



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:15.04.2024*

+ W.P.(C) 10006/2018

GOVT. OF NCT OF DELHI AND ORS.

..... Petitioners

Through: Ms. Latika Chaudhary, Advocate.

versus

JAGBIR SINGH

..... Respondent

Through: Mr. Anil Singal, Advocate.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 22.03.2018 passed by the learned Central Administrative Tribunal in original application no. (O.A.) 3634/2017. Vide the impugned order, the learned Tribunal has set aside the order dated 28.09.2017 passed by the petitioners whereby the initially directed suspension of the respondent for 90 days was sought to be extended for a further period of 90 days, without any charge sheet having been issued to him within the initial period of 90 days.

2. At the outset, we may note the brief factual matrix as emerging from the record.

3. The respondent, while working as a principal of Rashtriya

W.P.(C) 10006/2018**Page 1 of 9**



Sarvodya Bal Vidyalaya (RSBV), Mandawali, Delhi, under the administrative control of the Govt. of NCT, was vide order dated 03.07.2017 passed under Rule 10(1) of the CCS (CCA) Rules, 1965, suspended for a period of 90 days for alleged misappropriation of government funds. Even though no charge sheet was issued to the respondent during this initial period of suspension, the said period of suspension was, vide order dated 28.09.2017 extended for a period of 180 days.

4. Aggrieved by his further suspension, the respondent approached the Tribunal assailing the order dated 28.09.2017 whereby his suspension was extended. In his OA, the respondent relied on the decision of the Apex Court in *Ajay Kumar Choudhary Vs. Union of India (2015) 7 SCC 291* and OM dated 03.07.2015 issued by the Department of Personnel and Training (DoPT), Government of India.

5. The original application was opposed by the petitioners by urging that since the respondent was a Group 'A' officer, a charge memorandum could not be issued to him without obtaining the 1st stage advice of Central Vigilance Commission (CVC), which advice was received only on 28.09.2017 and, therefore, no charge sheet could be issued within the initial 90 days period of suspension. In support of its plea that the suspension would not lapse merely because the charge sheet could not be issued within the 90 days period, the petitioners had relied on the decision of this Court in *Govt of NCT of Delhi v. Dr. Rishi Anand, 2017 SCC OnLine Del 10506*.

6. After considering submissions of both parties and taking into
W.P.(C) 10006/2018 *Page 2 of 9*



account the effect of the two decisions relied upon by them, the first in *Ajay Kumar Choudhary (Supra)* and the other in *Dr. Rishi Anand (Supra)*, the learned Tribunal has allowed the original application vide the impugned order. The Tribunal has, consequently, set aside the order dated 28.09.2017 extending the respondent's suspension beyond 90 days and has directed that he be reinstated in service w.e.f. 03.10.2017 and paid full salary from the said date with further directions to take a decision regarding the initial suspension period of 90 days in terms of Fundamental Rules 54-B.

7. Being aggrieved, the petitioners have approached this Court. In support of the petition, the learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that the respondent was a Group 'A' officer and, therefore, it was incumbent for the petitioners to obtain 1st stage Central Vigilance Commission (CVC) advice before issuing a charge memo to him, which process took time. Since the advice from the CVC was received only on 28.09.2017, the petitioners could not be faulted for the delay in issuance of the charge memo to the respondent. Furthermore, the charge sheet to the co-delinquent namely, Sh. K.S. Meena, who was not a Group 'A' employee, was issued well in time i.e., on 07.09.2017. Finally, she contends that the Tribunal also failed to appreciate that the respondent stood superannuated on 31.01.2018 and, therefore, he could no longer be reinstated in service in terms of the impugned order. She, therefore, prays that the impugned order be set aside.

8. On the other hand, Mr. Anil Singal, learned counsel for the
W.P.(C) 10006/2018 *Page 3 of 9*



respondent supports the impugned order, and submits that though the learned Tribunal agreed with the petitioners plea that the period of 90 days for issuing of charge sheet cannot be treated as sacrosanct, the Tribunal found, after appreciation of the factual matrix that the petitioners had not taken steps in time to issue a charge sheet or to seek the 1st stage advice of CVC. He, therefore, prays that the writ petition be dismissed.

9. In order to appreciate the rival submissions of learned counsel for the parties, we may begin by noting the relevant extracts of the impugned order, which read as under:-

*“6. We have considered the arguments of the learned counsel for the parties and have also perused the records. It is an admitted position of the parties that no memorandum of charges has been issued to the applicant within a period of 90 days from the date of his suspension vide Annexure A-2 order dated 03.07.2017. The contention of Shri R.N. Singh, learned counsel for the respondents that delay has occurred on account of applicant not submitting his reply to the SCN dated 03.11.2017 (Annexure R-3) cannot be accepted prima facie for the simple reason that there is no requirement of law that the DA should kept on waiting endlessly for reply to the SCN before issuing the memorandum of charges to the delinquent Government servant. The applicant had demanded certain documents. He was informed by the DA to visit the vigilance office and collect them but he did not turn up on his indicated date. There was no legal impediment in the way of the DA to issue the memorandum of charges to the applicant even without receiving his reply to the SCN. The judgment of the Hon’ble Supreme Court in the case of **Ajay Kumar Choudhary** (supra) is absolutely unambiguous. The law laid down in that judgment is that if the competent authority fails to issue the memorandum of charges/charge-sheet to the delinquent Government servant within 90 days of the suspension, then the charged Government servant has to be reinstated in service. For clarity, the relevant portion of the judgment is reproduced below:*



"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;"

7. Shri R.N. Singh tried to argue that the 90 days period mentioned in **Ajay Kumar Choudhary** (supra) is not sacrosanct and by relying upon the judgment of the Hon'ble High Court of Delhi judgment in the case of **Dr. Rishi Anand** (supra). There cannot be any dispute that there could be certain situations where it may not always be possible to issue the memorandum of charges within 90 days, as there could be some highly exceptional situations, viz. force majeure. In the instant case, we do not find that there was any exceptional situation which could have prevented the respondents from issuing the memorandum of charges within a period of 90 days. It appears that there has been delay at the end of the respondents in getting the stage advice of CVC. Even the alacrity required to be shown in issuing the chargesheet was missing at the end of the respondents. Hence, we are of the view that the continuation of the suspension of the applicant beyond 90 days is absolutely illegal in the light of the ratio of law laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary** (supra). It is also in violation of the DoPT OM dated 03.07.2015.

8. In the conspectus of the discussions in the foregoing paras, the impugned Annexure A-2 order dated 03.07.2017, extending the suspension period of the applicant for a further period of 180 days is quashed and set aside. The respondents are directed to reinstate the applicant from the date of expiry of the suspension period of 90 days vide Annexure A-2 order dated 03.07.2017. The suspension period started w.e.f. 03.07.2017. The applicant shall be reinstated in service from 03.10.2017 and shall be paid his regular salary from that date. The respondents are also directed to take a decision with regard to the suspension period of 90 days in terms of FR 54-B. These directions shall be complied with within two months from the date of receipt of a certified copy of this order. We, however, make it clear that the respondents shall have liberty to continue with the disciplinary proceedings in accordance with law, if they so desire. The OA stands allowed in the aforesaid terms."



10. From a bare perusal of the aforesaid, it is evident that though the learned Tribunal accepted the petitioners' plea that no charge sheet could have been issued to the respondent without seeking the 1st stage CVC advice, the learned Tribunal by relying on the decision in ***Dr Rishi Anand (Supra)*** also found merit in petitioners' plea that non-issuance of charge sheet within the initial suspension period of 90 days would not be fatal. However, after considering facts of the present case, the learned Tribunal found that there was an inordinate delay on the part of the petitioners seeking the 1st stage advice of CVC and, therefore, it could not be permitted to urge that the delay in issuing the charge sheet was not because of the fault of the petitioners but on account of delay in the CVC giving the necessary 1st stage advice.

11. Even before us, learned counsel for the petitioners has not been able to deny that the advice of the CVC was sought only on 19.09.2017 i.e., barely 10 days before the expiry of the initial 90 days suspension period of the respondent. When the petitioners themselves have, in breach of the DoPT's OM dated 03.07.2015 as also the subsequent OM dated 23.08.2016 failed to take timely steps to seek the advice of the CVC, they cannot, as rightly held by the learned Tribunal be permitted to urge that the charge memorandum could not be issued on account of delay on the part of the CVC in providing the 1st stage advice.

12. Having perused the decision in ***Dr. Rishi Anand (Supra)***, though, we are inclined to agree with the petitioners that it may not be



possible in every case to issue the memorandum of charges within the initial period of 90 days, we find that in the present case, this delay in obtaining the advice of the CVC, was attributable solely to the petitioners who waited till 19.09.2017 to seek this advice. At this stage, we also deem it apposite to refer to the DoPT's OM dated 23.08.2016, which was issued to avoid such situations where employees are kept under suspension indefinitely without issuance of any charge sheet against them. The same reads as under:

“OFFICE MEMORANDUM

Subject: Central Civil Services (Classification, Control and Appeal) Rules, 1965 – instructions regarding timely issue of Charge-sheet – regarding.

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/Chargesheet 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.

3. It should also be ensured that disciplinary proceedings are initiated as far as practicable in cases where an investigating agency is seized of the matter or criminal proceedings have been launched. Clarifications in this regard have already been issued vide O.M. No. 11012/6/2007- Estt.A-III dated 21.07.2016....”.

13. In the light of this specific OM issued by the DoPT to ensure timely issuance of charge sheets to suspended employees, we are inclined to agree with the learned Tribunal that this was not a fit case where the delay, on the part of the petitioners in issuing the charge sheet, deserved to be condoned. Once we find that there was an inordinate delay on the part of the petitioners itself in seeking the advice from CVC as also the fact that the respondent already stands superannuated, we do not find any reason to interfere with the impugned order as the only effect thereof, at this stage, would be payment of some additional amount to the respondent. We, however, make it clear that as held in ***Dr. Rishi Anand (supra)***, the effect of non issuance of the charge sheet within 90 days would not always be fatal and would depend on the facts of each case.



2024 : DHC : 2994-DB



14. For the aforesaid reasons, we find no ground to interfere with the impugned order. The writ petition being meritless is dismissed.

(REKHA PALLI)
JUDGE

(DR. SUDHIR KUMAR JAIN)
JUDGE

APRIL 15, 2024/ib

W.P.(C) 10006/2018

Page 9 of 9