

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/365/2019

HYDERABAD, this the 19th day of February, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



S. John Flavian,
 S/o. Late Savariyar,
 Aged about 42 years, CS 1206, Gr. C,
 Occ: Sanitary Mate,
 (under the orders of suspension),
 O/o. Station Headquarters Cell,
 Bollarum Post, Secunderabad – 500 010.

...Applicant

(By Advocate : Sri Dr. A. Raghu Kumar)

Vs.

1. Union of India rep. by its
 Director General of Staff Duties,
 SD – 7 (Civ), Integrated HQ of MOD (Army),
 DHQ PO, New Delhi.
2. The General Officer Commanding (GOC),
 Headquarters Telangana and Andhra Sub Area,
 Secunderabad, C/o. 56 APO,
 Pin – 900 453, Secunderabad – 500 010.
3. The Station Commander,
 Station Head Quarters Cell, Bollarum Post,
 Secunderabad – 500 010.
4. The Administrative Commandant,
 Station Head Quarters Cell, Bollarum Post,
 Secunderabad – 500 010.

....Respondents

(By Advocate : Smt. Megha Rani Agarwal, Addl. CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the action of the respondents in placing the applicant under suspension vide order dt. 08.12.2018 and not reviewing the same within 90 days as per the statutory provisions.

3. Brief facts of the case are that the applicant while working as Sanitary Mate in the respondents organization, took some loans from colleagues and for non repayment, he was convicted under Negotiable Instruments Act in CC 201/2015 and CC 45/2015 and was also ordered to pay certain amounts. On appeal, some reduction in the amount to be paid was ordered. Applicant was on Medical leave from 11.8.2018 to 1.11.2018 and during the leave period, as per the orders of the competent court applicant was arrested and remanded to Chenchalguda jail on 24.10.2018. The Hon'ble High Court of AP on granting bail the applicant was released on 1.11.2018. Applicant reported to duty on 2.11.2018 and worked up to 8.12.2018. Based on the report of the Station House Officer, Trimulgherry Police Station vide letter dated 12.11.2018 informing about the arrest of the applicant and release from jail, respondents issued show cause notice and on receipt of reply, placed the applicant under deemed suspension from 24.10.2018 vide letter dated 8.12.2018. According to the applicant, his suspension was continued without review within 90 days as prescribed under the rules and law. Charge memo was issued on 24.1.2019 and reply was submitted on 4.2.2019. Representation was submitted on 16.03.2019 to revoke the suspension and there being no action, the OA has been filed.

4. The contentions of the applicant are that Rules 10(6) and 10(7) of CCS (CCA) Rules have been violated in continuing the suspension without review within 90 days time period prescribed. Further, as per FR 53, subsistence allowance has to be regulated. Applicant cited the judgment of the Hon'ble Apex Court in Union of India & Ors v. Deepak Mali – 2010 (2) SCC 222 in support of his contention. Articles 14 and 16 of the Constitution have been violated.

5. Respondents state that the applicant was charged with criminal offence and is facing criminal trial. Applicant was placed under deemed suspension for having been detained under judicial custody for 9 days. They state that provisions of Rule 10(6) and 10(7) of CCS (CCA) Rules have been complied with. Being a case of prolonged suspension, review of the suspension order has been carried out within 90 days each time, with reasons thereof and the same will continue till the suspension is terminated. Respondents further state that the suspension order clearly states that the applicant would be under suspension until further orders, implying that the review of suspension as required has been carried out.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about prolonged suspension of the applicant. The facts are that the applicant has taken loans from colleagues and as a result he was subjected to criminal trial under N.I. Act, leading to deemed suspension w.e.f. 24.10.2018, for having been in judicial detention beyond 48 hours. The suspension has to be reviewed within 90 days by the suspension review committee to decide the revocation or extension of the

suspension as per Rules 10 (6) and 10 (7) of the CCS (CCA) Rules, which are reproduced hereunder:



“(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days :

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.”

II. Besides, Hon'ble Supreme Court in ***U.O.I. v Deepak Mali - 2010 (2) SCC 222*** in regard to suspension has observed as under:

“10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the Respondent and when the Petitioner's case came up for review on 20th October, 2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of Sub- rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under Sub- rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

11. The case sought to be made out on behalf of the petitioner, Union of India as to the cause of delay in reviewing the Respondent's case, is not very convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of Sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the

said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.”



According to the applicant, the order of suspension dt. 08.12.2018 placing him under deemed suspension w.e.f. 24.10.2018 has not been reviewed within 90 days and he was not communicated with any review proceedings and therefore, the order dt. 08.12.2018 lost its legal sanctity and its existence in the eye of law upon expiry of 90 days. However, the respondents stated in their reply statement, which was filed in October 2019, that suspension of the applicant has been reviewed and extended from time to time. On the direction of this Tribunal, respondents furnished Review Committee proceedings on 04.03.2020. On perusal of the same, the suspension of the applicant was reviewed on 17.01.2019, 20.04.2019, 19.07.2019, 17.10.2019 and 11.01.2020, by extending the suspension period by 90 days on each occasion.

Nevertheless, the latest position after the review dt.11.01.2020 has not been submitted to this court by either side. Even as per the information available, the applicant had been under suspension w.e.f. 24.10.2018 till 15.04.2020 i.e. nearly 1 year 7 months and it could be more also, as the latest position as on today about the subsequent reviews is not known. This kind of prolonged suspension, as is admitted by the respondents themselves in the reply statement, is not in the interest of either the delinquent employee or the department. As contended by the applicant, charge memo was also issued to him on 24.01.2019. Even thereafter, suspension was extended for a long time. The applicant rightly submitted a representation dt. 16.03.2019 for revocation of suspension and as is seen, it did not have

the desired result. Hon'ble Constitutional Courts, time and again, deprecated such a practice of keeping the employee under prolonged suspension. Suspension is transitory in nature and should be of short duration. Continuing the suspension for indefinite period as is seen in the instant case, would make it punitive. Applicant is made to suffer the ignominy of suspension for an indefinite period for some indiscretion in managing his finances. Moreover, when the charge sheet has been issued, the applicant would not be able to tamper the documents and continuing him under suspension by paying subsistence allowance without extracting any work from him is not a prudent administrative decision. Particularly, when the issue is related to some loans taken by the applicant and not able to repay them, which *defacto* is not an issue internal to the organization. The respondents can, in fact, think of posting the applicant at a different place or in a different wing at the same place, which, we observe, would be in the interests of the organization as well as the applicant. While stating the above, we take the support the observations of the Hon'ble Supreme Court in the following judgments, as under:

a) Supreme Court of India in *Ajay Kumar Choudhary vs Union Of India, through Its Secretary & Anr*, on 16 February, 2015, Civil Appeal No. 1912 of 2015(Arising out of SLP No.31761 of 2013):

“14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/ Charge sheet is not served on the delinquent officer/employee; if the Memorandum of Charges/ Charge sheet 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.

b) Supreme Court of India in ***State Of Tamil Nadu, Rep By Secretary to Government (Home) vs. Promod Kumar, IPS & Anr*** on 21 August, 2018, Civil Appeal No.8427-8428 of 2018, (Arising out of S.L.P. (Civil) No.12112-12113 of 2017) :

“23. This Court in [Ajay Kumar Choudhary v. Union of India](#), (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.”

Thus, the action of the respondents is not in tune with the spirit of the verdicts of the Hon'ble Apex Court as cited supra.

Besides, offence committed under NI Act cannot be treated as a case of moral turpitude and it is a civil wrong with criminal over tones, which cannot be equated with the offence committed under the IPC. We are supported by the observations of the Hon'ble High Court of Kerala in ***R.G. Vilas Kumar vs The Food Corporation Of India*** on 3rd March 2015 in WP(C).No. 16011 of 2013 (B), as under:

8. *The conviction for the offence under [Section 138](#) of the Negotiable Instruments Act, has to be differentiated from the offences. The offence under [Section 138](#) of the Negotiable*



Instruments Act is, in fact, a technical offence in the sense on account of certain contingency if the cheque has to be dishonoured, the drawer of the cheque is liable to be punished under law. If the conviction is for the sole reason that the cheque happened to be dishonoured for want of sufficient fund, it does not involve any moral turpitude, one may become poorer after issuance of the cheque. The offence under Section 138 of the Negotiable Instruments Act cannot be classified one coming under Annexure to Rule 14 as above. Annexure to Rule 14 in C.C.S.(C.C.A) Rules classify types of cases which may meant action for imposing major penalty.

9. *Considering the facts and circumstances, it cannot be said that such a breach to honour cheque would entail in an offence of moral turpitude. The technical offence in law is understood on account of qualifying certain technical parameters as contemplated in law to attract the offence. Therefore, such offences are more of quasi penal offence and not in offences as understood in general law. The petitioner has been imposed with major penalty of reversion taking note of the conviction under Section 138 of the Negotiable Instruments Act as the retention of the petitioner in the public service found undesirable. In Kaushalya Devi Massand v. Roopkishore Khore [(2011) 4 SCC 593], the Hon'ble Supreme Court held that offence under Section 138 of the "Negotiable Instruments Act" cannot be equated with offence under Indian Penal Code. It is almost in nature of civil wrong having criminal overtones."*

10. *I am of the view, such finding is unsustainable, unless, it is found that the petitioner's conviction as a result of the prosecution against him for any offence of moral turpitude. The retention in public service, necessarily presupposes that public servant's personal credibility among general public is not lowered due to involvement in any offence of moral turpitude. It refers to thought, action and mind of the public servant to result in lower the image. The disciplinary proceedings without advertizing to the findings of the criminal court to hold that retention of the petitioner in the public service is undesirable, is therefore, illegal."*

The Hon'ble High Court has set aside the major penalty in the above case.

Thus, continuing the suspension of the applicant in the instant case for an indefinite period would not be in consonance with the spirit of the above judgment.

III. The suspension allowance too needs to be reviewed as per FR 53. There is no documentary evidence submitted by the respondents to affirm that the subsistence allowance has been reviewed as required under the

rules. As the name indicates subsistence allowance is meant for enabling the employee to subsist during the suspension period and therefore, the periodic review has been prescribed.

IV. Hence, in view of the above, the OA succeeds. Consequently, respondents are directed to revoke the suspension and regulate the suspension period as per extant rules and law, if not already done. The subsistence allowance to be granted during the suspension period has to be regulated as per extant rules and appropriate decision has to be taken. Time allowed to implement the judgment is 3 months from the date of receipt of this order.

V. With the above direction, the OA is allowed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/