

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 628 of 2017**

**Present:     Hon'ble Mr. Gokul Chandra Pati, Member (A)  
                  Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Ramachandra Behera, aged about 51 years, s/o Late Brahmananda Behera, R/o Silpi Kumbhara Sahi, PO-Cuttack GPO, Dist-Cuttack, Post Master (Under Suspension), Chandinichowk Head Office, Chandinichowk, Dist.-Cuttack.

.....Applicant

VERSUS

1. Union of India represented through DG (Posts), Department of Post, Dak Bhawan, New Delhi – 110001.
2. Member (P), O/o Secretary, Department of Post, Ministry of Communication, Dak Bhawan, New Delhi – 110001.
3. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-752001.
4. Director, Postal Services (HQ), O/o Chief PMG, Odisha Circle, Bhubaneswar, Dist.-Khurda-751001.
5. Director of Accounts (Postal), Mahanadi Vihar, Cuttack-753004.
6. Senior Superintendent of Post Offices, City Division, Cantonment Road, Buxi Bazar, Cuttack-753001.

.....Respondents

For the applicant :       Mr.S.Patra-I, counsel

For the respondents:     Mr.S.Behera, counsel

Heard & reserved on : 29.11.2019

Order on :   02.01.2020

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

In this OA the applicant has prayed for the following reliefs :

- “(a)   The orders dtd 9.12.2016 so far it relates to decision of Review Committee dtd 28.10.2016, 07.11.2016, 10.02.2017 and 11.05.2017 under Annexures – A/6, A/7, A/9 & A/10 be quashed.
- (b)    The Respondents be directed to allow the Petitioner to join in his duty forthwith and further the Respondents be directed to pay the salary and allowance of the applicant from the day after expiry of 90 days from the effective date of suspension i.e. 3.10.2016 with all other benefits admissible under Law.
- (c)    Pass any other order/orders as would be deemed just and proper.”

2. The facts of the case are that the applicant was initially appointed as Postal Assistant (in short PA). He was arrested in a criminal case involving alleged misappropriation of government cash in the Department, for which the main culprits were other employees. The applicant was arrested on 05.07.2016 and was released on bail on 31.08.2016. He was put under deemed suspension vide order dated 12.07.2016 w.e.f. 05.07.2016. After release from bail, he informed to the Respondent No.4 for revoking his suspension order. Subsequently, the review committee considered the case and extended the period of suspension on 09.12.2016 vide order at Annexure-A/6. It is stated in the OA that vide order dated 28.02.2017(Annexure-A/13), the deemed suspension period of another employee Shri Ratikanta Swain, involved in the same incident, was revoked. The applicant submitted representations at Annexure-A/10, A/11 and A/12 and when these representations were not considered, the OA was filed by him requesting his reinstatement in service after revocation of the suspension order and payment of salary after expiry of 90 days from the effective date of suspension order i.e. from 03.10.2016.

3. Counter has been filed by the respondents. It is submitted that on the basis of recommendation of review committee, the suspension order of the applicant has been revoked and he was posted as Manager PSD, Samabalpur vide order dated 02.1.2018 (Annexure-R/1) of the counter. It is further stated that the charge memo has already been issued to the applicant vide memo dated 28.2.2017 and that the appeal filed by the applicant against suspension order has been disposed of by the competent authority.

4. The applicant has filed a Rejoinder stating that as per the DOPT guidelines, he was entitled to be re-instated w.e.f. 3.10.2016 since his deemed suspension was not extended within 90 days from the date of suspension from 5.7.2016 (Annexure A/4). So the applicant has calculated 90 days from effective date of suspension i.e. 5.7.2016 till 2.10.2016. It is submitted that since his suspension period has been extended by the review committee vide order dated 9.12.2016 (Annexure A/6) he is entitled for re-instatement w.e.f. 3.10.2016 with full salary etc. It is stated that no order has been passed by the competent authority as required under the rules within the time stipulated under the DOPT OM dated 5.10.2018 (Annexure A/14 to the rejoinder).

5. Heard learned counsel for the applicant. He submitted that the applicant was in custody in connection with criminal case and was released on bail on 31.8.2016. Fact of release was informed to the respondent authority on 9.9.2016. The order of extension of suspension was issued on 9.12.2016

(Annexure A/6) after the recommendation of the review committee, which is not in accordance with the rule 10(6) of the CCS (CCA) Rules. It is also submitted by learned counsel for the applicant that the applicant was re-instated in service w.e.f. 2.1.2018. Hence he claimed that for the period from 3.10.2016 till 1.1.2018, the applicant is entitled for the full salary as claimed in para 8(b) of the OA.

6. Learned counsel for the respondents was heard. He also submitted a written note of submissions, stating that the date of intimation to the authority about the release of the applicant from custody was 9.9.2016 and the review committee reviewed his case on 28.10.2016 as mentioned in the order dated 9.12.2016 (Annexure A/6). It is stated by learned counsel that as per proviso of sub rule (6) of Rule 10 to CCS (CCA) Rules that the review is not necessary if the Government servant continued under suspension on completion of 90 days and if he was released, then the review is to be done within 90 days from the date of release from the custody or from the date when he intimated about his release to the authority, whichever is later. It is also mentioned that the applicant has sent the representation about informing his release from custody on 9.9.2016 and it was received by the appointing authority on 12.9.2016, which is taken as the relevant date. It was argued that if 90 days period is counted from 12.9.2016 it will end on 10.12.2016 and the order of extension of suspension was issued on 9.12.2016 after the review committee meeting on 28.10.2016, which is as per the rules.

7. Learned counsel for the applicant also cited the judgment of Hon'ble High Court at Calcutta in the case of Abanindra Mohanty -vs- Union of India & Others [WPCT 43 of 2010]. In this case the concerned employee was placed under deemed suspension from his date of detention vide order dated 29.12.2008. As observed in the order, he was granted bail and released on 18.12.2008. The suspension order was issued by the competent authority on 29.12.2008 when the applicant was not in the custody. Since the deemed suspension was effective from 19.11.2008, the date was to be calculated from 19.11.2008 for the purpose of calculation of 90 days period and not from the date of issue of the deemed suspension order. The review order was issued on 26.3.2009. It is clear from the facts of the cited case that by the time the deemed order of suspension was issued the applicant was not in custody and the review order was issued after expiry of 90 days from the date of his release on 18.12.2008. In the present OA the applicant was released on 31.8.2016 and intimation about his release was given on 9.9.2016 and the extension of suspension order was issued on 9.12.2016 which is within 90 days from the

date of intimation about release of the applicant from custody. Hence the cited case is factually distinguishable.

8. The applicant has already been re-instated in service from 2.1.2018. The question, therefore, is whether extension of his suspension from 3.10.2016 till 1.1.208 from time to time was in accordance with the rule 10 of the CCS (CCA) Rules, 1965. The sub rules 6 and 7 of the rule 10 are relevant for this OA. The said sub rules state as under:-

“(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days :

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under detention at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.”

9. One of the orders of Government of India after the rule 10 at the serial number 15C states as under:-

**“Review of suspension - Amendment to the provisions of rule 10 -**

The provisions of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 regarding deemed suspension have since been reviewed by this Department.

2. The provisions in Rule 10 of CCS (CCA) Rules have been modified and amendment to the same have been notified in Notification No. GSR 105 dated 6.06.2007 published in the Gazette of India dated 16.06.2007.

3. As per the original provisions of rule 10 of the CCS (CCA) Rules, 1965, the provision for review within ninety days was applicable to all types of suspensions. However, in cases of continued detention, the review becomes a mere formality with no consequences as a Government servant in such a situation has to continue to be under deemed suspension. It has, therefore, been decided that a review of suspension shall not be necessary in such cases. Accordingly, a proviso has now been added to sub-rule(7) of the said rule 10 as follows:

**“provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule(2), if the Government servant continues to be under detention at the time of completion of ninety days of suspension and the ninety days period for review in such cases will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.”**

4. In deemed suspensions under sub-rule (2), the date of order of suspension may be much later than the deemed date of suspension. With a view to making these provisions explicit, sub-rule (6) of the aforesaid rule 10 has now been amended to substitute the words “ninety days from the date of order of suspension” occurring therein with **“ninety days from the effective date of suspension”**.

Consequent upon this amendment, it would henceforth be necessary to specifically indicate in the orders of suspension the effective date of suspension.

5. Sub-rule (7) of the aforesaid rule 10 stipulates says that “Notwithstanding anything contained in sub-rule (5)(a), an order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.” Sub-rule (5)(a) of the aforesaid rule 10 has, therefore, now been amended to read as follows :-

**“subject to the provisions contained in sub-rule (7), 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.”**

Consequently, the words **“Notwithstanding anything contained in sub-rule (5)(a)”** stated in **sub-rule(7) of Rule 10** have become redundant and have, therefore, been **deleted**.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these amendments have been made in consultation with the Comptroller and Auditor General of India.

[DOPT OM No. 11012/4/2007-Estt. (A), dated 12th July, 2007]”

10. It is clear from the above provisions of the rule 10 that the review of the suspension or deemed suspension of a government servant is necessary under the rules unless the condition at the proviso to the sub rule 7 that the government servant continues to be under detention on completion of 90 days from the effective date of deemed suspension is fulfilled. In this case, the date of effective suspension was 5.7.2016 and 90 day period is completed on 2.10.2016 as stated by the applicant. On that date, the applicant was not under detention as he had been released on bail and he had informed about his release to the competent authority on 12.09.2016 as indicated in the Counter. Since the applicant was not under detention on completion of 90 days from his effective date of suspension, the proviso to the sub rule 7 of the rule 10 will not be applicable in this case, since the said proviso will be applicable if on completion of 90 days, the arrested government servant continues under detention. Since the applicant was released from detention before completion of 90 days of the effective date of deemed suspension, the review of suspension was required under sub rule 6 of the rule 10, as claimed by the applicant and the relaxation allowed in the proviso to the sub rule 7 of the rule 10, as claimed by the respondents, will not be available.

11. It is noticed with concern that the respondent authorities have failed to carry out the review of suspension of the applicant in time as required under the rules. It was delayed although the information about his release from detention was available with the authorities on 12.9.2016 and the reason for such delaying the review of suspension from 12.9.2016 till 9.12.2016 has not been explained in the pleadings of the respondents. Further, there is no mention of the status of the charge memo dated 28.2.2017 issued to the applicant. It is unfortunate that the authorities have not handled such a serious issue involving misappropriation of government money diligently. **Therefore, the respondent nos. 1, 2 and 3 may fix responsibility on the**

**officials found responsible for not reviewing the suspension in time and for delaying the matter and take action as deemed appropriate against such officials as per the provisions of law.**

12. For the reasons as discussed above, the orders dated 09.12.2016 (Annexure-A/6) and 11.05.2017 (Annexure-A/10) extending the suspension of the applicant are not in accordance with the rule 10 of the CCS (CCA) Rules, 1965 and hence, these orders are set aside, since it was necessary to conduct the review of the applicant's suspension before expiry of 90 days from the effective date of deemed suspension i.e. before 2.10.2016, which was not done in this case. As a result, other orders at Annexures A/7 and A/9 are also set aside. In the circumstances, the applicant is entitled to the salary and allowances after deducting the subsistence allowances already paid to him for the period from 3.10.2016 till his date of reinstatement on 02.01.2018, which is to be disbursed to the applicant within six months from the date of receipt of a copy of this order. The OA is allowed accordingly with no order as to cost.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

I.Nath