
(2019) 03 CAT CK 0040

In the Central Administrative Tribunal

Case No : Original Application No. 4485 Of 2018

R.K. Garg

APPELLANT

Vs

Union Of India & Ors. Through Its Secretary

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 10(2), 10(6)

Citation : (2019) 03 CAT CK 0040

Hon'ble Judges : L. Narasimh Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, CH. Shamsuddin Khan

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J

1. The applicant is working as Chief Engineer in M.E.S., Ministry of Defence and was posted at Kochi. He was placed under suspension through an order dated 16.07.2018 on the ground that he has been detained by the CBI on 01.07.2018. Initially, the suspension was for a period of 90 days under sub-rule 2 of Rule 10 of CCS (CCA) Rules. Thereafter, it was extended by 180 days through an order dated 28.09.2018. The applicant made representation on 12.10.2018 with a prayer to reinstate him into service and to enhance the subsistence allowance.

2. This O.A is filed with a prayer to set aside the order of suspension and the one of extension thereof. It is stated that in view of the judgment of the Hon'ble High Court in Ajay Kumar Choudhary Vs. Union of India & Ors. in C.A. No. 1912/2015 dated 16.02.2015, the Government of India, DoPT issued O.M dated 23.08.2016 directing that the suspension shall not be continued beyond 90 days, unless charge sheet is filed in a criminal case or departmental proceedings; and that the continuance of suspension beyond 90 days, is contrary to the OM. The applicant further contended that though he made representation on 12.10.2018 with a

prayer to reinstate him in service and enhance the suspension allowance in accordance with rules, no action has been taken thereon.

3. We have heard Mr. M. K. Bhardwaj, learned counsel for applicant and Dr. CH. Shamsuddin Khan, learned counsel for respondents at length.

4. The applicant was placed under suspension on account of his detention. He has been arrested by CBI in a criminal case.

Sub Rule (2) of Rule 10 of CCS (CCA) Rules reads as under:-

"(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority-

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION.-The period of forty-eight hours referred to in Clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account."

5. Whenever an employee is arrested and kept under detention for a period exceeding 48 hours, he shall be deemed to be under suspension. It is in the said context, that the impugned order dated 16.07.2018 is passed. Thereafter, the suspension was extended for another 180 days through order dated 28.09.2018. Rules 10 (6) empowers the Government to extend the suspension beyond 90 days, for reasons to be recorded.

6. It is true that in Ajay Kumar Chaudhary's case (Supra), the Hon'ble Supreme Court observed that in case the charge sheet is not filed in a criminal case or in the departmental proceedings within 90 days from the date of suspension, it shall lapse. However, the same was discussed at length by the Hon'ble Delhi High Court and it was held that the observation of the Hon'ble Supreme Court cannot be treated as a ratio in the facts of that case nor can it be treated as a clear proposition to the effect that in case charge sheet is not filed within 90 days in departmental proceedings, suspension would lapse automatically. Following same, this Tribunal in Vikash Kumar Vs. Union of India & Ors., O.A No. 3505/2018 decided on 14.12.2018, dealt with the proposition in detail.

7. Added to that, in the instant case, the suspension was warranted on account of the fact that the applicant was arrested by CBI, and not on their own accord, by the respondents.

8. The respondents are yet to make up their mind whether or not to institute the departmental proceedings. That would be possible only when they get to know the relevant facts that led to the detention of the applicant. Initiation of the departmental proceedings in a hasty manner is certain to become futile. The proceedings in a criminal case on the other hand, would depend upon the nature of the progress of the investigation. Therefore, the application of the rule of 90 days in the instant case becomes a bit doubtful.

9. Be that as it may, it is for the concerned department to decide whether or not to continue an employee under suspension. They have to weigh the gravity of the charges on one hand and interest and need of the department on the other. If the charges are frivolous and the work of the officer would be useful to the department, a decision for reinstatement may be taken. If on the other hand, if the charges are serious, a decision is bound to be in a different way.

10. The applicant has already submitted representation and reminders in this behalf. The respondents need to bestow their attention to the same by taking into account, the relevant facts.

11. We, therefore, dispose of the O.A declining to interfere with the orders of suspension and extension thereof. However, we direct the respondents to pass order on the representation dated 12.10.2018 made by the applicant within a period of four weeks from the date of receipt of a certified copy of this order. There shall be no order as to costs.