

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.208/2019

DATE OF DECISION: 03<sup>rd</sup> May, 2019

**CORAM: BHAGWAN SAHAI, MEMBER (A)**  
**R.N. SINGH, MEMBER (J)**

M.Y.A. Shaikh  
(Mohad Yaseen Abdulgani Shaikh)  
Aged 59 years (DOB 31.05.1959)  
S/o. Abdul Gani Shaikh  
Working as Assistant Director Grade-II  
(Technical) In the Regional  
O/O Textile Commissioner  
Kendriya Sadan, Near RBI, CBD  
Belapur, Navi Mumbai - 400 614.  
Residing at 505, White House,  
Building No.3, Near Anjuman School,  
Buddha Colony, S.G. Barve Marg,  
Kurla (West). . . . . **Applicant**

**( By Advocate Ms. Priyanka Mehndiratta)**

**VERSUS**

1. The Union of India  
Through its Secretary (Textiles)  
Ministry of Textiles,  
Udhyog Bhavan, New Delhi - 110 011.
2. The Textile Commissioner  
Nishtha Bhavan (New CGO Building)  
48, New Marine Lines, Mumbai - 400 020.
3. The Deputy Director (Administration)  
O/o The Textile Commissioner  
Nishtha Bhavan (New CGO Building)  
48, New Marine Lines, Mumbai - 400 020.
4. The Deputy Director (Vigilance)  
O/o The Textile Commissioner  
Nishtha Bhavan (New CGO Building)  
48, New Marine Lines, Mumbai-400 020.
5. The Director & Officer Incharge  
O/o Textile Commissioner

Kendriya Sadan, Near RBI,  
CBD Belapur,  
Navi Mumbai - 400 614. ... **Respondents**

**(By Advocate Shri N.K. Rajpurohit)**

**O R D E R (ORAL)**

**Per: R.N. SINGH MEMBER (J)**

The applicant who is working as Assistant Director Grade - II (Technical) in the office of the respondent No.2 has filed the present OA under section 19 of the Administrative Tribunals Act, 1985 praying, *inter alia*, the following reliefs:-

*“8(a) This Hon'ble Tribunal may kindly be pleased to quash and set aside the continued suspension of the applicant beyond the initial 90 days vide impugned orders dated 31.07.2018, 14.12.2018 and 28.01.2019 (A-3, A-2 and A-1 respectively) in view of the judgment of Hon'ble Supreme Court in Ajay Kumar Chaudhary's case:(2015) 7 SCC 291.*

*(b) This Hon'ble Tribunal may kindly be pleased to quash and set aside the review of suspension order at Exhibit A-1 to A-3 as it suffers from various illegalities, arbitrariness and non application of mind by the Disciplinary Authority.*

*(d) This Hon'ble Tribunal may kindly be pleased to direct the respondents to reinstate the applicant.*

*(e) This Hon'ble Tribunal may kindly be pleased to direct the respondent to grant all the consequential benefits of his salary minus subsistence allowance to him for the interregnum period i.e. from the date when his initial suspension period after 90 days and till the date of his reinstatement.*

(f) This Hon'ble Tribunal may kindly be pleased to direct the respondents that initial period of suspension up to 90 days shall be decided in accordance with Fundamental Rules 54-B.

(g) This Hon'ble Tribunal may kindly be pleased to pass such orders or reliefs as deemed fit and proper in the facts and circumstances of the case in favour of applicant and against respondent.

(h) Allow the cost of this application to the applicant."

2. The precise facts of the present OA are that in view of the contemplated disciplinary proceedings against him, the respondents suspended the applicant with immediate effect vide order dated 07.05.2018 (Annex A-5) by invoking the powers conferred under sub-rule (1) of Rule 10 of the CCS(CCA) Rules, 1965. That suspension was continued by the respondents for a further period of six months w.e.f. 04.08.2018 vide order dated 31.07.2018 (Annex A-5), and vide order dated 28.01.2019 w.e.f. 31.01.2019 for a period of 90 days. The suspension has further been reviewed by the respondents and extended from 01.05.2019 upto 31.05.2019 vide order dated 25.04.2019 (Annex A-15) with MA No.282/2019 filed by the applicant on 30.04.2019.

3. Learned counsel for the applicant submits that continuation of the suspension of the applicant after period of 90 days of the initial suspension vide order dated 07.05.2018 is contrary to the law laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary Vs. Union of India through its Secretary and another reported in 2015(7) SCC 291 and also contrary to the provisions of OM dated 07.01.2004 issued by Department of Personnel & Training, the Nodal Department of the respondents (Annex A-14) as well as the office Memorandum dated 21.07.2016 issued by the Department of Personnel & Training wherein the respondents have themselves referred to the law laid down by the Hon'ble Apex Court in Ajay Kumar Choudhary (supra).

4. In response to the notice issued by this Tribunal, the respondents have filed their reply and the pleadings were treated as complete. Learned counsel for the respondents Mr. Rajpurohit argues that there has been bonafide reason in continuation of the suspension even without issuing the charge memo for initiation of the departmental proceedings against the applicant within 90

days (3 months) of such suspension inasmuch as the number of beneficiaries i.e., units/weavers/entrepreneurs stated to have availed of/claimed the benefits of the scheme is more than 13900 and the total financial burden on the Government exchequer is to the tune of Rs.133 Crore. In view of the role and severity of offence committed by each of the members including the applicant in implementation of the said in-situ upgradation scheme of Government of India for Plain Powerlooms by examining the individual cases is underway and is likely to take longer time. He further argues that the judgment of Hon'ble Apex Court in Ajay Kumar Choudhary (supra) does not lay down 'an absolute law to the effect that if on account of contemplated disciplinary proceedings, an individual is kept under suspension and the charge sheet is not issued within 90 days of such suspension, the applicant becomes entitled for being reinstated or the subsequent order of continuation of suspension becomes invalid. In this regard he refers and relies upon the judgment/order dated 13.09.2017 of a Division Bench of Hon'ble High Court of Delhi in W.P. (C)

8134/2017 (Government of NCT of Delhi VS. Dr.

Rishi Anand) . He further relies upon the judgment dated 27.10.2017 of Hon'ble Madras High Court, WA(MD) No.1312 of 2017 in Arignar Anna Sugar Mills Ltd. Vs. R. Vengatasamy and the Commissioner of Sugar Mills, Chennai, in this regard.

5. We have considered the pleadings on record and the rival contentions. We have also gone through the OMs referred to by the learned counsel for the applicant and the judgments being relied upon by the learned counsels for the parties.

6. The facts leading to the present case are that applicant was suspended vide order dated 07.05.2018 under contemplated disciplinary proceedings and also the fact that though the said suspension dated 08/10.05.2018 had been reviewed and continued vide subsequent impugned orders dated 31.07.2018, 28.01.2019 and 25.04.2019. However, the charge memo for initiation of the disciplinary proceedings has not been issued to the applicant till date though the same was required to be issued within the time stipulated in Ajay Kumar Choudhary case

(supra) .

7. After considering the various case laws and statutory provisions, etc., the Hon'ble Supreme Court in Ajay Kumar Choudhary (supra) has ruled as under :-

*"14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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. We think 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.*

8. Such position of law laid down by the Hon'ble Apex Court has been accepted by the respondents through their Nodal Department i.e DoP&T as it would be evident from the OM No.F.No.11012/6/2007-Estt(A-III) dated 21.07.2016 and the very first paragraph thereof reads as

under:-

*“ The undersigned is directed to refer to the Department of Personnel and Training OM of even number dated the 1<sup>st</sup> August, 2007 on the above subject and to say that in a recent case, Ajay Kumar Choudhary Vs. Union of India Through Its Secretary & Anr, Civil Appeal No.1912 of 2015 (JT 2015 (2) SC 487), 2015(2) SCALE, the Apex Court has directed that the currency of a suspension order should not extend beyond three months if within this period a Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee;*

**9.** The OM dated 07.01.2004 issued by the Department of Personnel & Training (Annex A-14) provides as under:-

*“3. The Review Committee(s) may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice to the foregoing, if the officer has been under suspension for one year without any charges being filed in a court of law or no charge memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in police/judicial custody or is accused of a serious crime or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned.”*

**10.** The applicant is stated to retire on superannuation on 31.05.2019. There cannot be any dispute that the respondents are having the power and jurisdiction to suspend the applicant and review such suspension and if required to

extend the same. However, such power is to be exercised keeping in view their own policy decision issued vide OMs from time to time including the OMs referred to above. In the impugned orders, it is not found that the respondents have considered the aspect of reinstating the applicant and posting him at the same place or in some non-sensitive post if at all the respondents have found it difficult to issue the charge memo for initiation of the disciplinary proceedings within 90 days in view of the judgment of the Hon'ble Apex Court in Ajay Kumar Choudhary's case (supra) and in view of the OM dated 21.07.2016, notified by the respondents referred to above. Keeping an individual under suspension for long and that too without justification has been deprecated, it has not found favour with the Hon'ble Apex Court in the case of State of Tamil Nadu Vs. Promod Kumar, IPS, reported in AIR 2018 SC 4060 wherein their own judgment in Ajay Kumar Choudhary (supra) was referred to. Para 23 thereof reads as under:-

“23. This Court in Ajay Kumar Choudhary Vs. Union of India, (2015) 7 SCC 291 : (AIR 2015 SC 2389) has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a

*short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post."*

**11.** We have also gone through the order/judgment of the Division Bench of the Hon'ble Delhi High Court in Dr. Rishi Anand (supra). The Learned counsel for the respondents invites our attention to para 15 thereof wherein it has been noted that OM dated 23.08.2016 and even the earlier OM dated 03.07.2015 issued by DoPT evidently have misconstrued the said decision of the Supreme Court, since the facts of the said case and the eventual directions issued in para 22 of the said decision, appear to have escaped attention.

**12.** However, we find that in the present case the applicant is neither relying upon the OM dated 23.08.2016 nor the OM dated 03.07.2015. Moreover, in para 16 of the said judgment itself the Hon'ble Court has noted that there can be no quarrel with the proposition that a government servant who is suspended in contemplation of a disciplinary proceedings or criminal proceedings under

Rule 10 of the CCS (CCS) Rules, should not be kept under suspension indefinitely or unnecessarily. Moreover, this judgment of the Hon'ble Delhi High Court in Dr. Rishi Anand (supra) has been subsequently considered by a Co-ordinate Bench of the Principal Bench of this Tribunal in OA No. 2701/2018 titled Rakesh Chhabra Vs. New Delhi Municipal Council, Palika Kendra, New Delhi Through: The Chairman and after considering the aforesaid judgment along with a series of other judgments passed by Coordinate Benches of this Tribunal, Hon'ble High Courts, Hon'ble Supreme Court, the Principal Bench in its order/judgment dated 03.12.2018 has passed the following orders:-

7. *We have considered the arguments of the learned counsel for the parties and have also perused the pleadings. It is not in dispute that the applicant was placed under suspension on 27.03.2018 and the charge-memo has been issued to him on 16.08.2018. The charge-memo has not been issued within the statutory period of 90 days. The purpose of the suspension is to block access of the accused official to such documents which he could misuse to his advantage. The suspension is not a punishment. The applicant at the relevant point of time was working as a Deputy Director in the Municipal Housing Department of NDMC from where he was transferred way back on 21.05.2014 itself. The respondent is having all the liberty to post the applicant in such a department where he has no access to the official documents of Municipal Housing Department which he could misuse to his advantage.*

8. *The ratio of law laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary** (supra) leaves no room for any ambiguity. A government servant under suspension is entitled for re-instatement if no charge-memo is served upon him within 90 days of his suspension. The intent of this ratio is*

clearly discernible. The law laid down enjoins the DA to show alacrity in the accomplishment of the disciplinary enquiry proceedings and to ensure that a government servant is not placed under suspension for unduly longer period of time just with a view to harass him. This Tribunal has granted relief in many cases strictly in accordance with the ratio laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary (supra)**.

9. In view of the discussions in the foregoing paras, this OA is allowed. The respondent is directed to re-instate the applicant within a period of four weeks from the date of receipt of a certified copy of this order. The respondent, however, is at liberty to proceed ahead with the disciplinary enquiry proceedings pursuant to the charge memo dated 16.08.2018. The respondent is also granted liberty to post the applicant in such department where he is not able to interfere with the enquiry proceedings by virtue of his official position."

**13.** We further find that the Principal Bench of this Tribunal has also referred to other judgments of Hon'ble High Court of Kerala and Hon'ble Madras High Court. Perhaps they were not brought to the notice of the Hon'ble High Court of Madras while passing the order in Arignar Anna Sugar Mills Ltd. (supra).

**14.** In the facts and circumstances and in view of the law laid down by the Hon'ble Apex Court and followed by various Co-ordinate Benches of this Tribunal, particularly in Rakesh Chhabra (supra), we are of the considered view that OA deserves to be partly allowed.

**15.** Accordingly, the Original application is partly allowed with the following directions:-

(1) The impugned orders dated 31.07.2018 (Annexure A-3), 28.01.2019 (Annexure A-1) and 25.04.2019 are quashed and set aside.

(2) The respondents are directed to reinstate the applicant within one week of receipt of certified copy of the order and the respondents are at liberty to post the applicant in any sensitive or non-sensitive post.

(3) The respondents are further directed to pass appropriate orders with regard to the nature of the period of suspension of 90 days in view of the impugned order dated 07.05.2018 within six weeks of receipt of certified copy of the order.

In the facts and circumstances, no order as to costs.

(R.N. Singh)  
Member (J)

(Dr. Bhagwan Sahai)  
Member (A)

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