

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

**WP(C) No. 3216/2023
CM No. 7780/2023**

Ashok Kumar

..... Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Ms. Rudra Sharma, Advocate

vs

Union of India and Ors.

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**JUDGMENT
02.01.2025**

ORAL

1. The petitioner in the instant petition filed under Article 226 of the Constitutions of India seeks the following reliefs:-

- (a) *An appropriate writ, order or direction in the nature of writ of certiorari quashing order of suspension of the petitioner issued by respondent No. 3 under endorsement no. EST/PF/CBJ/ 2023/2019-2020 dated 18th September, 2023 whereby the petitioner, serving as Revenue Inspector, Jammu Cantonment Board, Jammu Cantt., has been placed under suspension, being totally illegal, arbitrary, without any jurisdiction and competence.*
- (b) *An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents to reinstate the petitioner back into service and allow him to perform his duties as Revenue inspector without any hindrance, obstruction or interruption and grant him all consequential benefits including his regular salary and allowances.*
- (c) *Any other relief, which this Hon'ble Court, in the facts and circumstances of the case deems fit and proper.*

2. The facts under the shade and cover of which the aforesaid reliefs have been prayed and as are stated in the petition are that the petitioner herein being an employee of Jammu Cantonment Board (for short the "**Board**") has to

his credit 35 years of impeccable service rendered by him with utmost dedication, devotion and sincerity.

3. The petitioner states that he came to be falsely implicated in a criminal case registered as FIR No. RC0042023A009 dated 13.09.2023 by Central Bureau of Investigation Anti-Corruption Bureau, Jammu (*for short, CBI/ACB*) for an alleged offence under Section 7 of the Prevention of Corruption Act, 1988, (*hereinafter referred to as the, "Act"*), consequent to which, the petitioner came to be arrested on 14.09.2023 and remained initially in the custody of the CBI/ACB and then, under judicial custody till 06.10.2022, after which, he came to be admitted to bail by the High Court on 06.10.2023.

4. It is being also stated that soon after petitioner came to be granted bail by the High Court, the CBI/ACB registered yet another highly motivated and baseless FIR bearing No. RC0042023A0010 dated 19.10.2023 against the petitioner for the commission of offence under Section 7 of the Act, in which FIR as well, he came to be granted bail in anticipation of his arrest by Special Judge Anti-Corruption, (CBI Cases), Jammu in terms of order dated 27.10.2023. The petitioner states to have challenged the FIR dated 19.10.2023 before this Court in CRM(M) No. 1013/2023, which is pending consideration before this Court.

5. It is being further stated that service conditions of the petitioner being an employee of the Board are governed by Cantonment Board Employees Service Rules, 2021 (*hereinafter referred to as the, "Rules of 2021"*) issued vide Notification SRO:16(E) of 2021 dated 13.10.2021 issued by Ministry of Defence, Government of India and that in terms of Rule 9(2)(b)(i) of the Rules of 2021, an employee is deemed to have been placed under suspension by an order of the

appointing authority with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding 48 hours and that in view of the detention of the petitioner beyond 48 hours, the respondent 3 in terms of order dated 18.09.2023 placed him under suspension.

6. The petitioner has challenged the impugned order of suspension inter-alia on the following grounds:-

- (a) That the impugned suspension order dated 18.09.2023 issued by respondent No. 3 placing the petitioner under suspension w.e.f 14.10.2023 is totally illegal, arbitrary and contrary to the provisions law and above all without any competence and jurisdiction, therefore, the same deserves to be quashed.*
- (b) That impugned order dated 18.09.2023 issued by respondent No. 3 Chief Executive officer, Jammu Cantonment is without any competence and jurisdiction. The Chief Executive Officer, Jammu Cantonment is the appointing authority for non-supervisory posts as per rule 7(1) and appointing authority for supervisory posts is the Cantonment Board. The petitioner is substantively holding the post of Revenue Inspector which is declared as supervisory posts, therefore, it is the respondent No. 2-Board alone which, as per rule 9(2)(b) (i), is the competent authority to place the petitioner under suspension. Exercising the powers of Board by Chief Executive Officer without any specific delegation, renders the impugned order dated 18.09.2023 totally illegal, arbitrary and without any jurisdiction. On this ground alone, the impugned order dated 18.09.2023 deserves to be quashed.*
- (c) That the impugned order dated 18.09.2023 is further not legally sustainable and is liable to be quashed on the ground that the Hon'ble Supreme Court of India in case reported as Marathwada University V. Seshrao Balwant Rao Chavan (1989) 3 SCC 132, has categorically held that when a statute prescribes a particular body to exercise a powers, it must be exercised by that body alone and not by others, unless it is delegated. The aforesaid judgment has further been followed by the Hon'ble Supreme Court of India in a case reported as Rakesh Kumar Agarwala and Anr V National Law school of India University, Bengaluru and Others (2021) 1 SCC 539, wherein it has again been laid down that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body and it cannot be exercised by others, unless it is delegated. From the bare*

perusal of the impugned order dated 18.09.2023 it clearly transpires that the respondent No. 3 has not disclosed any order or notification under which powers of the “appointing authority” qua supervisory posts is delegated upon him. The respondent No. 3 without there being any delegation of powers upon him, without disclosing the source of any such delegation has illegally and erroneously exercised the powers which are vested with the Appoint, Authority, which renders the impugned order highly vitiated and without jurisdiction. On this ground also, the impugned order of suspension of the petitioner dated 18.09.2023 having been issued by respondent No. 3 without competence and jurisdiction, therefore, the same deserves to be quashed.

(d) That this Hon’ble Court has already set at rest the issue with respect to issuance of suspension order by any authority without competence and jurisdiction while deciding writ petition WP(C) No. 222/2021 titled Qaiser Mehmood V. Ut of J&K and Ors vide judgment dated 11.02.2021. in this case, this Hon’ble Court quashed the suspension order of the petitioner Qaiser Mehmood, (member of J&K Administrative Service) issued by the Deputy Commissioner, Samba on the ground that the order of suspension being without jurisdiction. In the instant case, the respondent No. 3 does not have any competence and jurisdiction, as per the scheme of the Cantonment Board Employees Service Rules 2021 promulgated vide notification SRO 16(E) of 2021 dated 13.10.2021, therefore, the impugned order of suspension of the petitioner dated 18.09.2023 deserves to be quashed.

(e) That the impugned suspension order dated 18.09.2023 issued by respondent No. 3 placing the petitioner under suspension w.e.f 14.10.2023 is further bad in the eyes of law and is liable to be quashed on the ground that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry. In the instant case, the petitioner has been placed under suspension on the basis of his detention. Detention of the petitioner came to end with

effect from 06.10.2023 when he was admitted to bail. Since the petitioner is under no detention since 06.10.2023, therefore, the respondent No. 3 ought to have considered the case of the petitioner for revocation of his suspension, which has not been done till date which renders the impugned suspension of the petitioner ex-facie illegal and vitiated in law. On this ground also, the impugned suspension order dated 18.09.2023 deserves to be quashed.

(f) That effect on public interest due to the employee's continuation in office is also a relevant and determining factor. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc. The impugned suspension order runs contrary to the aforesaid proposition of law, therefore, the same deserves to be quashed.

(g) That in a remarkable judgment in service law jurisprudence, the Hon'ble Supreme Court of India in case reported as (2015) 7 SCC 291 Ajay Kumar Choudhary Vs. Union of India and Ors has held that a government employee cannot be kept suspended for more than three months if not formally informed about the charges and in any case if enquiry is not completed within 90 days the suspension gets automatically revoked. In the instant case, neither any enquiry into the conduct of the petitioner has been contemplated nor any charge-sheet uptill date has been issued and served upon the petitioner and nothing has been done beyond suspending and attaching the petitioner, therefore, continuation of suspension of the petitioner becomes punitive and runs contrary to the law laid down by the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India in the aforesaid judgment, amongst others, made the following important and significant observations, which are not only imperative but are fully attracted in the given facts and circumstances of the present case :-

“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/charge sheet is not served on the delinquent officer/employee; if the Memorandum of charges/charge sheet is served a reasoned order must be passed for extension of the suspension.

The suspension as well as attachment of the petitioner in the light of the observations and law laid down by the Hon'ble Supreme Court of India law laid down by the Hon'ble Supreme Court of India become highly illegal and contrary to law, therefore, the same deserve to be quashed.

- (h) *That the suspension of the petitioner has become illegal in view of the law settled by the Apex Court as the Apex Court has already issued direction that the currency of suspension should not be extended beyond three months if within this period, the memorandum of charges/charge-sheet is not served upon the delinquent officer/employee and if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. In the present case, no charge-sheet has been issued to the petitioner despite lapse of more than 3 months as such the suspension order becomes illegal, therefore, the same is liable to be revoked and the petitioner is required to be reinstated back into service.*
- (i) *That the suspension of the petitioner is visiting him with penal consequences in as much as he has been placed under suspension without any valid reason or occasion/circumstance against him. Therefore, the action of the respondents in not reviewing the suspension of the petitioner is arbitrary and volatile of fundamental and service rights of the petitioner, therefore, deserves to be quashed.*
- (j) *That the Hon'ble High Court of J&K and Ladakh also in the case reported as 2015 (2) JKJ 484 titled Balbir Singh vs. State of J&K and others has held that the prolonged suspension by itself has the effect of causing distress and agony to an employee. It has been further held that after an employee is suspended, he is required to be dealt with under rules immediately and cannot be kept under suspension for an indefinite period. Further it has been held that though suspension may not be a punishment but prolonged suspension is bad as the same is repressive and causes distress.*
- (k) *That the petitioner has not been given his subsistence allowance right since his suspension till date. Denial of subsistence allowance by the respondents to the petitioner under the given facts and circumstances of the case is aimed at causing grave and serious prejudice not only to the petitioner but to his family also as in the absence of subsistence allowance, the petitioner is facing acute and financial hardships and difficulties. If the subsistence allowance of the petitioner is not released together with arrears, that would offend his fundamental rights guaranteed under the Constitution of India.*
- (l) *That the petitioner has already filed a detailed representation before respondent no.3 on 01.11.2023 for revocation of his suspension order, but till date neither the said representation has been considered nor any order thereupon has been passed.*

(m) That viewed from any angle, the impugned suspension of the petitioner is totally illegal, arbitrary, contrary to the provisions of law and above without any competence and jurisdiction, therefore, the same deserve to be quashed.

7. Upon coming of this matter for consideration before this Court in the first instance on 17.12.2024, the Court, while issuing a notice to the respondents, directed the respondents to consider the representation of the petitioner irrespective of the pendency of the petition and on subsequent dates of hearing, provided opportunities to the respondents to file objections to the petition, which till last date of hearing i.e. 31.12.2024 have not been filed, as a consequences whereof, the right to file the same came to be closed.

Heard learned counsel for the parties and perused the record.

8. Learned counsel for the petitioner while making his submissions in tune with the contentions raised and grounds urged in the petition, would contend that the impugned order is legally unsustainable and is liable to be quashed, more so, in view of the fact that the charge-sheet arising out of FIR No. RC0042023A009 dated 13.09.2023 in connection with the petitioner came to arrested and placed under suspension stands presented before the Special Judge (Anti-Corruption) CBI cases, Jammu on 07.12.2023 and as such, the continuous suspension of the petitioner pursuant to the impugned order would not serve any purpose, more so, that the petitioner is reaching to the age of superannuation on 28.02.2025, upto which time, it is unlikely and highly improbable that the trial in the charge-sheet (supra) would be concluded before the trial Court.

9. On the contrary, Mr. Sharma, learned DSGI, appearing counsel for the respondents would submit that notwithstanding the closure of the right of the respondents for filing objections to the petition, the respondents had laid a motion

along with objections today itself under CM No. 90/2025, before this Court and would pray for considering the said objections in opposition to the petition. While opposing the submission made by the learned counsel for the petitioner, the counsel for the respondents would contend that the order under challenge stands issued validly and legally against the petitioner in accordance with the law and that the petitioner has committed a gross misconduct of accepting bribe, resulting into his arrest in FIR bearing No. RC0042023A0010 dated 19.10.2023, which stands challaned before the competent Court. The learned counsel would further contend that the plea of the counsel for the petitioner that on the account of filing of the charge-sheet, inasmuch as, the superannuation of the petitioner in near future would not clothe him with any right to seek quashing of the order of suspension.

10. Having regard to the aforesaid position obtaining in the matter and with the consent of the appearing counsel parties the instant petition is taken up for final disposal, at this stage and the application bearing CM No. 90/2025 (supra) filed by the respondents accompanied with the copy of objections and furnished by Mr. Vishal Sharma, learned DSGI are taken on record.

11. In the said objections, it is being contended by the respondents that the petitioner came to be suspended by respondent 3 herein in exercise of the power vested in him under Rule 9(2)(i) of the Rules of 2021 in view of the detention of the petitioner upon his arrest on 14.09.2023 by the CBI/ACB, while stating further that the representation submitted by the petitioner against his suspension came to be considered by the Board, which on 17.09.2024, opined and

decided to continue with the suspension of the petitioner stating lastly that the petitioner is not entitled to any relief much less thereto prayed in the petition.

12. Before proceedings further in the matter, it would be pertinent to refer to the Rule position occupying the field in the instant matter. S.R.O No. 16 (E) dated 13.10.2021 (supra) issued by the Ministry of Defence, Government of India provides for the Cantonment Board Employees Service Rules of 2021 and Rule 9 of the Rules of 2021 being germane and relevant to the controversy is reproduced hereunder:-

“Rule 9 (1). The officer Commanding –in Chief, the Command may, if in his opinion the number of employees employed or proposed to be employed by the Board or the salary assigned by the Board to any such employee is excessive, require the Board to reduce any number of such employees or the amount of such salary as the case may be, within such time as he may fix and the Board shall, subject to the provisions of sub-rule(1) of rule 8 and of any lawful contract between the employee and the Board, comply with such requisition.

Provided that reasonable opportunity shall be given to the Board to show cause in writing why such reduction should not be made.

(2)(a) the appointing authority may place an employee under suspension-

- (i) where a disciplinary proceeding against him is contemplated or is pending; or (ii) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;*
- (b) an employee shall be deemed to have been placed under suspension by an order of appointing authority-*
 - (i) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight hours;*
 - (ii) with effect from the date of his conviction, if in the event of a conviction for an offence he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsory retired consequent to such conviction.*
- (c) where a penalty of dismissal, removal, or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review under these rules and the case is remitted for further enquiry or action or with any direction, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.*
- (d) where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or*

rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on consideration of the circumstances of the case, decided to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:-

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of case.

- (e) (i) an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.*
- (ii) Where an employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced against him during the continuance of that suspension the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the employee shall continue to be under suspension until the termination of all or any such proceedings.*
- (iii) an order of suspension made or deemed or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.”*

As is manifest from above, Rule 9(2)(b)(i) provides that an employee shall be deemed to have been placed under suspension by an order of appointing authority with effect from the date of his detention, if he is detained in custody whether on criminal charge or otherwise for a period exceeding 48 hours.

Rule 9 Sub-Rule 2(e)(i) also provides that an order of suspension made or deemed to have been made under this Rule shall continue to remain in force until it is modified or revoked by authority competent to do so and that for the reasons by the competent authority in writing, direct that the employee shall continue to be suspension until termination of all or any of such proceedings. The Rule further provides that an order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the authority

which made or is deemed to have been made the order or by authority to which that authority is subordinate.

13. Having regard to the above rule position, inasmuch as, the facts and circumstances of the case, the moot question that would beg for consideration of this Court would be as to whether the impugned order could be reviewed by this Court in exercise of the power of the judicial review or not.

14. It is settled position of law that the word “suspension” refers to that states, when an employee temporarily is debarred by his employer for the time being from performing his official functions or enjoying certain privileges. When an employee is placed under suspension by an employer, during the period of suspension, the employee is essentially kept away from exercise of his official functions and enjoyment of those privileges. The main purpose of placing an employee under suspension by his employer is temporary and is not a permanent feature envisaged for the purposes of completing an enquiry or trial in respect of the conduct of an employee.

The Apex Court in case titled as *State of Orissa V/s Bimal Kumar Mohanty* AIR 1994 Supreme Court 2296 has, *inter-alia*, held that it would not be as an administrative routine or an automatic order to suspend an employee, but it should be on consideration of the gravity of the alleged misconduct or the nature of allegations imputed to the delinquent employee and that the suspension must be a step in aid to the ultimate result of the investigation or inquiry and that the authority must keep in mind public interest of the impact of delinquents continuation in office while facing the departmental enquiry or trial of a criminal charge.

The Apex Court in case titled as “*Union of India v/s Ashok Kumar Agarwal reported as 2013(16) SCC 147*”, has held that while summarizing the concept of suspension, that suspension, order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available and it cannot be actuated by mala fide, arbitrariness, or for ulterior purpose and that effect on public interest due to the employees’ continuation in office is also a relevant and determining factor and that facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard while further clarifying that the suspension order should be passed only where there is strong prima facie case against the delinquent and the charges if proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

The Apex Court in case titled as *Jayrajbhai Jayantibhai Pael Vs. Anilbhai Nathubai Patel & Ors. reported in (2006) 8 SCC page 200* has held that the power of judicial review may not be exercised qua an administrative decision unless the same is illogical or suffers from procedural impropriety or it shocks the conscience of the Court in the sense that it is in defiance of logic or moral standards, but no standardized formula, universal applicable to all cases, can be evolved and that each case has to be considered on its own facts, depending upon the authority that exercises of the powers, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affect the individual or society and though judicial restraint, ‘albeit’ self-recognized, is the order of the day, yet an administrative decision or action which

is based on wholly irrelevant consideration or material or excludes from consideration the relevant material or it is so absurd that no reasonable person could have arrived at it on the given material may be struck down.

The Apex Court in case titled “*Ajay Kumar Chowhdary V/s Union of India through Secretary*” reported in (2015) 7 SSC 291, at paras 11, 12, 20 and 21 has held as under:-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even long delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused, But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law jurisprudence, antedating even the Magna Carta of 1215, which assures that –“ We will sell to no man, we will not deny or defer to any man either justice or right”. In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

20. It will be useful to recall that prior to 1973 and accused could be detained for continuous and consecutive period of 15 days, albeit, after judicial scrutiny and supervision. The code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment

for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence, Drawing support from the observations contained of the Divisions Bench in Raghubir Singh V State of Bihar and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) Crpc, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charges-sheet has not been served on the suspended persons. It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should be also be placed on the same pedestal.

21. *We, therefore, direct that the currency of a suspension order should next extend beyond three months if within this period the memorandum of charges/charges-sheet 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 person concerned 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. We think this will adequately safeguard the universally recognized principle of human dignity and the right to speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that the 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."*

15. Keeping in mind the aforesaid position of law and reverting back to case in hand, it is an admitted fact that the petitioner herein came to be placed under suspension on 18.09.2023. It is also not in dispute that charge-sheet stands filed before the Court of Special Judge Anti-Corruption, (CBI Cases), Jammu on

07.12.2023 in connection with the case whereunder the petitioner herein was detained and consequently placed under suspension. It is also not in dispute that charges till date have not been framed therein the said charge-sheet against the petitioner by the said Court. It is not being disputed by the respondents herein that the petitioner is superannuating in the month of February, 2025. Indisputably, the petitioner has remained under suspension for a period of more than one year by now and is reaching to his age of superannuation next month. Having regard to the said undisputed facts, the question would be as to whether the principle of law laid down by the Apex Court in case of *Ajay Kumar Choudhary* (supra) would be extendable and applicable to the case of the petitioner qua the impugned order of suspension.

16. This Court is not oblivious of the position of law that the scope of the judicial review in the matter of suspension of an employee is limited and that the matter of suspension, its continuation or revocation is the exclusive domain of the employer, yet the principles of law laid down by the Apex Court in *Ajay Kumar Choudhary* (supra) cannot be over looked having regard to the peculiarity of the facts and circumstances of the case in hand, more particularly, having regard to the fact that the petitioner has remained under suspension for more than a year and that no departmental enquiry parallel to the filing of the charge-sheet has been initiated by the respondents against which would get prejudice by termination of the suspension of the petitioner and also that the petitioner is superannuating in the next month. Under the aforesaid circumstances, the interest of the respondents could be adequately safe-guarded by directing the attachment of the petitioner instead of continuing him under suspension moreso when the

respondents have not specified any period thereof either in the initial order of suspension or the order of review which is claimed to have been passed by the respondents upon representation filed by the petitioner.

17. In view of what has been observed, considered and analysed above, this Court deems it desirable and appropriate to quash the impugned order of suspension in that, the continuation of same would not serve any purpose as the petitioner is retiring next month and instead direct the respondents to attach the petitioner in the office without assigning him duties of any nature till his superannuation.

18. Ordered accordingly,

19. The judgment relied upon by the counsel for the respondents in view of the above pale into in significance.

20. *Disposed of* along with all connected application(s).

(JAVED IQBAL WANI)
JUDGE

Jammu
02.01.2025
Javid Iqbal

Whether the order is speaking? *Yes/No*
Whether the order is reportable? *Yes/No*