

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

MA No.212/2019 in & OA/310/00125/2017

Dated Wednesday, the 24th day of April, 2019

PRESENT

**Hon'ble Mr.R.Ramanujam, Administrative Member
&
Hon'ble Mr.P.Madhavan, Judicial Member**

K.Mohamed Farook,
S/o.S.M.Khader Mohideen,
No.129, Muniappa Salai,
Louis Nagar, East Ambikapuram,
Trichy-4.

...Applicant

By Advocate M/s V.Vijay Shankar

Vs.

1. The Union of India, rep.,by
its Commissioner of Customs,
No.1, Williams Road,
Trichy 620 001.

...Respondent

By Advocate Mrs.Hema Muralikrishnan

ORDER

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the proceedings for the respondent in its C.No.II/39/09/2015VIG(PF-I) Dated 2.9.2016 and quash the same and consequently direct the respondent to reinstate the applicant forthwith with all consequential benefits in the light of the judgment of the Hon'ble Supreme Court of India in Ajay Choudry's case reported in 2015(7)SCC 291 and pass such other order or orders as may be deemed fit and thus render justice.”

2. According to the applicant he is working as a Superintendent Customs at Trichy and on 18.04.2015 the respondents had placed the applicant under suspension and a FIR was lodged against the applicant and one Inspector M.Senthil Kumar, and investigation is going on. The respondents in this case is extending the period of suspension continuously without applying their mind and no charge memo has been issued even after completion of 90 days. According to the applicant the continued suspension of the applicant is in violation of the rule laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India reported in 2015 (7) SCC 291. So the applicant seeks to quash the extension of suspension dated 02.09.2016.

3. The respondents appeared and filed a detailed reply stating that the applicant was the Superintendent of the Customs Seized Godown at Tricy and he was in custody of the godown along with one Senthil Kumar who is an Inspector of Customs. On 18.04.2015 during a retrieval procedure of the package containing gold bars weighing 18512.50 gms deposited in safe custody of the office strong room at Trichy by DRI, it was found that the package was tampered with and an estimated 14932.50 gms was missing. Accordingly a case was registered and the applicant as well as Senthil Kumar Inspector were suspended on 18.04.2015. Thereafter, every 90 days review committee was constituted and the suspension was being extended. According to the respondents the investigation by the CBI is still going on and the suspension cannot be revoked. Thereupon the applicant filed MAs for advancing the hearing date and issuing a direction to the respondents to revoke his suspension. Accordingly the matter was taken up and heard.

4. On perusal of pleadings and arguments we find that the only point that has to be considered is whether the continued suspension of the applicant is necessary in this case. On a perusal

of the pleadings it can be seen that the applicant was suspended on 18.04.2015 and thereafter the suspension was extended till 27.06.2016. The applicant herein filed another OA 1145/2016 seeking the revocation of suspension, wherein the CAT ordered the respondents to consider the representation filed by the applicant. Accordingly, the respondents had passed a speaking order on 02.09.2016 which is the impugned order in this case. The respondents had also filed an additional reply statement stating that the CBI investigation is now over and they had filed a charge sheet against the applicant and one Senthil Kumar before the CBI court and the case is pending. This court had earlier disposed of OA 1277/2016 filed by Inspector Senthil Kumar on 14.12.2018. The applicant in this case would contend that he is also similarly placed and the continued suspension is illegal and against the spirit of the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary case referred supra.

5. We have anxiously considered the rival contentions from both sides. The Hon'ble Apex court in the case of Ajay Kumar Choudhary has categorically held that suspension, specially preceding the formulation of charges, is essentially transitory or

temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay. From the above decision of the Hon'ble Supreme Court it can be seen that suspension is not a punishment and it can be continued only for a particular period and extension of suspension without applying mind is arbitrary and should not be encouraged. In this case, the applicant has filed a representation regarding his continued suspension and relying on the law laid down by the Hon'ble Supreme Court before the review authority, but the authority had rejected the representation holding that CBI investigation is still continuing and suspension cannot be revoked. The Hon'ble Apex court in the above said case had held that the period of suspension should not exceed three months if the memorandum of charges is not filed within time. The Nodal Department DOPT had also issued

a official OM F.No.11012/04/ 2016-Estt(A) dated 23.08.2016 in accordance with the above decision of the Hon'ble Supreme court and directed not to extend suspension beyond the period of 90 days without issuing a charge memo. In this case also the respondents had not issued any charge memo so far. But it is submitted the CBI has completed the investigation and laid the charge sheet. So investigation is completely over and it is not clear why the review committee has extended the suspension for a further period of 90 days as per the impugned order. There is no application of mind seen in the above order. So the above order of the respondents is arbitrary and cannot be sustained in the light of the decision of the Hon'ble Apex court. There is also no purpose served by continuing an officer under suspension even after a period of more than two years. The extension orders passed in this case is mechanical and it has to be held as arbitrary and against the law laid down by the Hon'ble Apex court. So, we are of the opinion that continued suspension of the applicant is arbitrary and it is liable to be vacated.

6. In the result the respondents are hereby directed to vacate the suspension of the applicant from the date of this order. The respondents are also directed to reinstate the applicant if

necessary, in a suitably non sensitive post at a sufficiently distant place from the place of enquiry so that he will not be in a position to interfere or influence the witnesses. We hope that the disciplinary authority will start the formal enquiry at the earliest after issuing charge memo. The OA is disposed of. Accordingly, MA also stands disposed of.

(P.MADHAVAN)
MEMBER(J)

24.04.2019

(R.RAMANUJAM)
MEMBER (A)

M.T.