

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 1771/2022

Union Territory of J&K and Anr. ...Appellant/Petitioner(s)

Through: Ms. Asifa Padroo, AAG

Vs.

Hilal Ahmad Rather ...Respondent(s)

Through: Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Muzaffar Nabi, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

24.08.2022

Per Wasim Nargal J.

1. We have heard learned counsel for the parties at length and perused the material on record.

BRIEF FACTS OF THE CASE:

2. The present writ petition has been preferred under Article 226 of the Constitution of India for seeking quashment of Order dated 27th April 2022, passed by the Central Administrative Tribunal, Bench Srinagar, (for short "*Tribunal*"), in OA No. 195/2022.
3. The brief facts leading to the filing of the Original Application bearing no. 195 of 2022, before the Tribunal was that the applicant (respondent herein) was placed under suspension more than 4 years back by virtue of Government Order No. 200-Home of 2018 dated 07.02.2018. It was a specific stand of the applicant (respondent herein) before the Tribunal that as per the prescribed procedure, the order of suspension was required to be followed by a memorandum of

charge/charge sheet and in case any inquiry is required to be conducted, the needful has to be done expeditiously. It was a specific case of the applicant (respondent herein) before the Tribunal that no charge sheet has been served upon the applicant (respondent herein) despite efflux of more than 4 years from the date the applicant (respondent herein) was placed under suspension. Under this background, the applicant (respondent herein) prayed that since no memorandum of charge sheet has been served upon the applicant (respondent herein) and, accordingly, the order impugned dated 7th February 2018, was required to be set aside.

4. From the perusal of the order passed by the Tribunal, it is apparent that despite the time given to the learned counsel for the respondents for filing response, no response was filed and keeping in view the urgency involved in the petition as the applicant (respondent herein) was due to retire on 30.04.2022, the case was taken up by the Tribunal and, accordingly, after appreciating all the material facts on record and relying upon the judgment passed by the Hon'ble Supreme Court, the Tribunal quashed the order of suspension bearing No. 200-Home 2018 dated 07.02.2018, by virtue of which, the applicant (respondent herein) was placed under suspension with a further direction by holding that the applicant (respondent herein) entitled for consequential dues as per rules.
5. Feeling aggrieved of the aforesaid order passed by the Tribunal, the present writ petition has been preferred by the petitioners on the ground that there are serious allegations against the applicant (respondent herein) having implication of threat on the security of the

State/UT, as per the report submitted by the Government on 23.02.2018, which has been reproduced as under:

“VII. It appears that the laid down procedures especially meant for the foreign inmates and also as directed by the Hon’ble Court of Chief Judicial Magistrate, Pulwama, was not followed for which responsibility squarely falls on central jail authorities. Under the circumstances, it appears that Superintendent, Central Jail and the doctors are responsible for such lapse”.

ARGUMENTS AND ANALYSIS:

6. It has also been argued vehemently by Ms. Asifa Padroo, learned AAG, that the order passed by the Tribunal is bad in the eyes of law for the reason that the respondents have not been given an adequate opportunity to file objections to the OA No. 195/ 2022, filed by the applicant (respondent herein). She further argued that the Tribunal has failed to accord any reason for quashment of the suspension order. She further argued that the learned Tribunal instead of quashing of the order of suspension could have directed to conclude the inquiry. She further argued that the Tribunal could have directed the Government to review the suspension of the officer instead of quashing of the order of suspension.
7. Ms. Asifa Padroo, learned AAG, has placed on reliance of the judgment passed by the *Union of India v. Ashok Kumar Aggarwal*, reported in (2013) 16 SCC. She has argued that the Tribunal must consider each case on its own facts and no general law could be laid down in this behalf. Besides that, she has argued that the scope of interference by the Court with the order of suspension has been examined by the Hon’ble Supreme Court in a large number of cases

wherein the Hon'ble Supreme Court, has held that the Court cannot act as if it is an appellate forum *de hors* the powers of judicial review. She further argued that if a criminal trial or enquiry takes a long time it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21.

8. In the aforesaid judgment on which reliance has been placed, the challenge was made to the order of suspension, wherein departmental proceedings were initiated based on CBI investigation report and charge of memorandum was issued which was quashed by the Tribunal.
9. We are of the view that the aforesaid judgment is not applicable to the present case as no charge sheet has ever been issued for more than 4 years meaning thereby that no inquiry has been initiated. Thus, the aforesaid judgment is of no help to her.
10. She has also placed reliance on the judgment passed by the Madras High Court in case titled (*Formerly Tamil Nadu Electricity Board, Vengal, Thiruvannamalai v. A. Srinivasan*), wherein it has been held that the Court does not sit in appeal if the charges are patently baseless, *mala fide* or vindictive in nature.
11. We are of the view that the said judgment is also not applicable in the present case as no charge sheet has been issued to the applicant (respondent herein), to conclude that the charges are baseless.
12. *Per contra*, Mr. Jahangir Iqbal Ganai, learned senior counsel for the respondent assisted by Mr. Muzaffar Nabi, Advocate, vehemently

argued that the order passed by the Tribunal is legal, justified in peculiar facts and circumstances of the case as no inquiry whatsoever has been initiated against the applicant (respondent herein) for more than 4 years and as a consequence of which the order of suspension cannot sustain the test of law and has rightly been quashed by the Tribunal. Besides that, he further argued that what to talk of initiating inquiry, even, no charge sheet, has been served to the applicant (respondent herein) despite efflux of more than 4 years from the date the applicant (respondent herein) was placed under suspension and, accordingly, he argued that the suspension cannot be continued after expiry of 90 days when a memorandum of charge/charge sheet has not been served on the suspended employee.

13. Admittedly, in the present case, the order of suspension was issued way back on 07.02.2018 vide order No. 200-Home of 2018 and as per service law, the order of suspension was required to be followed by a memorandum of charge/charge sheet in case any inquiry is required to be conducted. In the present case, no charge sheet has been served upon the applicant (respondent herein) despite efflux of more than 4 years from the date the applicant (respondent herein) was placed under suspension and, accordingly, the Tribunal has rightly quashed the order of suspension by relying on the judgment passed by the Hon'ble Supreme Court in case of *Ajay Kumar Choudhary v. Union of India*. The operative portion of the judgment is reproduced 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 defense. 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.”

14. The law is settled at naught by the Hon’ble Supreme Court in various authoritative pronouncements that although, suspension is not a punishment but once, a suspension is prolonged for more than 4 years, then it amounts to punishment, as it has very strong stigmatic social connotations. On the one hand, the respondents have vehemently pleaded that there are very serious charges against the applicant (respondent herein) and on the other hand, the respondents have failed to discharge their obligations to proceed in accordance with law by issuing charge sheet and conducting inquiry after placing the applicant (respondent herein) under suspension for more than 4 years and no plausible reasons have been explained for such delay for not framing the charge sheet, even after a lapse of more than 4 years. No reason whatsoever has been spelled out by the respondents for such delay in

filing charge sheet, nor any such ground has been taken in the writ petition. Since, as per the stand of the respondents, there was grave charges against the applicant (respondent herein) then in that eventuality, the respondents could have acted with promptitude by issuing charge sheet by holding an inquiry within a stipulated time period, but the respondents by their own conduct have waived of their right either to charge sheet against the delinquent employee or conducting any inquiry.

15. From the perusal of the order of suspension, it is apparently clear that the inquiry was required to be completed within 15 days, which itself proves beyond any shadow doubt that the State was conscious of the seriousness and urgency involved in the matter, yet they slept over the matter for four long years to initiate inquiry by way of issuing charge sheet to the delinquent.
16. By keeping the employee under suspension for four long years, the applicant (respondent herein) has been put to lot of stress and temporary deprivation of his full wages over this period, and such inaction on part of the respondents indicate a total lack of seriousness in dealing with the matter as it was expected on the part of the respondents to have acted with promptitude by conducting the inquiry within the stipulated time period.
17. **CONCLUSION:**
18. In the light of what has been stated herein above, we uphold the judgment/order dated 27th April 2022, passed by the Tribunal in case of titled *Hilal Ahmad Rather v. UT of J&K through Principal Secretary to Government Home Department Civil Secretariat,*

