

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3448/2015

New Delhi this the 6th day of April, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Dr.B.N. Singh, Age 41
Deputy Director and Assistant Librarian,
Central Board of Secondary Education,
R/o Flat No.205,
Sumeru Apartment,
Kaushambi, Ghaziabad-201010.Applicant

(Argued by: Mr. Saquib).

Versus

1. Union of India
Through its Secretary,
Ministry of Human Resource Development,
Govt. of India,
Shastri Bhawan,
New Delhi.
2. Central Board of Secondary Education
Through its Chairman,
Shiksha Kendra,
2 Community Centre,
Preet Vihar,
Delhi-110092.Respondents

By Advocate: Shri Sat Pal Singh.

ORDER(ORAL)

Justice M. S. Sullar, Member (J)

The crux of the facts and material, relevant for the limited purpose of deciding the core controversy involved in the instant Original Application (OA), and emanating from the records is that in the wake of contemplation of departmental proceeding, the applicant, Dr. B.N. Singh,

Deputy Director & Assistant Librarian, was placed under suspension, in exercise of power conferred by Rule 9.1 of Chapter 9 of CBSE Service Rules, 1985 (hereinafter referred to as "CBSE Rules") by the competent authority vide impugned order dated 23.01.2015 (Annexure P-I).

2. According to the applicant, the impugned charge sheet dated 07.05.2015 (Annexure P-5) was served upon him for committing misconduct of repeatedly reporting late and leaving office early during the period of January, 2013 to January, 2015. He requested the concerned authority to revoke his suspension order by way of letter dated 12.05.2015 (Annexure P-7), but in vain.

3. Thereafter, he filed the reply dated 29.05.2015 (Annexure P-9) to the Annexure P-5 charge-sheet. The competent authority enhanced the subsistence allowance having found that the period of suspension is prolonged for the reasons not attributable to him vide order dated 30.06.2015 (Annexure P-10).

4. The case of the applicant further proceeds that vide another request letter dated 07.09.2015 (Annexure P-11), he again pleaded before the competent authority for revocation of the impugned order of suspension, duly informing that period of more than 3 months has

lapsed. His legitimate and bona fide request has not been considered despite valid reasons.

5. It was pleaded that the impugned suspension order for an indefinite period is wholly illegal, arbitrary and unjustified, inasmuch as the charge sheet was issued much after the expiry of 90 days from the date of suspension. Although charge sheet has been purportedly issued under Rule 9.1 of CBSE Rules read with Circular No.Admn.I/3(8)/97 dated 19.02.1997 issued by the CBSE for imposing minor penalty under the said rules, but the suspension order was never reviewed. The concerned authority was required to extend/review the period of suspension within 90 days and thereafter, suspension order becomes inoperative in view of Circular/Instruction No.Admn.I/3(8)/97 dated 19.02.1997. On the basis of the aforesaid grounds, the applicant has sought quashing of the impugned suspension order dated 23.01.2015 (Annexure P-I), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

6. In pursuance of the notices, respondents appeared but did not file reply despite repeated adjournments for the reasons best known to them. Thus, we have no option but to decide the OA without the reply of the respondents. That is how we are seized of the matter.

7. After hearing the learned counsel for the parties, going through the record with their valuable help and considering the entire matter deeply, we are of the firm view that the instant OA deserves to be allowed for the reasons mentioned herein below.

8. As is evident from the record that in contemplation of departmental enquiry, the applicant was placed under suspension vide order dated 23.01.2015 (Annexure P-I). It is not a matter of dispute that neither the matter of suspension was reviewed nor extended by the competent authority even after the expiry of the statutory period of 90 days and despite repeated letters from the applicant.

9. Concededly, the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DOP&T) has issued instructions vide OM dated 3rd July, 2015 in regard to the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as “CCS(CCA) Rules”] in pursuance of the judgment of the Hon’ble Apex Court in case ***Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another JT 2015 (2) SC 487***.

487. The instructions provide that every effort should be made to finalize the charges and serve the charge-sheet on the delinquent Government servant within 3 months from the date of his suspension. Admittedly, the said

instructions and CCS(CCA) Rules pertaining to suspension are applicable to the case of applicant.

10. Moreover, Rule 10(6) of the CCS (CCA) Rules, posits that 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 and extension of suspension shall not be for a period exceeding one hundred and eighty days at a time. Sequelly, according to sub-rule (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.

11. Therefore, a conjoint and meaningful reading of these provisions would reveal that the period of suspension can only be extended before the expiry of 90 days or 180 days as the case may be and not otherwise. In case the suspension order is not reviewed or extended within the stipulated period, then such suspension order would be deemed to be invalid and inoperative.

This matter is no more res integra and is now well settled.

12. An identical question came to be decided by the Hon'ble Apex Court in case **Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another JT 2015 (2) SC 487**, wherein it has been held as under:-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short 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. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

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21. 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”.

13. Sequelly, the Hon'ble Supreme Court in cases **O.P. Gupta Vs. Union of India 1987 (4) SCC 328** and **State of A.P. Vs. N. Radhakishan 1998 (4) SCC 154** has held that suspension of an employee is injurious to his interest and must not be continued for an unreasonably long period.

14. Similarly, Hon'ble Supreme Court in the case of **Union of India and Others Vs. Dipak Mali** 2010 (2) SCC 222, after considering the scope of newly inserted sub-rule (6) and (7) to Rule 10 of the relevant rules, has ruled that under these circumstances, the order of suspension would not survive, if it is not extended within the statutory period and suspension got automatically lapsed. It was also held that subsequent review and extension would not revive the order.

15. This matter did not rest there. The same view was taken by the Hon'ble Delhi High Court in the case titled **N.K. Sethi Vs. India Trade Promotion Organisation** W.P. (C) No.14848/2004 decided on 22.02.2005, a Full Bench of this Tribunal in the case of **D.R. Rohilla Vs. U.O.I. and Another** (OA No.2105/2004) decided on 31.10.2005, a co-ordinate Bench of this Tribunal in the case of **Om Prakash Vs. National Council of Educational Research and Training through its Director - OA No. 1779/2005** – decided on 25.11.2005 and in the case of **Dharam Pal Vs. U.O.I.** - OA

No.3011/2004 decided on 18.01.2005. In all these judgments, it has been held that any order of suspension would become invalid and inoperative after the expiry of stipulated period. The crux of law laid down in the indicated judgments *mutatis mutandis* is applicable to this case and is a complete answer to the problem in hand.

16. Therefore, the impugned suspension order Annexure P-1 cannot legally be sustained in the obtaining circumstances of the case.

17. In the light of the aforesaid reasons, the Original Application is allowed and impugned suspension order dated 23.01.2015 (Annexure P-I) is set aside. Needless to mention that the applicant would be entitled to all consequential benefits. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

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