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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No. 419 OF 2018

Date of decision:- 09th April, 2019.

***Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).***

Smt. Preetha Babukuttan

age about 48 years,
Residing at B-106, Safal Residency
CHS Ltd., Sector 25, Nerul (East)
Navi Mumbai 400706.

...Applicant.

(By Advocate Shri A.A. Manwani)

Versus

- 1. Union of India,***
Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.
- 2. The Chairman***
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.
- 3. Principal Chief Commissioner***
of Income Tax-10, 101,
Aaykar Bhawan, Maharshi Karve Road,
Mumbai 400020.
- 4. Principal Commissioner of Income Tax-31,***
Room No.301,
C-13, Pratyakshar Bhavan,
Bandra-Kurla Complex,
Mumbai 400 051.

... Respondents

(By Advocate Shri N.K. Rajpurohit)

Reserved on:- 14.03.2019.

Pronounced on:- 09.04.2019.

ORDER**PER:- R. VIJAYKUMAR, MEMBER (A)**

This application has been filed on 12.06.2018 by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) This Hon'ble Tribunal will be pleased to quash and set aside the Impugned Order at Annexure A-2 and the Suspension Orders at Annexures A-1 & A-3 (Coll) with further direction to the respondents to allow the applicant to join her duties as Income Tax Officer.

(b) This Hon'ble Tribunal may be further pleased to hold & declare that applicant's continued Suspension beyond on 28.06.2015 is illegal and bad in law and she may be treated as on duty on and from 29.06.2015 and entitled to full salary, emoluments & other benefits since then.

(c) This Hon'ble Tribunal may also be further pleased to direct the respondents to allow the applicant to join the duties and to pay her all the arrears of salaries & emoluments since 29.06.2015, without any further delay.

(d) In the alternate, respondents may be directed to pay to the applicant the enhanced Subsistence allowance since 03.07.2015 as per FR 53 (1)(ii) (a) (I) with all the arrears.

(e) Any other or further orders may be passed in the interest of justice.

(f) Cost of the application may be provided."

2. The applicant, while serving as Income Tax Officer with the respondents was arrested in connection with a trap case under the Prevention of Corruption Act, 1988 and detained in

custody from 30.03.2015 up to release on bail on 06.04.2015 with one of the bail conditions being that she should not enter office till further orders of the Court and further, that every alternate day, she should present herself before the CBI Authorities between 12:30 PM to 01:30 PM. Upon release on bail, she tendered a letter dated 07.04.2015 (Annexure A-5) with these details to the respondents who, thereafter on 08.04.2015, in the order No. Pr.CIT-31/Gaz.Vig./2015-16 (Annexure A-4), placed her under Suspension under Rule 10(2) CCS (CCA) Rules 1965 w.e.f. 30.03.2015 and until further orders. These orders are as under:

" No. Pr.CIT-31/Gaz.Vig./2015-16

Date:- 08.04.2015

ORDER

(Rule 10(2) of CCS (CCA) Rules, 1965)

WHEREAS a case against smt. Preetha Babu Kuttan, Income-Tax Officer-31(1)(2), Mumbai in respect of a Criminal offence is under investigation.

AND WHEREAS the said Smt. Preetha Babu Kuttan was detained in custody from 30.03.2015 to 06.04.2015, i.e. for a period exceeding forty-eight hours.

NOW, THEREFORE, the said Smt. Preetha Babu Kuttan is deemed to have been suspended with effect from the date of detention, i.e. the 30th March, 2015 in terms of Sub-rule (2) of Rule 10 of the Central Civil Services (Classification, control and appeal) Rules, and shall remain under suspension until further orders."

3. Thereafter, subsistence allowance was also sanctioned to her in orders dated 30.04.2015. The orders of suspension were reviewed by the respondents and order was passed under Rule 10(1) and 10(2) of the CCS (CCA) Rules 1965 on 03.07.2015 extending the suspension for 180 days in the following orders:-

"No. Pr.CIT-31/Suspension/2015-16 Date:- 03rd July, 2015

ORDER (UNDER RULE 10(1) & 10(2) OF CCS (CCA) RULES, 1965)


Whereas Smt. Preetha Babu Kuttan, Income-Tax Officer-working in the office of the Pr. Commissioner of Income Tax-31, Mumbai was placed under suspension in terms of Sub-rule(2) of Rule 10 of Central Civil Services (Classification), Control and appeal Rules, 1965 vide order bearing No.Pr.CIT-31/Gaz.Vig/2015-16 dated 08.04.2015. Whereas, a case of criminal offence against her is under investigation by the Central Bureau of Investigation and as per information available, a Charge Sheet has been filed in the Competent Court.

The undersigned, as a Competent authority, has reviewed her suspension on the basis of recommendation of the Review Committee constituted for this purpose as provided in Govt. of India DOPT Notification dated 23.12.2003 and in DOPT's OM dated 07.01.2004 and having regard to all the facts and circumstances of the case hereby extends the suspension of Smt. Preetha Babu Kuttan, Income Tax Officer (under suspension) for a further period of 180 days.

*(N.K. Pradhan)
Pr. Commissioner of Income Tax-31
Mumbai."*

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4. Further extensions were ordered under Rule 10(1), 10(2) and 10(6) in orders dated 22.12.2015, 15.06.2016, 30.11.2016, 09.05.2017, 02.11.2017 and 24.04.2018 which have been filed with this OA and each order extended the period of suspension by 180 days. Upon receipt of the extension order dated 03.07.2015, the applicant filed an appeal under Rule 23 of the CCS (CCA) Rules 1965 on 12.08.2015 to the Competent Authority in which it is mentioned that the charge-sheet was filed by the CBI before the CBI Court on 26.06.2015. The main arguments posed by the applicant in that appeal was that the review of suspension was not made within the prescribed period of 90 days as per Rule 10(6) and 10(7) of CCS (CCA) Rules 1965 and further, since the charge-sheet has been filed, her suspension could be revoked. The respondents disposed this appeal in their orders No. MUM/CCIT-10/P.B.K/Appeal/10(2)-CCS (CCA)2015-16/1336 dated 21.12.2015 (Annexure A-2) agreeing that the review of deemed suspension order was required to be made on 28.06.2015 but was actually made four days later on 03.07.2015 and that was irregular. However, the Appellate Authority has noted on the basis of the orders passed on 03.07.2015, that it was also an order passed under Rule 10(1) of CCS (CCA) Rules 1965 along with Rule 10(2). The Appellate Authority notes the discussions in that order which



led him to infer that competent authority had also examined the circumstances of apparent misconduct of the petitioner in the performance of assigned duty, receipt of illegal consideration for doing unlawful and undue favours and has passed specific order under Rule 10(1) independent of circumstances leading to deemed suspension. Therefore, while noting certain irregularities in continuation of deemed suspension, order of suspension under Rule 10(1) passed on 03.07.2015 was held to be valid and remained effective and was extended periodically.

The appeal concludes as follows:-

"14. Conclusion:- In the totality of the facts and circumstances of the case, the original order of deemed suspension effective from 30.03.2015 remains valid upto 28.06.2015. The period from 29.06.2015 to 02.07.2015 comprising of the extension of the deemed suspension is treated as not to be regular and for this period appellant may be considered as not to be under suspension. For the period 03.07.2015 to 22.12.2015, the order passed by competent authority under rule 10(1) of CCS (CCA) Rules 1965 is treated as valid order of suspension. For the subsequent period from 22.12.2015 till 180 days the extended period of suspension passed under sub-rule (1) of Rule 10 is considered as valid order of suspension. Hence, the appeal filed by the appellant under Rule 23 of CCS (CCA) Rule-1965 is partly allowed to the extent specified in the body of the order.

This appeal stands disposed today i.e. 21st December, 2015 in accordance with the provision of rule 27 of CCS(CCA) Rule-1965."

5. *MA No.328/2018* has also been filed by the applicant seeking condonation of delay, from 20.12.2016 after the limitation period of one year, for the delay period of roughly one year and five and half months. The reasons given are that the elder son was suffering from clinical depression and that she needed to look after her father who was 74 years old and was suffering from slip disc and further, had to attend the criminal trial in the Sessions Court. Subsequently, she supplemented this delay application with an affidavit containing medical prescription and details relating to her son who is noted as lacking concentration and dependent on gadgets and further, for her father who is stated to have some *lumbar stenosis* and needs *lumbar decompression*. The respondents have filed a reply arguing that the applicant has challenged the extension orders dated 03.07.2015 but has adopted the appeal orders dated 21.12.2015 as the relevant cause of action which is incorrect. Therefore, the correct computation of delay should be from 03.07.2015 up to 12.06.2018 which comes to two years. They also opposed the grounds stated by the applicant as unsatisfactory and therefore, opposed condonation of delay. In reply to the main OA, they denied various averments made by the applicant in regard to the charges against her under the Prevention of Corruption Act, on the payment of subsistence

allowance and reiterate the validity of the orders of the extension of suspension and need for suspension in view of the gravity of the charge, the nature of evidence, chances of success in prosecution, the need for deterrence, the internal disciplinary proceedings, and the fact that the applicant had never filed any request for revocation of suspension.

6. During arguments, the learned counsel for applicant reiterated the reasons for delay contained in the MA for condonation of delay. He referred to the ruling of the Hon'ble Apex Court in the case of N. Balakrishnan V/s. M. Krishnamurthy decided on 03.09.1998 reported in (1998) 7 SCC 123, where the Court was required to consider limitation by construing the words "sufficient cause" in a liberal manner on the consideration that no litigant would want to deliberately delay the litigation. The relevant aspect was the acceptability of the explanation. Even the shortest delay may not be condoned due to want of acceptable explanation, whereas, in certain other cases, delay of very long range could be condoned if the explanation was satisfactory. He also referred to the Hon'ble Apex Court in the Case No. 460 of 1987 of Collector, Land Acquisition, Anantnag Versus Katiji decided on 19.02.1977 reported on 1987(2) SCC 107, where the appeal of the State against the high compensation award in a land acquisition case

was rejected as time-barred for being five days beyond the time prescribed. The Court held that there cannot be a presumption that delay was caused deliberately and taking a justice-oriented approach, the Court held that sufficient cause existed for the delay. He also relied on the judgment of the Hon'ble High Court of Bombay in (Nagpur Bench) in Civil Revision Application No.119 of 2000 in case of Ashok S/o. Balaji Ratan V/s. Nagpur Improvement Trust, Nagpur decided on 08.04.2004, where in regard to an illegal construction, the respondents refused regularization and were directed to grant permission by a lower Court. An appeal was filed with delay and was condoned against which the matter was taken to the Hon'ble High Court on the condonation of delay. Para 6 of the judgment reads as below:

"6. In view of the law as discussed hereinabove and the facts of the case, I am of the view that I shall have to see as to what shall get condoned if the delay is not condoned. If the grievance of the applicant is not opened for scrutiny, observance of mandatory provision of law shall stand neglected and balance of justice cannot be struck if the delay is not condoned. It will have to be seen what gets condoned is illegality, if delay is not condoned which certainly cannot be allowed."

7. The learned counsel for applicant also argued that the suspension is a continuous cause of action. On the merits of the matter, the learned counsel argued that the date of

detention was 30.03.2016 and after the orders were passed on 08.04.2015 the suspension should have been reviewed on 27/28.06.2015 but was actually done on 03.07.2015 which was beyond the period of 90 days and hence, the order including the review of suspension was bad in law. He also relied on the judgments of the Hon'ble High Court of Calcutta Shri. Abanindra Mohanty Versus Union of India & Ors. in WPCT No.43 of 2010 decided on 28.07.2010 which considered a similar case of deemed suspension in which orders were issued after release from custody for a period of more than 48 hours and the orders of review were made after expiry of 90 days. The Hon'ble Court held that the requirements under Rule 10(6) of CCS (CCA) Rules had not been followed and the date of passing of suspension order had been adopted which was not correct and accordingly, quashed those orders.

8. The respondents have argued that the original suspension orders have not been challenged by the applicant and only the continuation of suspension has been challenged. They point out that she had challenged the orders of extension dated 03.07.2015 when she was free and continued to be free even in December. They oppose the validity of the reasons mentioned in relation to the applicant's son and father's illness. The long delay cannot, therefore, be accepted for condonation.

The respondents argue that the law does not hold for those who sleep over their rights.

9. We have gone through the O.A. alongwith Annexures A-1 to A-8, application for condonation of delay and Rejoinder filed by the applicant. We have also gone through the Reply along with Annexure R-1 and reply to application for condonation of delay filed by the Respondents and have also carefully examined the various documents annexed in the case.

10. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

11. At the outset, it is necessary to observe that when the applicant was enlarged on bail by the CBI Court, she was released on the condition, as admitted by her in her letter dated 07.04.2016, that she should not enter her office until further orders of the Court. No further orders of the Court have been produced by the applicant in this OA and it is presumed that these orders continued to be in force. Therefore, after her release on 06.04.2015, the applicant was under a bar by orders of the CBI Court not to attend office and it would seem apparent that this continued well after and at least up to the order of extension dated 03.07.2015.

12. It is also evident by reference to the case cited by the applicant of Mohanty (Supra) of the Hon'ble High Court of Calcutta in which the applicant had been detained from 19.11.2008 to 18.12.2008 when he was granted bail but deemed orders under Rule 10(2) were issued by the Competent Authority only on 29.12.2008 after the petitioner was released from custody. The Court has recorded its views as under:

" The respondent authorities should not have placed the petitioner under suspension when he was actually not detained in custody.

An employee could not be placed under suspension in terms of the aforesaid Rule 10(2) of the CCS(CCA) Rule, 1965 when he was actually not detained in custody and was enlarged on bail by a competent criminal court. The impugned order of suspension in the present case was admittedly, issued long after the release of the petitioner from detention and, therefore, the said suspension order cannot be sustained in the eye of law."

13. It is also a fact as noted by the Appellate Authority of the respondents in his orders dated 21.12.2015 that the review of suspension that was contained in the orders of 03.07.2015 were made after a delay of five or six days and therefore, they did not conform to the rules laid down. The

Appellate Authority, however, held that the review orders were passed under rules 10(1) simultaneously and considered the fact of charge-sheet having been filed in June 2015 and the various circumstances of the case and therefore, it was an appropriate order of suspension and had to be sustained. Clearly, in the above circumstances, there are issues of law that are relevant to the consideration in this case both in respect of the initial order of deemed suspension and orders of continuing suspension.

14. The applicant has sought condonation of the delay from passage of the orders on appeal up to date of filing this OA and has challenged the orders of review dated 03.07.2015 by referring to the disposal of her appeal on 21.12.2015. The only reason given for condonation is the stenosis of her father who is aged 74 years and details relating to her son who is noted as lacking concentration and depending on gadgets. These are not weighty reasons that could be considered for condonation of such a long delay.

15. On the grounds that the original orders of deemed suspension were themselves wrongly issued after release from custody in terms of the judgment of the Hon'ble High court of Calcutta in Mohanty (Supra) and the delay in review of suspension which was in violation of the law and therefore, void in law, we consider the question of whether limitation

would not apply to such circumstances. However, we are bound by the view of the Hon'ble Apex Court held in Civil Appeal No. 1852 of 1989 in State of Punjab & Ors. Versus Gurdev Singh reported in 1991 SCC (L&S) 1082 with Civil Appeal No.4772 of 1989 in State of Punjab & Ors. Versus Ashok Kumar, decided on 21.08.1991, a suit was filed after the lapse of the prescribed limitation period from the date of passing dismissal order. The respondents had claimed that their dismissal was illegal and they had the right to continue in service. The Hon'ble Apex Court held as below while allowing the appeal:

"8. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In *Smith v. East. Elloe Rural District Council*, [1956] AC 736 at 769 Lord Redcliffe observed:

"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity is plainly visible; for there also, the order can effectively be resisted in law only by

obtaining the decision of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles:

"The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case, the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another."

10. *It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires, the Court cannot give the declaration sought for."*

16. These orders have also been followed by various Courts across the country such as in *The Hon'ble High Court of Punjab & Haryana in Sukhdev Raj Versus State of Punjab & Ors. in RSA No.1083/1987 decided on 29.10.2009.*

17. In the present case, the context is a little different in that the suspension is not even in the nature of a punishment.

The purpose of suspension is to debar a Government servant from exercising powers and discharging duty for the period it remains in force. Although, it may not be a punishment and of a temporary nature pending the final order in the disciplinary case, there is naturally a taint placed on the delinquent official. However, in the present case, the Criminal Court itself had directed the applicant to desist from entering her office and effectively placed her under suspension as part of the bail condition that was imposed on her on 04.04.2015 prior to release on 06.04.2015. From that aspect, her suspension evidently continued although no dates have been given on when the bail condition ceased to operate or whether such a barrier was withdrawn before the orders dated 03.07.2015. However, considering the fact that this OA is found wanting on the grounds of limitation, all these other aspects are not considered at this present stage.

18. In the aforesaid circumstances, the OA is dismissed on the grounds of limitation without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar) 2/4/17
Member (A)

srp/Ram.

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