

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. OA - 40 of 2020

Prithwis Ojha - VERSUS - THE STATE OF WEST BENGAL & ORS.

erial No. and
Date of order

For the Applicant : Mr. M.N. Roy,
Advocate

For the State Respondent : Mr. A. De,
(Departmental Representative)
Land and Land Reforms Department.

8
24.03.2021

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.

With the consent of both the parties the matter is taken up.

The instant application has been filed basically challenging the suspension order dated 02.09.2019, whereby the applicant was suspended under Sub-Rule (1) of Rule 7 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971 (Annexure 'A'). According to the applicant, though he was suspended under Sub-Rule (1) of Rule 7 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971 in contemplation of disciplinary proceeding as there was no disciplinary proceedings or any other judicial proceeding pending on that date. However, after a lapse of more than three months, his suspension order was not reviewed as per Rules and Law of Land. Even on 13.01.2020, he had made a prayer to the respondent to revoke and rescind the suspension order dated 02.09.2019. As no action was taken on behalf of the respondent to revoke or to review the suspension order, the applicant being aggrieved with, has filed the instant application on 22.01.2020.

The applicant has filed further supplementary application and has

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submitted that the O.A. first appeared on 27.01.2020 and the applicant was directed to file affidavit of service. The matter was directed to be listed on 19.02.2020. On 19.02.2020, Ld. Departmental Representative has asked for some time to take instruction and the matter was adjourned till 16.03.2020. However, the respondent without reviewing the suspension order had issued charge sheet dated 06.02.2020 with a covering letter of Additional District Magistrate & District Land and Land Reforms Officers, South 24-Parganas vide Memo dated 28.02.2020, which was served upon the applicant on 04.03.2020. Therefore, according to the applicant, in the case of Ajay Kumar Choudhury – Vs- Union of India reported in “(2015) 7 SCC 291”. The Hon’ble Apex Court had held that if an incumbent is suspended in contemplation of a departmental proceeding and the said proceeding was not initiated within a period of three months from the date of suspension, the suspension order should be revoked and in the instant case, the applicant was put under suspension on 02.09.2019 and the three months expired on 03.12.2019. Thereafter, also he had made an application for revocation of his suspension order on 13.01.2020. Even then without reviewing the suspension order or without initiating any disciplinary proceedings within three months time, had issued the Charge Sheet dated 06.02.2020 after filing of the instant application. Therefore, the counsel for the applicant has prayed for setting aside of suspension order dated 02.09.2019.

The Official Departmental Representative has filed reply wherein they have submitted that as per the instruction of Land Reforms Commissioner and Principal Secretary, Department of Land & Land Reforms and Refugee Relief & Rehabilitation, West Bengal and subsequent direction of the Director of Land Records & Surveys, West Bengal, the Sub-Divisional Land & Land Reforms Officer, Kakdwip conducted an enquiry and found that the applicant had tampered the land records. Accordingly, the S.D.L. & L.R.O., Kakdwip vide

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Memo dated 22.07.2019 sought all the case records along with the written explanation from the applicant, which he had submitted on 25.07.2019 (Annexure R-1). Above facts were reported by the D.L.R. to the Principal Secretary vide communication dated 09.08.2019. Subsequently, the applicant was put under suspension with immediate effect vide order dated 02.09.2019 under clause (a) of Sub-Rule 1 of Rule 7 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971. Thereafter, one departmental proceeding was initiated vide Memo dated 06.02.2020. However, as the period of suspension of the applicant had exceeded more than three months for reasons not directly attributable to him, therefore the disciplinary authority enhanced the subsistence allowance with effect from 02.12.2019 vide order dated 06.03.2020 (Annexure R-5). It has further submitted by the respondent that the departmental proceeding is going on and the applicant has also participated in the said proceeding. The departmental representative had placed one order dated 22.03.2021, whereby the Deputy Secretary to the Govt. of West Bengal vide letter dated 22.03.2021 communicated that final hearing would be held on 25.03.2021 before the Land Reforms Commissioner and Principal Secretary.

Heard the parties and perused the records. During the course of the hearing, the counsel for the applicant has referred one order dated 24.02.2020 passed in O.A. No. 1 of 2020 and has prayed for extension for benefit of the said order. The Hon'ble Apex Court while dealing with the issue of suspension has held that the currency of suspension order could not exceed 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 under suspension order dated 02.09.2019 under Sub-Rule (1) of Rule 7 of the West Bengal Services (Classification, Control & 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 was 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 employee can be put under suspension under Rule 7(1)(a) if there is a contemplation of the disciplinary proceeding against him. However, as per the settled law, it cannot be continued beyond a reasonable period of time. Further, if someone has to be continued under suspension then the suspension order should be reviewed within three months and the authority concerned should consider whether the suspension will be continued or not and if they would decide to continue with the suspension order then the subsistence allowance has to be enhanced. In the instant case, admittedly neither any charge sheet was issued nor was any review done for consideration of continuation of suspension of the applicant. However, after filing of the instant application, the respondent had issued Charge Sheet dated

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06.02.2020, which was served upon the applicant on 04.03.2020. However, no review has been made till date though an order of enhancement of subsistence allowance was issued vide order dated 06.03.2020, which is as follows:

“WHEREAS Shri Prithwis Ojha, Special Revenue Officer, Grade – II and the Block Land & Land Reforms Officer, Pathar Pratima, South 24 Parganas was placed under suspension vide Order No. 3205-A&P/A-28/2019, dated 02.09.2019;

AND WHEREAS departmental proceedings under rule 10 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971 has been drawn against Shri Prithwis Ojha under Memo No. 452-A&P, dated 06.02.2020 and the same is yet to be concluded;

AND WHEREAS the period of suspension of Shri Prithwis Ojha has exceeded more than 3 (three) months for the reason not directly attributable to Shri Prithwis Ojha;

NOW, THEREFORE, after careful consideration, the Governor has been pleased to accord sanction towards the enhancement of subsistence allowance in favour of Shri Prithwis Ojha with effect from 02.12.2019 i.e. the date after completion of three months from the date of suspension in terms of Rules 71(1)(a) (i) of the West Bengal Service Rule Part-I by 50% (fifty percent) of the subsistence allowance admissible to him during the period of first three months of his suspension with the direction that the Dearness

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Allowances and other allowances admissible to Shri Prithwis Ojha, SRO-II in terms of the said rule will be drawn by him in full.”

From the above, it is clear that though the respondent has belatedly enhanced the subsistence allowance of the applicant after passing of more than three months time, however, in the order dated 06.03.2020, there is no whisper of reviewing or extension of suspension order dated 02.09.2019. The respondents have only enhanced the subsistence allowance. Further, it has been observed that initially suspension order was issued in contemplation of disciplinary proceeding under 7(1) (a) of the West Bengal Services (Classification, Control & Appeal) Rules, 1971 and since proceeding is going on, therefore, the main purpose of suspension as indicated in the initial order of suspension has become infructuous. Therefore, in my considered opinion, the applicant is entitled to get the benefit of the judgement passed by the Hon'ble Apex Court in the case of Ajay Kumar Choudhury –Vs- Union of India as well as the order dated 24.02.2020. However, it is observed that the applicant had already participated in the disciplinary proceeding, which has no connection with the issue involved in this case.

In view of the above, the suspensions order dated 02.09.2019 is quashed and set aside. The respondents are directed to allow the applicant to join his duty within a period of fifteen days. However, respondents would be at liberty to take appropriate steps as per Rules and Law, if so advised.

Accordingly, the O.A. is disposed of with no order as to costs.

Parties are directed to act upon the web copy.

Mrs. URMITA DATTA (SEN)
MEMBER (J)

A.K.P.