolkata (now Superintendent posted at Haldia CGST & CX Comm'te) formed a syndicate alongwith Shri Vikash Kumar, DC, Shri Kislay, Inspector & others and engaged himself in the smuggling of prohibited goods including the seized 14790 Kgs. of Red Sanders valued at Rs. 6,65,55,000/- and suspected smuggling of 225 MT of Red Sanders Valued at Rs. 100 Crore. He is also alleged to have arranged finance for transportation and other logistic for the export of Red Sanders. The said SCN also accused him of illegal gratification received in the form of household goods by him.

Shri Sandeep Kumar Dikshit, Superintendent, CGST & CX, Haldia Comm'te was placed under Suspension vide order under C.No. II(8)01/Vig/Haldia/2018/212(C) dated 22.03.18 with immediate effect.

The said suspension order was extended for a period of further 180 days vide Order No.II(08)01/Vig/Haldia/2018/464(C) dtd. 19.06.2018 as recommended by the review committee in its meeting dtd. 19.06.2018.

Shri Dikshit made a representation on 28.06.2018 against such extension of suspension and appealed for revocation of suspension in terms of DoPT's O.M. No. issued vide F.No. 11012/04/2016-Estt.(A) dtd. 23.08.2016.

Pending disposal of the said representation and being aggrieved with the said order of extension of suspension dtd. 19.06.2018 Shri Dikshit moved to Hon'ble CAT, Kolkata. CAT vide its order dtd. 31.08.2018 in the O.A. No. 1137 of 2018 directed the respondent No. 3 i.e. the Commissioner, CGST & CEX, Haldia Comm'te to consider the representation of Shri Sandeep Kr. Dikshit taking into consideration the orders/judgements referred by the applicant and pass a reasoned and speaking order within a period of 06 weeks from the date of receipt of the copy of the order.

As directed a review committee meeting was convened.

C. No. II(8)01/Vig/Haldia/2018

The Committee empowered to review the suspension order in a meeting on 30.10.2018 at the chamber of the Commissioner, CGST & CEX, Haldia Comm'te reviewed the appeal made by Shri Sandeep Kr. Dikshit on 28.06.2018 in terms of CAT's order dtd. 31.08.2018 and find that the extension of suspension of Shri Sandeep Kr. Dikshit, Superintendent vide Order No.II(8)01/Vig/Haldia/2018/464(C) dtd. 19.06.2018 was in order, just and proper and accordingly the representation made by Sri Sandeep Kr. Dikshit vide letter dated 28.06.2018 has been disposed of.

The Draft Charge Sheet against Shri Sandeep Kumar Dikshit along with RUDs has been forwarded to the Director General, DGoV, New Delhi Vide this office letter under C. No. II(08)01/Vig/Haldia/2018/822(c) dated 03.12.2018. Three reminders dated 20.12.2018, 08.03.2019 and 21.05.2019 have been issued in this regard.

The suspension of the said officer was further extended for a period of 90 days vide Order No. II(08)01/Vig/Haldia/2018/835(c) dated 07.12.2018 with effect from 17.12.2018 as recommended by the Review Committee in its meeting dated 06.12.2018.

The suspension of the said officer was again extended for a period of 90 days vide Order No. II(08)01/Vig/Haldia/2018/1062(c) dated 12.03.2019 with effect from 17.03.2019 as recommended by the Review Committee in its meeting dated 12.03.2019.

Findings of the Review Committee:-

1. Shri Sandeep Kumar Dikshit, Inspector, DRI, KZU, Kolkata (now Superintendent posted at Haldia CGST & CX Comm'te) is alleged to form a syndicate alongwith Shri Vikash Kumar, DC, Shri Kislay, Inspector & others and engaged himself in the smuggling of prohibited goods including the seized 14790 Kgs. Of Red Sanders valued at Rs.6,65,55,000/- and suspected smuggling of 225 MT of Red Sanders

hsl

valued at Rs. 100 Crore. He is also alleged to have arranged finance for transportation and other logistic for the export of Red Sanders.

2. Two more officers namely Shri Vikash Kumar, Dy. Commissioner and Shri Kislay, Inspector were made party in the Show Cause Notice bearing DRI F.No.DRI/KZU/AS/ENQ-13/2016/773-784 dtd. 18.05.2017 along with Sri Sandeep Kr. Dikshit in alleged smuggling of Red Sanders and other offences. Suspension of Shri Vikash Kumar, D.C. a Group-A officer who was in suspension since 10.11.2017 has been reviewed by Board and extended for a period of 180 days w.e.f. 07.08.2018 vide order dtd.03.08.2018. Again, the said suspension has been reviewed by Board and extended for a further period of 180 days w.e.f. 03.02.2019 vide order issued under F.No.C-14011/27/2017-Ad.V/801 dated 31.01.2019. In case of Shri Kislay, Inspector, a Group-B Officer who has been placed under suspension w.e.f. 21.12.2017 and that has been reviewed and extended vide order dated 20.03.2018 for a period of 180 days initially and thereafter extended for a further period of 90 days w.e.f. 17.09.2018 by the Commissioner, CGST & CEX, Kolkata North Comm'te vide order dtd. 14.09.2018, which has been extended for a further period of 90 days w.e.f. 16.12.2018 vide order dated 07.12.2018. That was again extended for a further period of 90 days vide order dated 12.03.2019 w.e.f. 16.03.2019.

C.No.II(8)01/Vig/Haldia/2018

3. The CBI, ACB, Kolkata's investigation in RC0102017A0035 against them for their suspected role in smuggling of Red Sanders is in progress.
4. Civil Appeal No. 1912 of 2015 filed in the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary and Union of India the issue cited by Shri Sandeep Kumar Dikshit, supdt. in his defence is quite different from the instant case both in nature and gravity of allegation. Further the Draft Charge Sheet has been forwarded to the DGoV, New Delhi for approval in the said case. Therefore, the instant case is to be viewed from a different perspective.
5. The CAT Principal Bench, New Delhi in the case of Dr. Rishi Anand Vs. Govt. of NCT Delhi, under O.A. no. 1785/2017 had quashed the suspension of Dr. Rishi Anand by placing reliance on the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India & Anr., (2015) 7 SCC 291. The said order had been set aside by Hon'ble High Court of Delhi in W.P.(c) 8134/2017 & C.M. No. 33423/2017 by observing the following:

"Para-15. The O.M. dated 23.08.2016 and even the earlier O.M. dated 03.07.2015 issued by the DoPT (a copy whereof has been tendered in court by counsel for the respondent) evidently have misconstrued the said decision of the Supreme Court, since the facts of the said case and the eventual directions issued in para 22 of the said decision, appear to have escaped attention.

Para- 17. It may not always be possible for the government to serve the charge sheet on the office concerned within a period of 90 days, or even the extended period, for myriad justifiable reasons. At the same time, there may be cases where the conduct of the government servant may be such, that it may be undesirable to recall the suspension and put him in position once again, even after sanitising the environment so that he may not interfere in the proposed inquiry. On a reading of Ajay Kumar Choudhary (supra), we are of the view that the Supreme Court has not denuded the Government of its authority to continue/extend the suspension of the government servant- before, or after the service of the charge sheet- if there is sufficient justification for it.....

Para- 18. The direction issued by the Supreme Court is that the currency of the suspension should not be extended beyond three months, if the charge memorandum/ charge sheet is not issued within the period of 3 months of suspension. But it does not say that if, as a matter of fact, it is so extended it

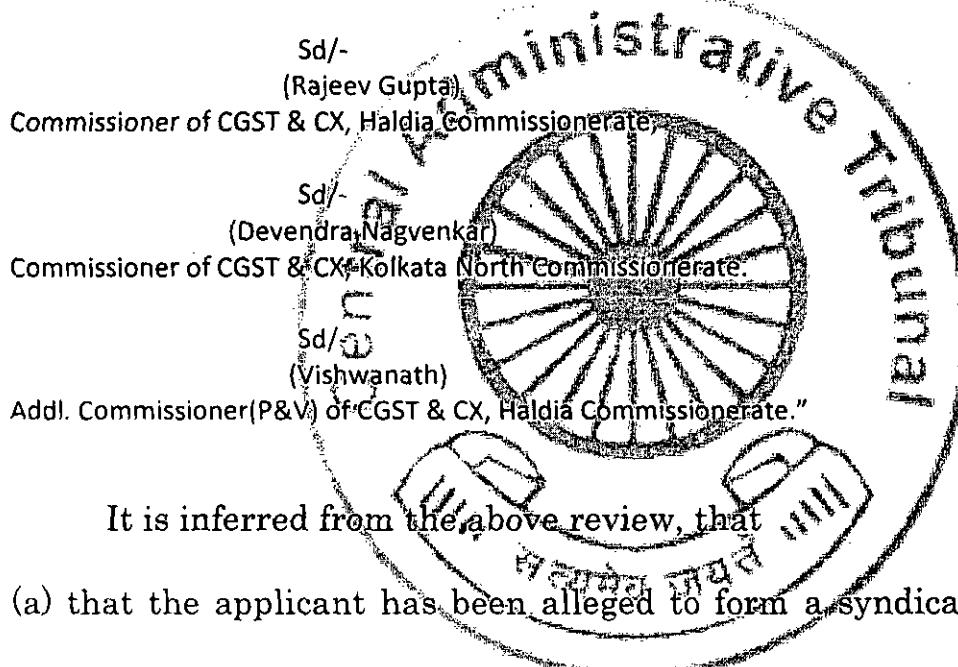
h.s.h

would be null and void and of no effect. The power of the competent authority to pass orders under Rule 10(6) of the CCS (CCA) Rules extending the suspension has not been extinguished by the Supreme Court the said power can be exercised if good reasons therefore are forthcoming.

Para-21.....Under Rule 10 of the CCS (CCA) Rules, there is no automatic reinstatement of a suspended Government Servant upon expiry of 90 days, or the extended period of suspension if, by the date of expiry of such suspension/ extended period of suspension, the charge sheet is not issued.."

C.No.II(8)01/Vig/Haldia/2018

Considering the above findings and since Shri Vikash Kumar, Deputy Commissioner is still under suspension upto 01.08.2019 as per the Order issued by the board dtd. 31.01.2019 and the case of Shri Dikshit cannot be divorced from the above mentioned cases, the committee is of the view that there will be no violation of judicial discipline if suspension of Shri Sandeep Kumar Dikshit is extended for a period of further 60 days. Hence, the committee recommends the extension of suspension of Shri Sandeep Kumar Dikshit for the further period of 60 days with effect from 15.06.2019.



It is inferred from the above review, that

- (a) that the applicant has been alleged to form a syndicate along with Shri Vikash Kumar and Shri Kisley to engage and smuggle prohibited goods, particularly, Red Sanders, valued up to Rs. 100 crores. The applicant was also alleged to have arranged for transportation and other logistics for export of Red Sanders.
- (b) That the case of the applicant has to be read collectively with the case of Shri Vikash Kumar and Shri Kisley, as all three of them have formed a syndicate to allegedly engage in the smuggling of prohibited goods.
- (c) The review committee dealt with the applicability of the ratio in Ajay Kumar Choudhury (supra) as well that in the Principal Bench in Dr. Rishi

hwh

Anand (supra) and concluded that the applicant's tenure of suspension deserves to be continued.

7.2. We would hereinafter, refer to the speaking order of the respondent authorities dated 31.10.2018 in compliance to the order of the Tribunal in O.A 1137/2018. The findings of the speaking order are extracted as below:-

"Findings:-

Content of the representation made by Shri Sandeep Kr. Dikshit on 28.06.2018 was examined on the line of DoPT's O.M. vide F.No.11012/04/2016-Estt.(A) dtd. 23.08.2016 and Hon'ble Supreme Court Judgement in the Civil Appeal No. 1912 of 2015 in the case of Ajay Kumar Choudhary and Union of India. Other factors prevailing at the time were also taken in to consideration.

It is observed that -

1. Shri Sandeep Kumar Dikshit, Inspector, DRI, KZU, Kolkata (now Superintendent posted at Haldia CGST & CX Comm'te) is alleged to form a syndicate alongwith Shri Vikash Kumar, D.C, Shri Kislay, Inspector & others and engaged himself in the smuggling of prohibited goods including the seized 14790 Kgs. of Red Sanders valued at Rs. 6,65,55,000/- and suspected smuggling of 225 MT of Red Sanders valued at Rs. 100 Crore. He is also alleged to have arranged finance for transportation and other logistic for the export of Red Sanders.
2. Two more officers namely Shri Vikash Kumar, Dy. Commissioner and Shri Kislay, Inspector were made party in the Show Cause Notice bearing DRI F.No.DRI/KZU/AS/ENQ-13/2016/773-784 dtd. 18.05.2017 along with Sri Sandeep Kr. Dikshit in alleged smuggling of Red Sanders and other offences. Suspension of Shri Vikash Kumar, D.C. a Group-A officer who was in suspension since 10.11.2017 has been reviewed by Board and extended for a period of 180 days w.e.f. 07.08.2018 vide order dtd. 03.08.2018. In case of Shri Kislay, Inspector, a Group-B Officer who has been placed under suspension w.e.f. 21.12.2017 has been extended for a further period of 90 days w.e.f. 17.09.2018 by the Commissioner, CGST & CEX, Kolkata North Comm'te vide order dtd. 14.09.2018.
3. Civil Appeal No. 1912 of 2015 filed in the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary and Union of India, the issue cited in his defence by the applicant is quite different from the instant case both in nature and gravity of allegation in as much as in that case, the concerned officer was already served with charge sheet before pronouncement of the Supreme Court order, whereas in the present case the charge sheet is yet to be served. Therefore the instant case is to be viewed from a different perspective.
4. In a similar case wherein another officer - Sri Navneet Kumar, Deputy Commissioner, CBIC was put under suspension from 17.06.2017, and the same was extended further vide CBIC order dated 13.09.2017, for alleged involvement of smuggling detected by DRI, Kolkata. The order for extension of suspension dated 13.09.2017 was set aside by Hon'ble CAT PB vide order dated 02.04.2018 in OA No. 915/2018 citing the case of Ajay Kumar

hsl

Chowdhury. The Department however preferred appeal before Hon'ble High Court of Delhi through Writ Petetion W.P.(C) No. 7917/2018 against the said order claiming the facts of Navneet Kumar & the Ajay Kumar Choudhary distinguishable. Thus, the stand that suspension cannot be continued beyond 90 days is not an universally acceptable principle.

Considering the above findings, it is opined that since the case has cropped up from a common investigation in which one Group-A officer is involved besides other Group - B officers, Sri Sandeep Dikshit being one of them, his suspension is required to be continued.

The Review Committee, unanimously decided that the extension of suspension of Sri Sandeep Kr. Dikshit, Superintendent vide Order No. II(08)01/Vig/Haldia/2018/464(C) dtd. 19.06.2018 was in order, just and proper.

In view of the above findings, the undersigned has accepted the recommendation of the Review Committee and convey that the said suspension will continue till the time as extended in the order dated 19.06.2018."

Upon examination of the speaking order, the following would transpire:

- (i) That the applicant had allegedly been involved in smuggling of prohibited goods in the form of a syndicate along with Shri Vikash Kumar, Deputy Commissioner and Shri Kishley Inspector.
- (ii) That the applicability of the ratio in Ajay Kumar Choudhury (supra) is not maintainable in this case as because the nature of gravity and allegations are different. In the case of Ajay Kumar Choudhury, the applicant was already served with a chargesheet before pronouncement of the Hon'ble Apex Court's judgement but, in the case of the applicant, the chargesheet is yet to be served, thereby distinguishing the case of Ajay Kumar Choudhury from that of the applicant.
- (iii) The department has preferred an appeal before Hon'ble High Court in Delhi W.P 7917/2018 in the case of Navneet Kumar, Deputy Commissioner, claiming clear distinction in the facts in the matter of Navneet Kumar (supra) and Ajay Kumar Choudhury (supra).

7.3. We would now proceed to consider the order passed in Principal Bench in O.A 3505/2018 (Vikash Kumar vs. UOI). It is seen that the applicant, Vikash Kumar had also, relied essentially on the ratio of Ajay

[Signature]

Kumar Choudhury (*supra*), challenging both the initial order of suspension as well as orders of extension of suspension. This Tribunal, in its Principal Bench, while adjudicating O.A 3505/2018 in the matter of Vikash Kumar, had identified the issue as to whether the orders of initial suspension of Vikash Kumar dated 10.11.2017 and subsequent orders of extended order were legally inaccurate or discriminatory.

In the instant O.A, we are also confronted with similar issue as brought forward by the applicant in O.A. No. 3505/2018.

7.4. The Principal Bench of this Tribunal had referred in detail, Rule 10 of the CCS CCA Rules 1965, the applicability of the ratio in **Ajay Kumar Choudhury, (*supra*)**, consequent of ~~order~~ issued by DOPT dated 23.08.2016, the ratio in **Pramod Kumar, (*supra*)**, the ratio in **Union of India v. B.V Gopinath (2014) 1 SCC 361**, the ratio in **Rishi Anand, (*supra*)**, as well as the ratio in **Jagbir Singh vs. Govt. of NCT of Delhi 2008 SCC Online CAT 94**.

The Principal Bench extensively discussed Salmond on jurisprudence particularly to distinguish ratio decidendi from obiter dicta, in the context of 'judicial reasoning' the 'the method of analogy' and the method of reversal' respectively.

The Principal Bench, upon further reference to the ratio in **Municipal Corporation of Delhi vs. Gurnam Kaur, AIR 1989 SC 38**, concluded as follows:

"26. The endeavor of Hon'ble Supreme Court, for decades together was to ensure transparency in Government services and public life, and even new statutory agencies, like CVC, have been brought into existence in compliance of the directions of the Supreme Court. Radical changes were brought as regards the functioning of CBI is to ensure that no laxity is exhibited in the context of dealing with the cases where allegations of corruption or misconduct of serious nature exist. The applicant is facing serious allegations. Whatever be the reasons for default in issuing charge sheet, that should not become an advantage for the applicant to get reinstated into service.

27. We, therefore, dismiss the OA. However, we direct that the respondents shall make endeavor to file the charge memo within a period of three months from the date of receipt of copy of this order and when the Suspension Review Committee meets next, it shall specifically address the question as to whether it is desirable at all to continue the

[Signature]

suspension, and whether the interests of the State and of the applicant would be served in case he is transferred to any other place by reinstating him. There shall be no order as to costs."

Prior to arriving to its conclusions, the Principal Bench, noted as follows (with supplied emphasis):

"We do not intend any disrespect to the judgment of the Hon'ble Supreme Court or the Hon'ble High Court.

18. It appears that the Delhi High Court took note of the principles pertaining to the ascertainment of ratio deci dendi of a precedent while deciding Dr. Rishi Anand's case. One of the difficult tasks for a Court or a Tribunal is to distinguish the ratio deci dendi from an obiter dicta. It is fraught with several uncertainties and any mistake is bound to be taken as a failure, if not a refusal, to follow an otherwise binding precedent. Therefore, one has to be careful in this regard."

20. We are of the view that the Hon'ble Delhi High Court has in its mind, the test of reversal while analyzing the judgment of Hon'ble Supreme Court in Ajay Kumar Choudhary. This method was explained by Salmon in his treatise as under:-"The "reversal" test of Professor Wambaugh suggested that we should take the proposition of law put forward by the judge reverse or negate it, and then see if its reversal would have altered the actual decision (h). If so, then the proposition is the ratio or part of it; if the reversal would have made no difference, it is not. In other words the ratio is a general rule without which the case would have been decided otherwise."

21. It was held in Dr. Rishi Anand's case that the very fact the observations of the Supreme Court that the suspension cannot be continued beyond 90 days in case no charge sheet is filed within that time, were not applied in that case; would lead to the conclusion that the said principle cannot be ascribed the status of ratio deci dendi.

22. Further, there would not have been any necessity for us to undertake any discussion on this aspect had Rule 10 (7) of the CGS (CCA) Rules, 1965 was interpreted or any portion of it was struck down, denuding the Government of the power to continue the suspension beyond 90 days if no charge sheet is filed.

23. The authority of a precedent and its binding nature is certainly high, when the issue decided therein is not covered by any provision of law or by an earlier precedent. The Courts subordinate to the one which authored the precedent, have to religiously follow it, till any legislation is made to the contrary, in accordance with law. If the issue is covered by a provision of law, the precedent would retain its strength, if the provision is taken into account and is interpreted. The judgment then becomes a guiding tool for the interpretation or understanding the provision of law.

25. Learned counsel for the applicant submitted that in view of the Article 141 of the Constitution of India, the binding nature of the judgment in Ajay Kumar Choudhary's case cannot be doubted. There is absolutely no doubt about it. The whole difficulty is in the context of discerning the binding principle, and in that behalf the Hon'ble Delhi High Court has already undertaken an extensive exercise. Even by now, Rule 10 (7) remains in its original form, nor it was interpreted to mean something different. In Gurnam Kaur's case (supra), the Hon'ble Supreme Court laid down the principles as regards the binding precedents that too in the context of Article 141 of the Constitution of India. The relevant portion reads as under:-

hba

"10. It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice.

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions."

8. Ld. counsel for the applicant has cited the decision in **Navneet Kumar** (supra), in **B B Rajendra Prasad** (O.A. No. 432 of 2018) and in **Pranabananda Bala** (supra), all of which have relied on the ratio in **Ajay Kumar Choudhury** (supra), and **Pramod Kumar** (supra). Ld. counsel would also rely on **R. Daniel Madhukar**, W.P. (C) Nos. 18911 & 19908 of 2017 as well as in the case of **Kulamani Biswal v. Union of India** in W.P. Civil 6859 of 2018 Delhi High Court in support. While **Pramod Kumar** (supra) has been extensively discussed by Principal Bench, we proceed to examine of the applicability of the other citations as follows:

In **R. Daniel Madhukar** (supra), the Hon'ble High Court of Kerala questioned the authority of respondent no. 2 in distinguishing the circumstances of the case with that of **Ajay Kumar Choudhury** (supra).

In **Katamoni Biswal** (supra), the Hon'ble Court discussed the issue on suspension from service in terms of Section 15 of the NTPC (Conduct, Discipline and Appeal) Rules, 1977.

(Signature)

Each of these orders/judgements referred to, place their reliance on Ajay Kumar Choudhury (supra). In Vikash Kumar (supra), however, the Principal Bench of this Tribunal has elaborately discussed on the applicability of this ratio in the context of judicial reasoning, namely, the 'method of analogy' and the 'method of reversal' and has arrived at the conclusion that the only binding element in a judge's decision is the principle upon which the case was decided. The task of finding the principle is fraught with difficulties without investigation into the facts.

The Principal Bench therefore concluded that, as the applicant is facing serious allegations, whatever be the default in issuing the charge sheet, the same should not become an advantage for the applicant to be reinstated in service.

9. After having analysed as above, we are of the considered view that,

- The applicant's matter cannot be treated on an independent footing as because the primary allegations against him are that he has functioned as a syndicate along with Shri Vikash Kumar and Shri Kishley. Accordingly, as correctly decided by the respondent authorities, the applicant's matter has to be treated as a composite case and cannot be decided independently on a neutral footing.
- We find the respondent authorities have analysed the applicability of the ratio in **Ajay Kumar Choudhury, supra**, and has distinguished the matters from points of fact and law.
- The applicant has admitted that his supplementary show cause notice is subject to the decision in WP No. 290/2018.
- It is also a matter of record that the respondent authorities have moved the Hon'ble High Court Delhi to establish the distinction between the

(unb)

decision arrived at Navneet Kumar (supra) vis-a-vis Ajay Kumar Choudhury (supra). Reportedly, the decisions remain pending.

e) The respondents have clarified that the applicant was promoted as Superintendent on 06.09.2017 since he had received his vigilance clearance and no charge sheet had been issued to him. The applicant was placed on suspension w.e.f 22.03.2018.

f) Most importantly, the Principal Bench of this Tribunal has considered the judgement of the Hon'ble Apex Court in the matter of suspension and extension thereof, and, after making a fine distinction between the ratio decidendi and obiter dicta as advanced in Salmond's jurisprudence, held that the ratio in ~~Ajay Kumar Choudhury, (supra)~~ is to be interpreted in the context of discerning the binding principle.

We also find that the Principal Bench has observed that there are serious allegations against Shri Vikash Kumar and that any default in issue of charge even on ground of delay should not enable the applicant to obtain reinstatement in service.

The applicant is alleged to be guilty of the same misconduct by operating a syndicate to facilitate smuggled goods.

It is settled law that the horizontal principle of precedent and "stare decisis" is a rule of prudence which may be diluted by factors such as distinction of facts.

In *John Martin v. State of WB, AIR 1975 SC 775* it was held that distinction can be made on facts to avoid inconvenient precedents.

In the instant O.A., the allegations made against the applicant in O.A. No. 3505/2018 and the applicant in the present O.A. is that they have formed

b2
b7c

a syndicate to facilitate smuggling of red sandars, a crime, that he was duty bound to prevent as an Excise official. The allegations are grave and require thorough enquiry. We therefore agree with the Principal Bench that delay in issue of chargesheet in such a grave matter cannot be a reason to enable the applicant to be reinstated when he had allegedly failed to discharge his duties to prevent smuggling of endangered species/near threatened category. We also note that the decision of the Principal Bench is yet to be successfully challenged in any higher forum.

The issues before Principal Bench and this Tribunal being the same and exhaustively discussed both by the Hon'ble High Court of Delhi as well as by the Principal Bench of this Tribunal on the applicability of ratio of the Hon'ble Apex Court in *Ajay Kumar Choudhury (supra)*, we hardly have any scope to take a contrary view to the decision of the Principal Bench of this Tribunal.

10. Accordingly, the O.A. fails to succeed. We direct the respondent authorities to endeavour to file the charge memo within a period of 3 months from the date of receipt of a copy of this order, failing which the applicant will be at liberty to agitate afresh.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

ss