

(2019) 07 DEL CK 0269

In the Delhi High Court

Case No : Civil Writ Petition No. 7071 Of 2019

Rakesh Kumar Garg

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 8, 10, 12
Indian Penal Code, 1860 — Section 120B

Citation : (2019) 07 DEL CK 0269

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : A.K Bhardwaj, Rakesh Kumar, Raghav Nagar

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

C.M. No. 29464/2019

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 7071/2019 & C.M. No. 29465/2019

3. The petitioner has preferred the present writ petition to assail the order dated 08.03.2019 passed by Central Administrative Tribunal, Principal

Bench, New Delhi (the Tribunal) in O.A. No. 4485/2018. The Tribunal has rejected the said Original Application preferred by the petitioner wherein

he had assailed the continuation of his suspension. He was initially placed under suspension on 16.07.2018 on the ground that he had been detained by

the CBI on 01.07.2018. His initial suspension of 90 days was extended vide order dated 28.09.2018 for a period of 180 days. The suspension of the

petitioner has been further extended vide order dated 27.03.2019 for a period of 180 days. After taking into consideration the facts of the case, the

Tribunal rejected the petitioner's reliance placed on the decision of the Supreme Court in Ajay Kumar Choudhary Vs. Union of India & Ors.,

(2015) 7 SCC 291. While doing so, the Tribunal referred to its earlier decision in Vikash Kumar Vs. Union of India & Ors. O.A. No. 3505/2018,

decided on 14.12.2018, which in turn, proceeded on the basis of the decision of this Court in Govt. of NCT of Delhi Vs. Dr. Rishi Anand, W.P. (C.)

No. 8134/2017 & C.M. No. 33423/2017, dated 13.09.2017.

4. The decision in Dr. Rishi Anand (supra) analysed the decision of the Supreme Court in Ajay Kumar Choudhary (supra), while allowing the writ

petition against the order of the Tribunal revoking the suspension of the respondent Dr. Rishi Anand in that case.

5. The submission of learned counsel for the petitioner is that in the present case, till date, no charge sheet has been issued to the petitioner. He

submits that the present is, therefore, distinguishable from the Decision of this Court in Dr. Rishi Anand (supra). He places reliance on the Division

Bench judgment of this Court in Govt. of NCT of Delhi and Anr. v. Vijay Kumar Jha, W.P. (C.) No. 6456/2016, decided on 26.07.2016, wherein the

Division Bench invoked Ajay Kumar Choudhary (supra) and did not interfere with the order of the Tribunal revoking the suspension of the employee.

He also places reliance on the decision of the learned Single Judge of this Court in Kulamani Biswal v. Union of India & Anr., W.P. (C.) No.

6859/2018, decided on 31.10.2018, wherein the learned Single Judge has taken into consideration various decisions, including the decisions in Ajay

Kumar Choudhary (supra), Dr. Rishi Anand (supra) and the further decision of the Supreme Court in State of Tamil Nadu Rep. by Secretary to Govt.

(Home) v. Promod Kumar IPS & Anr., Civil Appeal No. 8427-8428/ 2018, decided on 21.08.2018

6. Learned counsel for the respondent, who appears on advance notice has defended the continuation of the petitioner's suspension and the order

of the Tribunal. He submits that the petitioner was holding a senior position as the Chief Engineer in MES, Ministry of Defence. There are serious

allegations of corruption against the petitioner. The CBI has registered a case, which is presently under investigation under Section 120B IPC and

under Section 7,8,10 and 12 of the Prevention of Corruption Act. The charges, as per the FIR pertain to demand and acceptance of illegal bribe by the petitioner from private contractors.

7. Learned counsel submits that the CBI is still in the process of conducting the investigation and collecting evidence and, therefore, the charge sheet has not been filed in the Court. For the same reason, no charge memorandum has been issued for initiation of disciplinary proceedings. He submits that the CBI has, in fact, sent a communication to the respondent on 12.03.2019 stating that the case is presently under investigation, and in case the petitioner is reinstated at this time, he may influence the witnesses to be examined further.

8. The CBI requested for extension of petitioner's suspension period.

Moreover, the Director of Enforcement vide letter dated 01.03.2019 informed that their unit has been conducting investigation under the provisions of the Prevention of Money Laundering Act, 2002(PMLA) and that the matter is under progress.

9. Learned counsel for the respondent has drawn our attention to the speaking order dated 06.06.2019, passed by the Government in pursuance of the order passed by the Tribunal in O.A. No. 4485/2018 on 04.12.2018.

10. We have heard the submissions of Mr. Bhardwaj, learned counsel for the petitioner and Mr. Rakesh Kumar, learned counsel for the respondent.

At the outset, we may observe that the petitioner has held back the particulars of the case registered against him by the CBI, and particulars of the case made out against him under the PMLA. In all fairness, he should have disclosed all the relevant facts, since they are most material and pertinent to assess the petitioner's grievance. All that the petitioner states is that someone has played mischief and he claims that the case is false and frivolous. This ipse dixit of the petitioner cannot be accepted. His act of withholding the aforesaid material and relevant information raises an adverse inference that if the same were to be disclosed, it would go against his claim.

11. We may observe that there can be no hard and fast rule that in all cases where charge sheet is not filed within three months, of suspension, the same would mandatorily be revoked. The need for continuation of the same would have to be assessed on the facts of each case. Most relevant would be the nature and substance of allegations; the materials on which the

same is founded; the position held by the concerned government officer

i.e. whether he is holding a portion of authority and influence, or he is a lower ranked employee with little or no power to influence others concerned

with the matter.

12. No doubt, in the present case, the charge sheet " either in the criminal case, or for holding the departmental enquiry against the petitioner has not

been issued till date. Investigation is still underway by the CBI. The communication dated 12.03.2019, sent by the CBI, requesting the Government not

to reinstate the petitioner, since the investigation was underway and he may influence the witnesses to be examined further, could not be taken lightly.

Similarly, the fact that the investigation is underway under the PMLA, could also not have been ignored by the Government. These are serious and

valid considerations to justify the continued suspension of the petitioner.

13. Reliance placed by Mr. Bhardwaj on the aforesaid decisions, in our view, are of no avail looking to the circumstances of the case. Even in Promod

Kumar IPS (supra), the Supreme Court, while referring to Ajay Kumar Choudhary (supra), wherein the Supreme Court had frowned upon the

practice of protracted suspension and held that suspension must necessarily be for a short duration, eventually held that the suspension of the

respondent in that case would not serve any useful purpose, on the basis of the material on record of that case. The same cannot be said in the facts

of the present case considering the fact that the investigation under the Prevention of Corruption Act, and the IPC is underway by the CBI, and by the

Appropriate Authority under the PMLA.

14. The petitioner is a senior, highly ranked government officer and was occupying a high position at the time of his suspension. He was in a position

to influence witnesses and tamper with the evidence. He has been released on bail. Pertinently, the petitioner has also not placed before us the order

passed by the Court granting him bail which may have, if produced, thrown light on the allegations against the petitioner. Considering all these aspects

as well, we are not satisfied that the suspension of the petitioner should not have been continued in the present case.

15. We find no reason to interfere with the impugned order.

16. Dismissed.