

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Member(J).

Case No. OA - 26 of 2021

Rajat Sen - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. M.N. Roy, Mr. G. Halder, Learned Advocates.
<u>02</u> 05.02.2021	For the State Respondent	: Mr. S.N. Ray, Learned Advocate.

The matter is taken up by the Single Bench pursuant to the Notification No. 949 - WBAT/2J - 15/2016 dated 24.12.2020 issued in exercise of the powers conferred under sub section (6) of Section 5 of the Administrative Tribunal's Act, 1985.

Affidavit of service has been filed. Let it be kept on record.

The instant application has been filed challenging the suspension order dated 03.01.2020 (Annexure 'B') whereby the applicant was placed under suspension with immediate effect under Clause (a) of Sub-rule 1 of Rule 7 of the West Bengal Services (Classification, Control and Appeal) Rules 1971. However, till date neither any charge sheet has been served upon him nor the said suspension order was reviewed or subsistence allowance has been enhanced. During the course of the hearing, the counsel for the applicant has drawn my attention to the judgement passed by the Hon'ble Apex Court in the case of Ajay Kumar Chowdhury -Vs- Union of India and Another reported in (2015) 7 SCC 291 and has prayed for extension for benefit of the said judgement by quashing the said order. The counsel for the applicant has also referred one

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order dated 11.02.2020 passed in O.A. No. 01 of 2020 Siddhartha Sen & 3 Others -Vs- State of West Bengal and Others and has prayed for extension of benefit of that judgement as the applicant is also similarly circumstanced with the applicants of the afore-mentioned order dated 11.02.2020 (Annexure 'D').

The counsel for the respondents has submitted that till today no charge sheet has been issued to the applicant nor the suspension order has been reviewed or subsistence allowance has been enhanced.

I have heard the parties and perused the records as well as the judgements referred by the learned advocate for the applicant.

It is noted that The Hon'ble Apex Court, while dealing with the issue of suspension, has held that the currency of suspension order should not extend beyond three months if within this period the memorandum of charges or charge sheet is not served upon the delinquent officer. In the instant case, admittedly the applicant was put suspension order vide order dated 03.01.2020 under Rule 7(1) (a) of the West Bengal Services (Classification, Control and Appeal) Rules 1971, which is as follows:

“7. (1) (a)The appointing authority or (b) any authority to which it is subordinate or (c) any

authority empowered by the Governor in that behalf may place a Government employee under suspension:

(a) Where a disciplinary proceeding or departmental enquiry against him is contemplated or is pending; or

(b) Where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(c) Where a case against him in respect of any criminal offence is under investigation or trial.

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made."

From the above, it is clear that an employee can be put under suspension under Rule 7(1)(a) if there is a contemplation of the Departmental Proceedings against him. However, as per settled Law, it cannot be continued beyond a reasonable period of time. Further if someone has to be continued under suspension then suspension order should be reviewed within three months and the authority concerned should consider

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whether the suspension would be continued or not and if they would decide to continue suspension then subsistence allowance has to be enhanced. But in the instant case, admittedly no review has been made nor has subsistence allowance been enhanced even no disciplinary proceedings has been initiated against the applicant. As the suspension is not a punishment but to keep aside the delinquent employee from influencing the witnesses. In view of the above, suspension cannot be use as a weapon for punishment purpose. As the rule does not permit such continuation without review, I am of the view that the instant suspension order is not sustainable. Accordingly, the suspension order is quashed and set aside. However, as there is a serious charge against the applicant, the respondents would be at liberty to take appropriate steps as per Rules.

Respondents are directed to allow the applicant to resume his duty within two weeks from the date of receipt of the order.

The O.A. is **disposed of**.

Parties are directed to act on the Web Copy of the order.

Mrs. URMITA DATTA (SEN)
MEMBER (J)

C.S.M.