

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDBAD BENCH**

ORIGINAL APPLICATION NO 450 OF 2017
Dated, this 27th day of September, 2018

**CORAM: HON'BLE MS ARCHANA NIGAM, MEMBER(A)
HON'BLE SHRI M C VERMA, MEMBER(J)**

Shri Satyendra,
S/o Bednath Singh,
Aged 31 years,
Working as Intelligence Officer under NCB
(Narcotics Control Bureau), Ahmedabad.
Address for Service of Notice: B/303, Setu
Skarlet, Radha-Swami Satsangh, Nr. Chandkheda,
Ahmedabad – 380024.

... Applicant

(By Advocate Shri K. K. Shah)

Versus

1. Union of India,
Notice to be served through
Director, Narcotics Control Bureau,
Government of India,
Ministry of Home and Affairs,
West Block – 1, Wing No.5,
R. K. Puram,
New Delhi – 110 066.

2 Zonal Director,
O/o. Narcotics Control Bureau,
2nd and 3rd floor, Screen Building,
Drive-in-Cinema,
Drive-in-Road,
Thaltej, Ahmedabad – 380 051.

... Respondents

(By Advocate Ms Prachi Upadhyay)

ORDER

HON'BLE SHRI M C VERMA, MEMBER(J)

1. The case of the applicant, as has been set out in the OA is that he is serving as Intelligence Officer with the respondents and that vide order dated 20/01/17 (Annexure A-2) he was communicated Order dated 5th

January 2017 (Annexure A/1), whereby and whereunder he has been suspended on 5th January 2017. That his case was reviewed by the Review Committee on 20th March, and suspension period was extended for further three months w.e.f. 5th April, 2017 (Annexure A-3). That no reason for extension was given and the computation of period of 90 days has to be reckoned with from 5th April, 2017 and thus had to expire on 04/07/17. That the period of suspension is completing 180 days in single spell at a time and thus is in violation of Rule 10(6) of CCS (CCA) Rules 1965. OA was filed on 3/10/17 and it has also been pleaded that about 250 days has passed and reviewing of suspension only once has lost its meaning and the applicant deemed to have been in service and further even suspension allowance has also not been reviewed. Applicant has pleaded as well that in relating criminal case he was arrested on 5/4/17 and was released on bail on 12/07/17, charge-sheet in said criminal case was filed in July 2017, no investigation is pending now and there is no question of tempering with the evidence also. The prayer as has been made by applicant in the instant O.A. reads as under:

"8.1 Lordships be pleased to admit this application and be pleased to issue order by holding that the impugned order dated 05.01.2017, 20.01.2017 and 20.03.2017 Annexure A/1, A/2 and A/3 are deemed to have not in existence on completion of the period of 90 days being over on review of the order dated 05.01.2017 and the order dated 20.03.2017 also no more in existence on completion of further 90 days w.e.f. 05.04.2017 and in absence of any further order issued by the respondents with or without reason the orders are deemed to have been considered as not in existence and by keeping the applicant under suspension is illegal, arbitrary and against the Rule 10 (6) of CCS (CCA) Rules 1965, by not paying the enhance rate of subsistence allowance as 75% w.e.f. 05.04.2017 and full salary w.e.f. 04.07.2017 is required to be held illegal.

8.2 Be pleased to direct the respondents to immediately allowed the applicant to perform the duties of his post of I.O. and be pleased to direct the respondents to pay the arrears of subsistence allowance at enhance rate of 75% or more)difference of 25%) and the arrears of salary from 04.07.2017 till the applicant is reinstated / allowed for duties with interest of 18% p.a. or as deemed fit to this Hon'ble Tribunal with all consequential benefits.

8.3 Hon'ble Tribunal be pleased to allow this application with cost and be pleased to pass any further order, direction as may be deemed fit just and proper may kindly be passed in the interest of justice.

8.4 The order may be passed to call for the record, if necessary."

2. Respondents have contested claim of the applicant and filed a detailed reply. It is pleaded therein that on 31.1.2015, NCB, Ahmedabad, conducted raid, affected seizure of Psychotropic substances and arrested five persons of Provizer Pharma. The case, CR-01/2015 was registered. That it was also found that the arrested accused persons and their family members had bitcoin accounts with Conmonk Venture Pvt. Ltd, Bangalore and accordingly, Conmonk Venture Pvt. Ltd was asked to freeze said accounts. That later it revealed that said bitcoins accounts were unfrozen on 22.6.2016 as per written instructions of Investigating Officer Satyendra Kumar, the applicant herein. That applicant was placed under suspension, preliminary inquiry was conducted, and it was found that applicant, who was the Investigating Officer of Case CR-01/2015 was involved in unfreezing of frozen account of Bitcoin relating to Case CR-01/2015 and it was done by him in connivance with Director of Conmonk Venture Pvt. Ltd. That FIR was lodged with District Crime Branch, Ahmedabad City on 19.1.2017, vide CR No. 9/2017. That suspension of applicant was reviewed on 20.3.2017 and suspension was extended for another 90 days from 5.4.2017 but in the meantime, the Crime Branch, Ahmedabad City has, on the basis of FIR, arrested the applicant on 5.4.2017 but applicant did not inform the same to the NCB till 24.8.2017 and as such the period of 90 days for reviewing reckoned from date of his application, meant to say from 24.8.2017 when fact of his release from detention was intimated

to ZD, NCB, Ahmedabad Zone. That computing from 24.8.2017, period of 90 days expires on 21.11.2017.

2.1. It has also been pleaded by Respondents that Review committee has recommended to increase the rate of subsistence allowance from 50% to 75% w.e.f. 22.11.2017. Accordingly, 75% subsistence allowance is being paid to applicant from December 2017 onwards. The respondents have therefore prayed that applicant is not entitled to any relief(s) as sought and this O.A. be dismissed accordingly being devoid of merits. That case of applicant was also reviewed on 14/05/18 by Review Committee and it recommended continuance of suspension for a further period of 90 days, w.e.f. 21/05/18. Applicant reiterating his claim that continuance of suspension is invalid filed rejoinder.

2.2 It is worth to note herein that on 17th September 2018, when the matter was at the stage of hearing it was inquired from Respondent's counsel whether after May 2018, the case of applicant has been reviewed or not and accordingly, record/report was called for. Today, certified zerox copies of some documents and of the report of the Review Committee has been placed before us and it transpires therefrom that after 14th May 2018 case of the applicant was reviewed by the Review Committee on 16th August 2018 and it has extended the period of suspension for further 90 days.

3. We have heard learned counsel for the parties at some length. Learned counsel, Shri K.K.Shah Advocate, who appeared for applicant while challenging the suspension and legality of the continuance of the suspension has submitted that as per the CCS (CCA) Rules, Sub Clause (1) of Rule 10 case of applicant has to be reviewed after 90 days and similarly review is

necessitated if he is suspended under Sub Clause (2) of Rule 10. It is his contention that as per said Rules after every 90 days case of suspension must be reviewed by the appropriate committee after prescribed interval of time and that should not be after more than 90 days. He submitted that after suspension of applicant, on 5.4.2017, his case was reviewed by the Committee only on 20.11.2017 i.e. beyond the period of 90 days when suspension after expiry of three months, reckoned from 5.4.2018 has become invalid. Further, there are period of more than 90 days in between other sittings of the Review Committee. He pointed out that even as per record placed today the case of applicant was reviewed lastly on 16.8.2018 and prior to that it was reviewed on 14.05.2018 and therefore period of more than 90 days is evident in between 14th May 2018 and 16th August 2018.

4. Learned counsel for applicant placing reliance on Rule (9) of the O.M. No. 221/18/65-AVD dated 7th September 1965 issued by the Department regarding Speedy follow-up action in suspension cases and time-limits prescribed as well placing reliance on two decisions of Hon'ble Supreme Court, decision dated 21/8/2018 in case titled *State of Tamilnadu Vs. Parmod Kumar IPS & ANR* passed in Civil Appeal No.8427-8428 Of 2018 and decision dated 16/02/2015 in case titled *Ajay Kumar Choudhary Vs. UOI & Ors.* rendered in Civil Appeal No. 1912 of 2015 (SLP No. 31761/2013 requested that suspension be declared as invalidated and applicant be directed to be reinstated.

5. Learned counsel Ms. Prachi Upadhyay who is appearing for respondents stated that it is true that case after 14th May 2018 was reviewed

by the Committee on 16th August 2018. She urged that so far contention that review of the case of the applicant on 20th November 2017, after 20th March, 2017 suffers from infirmities of lack of compliance of mandatory requirement of review within 90 days relates, the applicant was arrested on 5.4.2017, he remained in custody till 12th July, 2017 and he intimated the department only on 24/08/2017 so the period spent in custody till he did not intimate the Department would not have to be reckoned with. She referred proviso to Rule 7 of CCS Rule 1965 and submitted that ninety days period for review in such cases will count from the date the Govt servant is released from custody or the date on which the fact of his release from detention is intimated to his Appointing Authority, whichever is later. She added that so far so applicability of requirement of 90 days relates, taking date of intimation as 24/08/2017 his case was reviewed on 20.11.2017 and that he is within the prescribed period of 90 days. Learned counsel Ms. Prachi Upadhyay further urged that OA is without merits and the same may be dismissed.

6. There are two issues that falls for determination in the above back drop in this case. One pertains to the validity of periodic reviews conducted for his continuance under suspension and the other relates to the continuance of applicant under suspension. The relevant **Rule 10 (6)** of the CCS Rules, 1965 reads: "Rule 10(6) *An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is 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.” **Sub Clause 7** of Rule 10 of the CCS (CCA) Rules provides that an order of suspension made or deemed to have been made under sub rule (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. **Proviso** to Rule 7 of CCS Rule 1965 provides that *ninety days period for review in such cases will count from the date the Govt servant is released from custody or the date on which the fact of his release from detention is intimated to his Appointing Authority, whichever is later.*

7. When the matter was at the stage of hearing it was inquired from respondents, on 17th September 2018 whether after May 2018, the case of applicant was reviewed or not and accordingly, record/report was called. Today, zerox copies of certified copy of suspension order and order of extension of suspension as well of report the Review Committee was placed before us and it transpires that lastly, after 14th May 2018, the case of applicant was reviewed by the Review Committee on 16th August 2018.

8. From pleadings of the parties and from certified zerox copies of documents and of the report of the Review Committee placed before us today by respondent, facts uncontroverted or indisputable emerged are that applicant was suspended on 5th January 2017 vide Annex. A/1. His case firstly was considered by the Review Committee on 20th March 2017 and

suspension period was extended for further three months w.e.f. 5th April 2017. That a Criminal Case has also been registered against the applicant, he was arrested in that Criminal Case on 5th April 2017 by Crime Branch, Ahmedabad City and was granted Bail on 12th July 2017. Applicant inform the same to the NCB, after his release on bail and it was informed on 24.8.2017. The Review Committee again met on 20th November 2017 and extended the suspension period for further period of 90 days and recommended to increase the rate of subsistence allowance from 50% to 75% w.e.f. 22.11.2017. The Review Committee met 3rd time on 16th February 2018 and extended suspension for further 90 days. The Committee 4th time met on 14th May 2018 and extended the suspension for further 90 days, w.e.f. 21/05/18. Lastly Review Committee met on 16th August 2018 and extended the period of suspension for further period of 90 days.

9. It is true that in this case originally the official was not placed under suspension, under Rule 10(2) of CCS Rule 1965. Proviso to Rule 7, which specify that ninety days period for review would be applicable in such cases will count from the date the Govt servant is released from custody or the date on which the fact of his release from detention is intimated to his Appointing Authority, whichever is later, is applicable only in case where suspension is under Rule 10(2) of CCS Rule 1965. As noted above in case in hand the original suspension was not under Rule 10(2) of CCS Rule 1965 but was under Rule 10(1). It is an admitted fact that in between last two dates of Review Committee i.e. 14th May 2018 and 16th August 2018 there is a gap of more than 90 days. If sub Clause 7 of Rule 10 of the CCS (CCA)

Rules 1965 is read in between the line, the suspension seems to have become invalid after expiry of 90 days however, learned counsel for respondents have taken the plea that previously the period of extension was extended up to 19/08/2018 and, therefore, this meeting of 16th August, 2018 was well before the expiry of that period. We have considered this aspect as well but did find that the settled proposition is that a period legally cannot be extended beyond ninety days in single spell. Sub Clause 7 of Rule 10 of the CCS (CCA) Rules provides that an order of suspension made or deemed to have been made under sub rule (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.

10. As noted above two issues evolved are, one pertains to the validity of periodic reviews conducted for his continuance under suspension and the other relates to the continuance of applicant under suspension. Though these two issues are distinct but are inter connected to each other and hence without getting into the further intricacies of the merits of the issue canvassed "*validity of periodic reviews conducted for his continuance under suspension* ", we consider it just and appropriate , to consider now whether there is no need for the continuation of suspension of applicant. While public interest is the guiding principle for continuation of continuance of suspension but one of the significant factor is whether continuance in office of the person will prejudice investigation, trial or any enquiry. We have gone through the report of the committee. It is inquired from the learned counsel for respondent that what harm would be there if the applicant is

reinstated or why his suspension is necessary, and she replied that everything was considered by the Committee and the Committee found it necessary. It is necessary to record that all the report of Review committee, certified zerox copy of which were shown to us, on perusal of which it was evident that reasons were not recorded for each extension or where recorded were not elaborate and does not come to the succour of the extension. It is not the case of Department that applicant is causing any hindrance in proceeding of the trial or not cooperating in the trial or is causing any situation of tampering with the evidence or in the trial or inquiry.

11. In **Ajay Kumar Choudhary's case** (cited *ibid*) relied upon by applicant Hon'ble Supreme Court has frowned upon the practice of protracted suspension and has held that suspension must necessarily be for a short duration. Hon'ble Supreme Court in para 8 of the judgment, at page 7 held: held: ***"Suspension preceding the formation of charges, is essentially transitory or temporary in nature, and must perforce be of short in duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature."*** Hon'ble Supreme Court in same decision in para 9 of the judgment, at para 8 further held: ***"Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be."***

12. We need to underscore that applicant has been continuously on suspension from 5/01/17. Today, we are in October 2018 i.e. more than

twenty months have been passed after the suspension. On the basis of material on record it just and appropriate, to hold that there is no need for the continuation of suspension of applicant, especially when no material is brought to the notice of this Tribunal to indicate that reinstatement of applicant would have an adverse effect on the ongoing trial and when it is also not the case of Respondent that applicant is causing any hindrance in proceeding of the trial or not cooperating in the trial or is causing any situation of tampering with the evidence or in the trial or inquiry or his reinstatement would be a threat to a fair trial. We are convinced and thus hold that no useful purpose would be served by continuing the applicant under suspension any longer.

13. In view of factual and legal scenario discussed above, holding that continuing the applicant under suspension any longer is illegal and unnecessary, we direct revocation of suspension of applicant with immediate effect. He be reinstated forthwith. However, the respondent Department has the liberty to appoint the applicant in a non-sensitive post.

14. In the result we allow this OA but only in part and to the extent indicated above.

(M.C.Verma)
Member(J)

(Archana Nigam)
Member(A)

mehta