

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT COURT: SHIMLA)**

O.A.NO.063/01248/2018

Orders pronounced on: 10.01.2018
(Orders reserved on: 14.12.2018)

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

V. Sekar

S/o Late Sh. G. Vaikundam,

aged about 57 years,

Group-D,

R/o House No 112/A,

1st Floor Bogadi,

Village Mysore Karnataka,

A/P Central School for Tibetans,

Chotta Shimla,

H.P. 171002.



Applicant

1. Union of India through Ministry of Human Resource Development, Government of India, Room No. 124-C, Wing, Shastri Bhawan, New Delhi (110001).
2. Central Tibetans School Administration, ESS ESS Plaza Plot No. 1, Community Centre, Section-03, Rohini, Delhi (110085) through its Director
3. Central School for Tibetan, Chotta Shimla through its Principal, 171002 H.P.

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Respondents

**PRESENT: MR. SANJEEV BHUSHAN, SR. ADVOCATE WITH
M.R. RAJESH KUMAR, ADVOCATE.
MS. SHUBH MAHAJAN, ADVOCATE FOR R.NO.1
MR. RAJIV JIWAN, ADVOCATE, FOR R.NO.2.**

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985, for quashing the impugned orders dated 18.5.2018 (Annexure A-1), vide which he was placed under suspension with immediate effect, order dated 10.8.2018 (Annexure A-2), vide which the suspension period of applicant has been extended for a further period of 180 days and order dated 8.6.2018 (Annexure A-7) vide which appeal filed by applicant against suspension has been rejected and to direct the respondents not to initiate any departmental proceedings against the applicant.

2. The facts are largely not in dispute. The applicant pleads that he sought information under RTI Act, 2005 regarding closure of Central Tibetan Schools, which was not taken kindly by the respondents and they started harassing the applicant on one pretext or the other. He submitted a representation dated 25.4.2018 (Annexure A-4) and also proceeded on leave from 1.5.2018 to 17.5.2018. An explanation was called from him vide letter dated 6.5.2018 (Annexure A-5) as to why he submitted advance copies of representation to the authorities. He joined his duties back on 18.5.2018 and was placed under suspension. It was extended vide order dated 10.8.2018 (Annexure A-2). He filed an appeal which was dismissed vide order dated 8.6.2018 (Annexure A-7). The case of the applicant, in short, is that he has been placed under suspension without any basis and in any case, it has become void ab initio as he was not issued any charge sheet within 90 days, and as such the impugned orders be quashed and set aside. Reliance is placed on **AJAY KUMAR CHOUDHARY VS. UNION OF INDIA & ANOTHER**, 2015 (7) SCC 291.

3. While issuing notice of motion two months back on 12.10.2018, the Court noticed the plea and question of law raised by learned Sr. Counsel for the applicant that continued suspension of applicant was in violation of law laid down by Hon'ble Apex Court in the case of **AJAY KUMAR CHOUDHARY** (supra). Learned counsel for the respondents had accepted notice on behalf of the respondents and were directed to file reply within four weeks and case was adjourned for 14.12.2018 for further proceedings including hearing on interim prayer of the applicant for stay. However, on 14.12.2018, when case came up for hearing, learned counsels sought further time to file reply. Considering the fact that the issue raised in this case is purely legal one and covered by decision of Hon'ble Apex Court in the indicated citation, we are not inclined to grant any further time for reply and heard the O.A on the legal question involved.

4. It is admitted position that applicant was placed under suspension vide order dated 18.5.2018 with immediate effect which was to remain in effect or could be reviewed within 90 days i.e. on or before 15.8.2018. Rule 10 of the Central Civil Services (Punishment & Appeal) Rules, 1965, provides, inter-alia, that 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, where a disciplinary proceeding against him is contemplated or is pending or he has engaged himself in activities prejudicial to the interest of the security of the State; or where a case against him in respect of any criminal offence is under investigation, inquiry or trial. An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the

recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time. An order of suspension made or deemed to have been made under sub-rules (1) or (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.

5. Though suspension is not one of the scheduled punishment under the service rules but it casts a stigma on an employee before holding him guilty by a procedure established under the law. It has a disastrous impact on the fair name and good reputation that may have been earned and built up by a government servant in the course of many years of his service. The damage suffered by the Government servant is largely irreversible because the denigration and disgrace visited on him by the order of suspension is seldom wiped out by his being reinstatement in service. It is also held by the Hon'ble Supreme Court in the case of **Vice-Chancellor, Jammu University vs. D.K.Rampal,** (1977) 2 SCC 616 that by placing an employee under suspension, without proper application of mind, Government is loser, because it has to pay heavy amount by way of subsistence allowance and other payment without taking any service from an employee. It may be considered whether public purpose would be served if the officer can be transferred from his post or he be asked to proceed on some kind of leave. Guiding factors shall always by the public interest for adoption of such a course of action.

6. The duty of the Court is restricted only to the limited extent of ensuring that the appointing/disciplinary authority has taken into

consideration the nature of the charge, its complexity, public interest involved in retaining the government servant/employee, against whom, serious imputation are levelled and whether retention of such a person, would be scandalous to the department or sub-serve the discipline in the department or affect the morale of other government servants/employees or to facilitate a fair enquiry. This is clear from the decision in the case of **RAMANA DAYARAM SHETTY VS. INTERNATIONAL AIR PORT AUTHORITY** reported as AIR 1979 SC 1628. It has been held in that case that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.

7. Not only that, Lord Denning, as found in Wade on Administrative Law, has made more than clear that the discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant consideration and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith, nevertheless the decision will be set aside. The object of suspension is to enable the administration to conduct the proceedings smoothly with all fairness to the parties without the interference by the government servant against whom the proceedings are conducted. Suspension is only when government come

to the conclusion that it is not in public interest to keep employee to continue in office as there are no other methods are either not available or impracticable, meaning thereby the complete application of mind before passing order of suspension as "order of suspension affects a Government servant.

8. While passing order of suspension the authority concerned also keeps in mind the public interest while placing an employee under suspension. In absence of public interest the order of suspension can be set aside being based on other extraneous considerations. Because order cannot be passed lightly as it affect the right of an individual and cast stigma without an inquiry. Reliance is placed on **M.PAUL** **ANTHONY VS. BHART GOLD MINES LTD.**, (1993) 3 SCC 679 wherein it was held that exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee.

9. The Hon'ble Apex Court in **AJAY KUMAR CHOUDHARY VS. UNION OF INDIA**, (2015) 7 SCC 291, wherein a time limit is fixed for keeping an employee under suspension if no charge memo/charge sheet is issued has also settled the issue. In that case it was held that if no charge memo/charge sheet is issued within a period of three months, an employee cannot be continued to be placed under suspension. However, if the charge memo/charge sheet is issued, then, the department should

decide about the extension of suspension. Paras No. 13 and 14 of the order being relevant are reproduced as under:-

"13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained in the Division Bench in Raghbir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Charge sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

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/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. 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".

10. It is thus clear that the Hon'ble Apex Court has clearly held that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Charge sheet has not been served on the suspended person. Thus, 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.

11. It is not in dispute that the applicant has not been issued any charge-sheet within 90 days and in fact in order of suspension, non service of charge sheet is a ground taken to extent the period of suspension. Secondly, the extended suspension also appears to be illegal on the face of it as it has been extended "for a further period of 180 days" or "until further orders". Apparently in the rules, there is no provision for extension of suspension until further orders".

12. In the wake of aforesaid legal position, this O.A. is allowed. The impugned order, Annexure A-2 is quashed and set aside. The continuation of suspension of the applicant beyond 15.08.2018 is held to be illegally and the respondents are directed to reinstate the applicant with effect from 16.08.2018. The needful be done within a period of 3 weeks from the date of receipt of a certified copy of this order.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: JANUARY 10, 2019

HC*