

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01051/2016

Date of order : 22.7.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

MIHIR SEN BARMAN

VS

UNION OF INDIA & ORS.

For the applicant : Mr.M.Basu, counsel
Ms. A.Roy, counsel

For the respondents : Mr.P.Mukherjee, counsel

O R D E RMs.Bidisha Banerjee, J.M.

The Id. Senior Counsel Mr.M.Basu leading Ms.A.Roy, Id. Counsel for the applicant and Mr.P.Mukherjee, Id. Counsel for the respondents were heard and materials on record were perused.

2. The applicant is aggrieved as he has been kept on suspension indefinitely since 28.4.14 and suffered several renewals/review thereof without any justification, rhyme or reason and compelled in that way he is being to bear the ignominy for months together without any departmental proceedings. In this OA he has sought for the following reliefs :

- a) Direction do issue quashing and setting aside the order of deemed suspension dated 28.4.14 being Annexure A/1 hereto as extended by the orders dated 3.7.14, 31.12.14, 31.3.15, 30.6.15, 3.8.15, 18.9.15, 21.12.15, 16.3.16 and 17.6.16 being Annexure A/6, A/8, A/10, A/12, A/14 and A/15 hereto and hereupon to allow the applicant to resume duties with all consequential benefits and a further direction do issue directing them to make payment of full salaries to the applicant as if there had been no such order of suspension after grant of bail including arrears along with interest @ 18% per annum;
- b) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the order of deemed suspension dated 28.4.14 being Annexure A/1 hereto as extended by the orders dated 3.7.14, 31.12.14, 31.3.15, 30.6.15, 3.8.15, 18.9.15, 21.12.15, 16.3.16 and 17.6.16 being Annexure A/6, A/8, A/10, A/12, A/14 and A/15 hereto;

The respondents had advanced the following arguments in support of continuation of applicant on suspension, and submitted that,

CBI registered an FIR under Section 120B of IPC, Section 7, 12 and 13(2) read with Section 13(1)(b) of Prevention of Corruption Act, 1988 against Shri A.M.Sahay, Commissioner and Shri Mihir Sen Barman, Superintendent (the applicant), in a single FIR. The allegations indicted against the applicant was that he entered into a criminal conspiracy along with Shri A.M.Sahay, the then Commissioner, and the owners of M/S Riddhi Siddhi Udyog, Kolkata, with sole intent to defraud the exchequer and at the same time the Indian Railway. The charges against the applicant were therefore quite grave in nature.

CBI arrested him on 8.4.14. As he was under custody for more than 48 hours, the applicant was placed under suspension under Rule 10(2) of CCS (CCA) Rules, 1965 by the competent authority. Since the criminal case was initiated by CBI through an FIR and the departmental proceedings were intertwined with the investigation/proceedings of the criminal case and as regular departmental action had to rely upon the findings of the investigation conducted by CBI, besides its own findings, department regularly requested the CBI to update the department about their findings.

The respondents have further contended that every time, within stipulated time, Review Committee, duly constituted in adherence to concerned GOI order and Rule 10(6) of CCS (CCA) Rules, 1965, deliberated upon and took into cognizance the entire legal and factual aspects. Based upon the views of review committee orders were issued by Disciplinary Authority under 10(5) of CCS (CCA) Rules, 1965. Therefore neither any legal provision was ever violated, nor any right of the applicant was ever infringed.

The Id. Counsel for the respondents would argue that, the investigation/proceedings of criminal case being already initiated and departmental case being underway, and as many of the witnesses, documents and information are from the office, it was felt by the Review Committee as well as competent authority that uninhibited presence of the applicant in the whole office would

prejudice proceedings initiated by the CBI as well as the departmental investigation. Therefore the applicant was continued under suspension.

4. The Id. Senior counsel Mr.M.Basu on the contrary would argue, citing the decision rendered by Hon'ble Apex Court in **Ajay Kumar Choudhary -vs- UOI [(2015) 7 SCC 291]** and in OA 581/15 rendered by this Tribunal, that the authorities ought not to have put the applicant under suspension unnecessarily. If the respondents apprehended that the applicant would influence the witnesses or tamper with the evidence he could have well been transferred out of his present place of posting instead of putting him under continued intimidations and humiliation.

5. The issues that fell for determination were therefore the following :

- i) whether the suspension could be continued further without issuance of a formal charge sheet and initiation of departmental proceedings; and
- ii) in that event whether the suspension order had to be revoked.

6. In **Ajay Kumar Choudhary** supra, Hon'ble Apex Court had ruled 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.

12. 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."

Hon'ble Apex Court observed as under :

"Even where a person is released from incarceration after expiry of 90 days in terms of proviso to S.167 (2) Cr.P.C., 1973 even though accused of most heinous crimes, a fortiori suspension should not be continued after expiry of similar period especially when memorandum of charge sheet is not served on the suspended person - Proviso to S. 167(2) Cr.P.C.

postulates personal freedom, but respect and preservation of human dignity as well as right to a speedy trial should also be placed on the same pedestal.

Finally the Hon'ble Court directed infra :

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

(emphasis supplied)

In order to apply the proposition we have to delve into the factual background of the case. The background of the case was infra :

The appellant therein, namely Ajay Kumar Choudhary received a suspension order dated 30.9.11.

Various litigations were initiated by him in the Central Administrative Tribunal, Chandigarh Bench, as well as in the Punjab & Haryana High Court. On 28.12.2011 the Appellant's suspension was extended for the first time for a further period of 180 days. This prompted him to approach the Central Administrative Tribunal, Chandigarh Bench (CAT), and during the pendency of the proceedings the second extension was ordered with effect from 26.6.2012 for another period of 180 days. The challenge to these extensions did not meet with success before the CAT. Thereafter, the third extension of the Appellant's suspension was ordered on 21.12.2012, but for a period of 90 days. It came to be followed by the fourth suspension for yet another period of 90 days with effect from 22.3.2013.

The Tribunal gave partial relief to the Appellant in terms of its Order dated 22.5.2013 opining that no employee can be indefinitely suspended and that disciplinary proceedings have to be concluded within a reasonable period. The CAT directed that if no charge memo was issued to the Appellant before the expiry on 21.6.2013 of the then prevailing period the Appellant would be reinstated in service. The CAT further ordered that if it was decided to conduct an Inquiry it had to be concluded "in a time bound manner"..... The Respondent, Union of India filed a Writ Petition before the Delhi High Court contending that the Tribunal had exercised power not possessed by it inasmuch as it directed that the suspension would not be extended if the charge memo was

served on the Appellant after the expiry of 90 days from 19.3.2013 (i.e. the currency of the then extant Suspension Order). This challenge found favour with the Hon'ble Court in terms of the judgment dated September 04, 2013 assailed before the Hon'ble Apex Court.

It was submitted by the Additional Solicitor General that the original suspension was in contemplation of a departmental inquiry which could not be commenced because of a directive of the Central Vigilance Commission prohibiting its commencement if the matter was under the investigation of the CBI. The sanction for prosecution was granted on 1.8.2014. It was also submitted that the Charge sheet was expected to be served on the Appellant before 12.9.2014, (viz., before the expiry of the fourth extension)."

In the present case the applicant, is already facing criminal proceedings initiated by CBI and his suspension was ordered in terms of Rule 10(2)(a) of CCS (CCA) Rules after he was detained in custody for more than 48 hours.

The cases therefore factually differ. In view of such dissimilarity in the circumstances preceding suspension in each of the cases it would be highly improper to make an observation that the suspension or its continuation was unjustified.

7. Be that as it may, it could be noted that the applicant's appeal to the Chief Commissioner, Central Excise and Service Tax, Kolkata on 1.2.16 for revocation of suspension was not disposed of before granting renewals of suspension on 16.3.16 (Annexure A/14) and further on 17.6.16 (Annexure A/15).

8. We have also noted that the extensions were granted with the following order :

"The Review Committee is of the view that the suspension of Shri Mihir Sen Barman should continue as his uninhibited presence in office will prejudice the investigation/inquiry pertaining to contemplated Departmental Proceedings and hence recommended for extension of suspension of Shri Mihir Sen Barman, Superintendent for a further period of 90 (ninety) days beyond 24.6.16.

Hence, the suspension of Shri Mihir Sen Barman, Superintendent, is hereby extended for a period of 90 (ninety) days beyond 24.6.16 as per existing condition of suspension."

Therefore the order of extension could not be termed as bereft of actual reasons for putting the applicant under continued suspension. Nevertheless, the prayer for revocation in our considered opinion had to be disposed of with a reasoned order.

9. Hence, for the ends of justice, it is ordered that the Appellate Authority shall consider the appeal dated 1.2.16 in the light of the decision supra and pass a reasoned and speaking order before the next review.

10. Accordingly the OA stands disposed of with no order as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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