

CENTRAL ADMINISTRATIVE TRIBUNAL
KOKATA BENCH, KOLKATA

CIRCUIT BENCH AT PORT BLAIR

O.A. 1732/AN/2017

Orders reserved on : 25.06.2018

Date of orders : 26/6 June, 2018

CORAM

HON'BLE MR.S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. NANDITA CHATTERJEE, MEMBER (A)

Shri Avinash, S/o Shri D. Appa Rao, Post Graduate Teacher [Music]
[Presently under suspension], Under the Directorate of Education, Andaman
& Nicobar Administration, Port Blair, Resident of Aberdeen Village [Round Basti], Port Blair Tehsil, South Andaman.

.....Applicant

By Advocate : Mr. G.B.Kumar

Versus

1. The Union of India, Through the Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi.- 110001.
2. The Union of India through the Secretary of Ministry of Human Resources Development, Room No. 302 C, Shastri Bhawan, Gate No.1, Connaught Place, New Delhi – 11001.
3. The Hon'ble Lt. Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair – 7441010.
4. The Chief Secretary, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
5. The Secretary-cum- Director [Education], Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.

..... Respondents.

By Advocates: Mr. S.K.Mondal/Mr. S.C. Misra

ORDER

Per S.K. Pattnaik, Member (J):- Applicant challenges the suspension order dated 27th November, 2017 passed on contemplation of a disciplinary proceeding.

2. The ground urged by the applicant is that since within the last six months even no disciplinary proceeding was ever initiated or even a charge memo was not prepared, the continuation of suspension is illegal in the face of authoritative pronouncement of the Hon'ble Supreme Court in the

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case of **Ajay Kumar Choudhary vs. Union of India through its Secretary & Anr.** [Civil Appeal No. 1912 of 2015], [2015] SCC [L&S] 455.

3. The official respondents have filed a reply justifying the suspension. The main ground urged against the applicant is that the applicant remained in unauthorized absence from the School and never responded to the directions of the Department. According to the respondents, the conduct of the applicant was against the interest of the students and also against the discipline of the Government service for which with the approval of the competent authority, he was placed under suspension, vide order dated 27th November, 2011 [Annexure-R-12].

4. At this stage, we do not go into the degree of misconduct as we confine ourselves to the legality of the suspension order. Admittedly, till date, the respondents have not issued any charge-memo. Once no charge memo is served on the delinquent employee, the extension of suspension order beyond three months, becomes illegal.

5. In the case of **Ajay Kumar Choudhary vs. UOI & Anr.** [referred above], Their Lordships of the Hon'ble Apex Court have categorically observed that – "Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration." Here in spite of suspension order, no charge memo or charge-sheet has been served against the applicant, even till today. Therefore, continuation of suspension beyond three months becomes ipso facto illegal. The relevant portion of the observation of Their Lordships in para 14 is extracted below for better understanding of the legal position :

"14. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the

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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."

6. In view of the authoritative pronouncement of the Hon'ble Supreme Court, the impugned order of suspension dated 29th November, 2017 becomes vulnerable as no charge-memo has been served as yet upon the delinquent employee. Hence ordered.
7. The OA is allowed. The suspension order dated 27.11.2017 passed under order dated 29.11.2017 after three months, i.e. after 28th February, 2018 becomes illegal. Respondents to take consequential action on revoking the suspension w.e.f. 1st March, 2018. No costs.

[Dr. Nandita Chatterjee]
Member (Admn.)

mps/-

[S.K.Pattnaik]
Member (Judicial)