

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) 361/2023

CM 762/2023

c/w

WP(C) 358/2023

CM 757/2023

Union Territory of the J&K and Others

..... Petitioner/Appellant(s)

Through: Mr. Ab. Rashid Malik, Sr. AAG.

V/s

Munshi Masood

.....Respondent(s)

Through: Mr. Irfan Andleeb, Advocate

CORAM:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.

Hon'ble Mr. Justice Puneet Gupta, Judge.

ORDER

13.03.2023

1. This petition is filed by the Union Territory of J&K and three others against the judgment dated 27th November 2022, passed by the Central Administrative Tribunal, Srinagar Bench (CAT) in OA No. 1088/2022, whereby the order of suspension of respondents issued by the Chief Engineer, KPDCCL vide his No. CE/D/KPDL/04 of 2022 dated 15th April, 2022, has been quashed on the ground of prolong suspension. The Central Administrative Tribunal, Srinagar Bench, has relied upon the judgment of Hon'ble Supreme Court passed in case of Ajay Kumar Choudhary Vs. Union of India and Others reported in 2015 (7) SCC 29s, to hold that prolong suspension i.e., suspension beyond the period of three years is not sustainable in law, if within the said period the memorandum of charges/charge sheet is not served on the delinquent officer.

2. Having heard learned counsel for the parties and perused the material on record, it is necessary to set out Rule 31 of Civil Services (CC&A) Rules,

1956, which deals with the power of the Competent Authority to place delinquent Government Servant under suspension. For reference Rule 31 of Civil Services (CC&A) Rules, 1956 is reproduced as under:-

31. Placing of Government Servants under suspension

(1)The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf, may place a Government servant under suspension where:-

(a) an enquiry into his conduct is contemplated or is pending;

or

(b) a complaint against him of any criminal offence is under investigation or trial.

(2)A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty eight hours shall be deemed to have been suspended by the appointing authority under this rule.

(3)An order of suspension under sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is subordinate.

[(4)Where a penalty of dismissal or removal from service imposed upon a Government servant under suspension is set aside on appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

(5)Where a penalty of dismissal or removal from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the competent authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of dismissal or removal and shall continue to remain under suspension until further orders.]

3. From reading of the Rule 31, it is abundantly clear that a Government servant can be placed under suspension where an enquiry is contemplated or is pending or the complaint against him of any criminal offence is under investigation or trial. The Government servant can also be placed under suspension if he is detained in the custody whether on a criminal charge or otherwise for a period longer than forty eight hours, in such situation the Government servant would be deemed to be under suspension. The authority competent to place a delinquent Government employee under suspension is also empowered to revoke such suspension at any time.

4. In terms of Government instructions issued vide SRO 616 dated 20th September, 1978, wherever a Government servant is placed under suspension, it shall be the endeavour of the competent authority to have the charge sheet filed in the court in case of prosecution and the charges served on the Government servant, in case of departmental proceedings within three months from date of suspension. The cases in which this is not possible, such authority shall report to the next higher authority explaining the reasons for delay and the cases of such Government officer under suspension would be reviewed by the competent authority periodically to see that the steps could be taken to expedite the progress of trial/departmental proceedings so as to reduce period of suspension to barest minimum.

5. From the reading of the impugned judgment, it clearly transpires that the aforesaid instructions have not been taken note of by the Central Administrative Tribunal Srinagar Bench, else the only direction that could have been issued by the Central Administrative Tribunal, in the given facts and circumstances, was to direct the competent authority to review the suspension of the petitioners in the light of the fact that despite the lapse of almost one year, neither charge sheet in a court has been filed nor the

departmental proceedings have been initiated. It is true ordinarily whenever a Government servant is placed under suspension on a criminal charge, endeavour should be made to produce the charge sheet before the competent court of law within a period of three months. The failure to produce a challan/charge sheet within a period of three months does not automatically vitiate the suspension. However, in such cases the authority conducting investigation must report to the higher authority the reasons for delay. And also, the suspension of such Government servant is required to be reviewed by the competent authority.

6. In view of the above, this appeal is allowed and the order impugned passed by the Central Administrative Tribunal Srinagar Bench is set aside and a direction is issued to the Chief Engineer KPDCL who has passed the order of suspension of the petitioner to review the same having regard to the fact that more than a year has passed since the petitioner was placed under suspension and the investigating agency has not been able to present the challan/charge sheet in the court. He shall also take note of the fact that even the departmental proceedings against the petitioner have yet not been initiated. He shall consider the entire issue in the light of the government instructions appended with the Rule 31 vide SRO 616 dated 20th September, 1978, and pass a speaking order within a period of six weeks from the date of copy of the judgment is served upon him.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:
13.03.2023

“Mir Arif”