

TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LIMITED

SECRETARIAT BRANCH
144, Anna Salai.
Chennai-600 002.

Letter No.6691/A18/A181/2017-1, dated.15.11.2017

From

Thiru. R. Balaji, M.A., P.G.D.L.A.,
Secretary.

To

All Chief Engineers.

All Superintending Engineers.

All Chief Financial Controllers/TANGEDCO & TANTRANSCO.

The Chief Internal Audit Officer/Audit Branch.

The Residential Audit Officer/Chennai-2.

Sir,

Sub: Suspension in Departmental/Vigilance/Criminal Cases -
Clarification issued to the Government - Communicated for
guidance and inclusion in the appropriate orders of Suspension
issued by the Competent Authority and for inclusion in the
affidavits/Counter affidavits/Petitioners being filed before the
Court - Forwarded.

Ref: From the P&AR(N) Department, Government of Tamil Nadu,
Lr.No.43634/N/2016-1, dated 20.12.2016.

I am to enclose herewith the copy of the letter cited for guidance and
necessary action.

2. Receipt of the letter may be acknowledged.

Yours faithfully,

R. Viswanathan
18/11/17

(R.VISWANATHAN)
SECTION OFFICER,
for SECRETARY.

ds
18/11/17

Copy to:

The Chairman-cum-Managing Director's Table.

The Managing Director/TANTRANSCO.

All Directors/TANGEDCO & TANTRANSCO.

The Secretary/TANGEDCO/Chennai-2.

The Legal Adviser/TANGEDCO/Chennai-2.

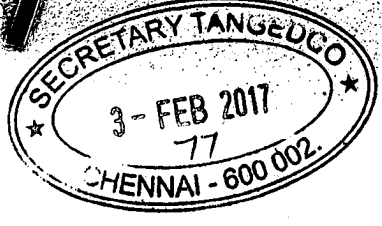
All Officers in Secretariat Branch/Chennai-2.

The Executive Assistant to Chairman-cum-Managing Director's Office.

All Assistant Personal Officers/Administrative Branch, Chennai-2.

The Assistant Personnel Officer/Tamil Development - for publication in the
Bulletin (2 copies)

2. No. 6691 / 018 / 0131 / 2016



Personnel and Administrative Reforms (N) Department, Secretariat, Chennai - 600 009.

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துன்முுகி, மார்கழி - 05
திருவள்ளூர் ஆண்டு 2047

Letter No.43634 / N / 2016-1, dated 20/12/2016.

From
Thiru. N. Ravichandran, M.A.,
Deputy Secretary to Government (Per)

To
All Additional Chief Secretaries / Principal Secretaries /
Secretaries to Government, Secretariat, Chennai-9.
All Departments of Secretariat, Chennai-9.
All Heads of Departments.
All Boards / Corporations / Public Sector Undertakings.



Sir / Madam,

A/8

Sub: Suspension in departmental / vigilance / criminal cases - Clarifications already issued - Supplement instructions for defending the court cases where suspension is challenged - Various directives of Supreme Court of India with regard to suspension - Communicated for guidance and inclusion in the appropriate orders of suspension issued by the competent authorities and also for inclusion in the affidavits (including counter) / petitions being filed before Courts.

- Ref: - 1. Government Letter No.13519 / N / 2015-1, Personnel and Administrative Deforms (N) Department, dated 23-07-2015.
2. Letter (Ms.) No.43/N/2015-3, dated 26-04-2016.
3. Government Letter No.30292 / N / 2016-1, dated 29.08.2016.

Kind attention is invited to the references cited.

2) It may be noted that the accused officers getting involved in heinous offences such as corruption / misappropriation / accumulation of disproportionate cases / offences involving moral turpitude and any other

(p.t.o.)

criminal misconduct defined in the Prevention of Corruption Act, 1988 and are of the trend of challenging the suspension orders issued against them by the competent authorities in the Courts of Law.

3) For making such suspension orders upheld before the Courts of Law, the following directives of the Supreme Court of India in the case-laws referred to therein shall be incorporated, in addition to any other relevant case-laws which the competent authority deems fit, in the affidavits (including counter) / petitions being filed before Courts of Law:-

(i) In the case in Allahabad Bank and another Vs Deepak Kumar Bhola reported in (1997) 4 SCC 1, the Supreme Court has held that :-

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9. This Court in Pawan Kumar Vs. State of Haryana (1996) 4 SCC 17 : 1996 SCC (Cr1) 583 dealt with the question as to what is the meaning of the expression "moral turpitude" and it was observed as follows:-

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

This expression has been more elaborately explained in Baleshwar Singh Vs Distt. Magistrate and Collector where it was observed as follows :-

"The expression "moral turpitude" is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so, if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

- (ii) After defining the term "moral turpitude", the Supreme Court has further held regarding the justification of the suspension of an employee, as given below :-

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"11. We are unable to agree with the contention of the learned counsel for the respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted by the C.B.I. which resulted in the filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution that respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty, when he is facing serious charges of corruption and misappropriation of money. Allowing such an employee to remain the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted.

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"The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the Bank, unless he is exonerated of the charge."

- (iii) In another case in Union of India and another Vs Ashok Kumar Aggarwal 2013 (14) SCALE 323, the Supreme Court has defined the scope of interference by the Courts in suspension orders. The relevant extract is given below :-
- (a) During suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as a punishment even by any stretch of imagination in strict legal sense.
- (b) Suspension should be made only in case, where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or

(p.t.o. .

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.

- (c) In view of the above, the law on the issue can be summarised to the effect the 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. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. 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.
- (d) Long period of suspension does not make the order of suspension invalid.
- (e) Mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature.
- (f) Whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension.
- (g) Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the Court may find out as which version is true, when there are claims and counter claims on factual issues. The Court cannot act as if it an appellate forum de hors the powers of judicial review.
- (h) The scope of judicial review is limited in case of suspension for the reason that passing of suspension order is of an administrative nature and suspension is not a punishment. Its purpose is to only forbid the delinquent to work in the office and it is in the exclusive domain of the employer to revoke the suspension order. The Tribunal or the Court cannot function as an appellate authority over the decision taken by the disciplinary authority in these regards.

- (i) It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.
- (j) Undoubtedly, the delinquent officer cannot be considered to be any better off after the charge sheet has been filed against him in the Court on conclusion of the investigation than his position during the investigation of the case itself. (Vide: Union of India and others Vs Udai Narain, (1998) 5 SCC 535).
- (k) The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, wherein, it has been observed that even 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.

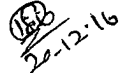
4. In the Government Letter 3rd read above, various Supreme Court directives have been communicated in which the Supreme Court has categorically laid down that in cases of corruption / misappropriation, the only punishment is dismissal.

5. In view of the above directives of the Supreme Court, the suspension orders shall be effectively upheld in the Court cases against the accused officers involved in vigilance cases / criminal cases/ departmental disciplinary cases pertaining to the allegations of corruption / misappropriation / accumulation of disproportionate assets or any other criminal misconduct defined in any of the Acts / disciplinary rules / Bye-laws or in any other conditions of service or in any of the provisions which are all ordinarily warranting imposition of major penalty of dismissal. Hence, the disciplinary authorities concerned shall scrupulously ensure that the above directives of Supreme Court are invariably incorporated, in addition to any other case-laws, in the petitions / affidavits, while defending the suspension orders in the Court of Law.

Yours faithfully,



for Deputy Secretary to Government


20-12-16

Copy to :-

Personnel and Administrative Reforms (L1, L2 and L3) Department,
Chennai-9. (6 copies).

Vigilance Commission, Chennai-9. (6 copies)

Directorate of Vigilance and Anti-Corruption, Chennai-16.

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