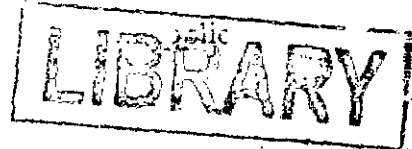


O.A-350/720/2017  
MA-350/431/2017



**In the Central Administrative Tribunal**

**Calcutta Bench**

Alankar Kumar Jha, Son of Late Chandra Shekhar Jha, aged about 59 years, working as Addl. Principal Chief Conservator of Forests in the office of PCCF and HoFF, Govt. of West Bengal at present residing at 2A, Rishi Apartment, Garia Main Road, Kolkata - 700084.

...Applicant

- Vs -

1. Union of India, through the Secretary to the Govt of India, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhavan, Jorbagh Road, New Delhi - 110 003, India.
2. State of West Bengal through the Chief Secretary to Govt of West Bengal, Nabanna 13<sup>th</sup> Floor, 325 Sarat Chatterjee Road, Shibpur, Howrah - 711102.
3. The Principal Secretary to Govt of West Bengal, Department of Forest, 2<sup>nd</sup> Floor, Aranya Bhawan, Block LA-10A, Sector- III, Salt Lake, Kolkata, West Bengal Pin - 700098.
4. The Principal Chief Conservator of Forest and Head of Forest Force, Govt of West Bengal, Directorate of Forest, 4<sup>th</sup> Floor, Aranya Bhawan, Block LA-10A, Sector- III, Salt Lake, Kolkata, West Bengal - 700098.

..Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O A.350/720/ 2017  
M.A.350/431/2017

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member**  
**Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member**

ALANKAR KUMAR JHA  
VS.  
UNION OF INDIA & ORS.  
(FOREST)

For the applicant : Mr. J.R. Das, counsel  
For the respondents : Mr. S.N. Roy, counsel

Reserved on : 24.06.2019

Order on : 9.8.19.

**ORDER**

**Bidisha Banerjee, Judicial Member**

This application has been preferred by a retired IFS who served as Additional PCCF(Campa). He would seek the following reliefs:-

- "a) To set aside and quash impugned Order being No.359/Pr.S.F./15 dated 17.01.2015 and Corrigendum No.359-A/Pr.S.F./15 dated 17.02.2015;
- b) To set aside and quash Impugned letter dated 16.04.2015 issued by Dy. Secretary to Govt. of India;
- c) To set aside and quash impugned Order No.1020-For dated 18.05.2015, Order No.28/Pr. S.F/15 dated 17.08.2015, Order No.347-For/FR/O/G/Viz-10/2015 dated 12.02.2016 and Order No.1083-For/FR/OG/Viz-10/2015 dated 28.04.2016;
- d) To direct the respondents to treat the period of suspension w.e.f. 17.02.2015 to 11.06.2016 as spent on duty with full pay and allowances together with all consequential benefits;
- e) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. The Id. counsels were heard at length. Written notes of arguments submitted by the parties have been perused and considered.

3. Shorn of details, the matter revolves around a suspension order and the short point that crops up for determination is whether the suspension order dated 17.02.2015 lost its validity upon expiry of 45 days in absence of any confirmation by the Central Government, in view of third proviso to Rule 3 of The All India Services(Discipline & Appeal) Rules, 1969 which deals with suspension and lays down the following:-

**"PART II—SUSPENSION**

**3. Suspension.—**

(1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, 1 Principal rules were published vide Notification No. 7/15/63-AIS-II dt. 20.3.1969 2 Substituted vide DP&AR Notification No. 6/9/72-AIS-III dt. 5.7.1975 (GSR No. 872, dt. 19.7.1975) 3 Substituted vide DP&AR Notification No. 31/7/72-AIS-III dt. 22.5.1972, 4 Inserted vide DP&AR Notification No. 11018/4/76-AIS(III), dt. 25.2.1977 (GSR No. 358 dt. 19.3.1977) 264 against whom disciplinary proceedings are contemplated or are pending, that Government may—

(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government request that Government to place him under suspension, pending the conclusion of the disciplinary proceedings and the passing of the final order in the case.

Provided that, in cases, where there is a difference of opinion,—

- (i) between two State Governments, the matter shall be referred to the Central Government for its decision;
- (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail:

Provided further that the Chief Secretary, Director General of Police and the Principal Chief Conservator of Forests, who are the heads of the respective Services, shall not be placed under suspension without obtaining prior approval of the Central Government:

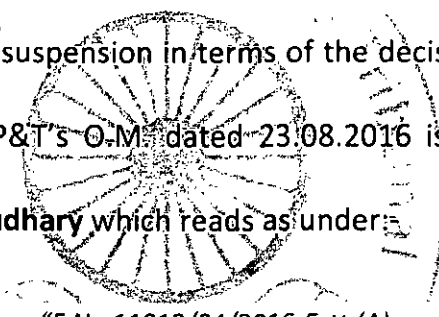
Provided also that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government."

4. Ld. counsel for the applicant would vociferously submit that the speaking order being issued on 17.01.2015 and again reissued on 17.02.2015, ought to

have been confirmed by the Central Government before expiry of 45 days from the date on which the applicant was placed under suspension. Failure to obtain confirmation within the said period of 45 days from the date of suspension, would invalidate the suspension making it null and void ab initio.

5. Per contra, Id. counsel for the respondents, drawing our attention to an order dated 16.04.2015, would submit that grant of confirmation even after expiry of 45 days would demonstrate and establish that Central Government had intended to grant ex post facto approval thus validating it with retrospectivity.

6. At that juncture, Id. counsel for the applicant would further submit that failure to initiate the proceedings within 90 days from suspension, would automatically invalidate the suspension in terms of the decision rendered in **Ajay Kumar Choudhary** and DOP&T's O.M. dated 23.08.2016 issued in view of the decision in **Ajay Kumar Choudhary** which reads as under:

  
 "F.No.11012/04/2016-Estt.(A)  
 Government of India  
 Ministry of Personnel, Public Grievances and Pensions  
 Department of Personnel & Training  
 Establishment A-III Desk

North Block, New Delhi — 110001  
Dated August 23, 2016

#### OFFICE MEMORANDUM

*Subject: Central Civil Services (Classification, Control and Appeal) Rules, 1965 – instructions regarding timely issue of Charge-sheet – regarding.*

The undersigned is directed to refer to DoP&T's O.M. No.11012/17/2013-Estt.A-III dated 3rd July, 2015 on the above mentioned subject and to say that in a recent case, *Ajay Kumar Choudhary vs Union of India Civil Appeal No. 1912 of 2015* dated 16/02/2015, the Apex Court has directed as follows:

"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/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. 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."

2. In compliance of the above judgement, it has been decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge-sheet is not served to the charged officer. As such, it should be ensured that the charge sheet is issued before expiry of 90 days from the date of suspension. As the suspension will lapse in case this time line is not adhered to, a close watch needs to be kept at all levels to ensure that charge sheets are issued in time.

3. It should also be ensured that disciplinary proceedings are initiated as far as practicable in cases where an investigating agency is seized of the matter or criminal proceedings have been launched. Clarifications in this regard have already been issued vide O.M. No. 11012/6/2007-Estt.A-III dated 21.07.2016.

4. All Ministries/ Departments/Offices are requested to bring the above guidelines to the notice of all Disciplinary Authorities under their control.

5. Hindi version will follow.

sd/-  
(Mukesh Chaturvedi)  
Director (E)"

7. In the present case, we would note that the suspension order was issued on 17.02.2015 while the charge sheet was issued on 12.02.2016 after almost 1 year. However, the fact remains that suspension was revoked by an order dated 17.06.2016 (Annexure A/21). Since the question to be determined is whether suspension would remain valid beyond 45 days upon failure of the Central Government to confirm it within 45 days of its issuance, we had asked for the proposal sent by the State Government seeking such confirmation. We discerned that the proposal itself was initiated on 10.04.2015 i.e. after expiry of 45 days and without seeking confirmation ex-post facto.

8. We had called for copy of the proposal dated 10.04.2015, which when produced, we found that there was no specific reason assigned to the delayed seeking of approval of suspension beyond the permissible period.

9. Therefore, by virtue of the proviso enumerated supra and having noticed that the suspension order is bound to become invalid upon expiry of 45 days from its issuance unless confirmed by the Central Government, we hold that the suspension became invalid after 45 days of its onset. Hence we direct the authorities to pass appropriate orders to declare suspension beyond 45 days as "spent on duty" for all practical purposes. The respondents shall release the full salary to the applicant as he would be entitled to after adjusting the suspension allowance that has been already disbursed.

10. Accordingly both the O.A. and M.A. stand disposed of. No costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member