

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00545/2020

Dated the 03rd day of March Two Thousand Twenty One

CORAM : HON'BLE SHRI. S. N. TERDAL, Member (J)
HON'BLE SHRI. C. V. SANKAR, Member (A)

(Through Video Conferencing)

A.Sankar, S/o. Ammasi, aged 50 years,
Residing at F-1, Government Employees Quarters,
Nehru Nagar, Karaikal, Puducherry.
Working as Male Warder, Central Prison,
Kalapet, Puducherry.Applicant

By Advocate M/s. P. Rajendran

Vs

1.The Union Territory of Puducherry, rep by,
The Inspector General of Prisons, Puducherry.

2.The Chief Superintendent of Jails,
Puducherry.Respondents

By Advocate Mr. R. Syed Mustafa

ORDER

(Pronounced by Hon'ble Shri. C. V. Sankar, Member(A))

The relief sought for in this OA is as follows:

"To call for the records relating to the impugned order of the second respondent in Proceedings No. 25/CSJ/JD/A-2/2019-20 dated 21.01.2020 and quash the same and direct the respondents to restore the applicant to duty with immediate effect with all consequential benefits and render justice."

2. The applicant is working as Male Warder at the Central Prison, Kalapet, Puducherry. He has been in the employment in the said post since 13.02.2004. He was placed under suspension on 21.01.2020 stating that disciplinary proceedings are contemplated in the case relating to violation of Prison Rules and unbecoming of a Government servant. The suspension has been ordered under Rule 10(1) under Central Civil Services (CCS) Rules, 1965. Till the filing of this OA on 17.11.2020, the applicant continued under suspension and no charge memo has been issued to him till then and the suspension has not been reviewed as required under Rule 10 (6) of the CCS (CCS) Rules, 1965. The applicant stated that he was not detained in custody and no criminal case has been registered against him. The applicant submitted representation to the higher authority viz., 1st respondent on 29.02.2020. But no action was taken till the filing of this original application.

3. The respondents have filed reply stating that the charges against the applicant were serious as evidenced by the detailed note sheet furnished as

Annexure R2. Vide Annexure R4, they have also submitted the minutes of the meeting of the Suspension Review Committee held on 05.11.2020 wherein a decision was taken to continue the suspension of the applicant and also limit the subsistence allowance to only 50% which was already being paid from January 2020. The review committee also decided to condone the delay as per Rule 31 of CCS (CCA) Rules, 1965 for not reviewing the suspension cases till 05.11.2020 and decided that the period beyond the initial 90 days i.e., w.e.f. 20.04.2020 shall be treated as deemed to continue under suspension. The law is well settled that in such cases of suspension, the disciplinary authorities should review the suspension before the end of 90 days from the date of suspension and issue a charge memo regarding the disciplinary action proposed to be taken. The Hon'ble Apex Court has categorically held in **(2015) 7 SCC 291 Ajay Kumar Choudary Vs. UoI** that suspension should not exceed 90 days if charge memo is not served within 90 days. The fact of the 90 days expiring on 20.04.2020 is not disputed. As stated by the applicant, the Hon'ble Apex Court has already categorically held in **(2015) 7 SCC 291 Ajay Kumar Choudary Vs. UoI** that the suspension is invalid in the absence of review within the time specified under Rule 10 (6) of the CCS (CCA) Rules, 1965. The said rule 10 (6) reads as follows:-

“10 (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.”

The rule 10 (7) reads as follows :-

“10 (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.”

4. In the present case as admitted by the respondents themselves, the first review meeting in this regard was held only on 05.11.2020 which is more than nine months after the order of suspension dt. 21.01.2020. During the hearing, learned counsel for the respondents submitted that normally such review would have been in time but for the disruption caused due to the Covid-19 pandemic. This contention is not acceptable since in the same review meeting held on 05.11.2020, the respondents have noted that in the case of six other persons who were also suspended with effect from various dates from 22.01.2020 were reinstated vide order dt. 20.04.2020 without prejudice to the disciplinary proceedings contemplated against them. It is therefore obvious that certain review was undertaken with respect to all the persons who were suspended in the months of January / February 2020 and while the suspension orders of six persons were revoked on 20.04.2020, the suspension order with respect to the applicant was neither reviewed nor extended before the expiry of 90 days from the date of suspension as per rules. The respondents have vide Annexure R4 stated that the Suspension Review Committee decided to condone the delay as

per rule 31 of CCS (CCA) Rules, 1965. The said rule states as follows:-

“31. Power to relax time-limit and to condone delay

Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.”

5. A mere reading of the rule will show that the relaxation of time limit and the power to condone the delay can be exercised only if there is no express provision in the rule and that too for good and sufficient reasons. As seen in the proceedings of the committee as Annexure R4, no reason whatsoever has been given for condonation of delay, leave alone any good and sufficient reasons. The action of the respondents in merely extending the suspension of the applicant beyond the period of 90 days without conducting a review and extending the period of suspension as per rules and without issuing a charge memo is clearly invalid and, therefore, we have no hesitation in accepting the contention of the applicant.

6. During the course of hearing, learned counsel for applicant submitted that the suspension orders have been revoked with effect from 03.02.2021 and the applicant has joined back in his post and, therefore, sought consequential benefits for the period during which the applicant was kept under suspension without any legal basis. At this point, we would like to make it clear that while the respondent authorities have every right to take any appropriate measure as disciplinary authorities against their employees at any point of time, especially when serious charges are contemplated, they must follow the rules relating to the further process of the disciplinary proceedings including suspension. In this

case, there has been a clear violation of the well settled position of law with regard to the issue of the charge memo as well as review of suspension before the expiry of 90 days from the date of suspension. Since, as stated by the learned counsel for the applicant, the suspension order has been revoked on 03.02.2021, part of the relief claimed by the applicant has been granted. It is necessary for the respondents to pursue the disciplinary proceedings to a logical conclusion as expeditiously as possible as per law. While issuing final orders, the respondents should specifically issue necessary order relating to treating the period of suspension. Since we have held that the suspension beyond 90 days without the charge memo or a review is invalid, the period beyond 90 days upto the revocation of the suspension will have to be treated on a different footing by the respondents.

7. The OA is disposed of with the above orders. No costs.

(C.V.Sankar)
Member(A)

(S.N.Terdal)
Member(J)

03.03.2021

SKSI