

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

ORIGINAL APPLICATION NO.060/00337/2016

**Chandigarh, this the 22nd day of February, 2019
(Reserved on: 24.01.2019)**

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CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...
Tarun Kumar Bhattacharya son of Late Sh. Sachikanta Bhattacharya, aged 52 years, Deputy Commissioner, Income-Tax, Ludhiana, resident of House No. 5, type-IV, Income Tax Colony, Jalandhar (Group A)

Applicant

(Present: Mr. V.K. Sharma, Advocate)

Versus

1. Union of India through the Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi – 110001.
2. Chairman, Central Board of Direct Taxes (CBDT), Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. Principal Chief Commissioner of Income Tax, Central Revenue Building, Sector 17, Chandigarh.
4. Central Vigilance Commissioner, Central Vigilance Commission, Satarkta Bhawan, GPO Complex, Block-A, INA, New Delhi – 110023.
5. Superintendent of Police, Central Bureau of Investigation, Plot No. 8, Sector 30 A, Chandigarh – 160030.

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Respondents

(Present: Mr. K.K. Thakur, Advocate)

**ORDER
SANJEEV KAUSHIK, MEMBER (J)**

1. For the reasons stated therein, MA No. 060/01735/2018 is allowed and the written statement of Respondents No. 1 to 3, filed along there with, is taken on record.
2. The applicant assails the order dated 13.05.2013 (Annexure A-1 colly) whereby he has been placed under deemed suspension

w.e.f. 03.04.2013 by invoking sub-Rule (2) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as Rules, 1965, and the suspension period continued since then by various orders including the last order dated 22.07.2016 being null and void. In support of his claim, he has placed reliance on the pronouncement in the case of **Ajay Kumar Chaudhary Vs. Union of India & Others**, 2017 (7) SCC 291.

3. The facts are not in dispute.

4. Applicant, while working as Deputy Commissioner, Income Tax at Ludhiana, was arrested along with one Ashwani Gupta, during a CBI raid, made on the basis of a complaint, on 03.04.2013. He was released on bail on 21.05.2013, as per orders of the CBI Court, Patiala. . While he was in custody, the respondents passed an order dated 13.05.2013 (Annexure A-1) whereby the applicant was placed under deemed suspension w.e.f. 03.04.2013, by invoking sub-rule 2 of Rule 10 of Rules, 1965. During the suspension, the applicant was allowed subsistence allowance, as admissible under FR 53 (1) read with FR 53 (2) with effect from the date when he was placed under suspension. Subsequent to that, by various orders, the suspension of the applicant was extended from time to time. The suspension allowance was enhanced from 50% to 75% vide order dated 21.11.2013. Applicant was also served with a charge-sheet dated 05.02.2014 (Annexure A-3) to which he filed reply dated 14.02.2014 (Annexure A-4). He made various representations for revocation of his suspension, and reinstatement in service, as there

was unjustified delay in prosecution matter which is pending before the CBI Court, Patiala. His last representation was dated 19.08.2015 which was made to the Ministry of Finance. By order dated 16.11.2016, the respondents revoked the suspension of the applicant and reinstated him into service, pending departmental and criminal proceedings. Applicant is before this Court, by way of the present O.A., for invalidation of the action of the respondents for continuing his suspension from 03.04.2013 to 16.11.2016, on the ground that the continued suspension is without any reason and is contrary to law settled by the Hon'ble Supreme Court in the case of Ajay Kumar Chaudhary (supra). Hence this O.A.

5. The respondents did not dispute the factual accuracy about the involvement of the applicant in criminal case and his placement under suspension, and then extension of his suspension till the order of revocation of suspension dated 16.11.2016, but they have denied the allegation levelled by the applicant that his suspension is without any reason. It has been submitted that each time a Committee was constituted for the purpose of looking into the matter, it opined to continue the suspension period of applicant on the ground of pendency of criminal as well as the departmental proceedings. It has also been submitted therein that on the basis of a reference received on 02.11.2016 from the DGIT (Vigilance), contrary to the decision of the CBI to place the applicant under suspension due to pendency of criminal case, the Competent Authority has revoked the suspension of the applicant, vide order dated 16.11.2016. It has been submitted that the criminal proceedings are pending on identical grounds on which the

applicant has been charge-sheeted and for that reason only the respondents could not proceed against him departmentally. The respondents have placed reliance upon the judgment passed in the case of **Ankur Saxena and Another Vs. State of U.P. and Others** (Special Appeal No. 308 of 2015 decided on 19.05.2015) whereby the Hon'ble High Court of Judicature at Allahabad considered the judgment passed in the case of Ajay Kumar Chaudhary (supra), and opined that it is not a thumb rule that suspension cannot be extended after expiry of 90 days period, if the authority has not recorded a reason to prolong the period.

6. We have heard learned counsel for the parties.
7. Mr. V.K. Sharma, learned counsel for the applicant has based his argument on the ratio laid down by the Hon'ble Supreme Court in the case of Ajay Kumar Chaudhary (supra) and submitted that suspension cannot be prolonged without recording reason in support thereof, therefore, since the applicant's suspension, in this case, continued from 2013 till it was revoked in the year 2016, without there being any reason, the same be held illegal. He prayed that the period under which the applicant was placed under suspension be revoked and counted for consequential benefits.
8. Mr. K.K. Thakur, learned counsel for the respondents argued what has been stated in the written statement. Apart from that he argued that since the departmental as well as criminal proceedings have not been completed, therefore, it cannot be said that there is nothing against the applicant for which he was placed under suspension. It is also submitted that when the applicant was placed under suspension, judicial pronouncement in the case of

Ajay Kumar Chaudhary (supra) was not there, and the Competent Authority, based upon the relevant rule formulation, after recording reasons, passed the order for extension in suspension, therefore, they cannot be said to be at fault based upon the law prevalent at that time.

9. We have given thoughtful consideration to the matter, perused the pleadings and judgments relied upon, with the able assistance of the learned counsel for the parties.

10. Admittedly, the applicant was placed under deemed suspension w.e.f. 03.04.2013 when he was arrested by the CBI, and a criminal case was registered against him, which is still pending before the Competent Court of law. He was also served with a charge sheet dated 14.02.2014 but the departmental proceedings were put on hold because of pendency of criminal proceedings on the same set of charges. Pleadings suggest that the applicant has not challenged the action of the respondents in not continuing with the departmental proceedings on account of criminal proceedings, therefore, we are not commenting upon this aspect of the matter as we are not called for in that connection.

11. The only plea raised herein before us is that continuation of suspension of the applicant till it was revoked on 16.11.2016 was without any basis and contrary to the law laid down in the case of Ajay Kumar Chaudhary (supra), and therefore it be declared invalid.

12. The judgment in the case of Ajay Kumar Chaudhary (supra), has been misconstrued by the learned counsel for the applicant. A perusal of the said judgment does not, in any manner, suggest that

the suspension cannot be extended after expiry of period of 90 days or 180 days, as suggested by the learned counsel for the applicant. What Lordships have held is that while extending the suspension, the Competent Authority has to record reasons in writing about why it was necessary to place or continue an employee under suspension. It is not the case of the applicant that his case was not reviewed by a Committee constituted for the purpose. Thus, we do not find any reason to invalidate the action of the respondents, which the applicant has challenged. If he was aggrieved against continuation of suspension then he could have invoked jurisdiction of this Court at that time. Now, at this stage, when the decision to extend the suspension period had already been announced and implemented, no order can be passed. The case of Ajay Kumar Chaudhary (supra) will not give him any right to seek invalidation of the said action which has already been completed by the applicant. Apart from that, Lordships also did not make any thumb rule that suspension period cannot be extended beyond 180 days.

13. In view of the above, we find the O.A. devoid of any merit, and it is dismissed as such. No costs.

**(P. GOPINATH)
MEMBER (A)**

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**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 22.02.2019