



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1410/2019
M.A. 283 / 2020

Date of order : 26/11/2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

ARCAPRAVA BANERJEE
VS.
UNION OF INDIA & OTHERS
(Central Excise & Customs)

For the applicant : Mr. V. Chatterjee, counsel
Mr. B. Bhattacharjee, counsel

For the respondents : Mr. A. Roy, counsel
Mr. K. Dey, counsel

ORDER

Bidisha Banerjee, Judicial Member

Ld. counsels were heard and records were perused.

2. The issue that cropped up for determination in the present O.A. is whether the respondents would further continue the applicant on suspension since order of suspension was issued on 27.12.2018. The applicant has alleged that the order of extensions have been issued with malafide intent and without any reasonable ground. No formal charge sheet has been issued till date and the applicant stands already transferred to a different office pertaining to a different establishment, the very purpose of his prolonged suspension is vitiated and, therefore, he should be allowed to join his office. The applicant has prayed for the following reliefs:-

*"a) To set aside and quash the Order no.II(10)A-10/VIG/CCP/WB/18/880(C)
Dated 27.12.2018 issued by the respondent no.3 herein placing the applicant*



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under suspension and all its subsequent extension dated 18.03.19, 19.06.19 & 11.09.2019 and an order dated 01.07.19 being annexure 'A-20' in the instant application.;

b) To direct the respondent to revoke the suspension of the applicant forthwith with all consequential benefits from the date of initial suspension i.e. 27.12.2019;

c) Any other or orders as the Hon'ble Tribunal deems fit and proper."

3. The respondents averred that the applicant was placed under suspension on the ground of alleged involvement of fraudulent exports made through Bangladesh through Petrapole Land Customs Station and investigation was started on the ground of very serious allegations against many exporting firms and fraudulent export have resulted in defrauding the Government amounting to loss of revenue to the tune of several crores. When the applicant was posted as Superintendent of CGST the appropriate authority extended the suspension as per law having considered the evidence, facts on record, nature and gravity of the case, nature of offence and documents furnished by DRI, the investigating agency. Pursuant to the direction of this Tribunal on 09.04.2019 in O.A.506/2019 the last representation dated 29.03.2019 was considered and a reasoned and speaking order was issued on 01.07.2019. That every time suspension has been extended by a Review Committee and a decision has been taken on the basis of evidences, investigation of facts by the DRI and the applicant is receiving subsistence allowance at the rate of 75%. As per the information/instruction/communication obtained from DRI authority, the investigation has Pan India ramifications and to chase masterminds of a huge scam, the applicant along with other persons have been



prevented from attending office so that they may not destroy/influence/obstruct in conspiracy among themselves. It is contemplated that many customs officers are involved in the case. An Administrative action is under process for common proceeding subject to availability of further evidences which can only be available upon completion of investigation that mere delay in conclusion of investigation cannot be a ground for quashing/revoking the suspension order as the charges are grave in nature.

4. Ld. counsel for the applicant would rely upon the decisions in **Ajay Kumar Chowdhury Vs. Union of India, Govt. of NCT of Delhi Vs. Dr. Rishi Anand and Union of India Vs. Ashok Kumar Agarwal** and also orders of DOPT AR O.M. No.35014/1/81-Ests(A) dated 09.11.1982 and DOPT Memo No.110 12/04/2016 ESTT(A) dated 23.08.2018 to in support of his contention.

5. Per contra the respondents would bank upon the judgment of Hon'ble Supreme Court in **Municipal Corporation of Delhi Vs. Gurnam Kaur [AIR 1989 SC 38]** wherein It was observed that:-

"The endeavour 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."

In connection with **Union of India Vs. Ashok Kumar Agarwal** the respondents would offer the following comments, that :-



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- a) The decision has been complied with
- b) Extension of suspension has been granted following the principles of natural justice on the basis of recommendation of competent authority which are consistent to rules of law;
- c) The order of suspension is legal and valid;
- d) Suspension order being lawful and subject to timely review, order of revocation is not maintainable;
- e) If the suspension is revoked the whole investigation would be jeopardized.

6. We heard Id. counsel for both sides and We directed the Id. counsel for the respondents to take instructions and to intimate the time required to complete investigation so that the applicant is not required to be placed under prolonged suspension and reserved the matter for orders.

The respondents have failed to inform the time ^{by} under which investigation is expected to be completed.

7. We find that the decision of Hon'ble Supreme Court in case of **Ajay Kumar Chowdhury vs. Union of India** stares at us. In the said judgment the Hon'ble Apex Court observed as under:-

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

We have also been informed that the suspension has been extended by the Review Committee till December, 2020.

8. In view of such, we dispose of the O.A. with a direction upon the respondent authorities to conclude the investigation as early as possible so that the applicant is not continued on suspension eternally and to pass appropriate orders revoking the suspension order if no charge sheet is issued before the next date of review.

9. The O.A. stands disposed of. No order as to costs.

10. Consequently, M.A. 283/2020 also stands disposed of.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member