

(2018) 07 CAT CK 0047

In the Central Administrative Tribunal

Case No : Original Application No. 2142 Of 2018

Savitur Prasad

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-07-2018

Acts Referred:

Citation : (2018) 07 CAT CK 0047

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Mohit Chaudhary, Sarbjit Kaur, Haneef Mohammad, Kunal Sachdeva, Nilansh Gaur, Hanu Bhaskar

Final Decision : Dismissed

Judgement

V. Ajay Kumar, J

1. The applicant, an IDAS Officer of 1983 batch and working as Additional CGDA, Ministry of Defence (presently under suspension), filed the OA being aggrieved by the action of the respondents in placing him under suspension vide Annexure A-1 order dated 21.11.2017 and in extending the said suspension vide Annexure A-5 order dated 15.02.2018 for a period of another 90 days beyond 18.02.2018 (first extension) and also in further extending the suspension vide Annexure A-3 dated 14.05.2018 (second extension) for another period of 74 days beyond 18.05.2018, i.e., upto the date of his retirement (31.07.2018) or till the completion of the enquiry, whichever is later.

2. The seminal facts required for the purpose of the OA are that, while the applicant was working as Additional Director General of Defence Accounts (ADGDA), the respondents placed him under suspension vide the impugned Annexure A-1 order dated 21.11.2017. The said order states that the applicant was placed under suspension in view of a criminal case under investigation and in contemplation of a departmental enquiry against him. Thereafter, the respondents, vide the order dated 15.02.2018, basing on the recommendation of

a Review Committee constituted for the purpose, extended the suspension period of the applicant for a period of another 90 days beyond 18.02.2018. The respondents issued the Annexure A-6 Charge Memorandum dated 15.02.2018, i.e., on the same date of the order of extension of suspension of the applicant. Again, the respondents extended the suspension period of the applicant for another period of 74 days beyond 18.05.2018, i.e., upto the date of retirement (31.07.2018) or till completion of the enquiry, whichever is later.

3. The applicant submits that he filed OA No.707/2017 against the respondent herein and also against Shri Atul Kumar Saxena, Ms. Veena Prasad, Ms. Madhilika P. Sakul, Shri Prasahnt N. Sukul as the said persons were not eligible for appointment as CGDA as per the statutory rules, but the said OA was dismissed by this Tribunal vide its judgment dated 22.03.2018. During the pendency of the aforesaid OA, basing on a complaint given by the office of the Chief Vigilance Commissioner, Delhi, an FIR No.0075 was registered on 17.10.2017 under Sections 419/465/468/471/182/120B of IPC, wherein it was stated that one Dr. Krishan Kumar claiming that he was working as a Director in the Prime Minister's Office came along with the applicant and met the Chief Vigilance Commissioner and told the CVC that the applicant is a very senior officer of IDAS and great injustice is being done to him in the allocation of work in his department and thereon, the CVC told him that the CVC does not interfere in the matter of work allocation etc., which is the prerogative of the Head of the Institution and that later on, on enquiries, they learnt that the said Dr. Krishan Kumar is an imposter and no person with the name of Dr. Krishan Kumar is working in the Prime Minister's Office as Director or on any other post. The applicant also submitted a representation on 29.10.2017 to the SHO, North Avenue, PS, New Delhi stating that one of his batch-mates, namely, Mr. Vijay Kumar, an Additional Secretary, Ministry of Finance introduced Dr. Krishna Kumar to him, who claimed himself that he is serving as Director in PMO. On believing the same, the applicant went along with the said person to him to the CVC, and on 27.10.2017 on reading a news article that the said Dr. Krishan Kumar is an imposter, and accordingly filed the said representation seeking action on the said Dr. Krishan Kumar, an imposter. But the respondent, illegally and arbitrarily placed him, under suspension, and later extended the same till his retirement, i.e., till 31.07.2018 or till completion of enquiry.

4. Heard Shri Mohit Chaudhary with Ms. Sarbjit Kaur and Shri Haneef Mohammad, Shri Kunal Sachdeva and Shri Nilansh Gaur, learned counsel for the applicant and Shri Hanu Bhaskar, learned counsel for the respondents and perused the pleadings on record.

5. Shri Mohit Chaudhary, the learned counsel appearing for the applicant raised the following grounds in support of the OA averments:-

(i) The order of suspension and the subsequent orders of extension of suspension of the applicant are liable to be quashed and set aside as the same were not signed/approved/issued by the competent authority;

(ii) As held by the Hon'ble Apex Court in *Ajay Kumar Choudhary Vs. Union of India and Another*, (2015) 7 SCC 291, whenever the period of suspension is being extended, though a reasonable order must be passed, but both the extension orders do not contain any reasons and hence they are liable to be quashed;

(iii) The charges levelled against the applicant are not serious and that there is no substance in it; and

(iv) Ms. Madhilika P. Sakul was one of the members of the Review Committee, basing on the recommendations of which, the suspension of the applicant was extended for the second time. Against the said Ms. Madhilika P. Sakul, the applicant filed OA No.707/2017 questioning her eligibility for promotion as CGDA and as a result, she developed animosity and personal grudge against the applicant and thereby she influenced the decision of the suspension Review Committee. As held by the Hon'ble Apex Court in *Justice P.D. Dinakaran Vs. Hon'ble Judges Inquiry Committee and Others*, AIR 2011 SC 3711, that 'no person shall be a judge in his own cause', whereas the said Ms. Madhilika P. Sakul had taken decision against the applicant for the extension of his suspension period. Hence, on this ground also the impugned orders of extension are liable to be quashed.

6. Per contra, Shri Haun Bhaskar, learned counsel appearing for the respondents would submit that the Hon'ble President of India is the competent authority to place the applicant under suspension and also for extension of the same and as per rules, the said competent authority approved the suspension of the applicant on all the occasions. In support of the said submission, the learned counsel produced the original file before the Tribunal at the time of hearing of the OA.

7. The learned counsel for the respondents also submits that the decision of the Hon'ble Apex Court in *Ajay Kumar Choudhary (supra)* has no application to the facts of the present case as the said case was pertaining to a situation where no charge sheet was filed within 3 months from the date of suspension, and whereas in the instant case, the applicant was placed under suspension on 21.11.2017 and a charge sheet was issued on 15.02.201, i.e., well within the said period of 90 days. He placed reliance on the decision of the Hon'ble High Court of Delhi in *Government of NCT of Delhi Vs. Dr. Rishi Anand in W.P. (C) No.8134/2017* dated 13.09.2017, wherein the decision in *Ajay Kumar Choudhary's case (supra)* was considered and explained.

8. The learned counsel further submits that the Annexure R-9 FIR which was registered in pursuance of a complaint of the CVC under Sections 419/465/468/471/182/120B of IPC, clearly reveals the involvement and connivance of the applicant with one Dr. Krishan Kumar, an imposter and falsely claimed that he was a Director in PMO, the complaint and the FIR are not only against the said Dr. Krishan Kumar but also against the applicant. With regard to the said serious and grave charges and misconduct and also with regard to

certain other acts of serious omissions and commissions of the applicant, and pending contemplation of departmental proceedings, the respondents rightly placed the applicant under suspension and the same was extended on both the occasions after following due procedure, i.e., on the recommendations of the duly constituted Suspension Review Committee.

9. He also submits that Ms. Madhilika P. Sakul was one of the members in the Review Committee and hence it cannot be said that she influenced the decision of other officers, who are senior to her in any manner. In view of the grave and serious nature of charges levelled against the applicant, he cannot be continued in service till the completion of the departmental proceedings. The challenge to the suspension order and to the order of first extension of the same becomes infructuous as now the order dated 14.05.2018 extending the period of suspension of the applicant till 31.07.2018, i.e., date of his retirement is only in operation.

10. With regard to the contention of the applicant that the impugned orders were not approved by the competent authority, we have verified the original file submitted by the learned counsel for the respondents at the time of hearing of the OA and satisfied that the order of suspension as well as orders of extension of the same were duly approved by the disciplinary authority, i.e., the Hon'ble Raksha Mantri, i.e., on behalf of the Hon'ble President of India and accordingly, we reject the said contention.

11. A perusal of the decision of the Hon'ble Apex Court in Ajay Kumar Choudhary (supra) and the decision of the Hon'ble High Court of Delhi in the case of Dr. Rishi Anand (supra), we agree with the submission of the learned counsel for the respondents and accordingly held that there is no illegality.

12. A bare perusal of the FIR and the Memorandum of Charges reveal that the charges are serious and grave and have to be enquired into, to elicit the truth and to find the real persons responsible for the same. Hence, on this count also, the contention of the applicant is rejected.

13. There cannot be a quarrel with the legal maxim "Nemo debet esse judex in propria causa", i.e., "no man shall be a judge in his own cause". The contention of the applicant that Ms. Madhilika P. Sakul, CGDA against whom the applicant filed OA No.707/2017 developed personal grudge and animosity against the applicant and in view of the same, she being one of the members of the suspension Review Committee which extended the suspension of the applicant for a second time, influenced the views of the others members and accordingly the said recommendation and consequential extension of the suspension order should be quashed basing on the principle of "Nemo debet esse judex in propria causa", also cannot be accepted. Firstly, the applicant failed to implead Ms.Madhilika P. Sakul as one of the respondents in the OA though alleged mala fides against her. As per the settled principles of law, if personal mala fides are attributed against any officer, the said officer/authority should be made as one of

the respondents in the OA by his/her name, to enable the said person, to plead his/her case. Secondly, though the applicant made the said Ms. Madhilika P. Sakul as one of the respondents in OA No.707/2017, but this Tribunal while dismissing the said OA, vide order dated 23.02.2018, observed at paragraphs 6 and 7 as under:-

"6. Regarding other respondents, the only averments made in paras 4 (iii), (vii) and ground (I) of the OA are to the effect that none of the respondents 5 to 7 possess the requisite qualifying service in the pre-revised grade of Rs.22400-24500 or Rs.24050-26000. In sum and substance, the plea of the applicant can be summarized - (i) that the respondent No.4 having superannuated on 31.05.2016, could not have been considered for promotion in the DPC/supplementary DPC held on 16.10.2017; (ii) the respondent No.5 did not possess even a single day's service as Addl. CGDA as on 01.01.2016, i.e., the crucial date; (iii) respondents 6 and 7 also did not possess the requisite qualifying service for promotion to the post of CGDA as on 01.01.2016; and (iv) the applicant who was eligible and possessed the requisite qualifying service, i.e., three years and nine months in the pre-revised scale of Rs.22400-24500, was not considered for promotion, despite eligibility.

7. When this matter was heard, learned counsel appearing for the applicant submitted that his main grievance is against the respondent No.5".

14. A perusal of the relevant paragraphs as referred above, clearly indicate that the only contention of the applicant in OA filed against Ms. Madhilika P. Sakul was that she did not possess the requisite qualifying service and even the said contention was not pressed, as the applicant stated that his main grievance is against respondent No.5 only. Therefore, we find no force in the submissions of the applicant, made with regard to the participation of Ms. Madhilika P. Sakul, in the second suspension Review Committee.

15. In the circumstances and for the aforesaid reasons, OA is dismissed being devoid of any merit. No costs.