

**Central Administrative Tribunal
Jammu Bench, Jammu**



O.A. No.809/2020

Thursday, this the 01st day of April, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Pranav Gandotra, aged 33 years
S/o Late Sh. Kewal Gandotra
R/o 60/3, Channi Himmat, Jammu.

..Applicant

(Mr. Rahul Pant, Senior Advocate)

VERSUS

1. Union Territory of Jammu and Kashmir through Food, Civil Supplies and Consumer Affairs Department Jammu and Kashmir Government Civil Secretariat, Srinagar.
2. Director, Food, Civil Supplies and Consumer Affairs Department, Plot No.58, Trikuta Nagar Extension Jammu.

..Respondents

(Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant is working as Tehsil Supply Officer (TSO) in the Department of Food, Civil Supplies & Consumer Affairs Department, Government of Jammu & Kashmir. FIR No.21 of 2018 was registered against him, alleging that he misappropriated the funds of the Department. Consequent upon

that, he was placed under suspension on 23.07.2018. The applicant filed SWP No.2216/2018 before the Hon'ble High Court of Jammu & Kashmir, challenging the same, after expiry of 90 days. He pleaded that neither any charge memo was issued, nor was any order of extension passed. It is stated that the suspension was stayed by the Hon'ble High Court on 14.11.2018.



2. After the applicant joined the duty on the basis of the interim order, two FIRs came to be registered against him. The first FIR, being FIR No.35 of 2018, was registered alleging that he held the properties, disproportionate to the known source of his income, and the second FIR, No.05 of 2019, stating that the applicant diverted the supply of kerosene oil. In view of this development, another order was passed on 01.11.2019, placing the applicant under suspension. Initially, he filed SWP No.4191/2019 before the Hon'ble High Court. That was dismissed on the ground that the applicant can challenge the order of suspension only on expiry of the stipulated period. Thereafter, in view of reorganization of the State of Jammu & Kashmir, he filed the instant O.A. before the Tribunal, challenging the order of suspension.

3. The applicant contends that though as many as three FIRs were registered against him, in none of them, the charge sheet was filed by the prosecution, nor was he issued any charge memo by the Department.

4. Placing reliance on the judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary v. Union of India & another**, (2015) 7 SCC 291, the learned counsel contends if no charge sheet is filed within 90 days, the order of suspension is liable to be set aside.



5. The respondents filed a detailed counter affidavit. It is stated that the charges against the applicant are very serious in nature and that he was accordingly placed under suspension. It is also stated that unlike Rule 10 (5-a) of CCS (CCA) Rules, 1965, in Rule 31 of Jammu & Kashmir Civil Services (CCA) Rules, 1956, there is no requirement as to extension of the period of suspension on expiry of 90 days. It is also stated that the suspension of the applicant was reviewed by the Government and through an order dated 17.11.2020, it was extended by another three months.

6. We heard Mr. Rahul Pant, learned senior counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, at length.

7. As of now, the applicant is facing three criminal cases. In two of them, the allegation is about misappropriation of funds or diversion of kerosene oil, and in one, it is about possession of disproportionate assets. Earlier, he was placed under suspension on 23.07.2018 and that was stayed by the Hon'ble High Court on



the ground that it was not extended beyond 90 days. For the second time, the applicant was placed under suspension on 01.11.2019. An effort made by him to challenge it before the Hon'ble High Court did not fructify on the ground that applicant can challenge the order of suspension only on expiry of the stipulated period. In this O.A., the challenge is to the order of suspension, mainly on the ground that no charge sheet was filed within 90 days.

8. It is true that in **Ajay Kumar Choudhary's** case (supra) the Hon'ble Supreme Court held that the order of suspension would lapse in case the charge sheet in a criminal case or in the departmental proceedings is filed within that time. That was in view of the requirement under Rule 10 (5-a) of CCS (CCA) Rules, 1965. However, in Rule 31 of Jammu & Kashmir Civil Services (CCA) Rules, 1956, there is no such requirement.

9. Secondly, this Tribunal in **Vikash Kumar v. Union of India & others** (O.A. No.3505/2018) decided on 14.12.2018 took the view that the observations made by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** (supra) are *obiter* and not ratio. Since there is no requirement under Rule 31 of Jammu & Kashmir Civil Services (CCA) Rules, 1956 for passing an order of extension of suspension within 90 days, the impugned order cannot be interfered with, on the sole ground that neither the departmental proceedings were initiated, nor

was the charge sheet filed in the criminal case within 90 days from the date of the order of suspension. However, there is one factor, which needs to be taken into account. On their own accord, the respondents reviewed the suspension of the applicant and passed an order dated 17.11.2020. It reads:



“In continuation to Government Order No.27-JK (FCS&CA) of 2020 dated 01.02.2020 issued by the Department of Food, Civil Supplies and Consumer Affairs under endorsement no.CAPD/Estt/13/2015 dated 01.02.2020 and as per Rule 31 of J&K Classification Control & Appeal Rules, 1956, the suspension of Mr. Pranav Gandotra (TSO, FCS&CA) Department) is hereby reviewed and is extended for a further period of 03 months.

The subsistence allowance as admissible under rules may be disbursed in favour of the suspended official w.e.f. 01.02.2020.

By order of the Government of Jammu and Kashmir.”

10. Once the respondents reviewed the suspension and decided to extend it for another three months from 17.11.2020, it cannot be continued beyond that, unless it was extended after that. Admittedly, there is no order of further extension. It is a clear case of failure, or a conscious decision, on the part of the respondents not to continue the suspension of the applicant beyond 16.02.2021.

11. We, therefore, allow the O.A. and direct that the applicant shall be reinstated into service, without prejudice to the right to initiate or continue disciplinary proceedings. If the subsistence allowance was not paid to the applicant, the dues in this regard

shall be cleared within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 1, 2021
/lg/sunil/jyoti/vb/

