

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.3209/2015

RESERVED ON 31.10.2015
PRONOUNCED ON 08.12.2015

**HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE SHRI K.N. SHRIVASTAVA, MEMBER (A)**

Mr. Chandras
S/o Sh. Mahipal Singh
R/o Qtr. No.1, Type V
BSNL Colony, Sector 8
Karnal, Haryana
Aged about 59 years
Presently posted as Sr. General Manager
(under suspension)

...Applicant

(By advocate: Mrs. Jasvinder Kaur)

VERSUS

1. Union of India through Secretary,
DoT, Ministry of Communication & IT,
20, Ashoka Road, Sanchar Bhawan,
New Delhi.
2. Director, Vigilance
Ministry of Communication & IT,
20, Ashoka Road, Sanchar Bhawan,
New Delhi.

...Respondents

(By advocates: Shri Subhash Gosain)

:ORDER:

HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J):

The applicant has filed this OA challenging the order of suspension dated 27.08.2014 passed by the Director (Vig-I), Ministry of Communication & IT, Department of

Telecommunications, Government of India, in exercise of powers conferred by Rule 10(2)(a) read with Rule 10(1)(b) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short 1965 Rules) for his detention in custody on 28.06.2014 for a period exceeding forty-eight hours. The applicant has also challenged the orders dated 17.09.2014 and 23.03.2015 passed by the same authority, extending the period of suspension for a further period of 180 days w.e.f. 26.09.2014 and 24.03.2015, respectively, or until further orders.

2. We have heard the learned counsel, Mrs. Jasvinder Kaur appearing for the applicant and learned counsel, Mr. Subhash Gosain appearing for the respondents.
3. The only argument, which has been advanced by the learned counsel for the applicant, is that since neither the charge memo nor the charge-sheet in the criminal case has been issued by the respondent-authority within three months from the date of placing the applicant under suspension, the order of suspension cannot be sustained in law and hence the same is liable to be set aside and quashed. According to the applicant, the indefinite extension of the period of suspension is not permissible under the law. The learned counsel, in support of his contention, has placed reliance on the judgment dated 16.02.2015 passed by the Hon'ble Supreme Court in Civil Appeal No.1912/2015 – **Ajay**

Kumar Choudhary Versus Union of India Through its Secretary and another.

4. The learned counsel appearing for the respondents, on the other hand, referring to the averment made in their counter filed, has submitted that the applicant was caught red-handed by the CBI while accepting a bribe of Rs.2 lakhs from one Shri Yashpal, JTO for exonerating him in the disciplinary proceedings pending against him, based on which the CBI registered FIR No.RCCHG20114A0007 dated 27.06.2014 under Section 7 of the Prevention of Corruption Act, 1988 and since the applicant was arrested in connection with the said FIR and was detained in custody for more than forty-eight hours, he has been placed under suspension. It has also been submitted that based on the recommendation of the review committee, required to be made under the provisions of 1965 Rules, the period of suspension has been extended by the Disciplinary Authority by passing the orders in that regard. The learned counsel further submitted that during the pendency of the OA the charge-sheet has been filed against the applicant.

5. Referring to the judgment passed by the Hon'ble Supreme Court in **Ajay Kumar Choudhary** (supra), it has been submitted by the learned counsel for the respondents that revocation of the order of the suspension in case of non filing of the charge-sheet

within three months from the date of suspension, is not automatic. It has also been submitted that the same is required to be considered on the basis of the facts and circumstances of the individual cases. In the instant case, according to the learned counsel, since the applicant has been caught red-handed while taking bribe, based on which the charge-sheet under Section 7 of the Prevention of Corruption Act, 1988 has already been filed, this Tribunal may not interfere with the order of suspension. The learned counsel, therefore, submitted that the OA needs to be dismissed.

6. We have considered the submission advanced by the learned counsel for the parties and also perused the pleadings.

7. The only ground, which has been pressed in service by the learned counsel for the applicant in challenging the order of suspension and the subsequent extension of the period of suspension, is that the charge-sheet has not been filed within 90 days from the effective date of suspension of the applicant from the service. It is not in dispute that because of the detention of the applicant in custody for more than forty-eight hours he was placed under suspension under the provisions of 1965 Rules. The applicant was detained in custody on the basis of the allegation that he was caught red-handed by the CBI while accepting a bribe of Rs.2 lakhs from an officer for favourably deciding a disciplinary proceeding pending against him. It is also not in

dispute that during the pendency of the OA the charge-sheet has been filed under Section 7 of the Prevention of Corruption Act, 1988 against the applicant, which, however, was beyond 90 days from the effective date of suspension. The whole argument of learned counsel for the applicant is based on the judgment passed by the Hon'ble Supreme Court in **Ajay Kumar Choudhary** (supra).

8. Part-IV of the 1965 Rules deals with the powers of the authority to place a Government servant under suspension. Sub-Rule (1) of Rule 10 empowers of the Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, to place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending; or where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or where a case against him in respect of any criminal offence is under investigation, inquiry or trial, subject to the proviso contained therein. Sub-Rule (2) of Rule 10 provides for deemed suspension either with effect from the date of his detention in custody or with effect from the date of his conviction. If a Government servant is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, he is deemed to have

been placed under suspension by an order of Appointing Authority with effect from the date of his detention. Similarly, if the Government servant is convicted for an offence and sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction, he shall be deemed to have been placed under suspension by an order of Appointing Authority with effect from the date of his conviction.

9. Sub-Rule (7) of Rule 10 of 1965 Rules provides that the order of suspension made under Sub-Rule (1) or deemed to have been made under Sub-Rule (2) of Rule 10 shall not be valid after expiry of the period of 90 days, unless it is extended after review, for further period before expiry of 90 days.

10. Sub-Rule (6) of Rule 10 of the aforesaid Rules mandates the authority, which is competent to modify or revoke the suspension, to review the order of suspension made under Sub-Rule (1) or deemed to have been made under Sub-Rule (2) of Rule 10, before expiry of 90 days from the effective date of suspension, on the basis of the recommendation of the Review Committee constituted for the purpose and to pass orders either extending or revoking the suspension. It also requires the authority to make subsequent reviews before expiry of the extended period of suspension. Such extension of suspension,

however, cannot be made for a period exceeding one hundred and eighty days at a time.

11. The aforesaid provisions requiring constitution of Review Committee for the purpose of making recommendation relating to extension or otherwise of the order of suspension, as well as for reviewing the order of suspension by the authority based on such recommendation and passing an order either continuing the order of suspension or revoking the same have been made with a view to eliminate the possibility of unnecessary continued suspension of the Government servant.

12. In **Ajay Kumar Choudhary** (supra) the order of suspension dated 30.09.2011 passed in contemplation of departmental inquiry and subsequent orders of extension of the period of suspension were put to challenge before the Tribunal, which was disposed of by directing that if no charge memo was issued to him before 21.06.2013, i.e., the date till which the period of suspension was extended, he would be reinstated in service. The said order was put to challenge before the Hon'ble High Court. The order passed by the Tribunal has been set aside by the Hon'ble High Court by holding that the Tribunal's view was nothing but a substitution of a judicial determination to that of the authority possessing the power i.e., the Executive Government as to the justification or rationale to continue with

the suspension. The order was put to challenge before the Hon'ble Supreme Court.

13. The Apex Court, having regard to the facts and circumstances involved in the said case as well as its earlier pronouncements has held that the suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration and 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. Taking note of the delay generally caused in initiating the disciplinary proceeding after placing a Government servant under suspension, which amounts to suffering the ignominy of insinuations, the scorn of society and the derision of his Department, it has been held that the right of the speedy trial as guaranteed under Article 21 of the Constitution equally applies to the departmental proceeding. The Apex Court has further held that a *fortiori* suspension should not be continued after expiry of 90 days specially when a memo of charges/charge-sheet has not been served on the officer/employee. It has also been held that the suspension order should not extend beyond three months if within this period the memo of charges/charge-sheet is not served on the delinquent officer/employee and if the memo of charges/charge-sheet is

served a reasoned order must be passed for the extension of the suspension.

14. The Apex Court having regard to the fact that in the said case the charge sheet in the disciplinary proceeding has not been issued based on the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance, which the Apex Court has held to be not valid, and also that the charge sheet in the departmental proceeding has already been issued, did not, however, interfere with the order of suspension and left it open to Shri Choudhary to challenge his continued suspension in any manner known to law, if so advised.

15. In the said case, as noticed above, the appellant before the Hon'ble Supreme Court was placed under suspension in contemplation of a disciplinary proceeding, in exercise of power conferred under Rule 10(1)(a) of 1965 Rules and not under Rule 10(2)(a) of the said Rules, which provides deemed suspension of a Government servant with effect from the date of detention if he is detained in custody, whether of the criminal charge or otherwise, for a period exceeding 48 hours, like in the case in hand. The direction of the Apex Court, therefore, that the suspension order should not extend beyond three months if within this period a memo of charges/charge-sheet is not served on the delinquent officer/employee, relates to the order of

suspension issued in contemplation of disciplinary inquiry and cannot be applied in respect of the order of deemed suspension under Rule 10(2) of the 1965 Rules. The submission of the learned counsel for the applicant that the principle laid down by the Apex Court in **Ajay Kumar Choudhary**' case applies to the order of suspension issued under Rule 10(2) of the aforesaid Rules, cannot be accepted.

16. Order of suspension cannot be for an indefinite period of time. Inordinate delay, without any reasonable justification, in initiating the department proceeding may, in a given case, be the ground for setting aside the order of suspension, but when an officer/employee deemed to have been placed under suspension in view of the provision in Rule 10(2) of 1965 Rules, the position would be different. Whether there is necessity of continued suspension or not in such cases depends on various factors including the nature of allegation for which the officer/employee has been detained in custody leading to his deemed suspension. Challenge made to such deemed suspension and its continuance has to be judged on the facts and circumstances of each case.

17. The power of extension of the period of suspension cannot be exercised by the authority mechanically. The recommendation of the Review Committee constituted for the purpose of the continuation of the order of suspension or otherwise must disclose the reason for its recommendation and the order

extending the period of suspension also needs to be a reasoned order disclosing the reason therefor. Suspension of a Government servant though is not a penalty it surely invites a stigma in the society, which in a given case, has to be removed as fast as possible. At the same time, seriousness of allegation, like allegation of corruption, which is invading the present day society like Cancer, levelled against the Government servant cannot be lost sight of. The public interest involved as against the personal interest of a Government servant has to be balanced. Therefore, revocation of an order of deemed suspension, thereby allowing a Government servant, against whom there is serious allegation, to discharge the duty and function, solely on the ground that Charge-sheet in the criminal case has not been filed within three months from the effective date of suspension, would send a wrong message to the society and give license to such persons to indulge in such activities again. That apart it may not always be possible to complete the investigation by the investigating agency within 90 days having regard to the nature of allegation and complexity of the matter. Hence, interference with an order of suspension by the Tribunal solely on the ground that no Charge-sheet in the criminal case has been filed within 90 days, would depend upon the facts of each case. Non initiation of the disciplinary proceeding within 90 days from the effective date of suspension under Rule 10(2) of 1965 Rules also cannot be the sole ground for setting aside the order of suspension unless of-

course inordinate delay has been caused in filing the charge-sheet in the criminal case and public interest does not require continued suspension. The authority for good and sufficient reasons, which are open for judicial review, may not initiate the disciplinary proceeding against an officer/employee deemed to have been placed under suspension under Rule 10(2) of the 1965 Rules pending the investigation in a given case.

18. It is, however, true that an employee/officer cannot be put under suspension for indefinite period of time. Reviewing Committee under sub-rule 6 of Rule 10 requires to review as to whether the continued suspension of an employee/officer is required both before and after filing of the charge sheet in the criminal case or issuance of charge memo initiating the disciplinary proceeding.

19. The respondents, in their counter reply dated 30.10.2015, have pleaded that the meeting of the Review Committee was held on 12.03.2015 for consideration of the representation filed by the applicant for revocation of the order of suspension as well as the recommendation, based on which the period of suspension of the applicant has been extended for a period of 180 days w.e.f. 24.03.2015, which came to an end on 23.09.2015. Nothing has been stated by the respondents in their counter about any recommendation of the Review Committee as well as subsequent extension of the period of suspension for further period beyond

on 23.09.2015. As discussed above, sub-rule 6 of Rule 10 of 1965 Rules mandates review of the suspension by a Review Committee and passing of an order by the authority, based on the recommendation of the Review Committee, extending the period of suspension.

20. In view of the above, we are of the opinion that the further suspension of the applicant cannot be sustained in law for not conducting the review and for not passing any order extending the period of suspension beyond 23.09.2015 and hence it is set aside. The applicant shall be allowed to resume his duty. It is, however, open to the respondent-authority to transfer the applicant out of the place of his last posting, if interest of public service so require.

21. The necessary decision relating to the period of suspension of the applicant would be taken by the Disciplinary Authority after closure of the criminal proceedings against the applicant. It is also open to the Disciplinary Authority to initiate the disciplinary proceeding against the applicant, if so advised.

22. OA is, accordingly, allowed to the extent indicated above. No costs.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

/jk/

