

(2013) 09 DEL CK 0109

In the Delhi High Court

Case No : Writ Petition (C) 4017 of 2013 and CM Application 9488 of 2013

Union of India and Another

APPELLANT

Vs

Ajay Kumar Choudhary

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0109

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant; Jyoti Singh and Mr. Aman Joshi and Ms. Avni Singh, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner-Union of India is aggrieved by an order of the Central Administrative Tribunal, Principal Bench (hereafter referred to as "Tribunal") dated 22.05.2013, especially the operative portion which directs the Government to issue a chargesheet in a time bound manner to the respondent (hereafter referred to as "applicant") failing which the latter's suspension would cease to be operative upon its expiry on 21.06.2013. The respondent, at the relevant time, was working as a Defence Estate Officer and was posted at Srinagar. Certain allegations of misconduct relating to the issuance of an NOC for disposal of lands which were subsequently found belonging to the Central Government, Ministry of Defence, were levelled. It transpired that the applicant had issued orders of revocation. His explanation was that the note recommending the course of action adopted by him was prepared by certain subordinates. He alleged that such subordinates and other employees who were in fact behind the move are continuing to work in the same posts that they were holding at the relevant time and that he along with one Vijay Kumar was targeted for hostile treatment. The Union of India issued an order placing Vijay Kumar and the applicant under suspension. In respect of the applicant, the first order of suspension was made on 30.09.2011. That was challenged by the

applicant through proceedings before the Tribunal (i.e. OA 1057/2011). The Tribunal by its order dated 02.11.2012 noticed that a criminal case had been instituted and that investigations are on. At the same time, the Tribunal was of the opinion that the memorandum of the DoP & T dated 07.01.2004 prescribing the procedure and a time limit which was to govern while issuing suspension and its continuation has to be followed.

2. The Central Government subsequently passed orders extending the period of suspension; the last one was on 21.12.2012. This was challenged in O.A. No. 587/2013 before the Tribunal; the order which is the subject matter in the present case. During the pendency of that application, yet another order dated 19.03.2013 extending the period of suspension was made. By the impugned order, the Tribunal took into consideration the fact that in the year 2013, i.e., on 01.05.2013 in SWP No. 1804/2012 preferred by Vijay Kumar, the Jammu & Kashmir High Court quashed the suspension order in his case. Taking note of these facts as well as the Memorandum of 07.01.2004, the Tribunal issued the impugned directions; the relevant parts of which are extracted below:-

14. It is seen that Review Committee/Respondents have not considered the above aspects in this case objectively but passed orders dated 21.12.2012 and 19.03.2013 in a routine and mechanical manner extending the period of suspension periodically. Admittedly, out of six persons including the Applicant allegedly involved in issuing the NOC, the Respondents have chosen only two persons to be placed under suspension. One was the Applicant and the other was Mr. Vijay Kumar. Now, the Hon'ble High Court of Jammu and Kashmir, vide its order dated 1.5.2013 (supra), ordered for revocation of the suspension of the said Vijay Kumar also, even though it was by invoking sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules, 1965 which says that reviews have to be made within the prescribed periods and the reviews made after the expiry of the prescribed period will invalidate the order of extension of suspension.

15. For all the aforesaid reasons, we dispose of this OA, with the following directions:-

(i) As the period of suspension in terms of order dated 21.12.2012 has already expired, there is no question of setting aside the same now. As regards the 2nd impugned order dated 19.03.2013 is concerned, it is still in currency and it will expire only on 21.06.2013. In case no charge memo is served on the applicant by that date, or unless the Respondents themselves revoke the said order from an early date, they shall not extend it for any further period and the Applicant shall be reinstated in service on expiry of the currency of the said order.

(ii) We also direct the Respondents that if they proceed with the enquiry, it shall be concluded in a time bound manner.

3. It is argued on behalf of the Union of India that the discretion and right to exercise the power of suspension is guided by the facts and circumstances in every case and that the Tribunal's limiting such discretion by the impugned

directions cannot be sustained. It was also argued that the Tribunal's findings that the Union Government had not applied its mind to the specific issues directed by it, i.e., OM dated 07.01.2004, is based upon an improper appreciation of the facts. In this regard, the counsel produced the relevant file to establish that such instructions had taken place; the Court has examined the same. Apart from the fact that the reference to the OM of 07.01.2004 can be found at more than one place, this Court also notices that some correspondence had ensued between the CBI and the competent authority of the petitioner. The letter of CBI dated 07.02.2013 indicated that the investigations were at a very advanced stage; likewise the letter dated 20.06.2013 stated that the investigation would be completed by July, 2013. In the light of these circumstances, yet another letter was written by the Government of India on 01.08.2013 eliciting a response from the CBI about the latest position. Counsel for the applicant submitted that no fault can be attributed to the Tribunal nor does any error attach to its directions. Learned Senior counsel for the applicant stressed upon the meaning and contents of the OM dated 07.01.2004 which, according to her, clearly state that in any case if no charge memo is issued to an employee beyond the period of a year, unless the official is in police or judicial custody or is accused of a serious crime or the matter involves national security, the Review Committee should as a matter of course not recommend extension of suspension.

4. This Court has carefully considered the submissions of the parties as well as the materials placed on record.

5. As discussed previously, the Tribunal's directions made on the earlier occasions were apparently taken into account by the Central Government which did consider the OM of 07.01.2004. It also appears to have actively engaged in correspondence with the CBI. The latter had indicated more than once that the investigations are almost completed and that the necessary action would be taken. In these circumstances, the narrow question which this Court has to consider is whether the impugned directions circumscribing the Government's power to continue the suspension and also to issue a chargesheet within a time bound manner can be sustained.

6. The OM of 07.01.2004 which has been heavily relied upon by the respondent/applicant are in the nature of mere executive directions. The power to suspend the employee is guided by the Statutory Rules, i.e., Rule 10 of the CCS (CCA) Rules, 1965, as amended on 24.01.2004. Whilst there can be no dispute about the fact that an Office Memorandum which the Government issues for the guidance of its officials, for the exercise of powers, such as the one contained in Rule 10 (6) and 10 (7) should be ordinarily adhered to, at the same time, the amplitude of the discretion contained in the statutory powers cannot be whittled down by the operation of the Office Memorandum. What the applicant invited the Tribunal to do was a straight forward application of the OM dated 07.01.2004. In the first instance, the Tribunal correctly, in the opinion of the Court, left it to the

discretion of the authorities. The Union Government was asked to take into consideration the said OM of 07.01.2004 at the stage of considering whether to continue with the suspension or act otherwise. The records show that such consideration in fact did take place. The records also indicate that the Government consciously decided to continue with the suspension having regard to what it perceived is the gravity of the charges. In the circumstances, the Tribunal's view embodied in the impugned order, in this Court's mind, is nothing but a substitution of a judicial determination to that of the authority possessing the power, i.e., the Executive Government as to the justification or rationale to continue with the suspension. In view of the above reasons, the impugned order cannot be sustained; the same is hereby set aside. The Central Government is hereby directed to pass appropriate orders as to whether it wishes to continue with the suspension or not having regard to all the relevant factors including the report of the CBI, if any, it might have received by now. This exercise should be completed as early as possible and within two weeks from today. The petition is allowed in the above terms.

Order dasti.