

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/92/2017

Date of order : 15.06.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

JUGAL KISHORE

S/o Late Ram Swaroop Agarwal,
By occupation service as
Accountant Member,
Income Tax Appellate Tribunal
Calcutta under the
Ministry of Law & Justice,
Government of India having
R/o Nizam Palace, Type VI quarters,
Flat No. 9 (3rd Floor),
234/4 AJC Bose Road,
Kolkata - 700020.

...APPLICANT

VERSUS

1. Union of India, through
The Secretary,
Ministry of Law & Justice,
Govt. of India,
Shastri Bhawan,
C-Wing, 4th Floor,
New Delhi - 110001.
2. The President,
Income Tax Appellate Tribunal,
Central Government Office Buildings,
4th Floor,
101 Maharshi Karve Marg,
Mumbai - 400020.
3. The Vice President,
Income Tax Appellate Tribunal
Calcutta, Allepy Court,
6th & 7th Floor,
225/C AJC Bose Road,
Calcutta - 700020.
4. The Dy. Inspector General &
Head of Branch,
Central Bureau of Investigation,
Anti Corruption Branch,
14th Floor, 2nd MSO Building,
Nizam Palace,
234/4 AJC Bose Road,
Kolkata - 700020.

...RESPONDENTS.

For the applicant : Mr.S.Samanta, counsel
 Mr.S.K.Dutta, counsel
 Mr.P.K.Mondal, counsel

For the respondents: Mr.P.Mukherjee, counsel

O R D E R

Per Ms. Manjula Das, Judicial Member

Being aggrieved with the suspension of service of the applicant, he approached before this Tribunal seeking the following reliefs :

- a) Direction do issue quashing and setting aside the order of suspension dated 15.5.2008 being Annexure A/8 hereto as extended by the subsequent orders first of which is dated 12.8.2008 and the last of which is dated 28.12.2016 being Annexure A/19 hereto and thereupon 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 suspension dated 15.5.2008 being Annexure A/8 hereto as extended by the subsequent orders first on which is dated 12.8.2008 and the last of which is dated 28.12.2016 being Annexure A/19 hereto;
- c) Direction do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and upon such production being made to render conscionable justice by passing necessary orders thereon;
- d) Costs and costs incidental hereto;
- e) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper.


2. Mr. S.Samanta, Id. Counsel appeared on behalf of the applicant and Mr.P.Mukherjee, Id. Counsel appeared on behalf of the respondents.

3. It is submitted by the Id. counsel that although the applicant was arrested on 14.5.2008 by the CBI, however, he was released on bail vide order dated 11.7.08 and the said bail was continued from the said date i.e. 11.7.2008. Immediately after granting the bail dated 11.7.2008 the applicant preferred representations before the authorities on 8.8.2008. however, his order of suspension dated 15.8.2008 has been subsequently extended for a further period of 180 days by an order dated 12.8.2008 and thereafter extended from time to time on several dates. Thereafter the applicant has made several representations on several dates.



4. It is submitted by the Id. Counsel that CBI has filed charge sheet before the Ld. CBI Court for accepting Rs.30 lakh as illegal gratification. Ld. Counsel further submitted that he approached this Tribunal in OA 1225/2009 vide order dated 22.10.2009 against the suspension where this Tribunal dismissed his case. He approached again in RA 29/09 which was dismissed in circulation. Being aggrieved by the inaction of the respondents the applicant filed OA 146/2011 before this Tribunal which was also dismissed. Having no other alternative the applicant approached Hon'ble High Court in COCT 7/13 where the Hon'ble High Court inter alia directed the respondent authorities to strictly adhere to the rules and office memorandum issued by the competent authority while grating extension of the suspension period of the petition in future. After passing of the Hon'ble High Court's order dated 4.2.2015, the applicant made fresh representation on 1.6.2015 for considering his case in view of DOPT dated 18.11.2014 in regard to the issue of prolonged suspension and the order dated 16.2.2015 passed by the Hon'ble Apex Court in Ajay Kumar Choudhary -vs- Union of India where it is held that prolonged suspension is not justified. According to the Id. Counsel instead of considering the representation dated 1.6.2015 the respondent authorities again issued an order of extension of the order of suspension on 1.7.2015 extending the order of suspension for a further period of 180 days beyond 7.7.2015. It was submitted by Mr.Samanta that the applicant thereafter made representation dated 23.5.2016 for revocation of the order of suspension but the respondents issued the order of further extension of suspension on 27.6.2016 for a period of 180 days and finally the latest order issued on 28.12.2016. It was further submitted that the impugned orders of extension of suspension speaks of the reason for such extension.

5. Mr.Samanta further relied upon DOPT OM dated 18.11.2014 which provides that a Government servant may be placed under suspension where a disciplinary proceeding against him is contemplated or is pending or (a) where a disciplinary proceeding against him is contemplated or is pending, (b) 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 (c) where a case against him in respect of any criminal offence is under investigation, enquiry or trial.

6. It was further submitted by the Id. Counsel that prolonged suspension is illegal, arbitrary, whimsical, erroneous, malafide, opposed to all norms of justice and in colourable exercise of power and/or without jurisdiction. As per provisions of Rule 10(1)(5) of CCS (CCA) Rules, 1965 keeping the applicant under prolonged suspension is in violation of the Government of India orders on the subject. It is further submitted that review committee extending the orders of suspension has failed to consider the law laid down by the Hon'ble Apex Court and the service rules in this regard with a predetermined notion that as if continuance of the order of suspension is the rule and withdrawal the exception whereas it is exactly the other way round. Further the review committee has failed to consider the continuance of the suspension order was unwarranted. According to the Id. Counsel review committee would go to show that the said authority has failed to discharge duty as a quasi judicial authority but rather has acted akin to an executive authority. It was further submitted that the orders of review committee suffers from the vice of malice in law and malice in fact and would not in any way prejudice the said case.

7. Mr. Samanta further submits that an order of suspension is in aid of a specific purpose namely investigation, but in the case of the applicant it is a CBI investigation and to obviate tampering of records but ⁱⁿ the instant case there is no formation of opinion that there could be tampering of records/evidence/interference in the CBI investigation, CBI having already filed charge sheet but charges have not been framed till date and hence there ought to have been an order of revocation of the order of suspension instead of continuing the same upon review.

8. According to the Id. Counsel the continuance of the order of suspension for long 8 years without framing of charges of CBI Court and discharge of the alleged bribe givers goes to show that the review committee has failed to apply their mind to the materials on records. It was further submitted by the Id. Counsel that suspension and thereafter extension of suspension from time to



time is not at all sustainable under the law and the instant OA deserves to be allowed by setting aside the suspension order.

9. To substantiate his case ld.counsel for the applicant relief upon the decision of Hon'ble Apex Court in Civil No. 1912/2015 (Ajay Kumar Choudhary).

10. By countering the arguments advanced by Mr.S.Samanta, ld. Counsel for the applicant, Mr.P.Mukherjee, ld. Counsel for the respondents submitted that a case was registered on receipt of a reliable source information to the effect that M/S S.K.Tulsiyan & Co., Kolkata used to appear in Income Tax matters for their clients before the various Income Tax authorities including Income Tax Appellate Tribunal, Kolkata where Shri Jugal Kishore was working as an Accountant Member. The information further revealed that the applicant had demanded an illegal gratification of Rs.30 lakh from M/s S.K.Tulsiyan & Co. for the undue favours being shown to them by him in the Income Tax matters of various parties represented by the said M/s S.K.Tulsiyan & Co. before the Income Tax Appellate Tribunal, Kolkata. The said amount of Rs.30 lakh was to be paid to the applicant at his residence located at Flkat No.1, Type- VI, Nizam palace, Kolkata by one Shri Nishant Jain after collecting the same from one Shri Subhash of M/s Mayankh Security Pvt. Ltd. Kolkata on the instruction of Ravi Tulsiyan of M/s S.K.Tulsiyan & Co. on 13.5.2008 at about 8.30 PM. Since the said facts disclosed commission of cognizable offence u/s 120B IPC r/w Section 7 & 12 of P.C.Act 1988, RC 21(A)/2008-Kol was registered by CBI, ACB, Kolkata against the FIR named accused persons of the said case.

11. It is stated that in order to prove the allegations levelled in the FIR of the above referred case, it was decided to apprehend the accused persons, after keeping a constant and careful watch under suitable cover on the residential premises of the applicant. The said watch was undertaken by the team of officers of CBI, ACB, Kolkata along with the independent witnesses on 13.5.2008. During the course of investigation, it was found that on 13.5.08 at around 20.15 hours two persons alighted from the royal blue coloured Hyundai Verna car being registration No. W-02X 7774 and entered inside the residence



of the applicant. After a few minutes both of them came out and took a black coloured briefcase from the rear seat of the said car, and then again went inside the residence of the applicant. When both the persons finally came out of the said residence and were heading towards the aforesaid car, they were intercepted. They disclosed their identity as one Shri Subhash Chand Barjatya and one Shi Nishant Jain, the aforesaid FIR named accused persons. On being challenged, they disclosed that they had come out of the residence of the applicant after handing over the bribe amount of Rs.28 lakh in cash out of the total bribe of Rs.30 lakh to the applicant as per the instructions of Ravi Tulsiyan. They further disclosed that since the rest bribe amount of Rs.2 lakh were in the denomination of Rs.100/- and Rs.50/- each and the applicant had refused to take the said bribe being G.C.Notes of such smaller denomination, and had directed them to replace the said with G.C.Notes of higher denomination and hand over later.

12. It is also submitted that the said accused carrying his black coloured briefcase, along with his accomplice and co-accused, were asked to proceed to the aforesaid official residence of the applicant along with the team. Consequent upon disclosing identity and purpose of visit to the applicant, the above mentioned bribe amount of Rs.2 lakh was recovered from the briefcase of the accused. Immediately search was also conducted in the residence of the applicant. The bribe amount of Rs.28 lakh was recovered from the green coloured soft bag kept beside the bed inside the bedroom of the applicant. The said proceedings were conducted in the immediate presence of the independent witnesses. The entire facts and circumstances have been detailed out in the memorandum and the recovery memorandum, submitted before the Ld. Court.


13. It is further stated that the investigation revealed that the bribe amount of Rs.30 lakh was brought by Subhash Chand Barjatiya from the house of S.K.Tulsiyan as per the instructions of Ravi Tulsiyan and was handed over to the applicant for favour obtained and favours to be obtained. President, ITAT had confirmed that the applicant has been arrested by CBI in Kolkata on



14.5.2008 at 4.01 hours and had requested that action as may be deemed appropriate in the circumstances of the case, be taken.

14. Thereafter Mr. Mukherjee Id. Counsel submitted that the guiding principles given in Chapter 2 of the CCS (CCA) Rules, provide that the Government servant may be placed under suspension if the offence includes corruption, embezzlement or misappropriation of government money, possession of disproportionate assets, misuse of official powers for personal gain. It is also submitted that it was informed by CBI that a case under Section 120-B IPC read with Sections 7 & 12 of the Prevention of Corruption Act was registered and the investigation is continuing. The above matter is a criminal offence and as provided under Rule 10 of CCS (CCA) Rules where a case against a government servant in respect to any criminal offence is under investigation, inquiry or trial, he can be placed under suspension. Further the guiding principles regarding suspension also suggest that in case of corruption matters the Disciplinary/Appointment Authority can place the Government servant under suspension.

15. Accordingly the applicant was placed under suspension w.e.f. 15.5.2008 initially for a period of 90 days and thereafter continuation of the suspension was reviewed by the competent authority and the suspension was extended. The applicant made representations for revocation of suspension. However, after examination of the issue the competent authority took a decision not to agree to the request of the applicant as the suspension was extended up to 7.8.09 on the recommendation of the review committee. It is submitted by the Id. Counsel that the applicant submitted another application dated 20.5.09 inviting the attention of the respondents to DOPT's OM dated 7.4.04. The respondents have already taken note of the said instructions while reviewing the suspension of the applicant in February 2009. Thereafter the respondents took up the exercise to review the suspension of the applicant in July 2009 and placed the matter before the said Review Committee and the said Review Committee was still of the view that the complaint against the applicant was of a very serious nature and as such, the revocation of his suspension would not




be in public interest. Therefore the said review committee recommended for continuation of the suspension period of the applicant for a further period of 180 days w.e.f. 8.8.2009.

16. Mr. Mukherjee further submitted that another representation dated 22.11.2010 filed by the applicant was placed before the Review Committee which considered the review of suspension period of 2011 and after considering his representation and taking into consideration the views of CBI, recommended continuance of suspension period of the applicant. Accordingly the competent authority extended the period of suspension of the applicant for a further period of 180 days w.e.f. 30.1.2011. Thereafter the applicant filed another representation dated 2.2.2011 for increasing his subsistence allowance which was considered by the competent authority and decided to increase the subsistence allowance by 50% of the subsistence allowance which was admissible to the applicant during the first three months of his suspension and accordingly the order was issued on 21.2.2011.

17. After considering the request of CBI the competent authority took a tentative view to grant sanction for prosecution and sought the concurrence of the CVC which agreed with the Ministry and recommended grant of sanction for prosecution of the officer. Sanction order dated 28.12.2011 was issued permitting the officer to be prosecuted. CBI vide their letter dated 10.4.2012 informed that after receipt of the sanction for prosecution, charge sheet was filed on 9.1.2012 before the Ld. Special Judge CBI, Alipore. CBI also recommended that the officer should not be allowed to take the benefit of delay in conclusion of investigation in the matter of review of suspension as the delay is because of his non-cooperation in further investigation.

18. The applicant filed OA 146/2011 before this Tribunal against the order of suspension and extension of period of suspension and the Tribunal dismissed the OA vide order dated 10.1.2013.

19. The respondents categorically stated in para 6.36 of their reply that CBI in his letter dated 16.6.2016 informed that seven Criminal Revisions filed by the applicant as well as CRR No. 2042/15 filed by CBI against the discharge of



co-accused persons, were still pending in Hon'ble High Court, Kolkata. CBI felt that revoking of suspension of the applicant at this stage would be detrimental to the interest of the prosecution case which is being deliberately delayed at the behest of the applicant and other co-conspirators. CBI also ensured that it is taking all possible steps on its part for early conclusion of the trial. It has been informed by the CBI that the applicant has involved himself in adhering to delaying tactics and hampered the procedure of fair trial and thus jeopardized the process of justice. In para 6.38 the respondents have stated that suspension of the applicant was last extended for 180 days beyond 28.12.2016.

20. The respondents in their reply para 20(a) relied upon the following decisions :

- i) Union of India & Ors. -vs- Rajib Kumar [AIR 2003 SC 2917]
- ii) Nelson Motis -vs- Union of India [(1992) 4 SCC 711]
- iii) Secretary to Govt., Prohibition & Excise Department -vs- L.Srinivasan [(1996) 3 SCC 157]
- iv) Allahabad Bank & Anr. -vs- Deepak Kumar Bhola [(1997) 4 SCC 1]

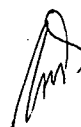
It was further submitted by Id. Counsel that due to the applicant facts and circumstances and ratio laid down by the Hon'ble Apex Court the case of the applicant deserves to be dismissed.

21. We have heard both the Id. Counsels and perused the pleadings and materials placed before us and the decisions relied upon

22. For coming to a logical conclusion the points to be considered are as to whether the order of suspension dated 15.5.2008 and subsequent extension of suspension dated 12.8.20087 and 28.12.2016 which are all impugned herein are ex facie illegal or legally found to be valid and such suspension is to be sustained.

23. Primarily we are coming to the circumstances under which the applicant was placed under suspension :

- (i) Ministry of Law & Justice, Govt. of India issued the suspension order dated 15.5.2008 by placing the applicant as hereunder :



"Whereas, a case against Shri Jugal Kishore, Accountant Member, Income Tax Appellate Tribunal, Kolkata Bench, under section 120-B IPC read with sections 7 and 12 of the Prevention of Corruption Act, is under investigation by the Central Bureau of Investigation (CBI).

Now, therefore the President, in exercise of the powers conferred by sub rule (1)(b) of Rule 10 of the CCS (CCA) Rules, 1965, hereby places the said Shri Jugal Kishore, Accountant Member, Income Tax Appellate Tribunal Kolkata Bench, under suspension with immediate effect."

(ii) The said suspension order was extended from time to time by the subsequent orders dated 12.8.2008 and 28.12.2016 which are all impugned herein.

24. a case was registered on receipt of a reliable source information to the effect that M/S S.K.Tulsiyan & Co., Kolkata used to appear in Income Tax matters for their clients before the various Income Tax authorities including Income Tax Appellate Tribunal, Kolkata where Shri Jugal Kishore was working as an Accountant Member. The information further revealed that the applicant had demanded an illegal gratification of Rs.30 lakh from M/s S.K.Tulsiyan & Co. for the undue favours being shown to them by him in the Income Tax matters of various parties represented by the said M/s S.K.Tulsiyan & Co. before the Income Tax Appellate Tribunal, Kolkata. The said amount of Rs.30 lakh was to be paid to the applicant at his residence located at Flat No.1, Type - VI, Nizam palace, Kolkata by one Shri Nishant Jain after collecting the same from one Shri Subhash of M/s Mayankh Security Pvt. Ltd. Kolkata on the instruction of Ravi Tulsiyan of M/s S.K.Tulsiyan & Co. on 13.5.2008 at about 8.30 PM. Since the said facts disclosed commission of cognizable offence u/s 120B IPC r/w Section 7 & 12 of P.C.Act 1988, RC 21(A)/2008-Kol was registered by CBI, ACB, Kolkata against the FIR named accused persons of the said case.

The investigation made by CBI revealed that the bribe amount of Rs.30 lakhs was brought by Subhash Chand Barjatiya from the house of S.K.Tulsiyan as per instruction of Ravi Tulsiyan and within the knowledge of Sajan Kumar Tulsiyan. Barjatiya handed over the same to the applicant along with Nishant Jain. The said Nishant Jain was co-conspirator of the act and on the basis of information phone was tapped with the consent of the competent



authority i.e. MHA, Govt. of India, it is very much evident that Nishant Jain got clear cut instruction from Ravi Tulsyan about the venue and time of handing over the bribe money to Jugal Kishore, Accountant Member, ITAT (the applicant). The said bribe money was handed over to the applicant for favour obtained and the favours to be obtained.

The President ITAT had confirmed that Jugal Kishore, Accountant Member, ITAT (the applicant) has been arrested by CBI I Kolkata on 14.5.2008 at 04.01 hours in the above matter. He had requested the action as may be deemed appropriate in the circumstances of the case may be taken in the matter. Accordingly the applicant was placed under suspension w.e.f. 15.5.2008 initially for a period of 90 days by invoking the power as provided under Rule 10 of CCS (CCA) Rules where a case against the government servant in respect of criminal offence is under investigation, enquiry or trial, he can be placed under suspension. Thereafter on the recommendation of Review Committee constituted for the purpose of extension of suspension, the applicant's period of suspension was extended from time to time.

25. It is noted from the case records that as the representations were not disposed of by the respondent authorities, the applicant approached this Tribunal in OA 1225/2009 with a prayer for quashing of the order of suspension dated 15.5.2008 and subsequent extension orders and to allow him to resume his duties with full back salaries with interest. This Tribunal after hearing the parties dismissed the OA vide order dated 22.10.2009 holding that -

"It was also held in that case that 'it is no doubt true that period of suspension should not be unnecessarily prolonged but if plausible reasons exists and the authorities feel that the suspension needs to be continued merely because it is for a long period that does not invalidate the suspension.'

In view of the above, I am unable to grant any relief to the applicant and accordingly the OA is dismissed. No costs."

Thereafter the applicant filed RA 29/09 where this Tribunal vide order dated 20.1.2010 rejected the Review Application on circulation.

26. It is further revealed that the applicant again approached this Tribunal in OA 146/2011 against the order of suspension dated 15.5.2008 and



subsequent order extending the period of suspension, where this Tribunal vide order dated 10.1.2013 dismissed the OA. The applicant thereafter approached Hon'ble High Court vide COCT 7/13 challenging the order dated 10.1.2013 passed by this Tribunal in RA 29/09. Hon'ble High Court vide order dated 4.2.2015 dismissed the COCT 7/13 with CAN 134/15 passed an order as hereunder :

"We are of the opinion ;that suspension of the petitioner cannot be revoked at this stage when the CBI has already filed charge sheet before the concerned CBI court and the trial will commence in near future.

It is, however, not in dispute that the matter is pending before the concerned CBI court for a considerable period and the suspension period of the petitioner has been extended from time to time in view of the pendency of the aforesaid CBI case.

In any event, we are of the opinion that the CBI authorities are in no way responsible for the delay in holding the trial."

27. From the record it appears that CBI in its letter dated 5.1.2015 informed that the case was pending before CBI Court, Alipore and three more accused persons of the case have filed discharge petition before the Court to cause further delay in the proceeding. CBI further in its letter dated 18.6.2015 informed that the case was pending before Ld. Special Judge, CBI Court, Alipore for hearing on petition dated 26.2.2015 filed by the applicant for dropping the case and discharging the accused. CBI also stated that the applicant and his co-conspirers were trying every method to stall the trial by trying to agitate the matter in the Hon'ble High Court, Calcutta in order to get a stay in the trial and that the applicant and other co-accused have been filing numerous petitions to bring the trial of the case to a halt. CBI also informed that because of these delaying tactics adopted by the applicant and his co-conspirators, the charges have not yet been framed and the applicant should not be released from suspension.

28. It is also revealed from the records that CBI in its letter dated 21.12.2015, 16.6.2016 and 20.12.2016 informed that the revoking of suspension of the applicant would be **detrimental to the interest of the prosecution case** which is being deliberately delayed at the behest of the applicant and other co-conspirators.



29. In the case of **Allahabad Bank & Anr. -vs- Deepak Kumar Bhola**

[(1997) 4 SCC 1] Hon'ble Supreme Court has held as under :

"We are unable to agree with the contention of learned counsel for the respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted by the CBI which resulted in the filing of a charge sheet, alleging various offences having been committed by the respondents, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a ban should allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisos of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge sheet was filed can also be no ground for allowing the respondent to come back to duty on a sensitive post in the bank, unless he is exonerated of the charge."

30. In the matter of **Union of India & Ors. -vs- Udai Narayan [(1998) 5 SCC**

535] Hon'ble Apex Court has held as under :

"A bare look at Rule 10 of CCS (Classification, Control & Appeal) Rules, 1965 would show that the interpretation placed by the Tribunal does not appear to be correct. An unduly narrow technical view has been taken by the Tribunal to quash the order of suspension. The view of the Tribunal that the expression 'investigation, inquiry over trial' would not include the stage of filing of the charge sheet in the Court and since investigation was over and the trial had not yet commenced, the respondent could not be placed under suspension, we are unable to accept. The delinquent cannot be considered to be any better off after the charge sheet had been filed against him in the Court after completion of the investigation, than his position during the investigation of the case itself. It has been brought to our notice that sanction for prosecution has already been obtained and case has been fixed for framing of charges by the trial court. In this view of the matter we find that the view taken by the Tribunal in the impugned order is not sustainable and the order of suspension was not liable to be quashed on the ground that the case was neither at the stage of investigation or enquiry or trial."

31. In the decision relied upon by Mr. Samanta, Id. Counsel for the applicant in Civil Appeal No. 1912/2015 (Ajay Kumar Choudhary), Hon'ble Apex Court has held that :

- (a) The direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance, is now superseded.
- (b) 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.
- (c) If the Memorandum of charges/Charge sheet is served, a reasoned order must be passed for the extension of the suspension.



- (d) 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 serve any local or personal contact, that he may have and which he may misuse for obstructing the investigation against him.

32. We have noted that while issuing the suspension order the department followed Rule 10 and Rule 10(7) of CCS (CCA) Rules, 1965 reads as hereunder :

"10. Suspension

- (1) 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, may place a Government servant under suspension -
- (a) where a disciplinary proceeding against him is contemplated or is pending, or
 - (b) 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
 - (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(7) an order of suspension made or deemed to have been made under sub rule (1) of (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.

33. We want to clarify the case referred to by the Id. Counsel for the applicant in the case of Ajay Kumar Choudhary (supra) that some principles have been laid down in para 14 of the judgment that the direction of CVC that pending a criminal investigation, departmental proceedings are held to be in abeyance, is now superseded amongst others. In the present case we have noted that there is no such criminal or CBI investigation going on but the CBI, ACB, Kolkata case No. 0102008A0021 against Jugal Kishore, Accountant Member, ITAT (the applicant) is registered and the applicant was charge sheeted with framing of charges and the case is thus at the stage of evidence. Thus the above principal guideline narrated in the case of Ajay Kumar Choudhary (supra) is not applicable in the instant case. More so, it is evidently clear that the applicant or his co-accused persons have repeatedly approached before the Tribunal and Hon'ble High Court which delayed the completion of proceedings.

34. We have further viewed that in the present case the investigation was over and the trial is going on by framing of charges by CBI and it is not in the stage of investigation or enquiry trial. Further we are of the view that the



allegation is of bribery of Rs.30 lakhs which led to the case of CBI under which the applicant was charge sheet and if at this juncture the employee is allowed to continue to remain on duty after facing such grave charges of corruption, there indeed required to keep him away from duty otherwise that would be lenient view of the department to encourage corruption, may be in some other places until he is exonerated of the charges or acquitted by the criminal court.

35. After taking into consideration the entire conspectus of the case and the present case being on a serious issue of corruption and by taking the ratio laid down by Hon'ble Apex Court mentioned in the foregoing paragraphs we are of the view that continuation of suspension of the applicant on being reviewed is valid and accordingly this Original Application does not have any merit.

36. Accordingly the OA is dismissed. No order as to costs.

(DR. NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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