

(2023) 07 DEL CK 0115

In the Delhi High Court

Case No : Civil Writ Petition No. 8664 Of 2023, Civil Miscellaneous Application
No. 32841, 32842, 32843 Of 2023

Dinesh Bishnoi

APPELLANT

Vs

Union Of India & Anr.

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Central Civil Services (Classification Control and Appeal) Rules, 1965 — Rule 10, 10(i)
(a)

Citation : (2023) 07 DEL CK 0115

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Tushar Ranjan Mohanty, Payal Mohanty, Saumya Punia, Vijay Joshi

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM Appl. 32843/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 8664/2023, CM APPLs. 32841/2023 & 32842/2023

1. The challenge in this petition is to an order dated March 01, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 2518/2022, whereby the Tribunal has dismissed the same on merits.

2. The challenge in the O.A. was to an order dated August 18, 2022 whereby the competent authority/respondents have extended the suspension of the petitioner beyond the initial period of 90 days.

3. The admitted facts are that the petitioner is a Direct Recruit Officer of Indian

Custom and Central Excise Services and was posted as Deputy Commissioner in the Office of Central Goods and Services Tax, Gurgaon.

4. He was placed under suspension vide order dated May 22, 2022 in contemplation of disciplinary proceedings under Rule 10(i)(a) of the Central Civil Services (Classification Control and Appeal) Rules 1965. The petitioner was suspended based on a report by the Chief Commissioner, CGST vide its letter dated May 21, 2022 wherein, it was alleged that the petitioner has committed irregularities while processing the refunds of nearly Rs. 30 crore.

5. The initial period of suspension of 90 days expired on August 19, 2022. The Suspension Review Committee after considering the case of suspension of the petitioner on August 18, 2022 and in view of the gravity and magnitude of the case and allegations of irregularities, recommended that the petitioner shall continue under suspension for a further period of 180 days. The Disciplinary Authority accepted the recommendation of the Suspension Review Committee and accordingly extended the suspension of the petitioner from August 28, 2022 till February 15, 2023 with no change in subsistence allowance.

6. The case set up by the petitioner before the Tribunal was primarily that (i) the competent authority could not extend the period of suspension unless a charge sheet has been issued within a period of 90 days in case of disciplinary proceedings (ii) even if a charge sheet has been issued to the suspended official, the suspended period cannot be further extended beyond three months/90 days (iii) the judgment of the Supreme Court in case of *Ajay Kumar Chaudhary vs. Union of India*, 215 (7) SCC 291, has unequivocally taken away the power of the Competent Authority to extend the suspension period beyond three months.

7. The Tribunal while rejecting the O.A. has considered the above submissions of the petitioner and has in paragraphs 16 and 17, stated as under:-

"16. I have gone through the records of the case thoroughly and heard the arguments carefully. I am of the considered view that the judgment in the Apex court in *Ajay Kumar Choudhary (supra)* case has not laid absolute law regarding continuance and discontinuance of the powers of extending suspension by the competent authority under Rules 10 of CCS (CCA) Rules 1965. I agree with the contention of the counsel for the respondents that the law, pronounced in *Ajay Hu.mar Choudhary's (supra)* case is not part of the ratio deci-dendi rather they are obiter dictum and are not authoritative. The analysis of the Madras High Court in *P.Kannan vs. Commissioner of Municipal Corporation* in WP (C)No. 2165/2015 is that the Apex Court in *Ajay Kumar Choudhary's* case has not laid down absolute proposition of law on suspension. The Suspension Review Committee has recorded the reasons for extending the suspension period beyond 90 days. The gravity of the disciplinary case and magnitude of the irregularities involved weigh heavily against the applicant. It •was necessary to continue his suspension to demonstrate the policy of the government to deal with strictly with the officers involved in public scandals, particularly in corruption. The

continuation of the suspension is also necessary to ensure that an officer is not in a position to tamper with the documents or influence the witnesses related to the case. Considering all these factors, the Suspension Review Committee recommended that suspension of Shri Dinesh Bisnoi should continue for a further period of 180 days. The Disciplinary Authority, after earful considering of all the facts and circumstances, decided to accept the recommendations of the Suspension Review Committee. We find no infirmity in the order of the disciplinary authority (Impugned order dated 18.8.2022).

17. In view of the above, there is no merit in the present OA and hence it is dismissed. There shall be no order as to costs."

8. Mr. Tushar Ranjan Mohanty, the learned counsel for the petitioner, at the outset submits that the subject matter of suspension should have been decided by Division Bench of the Tribunal and not by a Single Bench. According to him, despite this objection being taken, the single member of the Tribunal instead of placing the matter before a Division Bench has decided the matter by himself, which is an infirmity, which goes to the root of the legality of the impugned order.

9. It is his submission that the Tribunal has erred in overlooking the judgment of the Supreme Court in Ajay Kumar Choudhary (supra) wherein, the Supreme Court clearly held that the suspension of a Government Servant cannot be extended beyond the period of three months. That apart, he submits that, though the subject matter of allegations pertains to the period when the petitioner was posted at Gurugram has been transferred to Cochin, Thiruvananthapuram Zone on suspension, which is arbitrary and without application of mind. In other words, it is his submission that the suspension is primarily to obviate any attempt on the part of the Government Servants to tamper with the documents and / or influence the witnesses which may be produced / depose during departmental enquiry, and since he has been posted in Cochin, Thiruvananthapuram Zone, there is no basis to say that the petitioner will tamper with the documents or influence the witnesses. Hence, even on this ground the suspension needs to be revoked.

10. We are not impressed by the submissions made by Mr. Mohanty.

11. Insofar as the submissions as noted in paragraph 9 above are concerned, the same have been advanced primarily in view of the judgment of the Supreme Court in Ajay Kumar Choudhary (supra). We find that the Tribunal has by referring to the judgment of the Ajay Kumar Choudhary (supra) and also the judgment of this Court in the case of Government of NCT of Delhi v. Dr. Rishi Anand, W.P.(C) 8134/2017, has held that the judgment in Ajay Kumar Choudhary (supra) has not laid down absolute law regarding continuance and discontinuance of power for extending suspension by the competent authority under Rule 10 CCS(CCA) Rules, 1965. In fact, we note in the case of Dr. Rishi Anand (supra) in paragraph 19, this Court held as under:-

"19. The decision of the Supreme Court in Ajay Kumar Choudhary (supra) itself

shows that there cannot be a hard and fast rule in this regard. If that were so, the Supreme Court would have quashed the suspension of Ajay Kumar Choudhary. However, in view of the fact that the charge memo had been issued to Ajay Kumar Choudhary – though after nearly three years of his initial suspension, the Supreme Court held that the directions issued by it would not be relevant to his case.

12. It follows, the reliance placed on Ajay Kumar Chaudhary (supra) is misplaced and shall not be come to the rescue of the petitioner.

13. Insofar as the plea of Mr. Mohanty that the petitioner having been transferred to Cochin, Thiruvananthapuram Zone, there is no need for the respondents to continue the suspension of the petitioner is concerned, though the submission looks appealing on a first blush but while suspending the petitioner, the competent authority decided to fix the headquarter of petitioner at Cochin, Thiruvananthapuram Zone, may be for the reasons, it thought appropriate. So in that sense, it is not a case of transfer. We find that the Tribunal is justified in upholding the continuance of the suspension of the petitioner for a further period of 180 days by dismissing the OA.

14. The charges being serious, this Court is of the view that the impugned order should not be interfered with, more so in exercise of power under Article 226 of the Constitution of India.

15. The writ petition and connected applications are dismissed. No costs.