Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.201/00842/2017

Jabalpur, this Friday, the 31st day of August, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Debaprasad Ghatak
S/o Susil Kumar Ghatak,
Aged about 52 years,
Chief Manager,
NSIC Branch Office, Indore (M.P.)
Address 504 Block B Green Valley
Appartment Alok Nagar,
Kanadiya Road, Indore (M.P.) **-Applicant**

(By Advocate **–Shri Naveen Kumar Singh**)

V e r s u s

1. Union of India,
through Secretary,
Ministry of MSME
New Delhi

2. Chairman Cum Managing Director
The National Small Industries Corporation Ltd.,
NSIC Bhavan, Okhla Industrial Eastat,
New Delhi -20

3. P.K. Jha,
The Zonal General Manager (SG),
Zonal Office Central,
National Small Industries Corporation
202 Samruddhi Building
Opp. Gujrat High Court Ashram Road
Ahmadabad 380014 Gujrat - **Respondents**

(By Advocate **–Shri Arun Soni**)

(Date of reserving the order : 29.06.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

The applicant by way of filing this Original Application is seeking quashment of order of suspension dated 10.02.2017 passed by respondent No.2 and to reinstate him on the post of SBM Indore with all consequential benefits.

2. The applicant in this Original Application has prayed for the following reliefs:-

> *"8.1 allow the present application;*
>
> *8.2 Quash order of suspension dated 10.02.2017 passed by respondent No.2 (Annexure A-1) as voide ab initio;*
>
> *8.3 Direct respondents to reinstate the applicant on the post of SBM Indore with all consequential benefits;*
>
> *8.4 Any other order that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."*

3. The brief facts of the case are that the applicant was appointed as in Account Officer on 01.11.1989 in the respondent-department. He was promoted to the post of Deputy Manager (Account) on 31.12.1997 and thereafter promoted to the post of Joint Manager (Account) on 01.01.2006. He was transferred to Guwahati Assam vide order dated 27.03.2009 (Annexure A-2) and was posted as Senior Branch Manager on 31.07.2009 (Annexure

A-3). Thereafter the applicant was promoted to the post Chief Manager (Accounts) on 30.03.2013 (Annexure A-5).

3.1 While working as Chief Manager/Sr. Branch Manager, NSIC Ltd., a case of disciplinary proceedings were contemplated against the applicant in exercise under Rule 4(1) of the National Small Industries Corporation Limited (Control and Appeal) Rules, 1968 vide order dated 10.02.2017 (Annexure A-1) and the applicant was placed under suspension with immediate effect.

3.2 The applicant thereafter preferred an appeal dated 24.02.2017 (Annexure A-7) through e-mail to the Zonal Manager (respondent No.2) and followed with a reminder dated 29.07.2017 (Annexure A-8) requesting to revoke his suspension order. He has also requested to increase the subsistence allowance which was rejected by the respondent No.2 vide letter dated 28.08.2017 (Annexure A-9).

4. Learned counsel for the respondents submitted in their short reply/reply/Additional reply that the applicant in the acts of omission and commission of financial irregularities at NSIC Branch Office Guwahati, he was placed under suspension on 10.02.2017 (Annexure A-1) under Sub Rule 1 of Rule 4 of the NSIC Ltd., Rules 1968.

4.1 It is pertinent to mention that a complaint was lodged by NSIC with CBI, ACB, Guwahati on 20.02.2017. The CBI, ACB Guwahati has submitted its preliminary enquiry registration report vide letter dated 26.09.2017, wherein his name the then Senior Branch Manager, NSIC Branch Office, Guwahati has been mentioned as one of the suspected person. After preliminary enquiry, an FIR has been registered by CBI, ACB Guwahati on 09.01.2018 under Section 120(B), 420, 468, 471, 477A of IPC and 13(2) r/w 13(1)d of PC Act, 1968 in RC1(A)/2018-GWH in the said case, wherein the applicant's name has been mentioned as one of the suspected accused.

4.2 It is submitted by the respondents that the applicant's career was unblemished and his performance was excellent in the appraisal between 2009 to 2015 cannot absolve him from his alleged acts of omission and commission of financial irregularities committed by him during his tenure at NSIC Branch Office, Guwahati, which was resulted in unsecured outstanding of Rs.5.98 crores, which may expose the Corporation for huge financial loss. The applicant has failed to exercise proper control on the commercial transactions of Branch Office, Guwahati.

4.3 It is further submitted by the respondents that the order of suspension of the applicant was reviewed as per prescribed

guidelines. It has been specifically submitted by the respondents that the order of suspension dated 10.02.2017 has been extended time to time by the Joint Committee by order dated 06.05.2017 and 01.11.2017. Copy of which are annexed as Annexures R-1 and R-2 (with the short reply). The case is also under investigation by CBI, ACB Guwahati for his alleged criminal acts. The departmental charge sheet has also been issued to the applicant vide charge sheet dated 15.02.2018 (Annexure R-1) and after receipt of his statement of defence to the charge sheet, further proceedings as per rules will be held.

5. The applicant in his rejoinder submitted that after filing of this Original Application on 17.10.2017, CBI has lodged an FIR and respondent has served charge sheet on him. He further submitted that the respondent-Corporation has not been exposed to any financial risk/loss by any omission or commission. Every single penny of the corporation was duly received against securities furnished in favour of the corporation. The legal recourse with regard to the securities furnished has been initiated and is pending. If there was any alleged loss the centre and zonal heads are also responsible for the same. The applicant being lower in hierarchy cannot be singled out and fastened with liabilities of other directly responsible for the same. The applicant further submitted that he

has been transferred from Guwahati and has no means to interfere in departmental enquiry initiated at Ahemdabad. He is under suspension from the last more than a year. It is a settled principle that suspension is not a punishment and cannot be made to continue for indefinite period. He also pointed out that suspension order was not reviewed and after service of notice to respondents, they have stated that the same was reviewed but was never communicated.

5.1 It is further contended that the respondents have relied upon the financial services Manual 01 edition 06 wherein the disciplinary action to be taken in the nature of irregularities relating to financial loss are as under:-

(a) In case where irregularities are committed in a few cases due to clerical/oversight errors. “Advisory Memo” to be issued with an advice to rectify and regularize the account and recover the interest/service charges/delayed payment interest within 15 days. In case of non-compliance, show cause to be issued with instruction to recover the dues within 15 days.

(b) In case such irregularities are noticed in several cases, ‘Show cause Notice’ to be served to the erring officers, with the instructions to rectify and regularize the account and

recover the interest/service charges/delayed payment interest within 15 days.

(c) In case of non compliance of the above, 'Charge Sheet' will be served to the erring officer(s).

5.2 In case any financial loss caused to NSIC on account of non recovery of outstanding dues granted in excess of BG value (including interest and service charges) or interest/any other charges unrecovered even after invocation of BG. The disciplinary action to be taken (a) serve 'Show cause notice to Branch Head/Head of NICS/DMRB giving a time period of 15 days to recover the financial loss and this should be served immediately on noticing the lapse. (b) In case the concerned officer fails to recover and thereby causes financial loss to the Corporation, in such case the erring officer(s) will be place under 'Suspension' immediately on completion of the notice period of 15 days. The manual quoted above shows that Zonal GM was responsible for lapse if any and the applicant has been erroneously charge sheeted by the respondents.

6. The respondents in their additional reply stated that the applicant has exposed an outstanding amount of Rs.5.98 crores under Raw Material Assistance Scheme of the Corporation. He has caused the investment of the NSIC at great risk. The amount has

not been recovered so far. It is also submitted that the applicant has not been singled out for the loss of the NSIC, the action against other employees of NSIC responsible for acts of omissions and commissions above in hierarchy and below in hierarchy is under process. The applicant has not submitted his reply to the charge sheet issued on 15.02.2018. As far as paras' of Financial Services Manual Edition-2006 is concerned, itself makes applicant liable and responsible for acts of omissions and commissions committed by him. The applicant if so desires can submit his defence during the course of his disciplinary proceedings.

7. Heard the learned counsel for the both the parties and perused the pleadings and documents annexed therewith.

8. It is an admitted fact by both the parties that the applicant was appointed as Accounts Officer on 01.11.1989. The applicant was further promoted to the post of Deputy Manager (Accounts) on 31.12.1997 and thereafter promoted to the post of Joint Manager Account on 01.01.2006. The applicant was posted as Senior Branch Manager on 31.07.2009 (Annexure A-3). Later on, he was promoted to the post of Chief Manager (Accounts) on 30.03.2013 (Annexure A-5). It is also not in dispute that the applicant was placed under suspension on 10.02.2017 (Annexure A-1). The applicant preferred an appeal dated 24.02.2017 (Annexure A-7)

and also reminder was given to the respondent department on 29.07.2017 (Annexure A-8) requesting to revoke his suspension and also to increase the subsistence allowance. From pleadings it is clear that the request of the applicant was rejected by respondent No.2 vide letter dated 28.08.2017 (Annexure A-9).

9. On the other side, the respondents have submitted that when the applicant was posted at Gwahati, there were acts of omission and commission of financial irregularities and the applicant was placed under suspension and the order of suspension has been further considered vide Annexure R/1 and R/2 annexed with short reply.

10. It is the contention of the respondents that the complaint was lodged by the respondent-department with CBI, ACB, Guwahati and on receipt of preliminary enquiry, an FIR has been registered on 09.01.2018 under Section 120(B), 420, 468, 471, 477A of IPC and 13(2) r/w 13(1)d of PC Act, 1968 and the applicant's name has been mentioned as one of the suspected accused. It is submitted by the respondents that the order of suspension of the applicant has been issued as per the prescribed guidelines. The case is also under investigation by CBI, ACB, Guwahati. On 15.02.2018 vide Annexure R-1 the applicant was directed to submit written

statement of his defence within 10 days and after receipt of the same further proceedings will be initiated as per rules.

11. Further, the contention of the applicant is that the respondent-corporation has not been exposed to any financial risk/loss and every single penny of the corporation has been received against the securities. If there were any alleged loss the centre and the zonal heads are also responsible and the applicant being lower in hierarchy cannot be singled out. The revival of suspension order was never communicated to the applicant. The applicant has also placed on reliance upon the finance Services Manual 01 Edition 2006, whereby some procedure and law of the higher officers has been indicated.

12. In the additional reply filed by the respondents, it is submitted that investment of the NSIC at great risk and the amount has not been recovered so far. The applicant has not submitted his reply on the charge sheet which has been issued on 15.02.2018.

13. The learned counsel for the applicant has relied upon the judgment of Hon'ble Apex Court in the matter of ***Ajay Kumar Choudhary*** vs. ***Union of India***, AIR 2015 SC 2389. The contention of the counsel for the applicant is that the respondents neither reviewed the order of suspension after 90 days nor communicated any order to that effect. The counsel for the

applicant submits that this judgment of Hon'ble Apex Court in the matter of ***Ajay Ku. Choudhary*** (supra), the suspension cannot be there for indefinite period and it has to be reviewed after 90 days.

14. On the other side, the learned counsel for the respondents has submitted that the respondent-department has acted as per rules and the applicant is governed under the NSIC (Control and Appeal) Rules, 1968, issued by the respondents-Corporation. It has been specifically mentioned by the replying respondents that there is a specific provision in the said Rule regarding suspension and the order of suspension made or deem to have been made under the Rules shall continue remain in force until it is modified or revoked by the authority competent to do so.

15. From the pleadings, it is clear that the order of suspension has further been considered as per Annexure R/1 and R/2 (with short reply) and there is no question of intimation to the applicant. Although in the matter of ***Ajay Kumar Choudhary*** (supra), Hon'ble Apex Court has settled the principle regarding the suspension of the employee. Hon'ble Apex Court has held that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period. The relevant Paras of the case of ***Ajay Kumar Choudhary*** (supra) reads as under:-

> *"7 Learned Senior Counsel for the Appellant, however, has rightly relied on a series of Judgments of this Court,*

including O.P. Gupta v. Union of India 1987 (4) SCC 328, where this Court has enunciated that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, an order of suspension should not be lightly passed. Our attention has also been drawn to K. Sukhendar Reddy v. State of A.P. 1999 (6) SCC 257, which is topical in that it castigates selective suspension perpetuated indefinitely in circumstances where other involved persons had not been subjected to any scrutiny. Reliance on this decision is in the backdrop of the admitted facts that all the persons who have been privy to the making of the Office-notes have not been proceeded against departmentally. So far as the question of prejudicial treatment accorded to an employee is concerned, this Court in State of A.P. v. N. Radhakishan 1998 (4) SCC 154, has observed that it would be fair to make this assumption of prejudice if there is an unexplained delay in the conclusion of proceedings. However, the decision of this Court in Union of India v. Dipak Mali 2010 (2) SCC 222 does not come to the succour of the Appellant since our inspection of the records produced in original have established that firstly, the decision to continue the suspension was carried out within the then prevailing period and secondly, that it was duly supported by elaborate reasoning.

8 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.

9 Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his

knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1)promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

10 The Supreme Court of the United States struck down the use of nolle persequi, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in Klapfer vs. State of North Carolina 386 U.S. 213 (1967). In Kartar Singh vs. State of Punjab (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better the extract these paragraphs from that celebrated decision -

" 86 The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by

arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. This Court in Hussainara Khatoon (I) v. Home Secretary, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21.. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

11 The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in Abdul Rehman Antulay vs. R.S. Nayak, 1992 (1) SCC 225, underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Cr.P.C., 1973; that it encompasses all stages, viz., investigation, inquiry, trial, appeal, revision and re-trial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind the CAT had in the case in hand directed that the Appellant's suspension would not be extended beyond 90 days from 19.3.2013. The High Court had set aside this direction, viewing it as a substitution of a judicial determination to the

authority possessing that power, i.e., the Government. This conclusion of the High Court cannot be sustained in view of the following pronouncement of the Constitution Bench in Antulay:

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are: (1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of [pic]death, disappearance or non- availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known

defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on - what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barke 33 L Ed 2d 101 "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell 15 L Ed 2d 627 in the following words:
'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends

upon all the circumstances.' However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of [pic]accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker 33 L Ed 2d 101and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to

justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and [pic] exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

16. In the instant case, the applicant was suspended on 10.02.2017 (Annexure A-1) and till date the extension order of suspension has not been communicated regarding the review of order of suspension. It is clear from the pleadings also that the conduct of the applicant is subject to the National Small Industries Corporation Limited (Control and Appeal), 1968. The relevant portion regarding the suspension is as under.:-

"(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where an employee is suspended or is deemed to have been suspended. (Whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceedings is commenced against him during the continuance of that suspension the authority competent to place him under suspension may, for reasons to be recorded by him in writing direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked

> *by the authority which made or is deemed to have made the order or any authority to which that authority is subordinate*"

17. The learned counsel for the respondents has also relied upon the judgment passed by Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur in the matter of ***M/s Satkar Caterers and others*** vs. ***Union of India and another*** passed in Writ Petition No.9899/2013 decided on 10.06.2013, wherein Hon'ble High Court has held that unless the policy made and promulgated by the Railway Board has been challenged by the petitioner, the same is declared to be ultra vires, the petition could neither be entertained nor admitted for final hearing.

18. The contention of the learned counsel for the respondents is that in the instant case, the respondent-department has taken action as per rules enshrined under National Small Industries Corporation Limited (Control and Appeal) Rules 1968 Part II –Suspension and in Para 5A which reads as under:-

> "*(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so."*

So, the contention of the learned counsel for the respondents is that unless this Rule, which is applicable to the respondent-department, is not challenged or declared ultra vires by the competent court of law, it is valid for all purpose.

19. We have gone through this Rule minutely and it is clear that "An order of suspension made or deemed to have been made under this rule shall be continue to remain in force until it is modified or revoked by the authority competent to do so. Moreover, the applicant has not challenged the vires of the said rule. So, in view of this clear position of law, the action on the part of the respondent-department is valid and legal.

20. From the pleadings itself it has come to our notice that the respondent-department has issued charge sheet to the applicant on 15.02.2018 and the applicant has not replied to the said charge sheet. So, it is incumbent on the respondents to decide the issue of suspension after serving of the charge sheet to the applicant.

21. In view of the above, we do not find any illegality in the action taken by the respondents. Hence this Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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