CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/00396/2021

HYDERABAD, this the 12th day of July, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

K.Goutham S/o Late K.Venkataiah (Group-B),
Aged 34 yrs, Occ: Inspector of Customs,
O/o. The Principal Commissioner of Customs,
Hyderabad Customs Commissionerate,
GST Bhavan, Basheerbagh, Hyderabad.

(By Advocate: Mr.N. Vijay)

Vs.

1.Union of India, Ministry of Finance,
Department of Revenue, North Block,
New Delhi, Represented by its Secretary.

2. Central Board of Indirect Taxes and Customs,
North Block, New Delhi, Rep. by its Chairman.

3.The Chief Commissioner,
Customs, Central Tax, Central Excise and Service Tax,
GST Bhavan, Basheerbagh, Hyderabad Zone, Hyderabad.

4.The Principal Commissioner of Customs,
Hyderabad Customs Commissionerate,
GST Bhavan, Hyderabad. …Respondents

(By Advocate: Mr.N.Parameswara Reddy, Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

<u>Through Video Conferencing:</u>

2. The OA is filed questioning the continued suspension of the applicant by the respondents.

3. Brief facts of the case are that the applicant while working as Inspector at the Thimmapur ICD (Inland Container Depot) was suspended on 2.3.2021 for alleged clearance of unaccompanied baggage against Baggage Rules 2016. Applicant represented on 08.03.2021 against the suspension. However, respondents extended the suspension of the applicant vide order dt. 24.05.2021 without disposing the representation and challenging the same, the OA is filed.

4. The contentions of the applicant are that Joint Commissioner of Customs Commissionerate and the Principal Commissioner of Customs Commissionerate visited his office on 21.12.2020 and 6.1.2021 respectively and found no discrepancy in respect of the work done by him. Applicant was transferred from Thimmapur ICD depot to Technical Section of the HQ on 3.2.2021 and applicant obeyed the orders on 4.2.2021. Without disposing the representation of the applicant, his suspension was extended beyond 90 days vide memo dated 24.5.2021 without giving any reasons. Applicant has cited the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary [2015 (7) SCC 291] to support his contentions.

5. Respondents in their elaborate reply statement have stated that the applicant was posted as Inspector at ICD Thimmapur vide order dt.

10.09.2000 and he assumed charge on 18.09.2020. He was allotted the work relating to Examination and Clearance of Unaccompanied Baggage in addition to other responsibilities as Inspector. The SIIB (Special Intelligence and Investigation Branch) of the respondents organization seized 2 containers containing non bonafide baggage cleared as Unaccompanied Baggage by ICD Thimmapur depot and consequently, applicant along with 3 others were transferred out of ICD depot on 3.2.2021. During the period from October 2020 to December 2020, out of 337 containers, which came to ICD Thimmapur, 223 containers were verified and found that 160 containers contained non bonafide baggage. The goods in respect of 124 containers were confiscated and on paying a sum of Rs.18.54 crores towards fine, duty and penalty, the goods were released. Applicant has processed 414 Baggage Declarations violating Baggage Rules 2016. Vigilance Task Force was constituted on 15.2.2021 which submitted a report pointing out 4 major irregularities. Moreover, applicant did not maintain records to prove that the baggage was cleared as per Baggage Rules 2016. The enquiry initiated will be completed shortly. For dereliction of duties applicant was suspended giving reasons. Senior officers visiting the ICD depot would not mean that the entire work done by the applicant has been verified. Applicant's suspension was extended by another 90 days with effect from 31.5.2021 vide order dt. 24.5.2021, pursuant to the recommendation of the Review Committee constituted.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about continued suspension of the applicant for alleged violations of Baggage Rules 2016 by the applicant. The factual

Matrix is that the applicant was posted at ICD Thimmapur vide order dt. 10.09.2020 and he assumed charge on 18.09.2020. Based on some intelligence inputs that containers containing non bonafide baggage were being cleared at ICD Thimmapur depot, SIIB swung into action and seized 2 containers containing non bonafide baggage. Respondents have formed a Vigilance Task Force on 15.2.2021, which has pointed out 4 major irregularities in clearing non bonafide baggage contravening Baggage Rules 2016 and Customs Act 1962. In the process of investigation, respondents found that 160 containers out of the 337 which touched ICD Thimmapur Depot between the months of October 2020 to December 2020, were found to contain non-bonafide baggage. Of the 160 containers, goods in 124 containers were released after payment of Rs.18.54 crores towards duty, fine and penalty. Further, respondents point out that in January 2021, applicant has cleared 26 containers wherein duty component to the extent of Rs.25.43 lakhs had to be collected but only Rs.6.62 lakhs was collected, thereby causing loss of revenue. Respondents claim that the investigation is on and would be completed soon. Therefore, for dereliction of duties and on noticing multiple discrepancies in clearance of baggage by the applicant, he was initially transferred from ICD depot to ACR Section of the Head quarters on 3.2.2021 and later, suspended on 2.3.2021, which was further extended for another 90 days vide memo dated 24.5.2021.

II. Against the suspension, applicant represented on 8.3.2021 and the same is yet to be disposed. The respondents state in the reply affidavit that as this OA was directed to be tagged with OA No. 388/2021, the representation of the applicant could not be disposed. As per the recommendation of the Review Committee constituted for the purpose, the suspension of the applicant was extended vide memo dated 24.5.2021. Besides, when the other connected case OA No.388/2021 came up for admission on 10.6.2021, Ld. Counsel for the applicant therein has conceded for disposal of the OA rather than the representation, agreeing to the submission of the Ld. Respondent Counsel made on date cited. After this OA was tagged with OA 388/2021, learned counsel for the applicant agreed for similar disposal in this OA as well.

III. Suspension is an action whereby a civil servant is temporarily kept out of discharging his duty pending final action being taken against him i.e. whenever a departmental enquiry is contemplated or pending against a civil servant or where a case against a civil servant in respect of any criminal offence is under investigation, enquiry or trial, the rules authorize the disciplinary authority to place the concerned civil servant under suspension. A civil servant may be placed under suspension under Rule 10(1) of CCS (CCA) Rules, on any of the following grounds:

> *"(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-*
>
> *(a) when a disciplinary proceeding against him is contemplated or is pending; or*
> *(aa) when in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the state; or*
> *(b) when a case against him in respect of any criminal offence is under investigation, inquiry or trial."*

Respondents have invoked clause (a) and placed the applicant under suspension and therefore, the contention of the applicant that the respondents have not given reasons for his suspension is not maintainable.

IV. However, the object of placing a civil servant under suspension is to keep him away from a position where he can interfere with the conduct of the enquiry or tamper with documentary or oral evidence in any manner or where, having regard to the nature of the charges against him, it is felt that it would be unsafe to continue to vest in him the powers of his post. It is for the disciplinary or the competent authority to consider all the facts and circumstances of the case and in its discretion, to place a civil servant under suspension. Such discretion should be tempered against the background of relevant rules and law.

V. Further, no requirement to comply with the rules of natural justice is attracted in ordering suspension. Having regard to the object and purpose and the necessity of placing a civil servant under suspension with immediate effect, the rules of natural justice are by necessary implication excluded. This view was taken by the Hon'ble Karnataka High Court in disagreement with the view of the Hon'ble Bombay High Court, which had held that before suspending a civil servant, an opportunity should be given. (**Sundaresan v. Superintendent of Police, 1983(2) Kar LJ 523; Rajeswara Savanna v. State of Maharashtra, (1983) 1 All India Service Law Journal 484**). Therefore, the contention of the applicant that he was not given any reasonable opportunity to explain his point of view, before placing him under suspension, is invalid.

VI. The applicant was suspended on 2.3.2021 and it was extended for another 90 days w.e.f. 31.05.2021 vide order dt.24.5.2021 without issue of charge sheet. In regard to suspension, DOPT, the nodal Ministry, vide OM F. No. 11012/04/2016-Estt.(A),dated August 23rd, 2016, has given clear instruction that suspension cannot continue beyond 90 days if charge sheet is not issued within the said period. Respondents are duty bound to follow instructions of the nodal Ministry, as per allocation of Business Rules framed under Article 77 (3) of the Constitution. The relevant para of the cited memo is extracted here under:

> *"The undersigned is directed to refer to DoP&T's O.M. No. 11012/17/2013-Estt.A-III dated 3rd July, 2015 on the above mentioned subject and to say that in a recent case, Ajay Kumar Choudhary vs Union of India Civil Appeal No. 1912 of 2015 dated 16/02/2015, the Apex Court has directed as follows:*
>
> > *"14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/ Charge sheet is not served on the delinquent officer/employee; if the Memorandum of Charges/ Charge sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."*
>
> *2. In compliance of the above judgement, it has been decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge-sheet is not served to the charged officer. As such, it should be ensured that the charge sheet is issued before expiry of 90 days from the date of suspension.* ***As the suspension will lapse in case this time line is not adhered to****, a close watch needs to be kept at all levels to ensure that charge sheets are issued in time."*

Rules laid are to be followed by both the respondents and the employees. Respondents are not above law, as to infringe the rules on the subject. Hon'ble Supreme Court came down heavily on the aspect of violation of rules, by observing that action has to be taken as per rules and that decisions deviating from the rules has to be curbed and snubbed in the following judgments.

> *The Hon'ble Supreme Court in T.Kannan and orsvs S.K. Nayyar (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in Seighal's case (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules.*

Therefore, not adhering to the DOPT memo dated 23.8.2016 in regard to extending the suspension beyond 90 days without issuing a charge sheet, goes against the directions of the Hon'ble Supreme Court in the verdicts cited supra. Hence extension of the suspension of the applicant beyond 90 days is not lawful.

VII. Moreover, the DOPT memo referred to has been issued in the context of the Hon'ble Supreme Court judgment in Ajay Kumar Choudhary vs Union of India, on 16 February, 2015, CIVIL APPEAL No. 1912 of 2015 (Arising out of SLP No. 31761 of 2013, as under:

> *14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that*

pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

By telescoping the above judgment to the case of the applicant, it is seen that the applicant has been transferred from ICD Thimmapur on 3.2.2021 and therefore, there is little scope for him to interfere with the inquiry being conducted by SIIB/respondents at Thimmapur or tamper with documents/ witnesses. Moreover, applicant is not in such a senior position as to influence the course of the inquiry. By continuing the applicant under suspension, respondents would be paying subsistence allowance without any work rendered by him. Respondents have a responsibility to ensure that expenditure from the public exchequer is not superfluous. In fact, respondents have the authority to prohibit the applicant from contacting any person, or handling records and documents till the stage of his having to prepare his defence, as observed by the Hon'ble Supreme Court in ***A.K. Choudhary***. *Albeit*, suspension is not a punishment, but continued suspension will be stigmatic which impairs human dignity. The respondents can initiate disciplinary action with available evidence and need not wait till the investigation is completed. This will help in expediting prosecution of the applicant and at the same time allow the applicant work for the organization for the salary he is paid. Suspension by character is a temporary phenomenon and respondents cannot tinker with its character by extending suspension contravening rules/law.

VIII. The judgment in ***A.K.Choudhary*** by Hon'ble Apex Court, was reaffirmed with much more vigour, in its verdict as recently as in 2018 in State of Tamil Nadu Rep By Secretary to Govt. (Home) vs. Promod Kumar

IPS & Anr. on 21 August, 2018, Civil Appeal No.8427-8428 of 2018, (Arising out of S.L.P. (Civil) No.12112-12113 of 2017) as under:

> *23. This Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.*

Competent authority can post the applicant in a non sensitive post at any place in the respondents' organization. Specific instructions on the do's and don'ts by the applicant can be issued by the respondents for circulation to those concerned. By doing so, there would not be any threat to a fair trial. Continuing the applicant under suspension, is neither in the interests of the organization nor the applicant.

IX. The work of the applicant was closely supervised by the Assistant Commissioner and the Deputy Commissioner as contended by the applicant in his representation dated 8.3.2021 and therefore, it is his stand that he has not committed any wrong.

Nevertheless, the action of the respondents to extend the suspension of the applicant beyond 90 days without issue of charge sheet is not in accordance with rules or law, as brought out in the preceding paras. Hence the suspension of the applicant vide memo dated 02.03.2021 and its extension by order dated 24.05.2021 are set aside. Consequent to revocation of the suspension, applicant be posted to a non-sensitive post with attendant provisos as laid down in A.K. Choudhary judgment cited supra, anywhere in the respondents organization by the competent authority. Time granted to comply with the order is 8 weeks from the date of receipt of this order. However, keeping in view the contentions of the respondents in the reply statement about the alleged irregularities committed, it would be in the fitness of things for the respondents to issue a charge sheet as deemed fit early, but not later than 6 months from the date of receipt of this order. Individual and Organizational interests have to operate in tandem but not in isolation. We state no more.

X. With the above directions, the OA is allowed to the extent indicated. No costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr