

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00700/2018

Jabalpur, this Thursday, the 09th day of January, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Upendra Gupta,
S/o Late Shri Ramesh Chandra Gupta,
aged about 32 years,
Income Tax Officer (Under Suspension),
O/o Principal Commissioner of Income Tax,
Gwalior, R/o House No.2,
Income Tax Officer Colony,
City Centre Gwalior

-Applicant

(Applicant in person)

V e r s u s

1. Union of India through its Secretary,
Ministry of Finance (Revenue of Department),
New Delhi 110001.

2. The Chief Commission of Income Tax,
Aayakar Bhawan (Main) Opp.
White Church Indore – 452001.

3. The Principal Commissioner of Income Tax,
Aaykar Bhawan, City Centre, Gwalior (M.P.).

4. The Deputy Commissioner of Income Tax (HQ)
Aaykar Bhawan, City Centre,
Gwalior (M.P)

-Respondents

(By Advocate – Shri Sanjay Lal)

ORDER (O R A L)**By Navin Tandon, AM.**

The applicant is aggrieved that he is being kept under suspension for a very long period without following the rules.

2. The applicant has submitted as under:

2.1 He joined as Inspector with the Department and was subsequently promoted as Income Tax Officer on 20.05.2014 (Annexure A-2).

2.2 A criminal case No.71/15 under section 304B, 34 IPC was registered against the applicant and he was detained in jail since 04.06.2015. Accordingly, he was placed under suspension in terms of sub-rule (2) of Rule 10 of the CCS (CCA) Rules, 1965 vide order dated 18.06.2015 w.e.f. 04.06.2015 (Annexure A-3).

2.3 The applicant was released on bail on 19.05.2017. The same was intimated to the Department vide application dated 22.05.2017.

2.4 The respondent department constituted a review committee and thereafter suspension of the applicant was extended for a further period of 90 days vide order dated 18.08.2017 (Annexure A-4). This was further extended by 90

days vide order dated 10.11.2017 (Annexure A-5). The next review order was due on or before 89 days, i.e. 07.02.2018, but the Principal Commissioner of Income Tax Gwalior released the review order only on 04.06.2018 vide F.No.Pr. CIT/Gwl/Hq./2017-18/702 (Annexure A-6).

3. The applicant has, therefore, sought for the following reliefs:

“8. RELIEF SOUGHT

In view of aforesaid facts and ground of the case the Applicant most humbly pray for following relief:-

8.1 It is, therefore, prayed that this Hon’ble tribunal may kindly be pleased to quash the impugned extension of suspension order dated 04.06.2018 passed by the Respondent No.3, and to direct the Respondents to permit applicant to join duty and to treat the period beyond 07.02.2018 as duty for all purposes and to pay benefits of full salary with effect from 08.02.2018 with revised pay scales in terms of the 7th central pay commission.

8.2 It is, therefore, prayed that this Hon’ble tribunal may kindly be pleased to direct the Respondents to pay subsistence allowance for 14 days i.e. 04.06.2015 to 17.06.2015 to the applicant.

8.3 It is, therefore, prayed that this Hon’ble tribunal may kindly be pleased to direct the Respondents to release annual increments which fell due during the suspension periods any pay arrear of the balance of subsistence allowance to the applicant after calculating the subsistence allowance with annual increment.

8.4 It is, therefore, prayed that this Hon'ble tribunal may kindly be pleased to direct the Respondents to pay arrear of the balance of subsistence allowance to the applicant at the enhanced rate of 75% from the date of expiry of first three months of suspension/deemed suspension.

8.5 It is, therefore, prayed that this Hon'ble tribunal may kindly be pleased to direct the Respondents to pay arrears of subsistence allowance on the basis of the revised pay scales in terms of the 7th Central Pay Commission which came into effect from 01.01.2016.

8.6 It is, therefore, prayed that this Hon'ble tribunal may kindly be pleased to direct the Respondents to pay to the applicant interest @ 24% on all the above balances dues from the date the same became due to the applicant till the date of their realization.

8.7 It is, therefore, prayed that this Hon'ble tribunal may kindly be pleased to direct the Respondents to pay to the applicant cost of this OA.

8.8 Any other order/direction, which this Hon'ble Administrative Tribunal considered fit, necessary and appropriate in the circumstances of the case may kindly be granted to the applicant."

4. The respondents have filed their reply, wherein they have submitted that there is no violation of any rule or law in reviewing the suspension as alleged by the applicant. The order extending the suspension has been passed within the prescribed period, i.e. before the expiry of the period of suspension, i.e. 06.02.2018.

4.1 Further, in para 11 of their additional reply, the respondents have stated as under:

“11. That, the aforesaid para needs no comment being a matter of record. After verification of the record it is found that the petitioner has filed the RTI application and order u/s 7(1) passed and provided the information to petitioner, in this order, copy of **review order of the suspension for further period was passed within 90 days by the Pr.CIT, Gwalior on 06/02/2018** Vide F.No. Pr. CIT/Gwl/Hqrs./2017-18 was enclosed. Said review order was dispatched by this office on 04/06/2018 vide dispatch no. 702.”

5. We have heard the learned counsel for the parties and perused the pleadings available on record.

6. The applicant submits that since the order dated 06.02.2018 was not communicated to him till 04.06.2018, extension of suspension period beyond 07.02.2018 is not as per law. He placed reliance on the following decisions:

“(i) Bachhittar Singh vs. State of Punjab & Anr.,
AIR 1963 SC 395.

(ii) State of Punjab vs. Amar Singh Harika, AIR
1966 SC 1313.

(iii) Union of India & Ors. vs. Dinanath Shantaram
Karekar & Ors., (1998) 7 SCC 569.

(iv) **State of West Bengal vs. M.R. Mondal & Anr.**,
(2002) 8 SCC 443.

(v) **Laxminarayan R. Bhattad & Ors. vs. State of Maharashtra & Anr.**, (2003) 5 SCC 413.

(vi) **Greater Mohali Area Development Authority vs. Manju Jain & Ors.**, AIR 2010 SC 3817

6.1 He further placed reliance on a decision of this Tribunal in Original Application No.200/00525/2016, decided on 03.08.2018 (**Anil Kumar Yadav vs. Union of India & Ors.**)

7. Learned counsel for the respondents submits that once the orders for extension of suspension period have been passed by the competent authority within the stipulated period, therefore, the suspension beyond that is as per rules.

FINDINGS

8. We have perused the orders cited by the applicant. These judgments by Hon'ble Supreme Court are on different subjects like house allotment, highway toll collection, disciplinary proceedings etc. However, portions relevant in the present case have been extracted as below:-

8.1 In the case of **Bachhittar Singh** (supra), the Hon'ble Apex Court has held as under:-

“Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.”

8.2 In the case of **Amar Singh** (supra), the Hon’ble Apex Court has held as under:-

“ It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order.”

8.3 In the case of **Dinanath Shantaram Karekar** (supra), the Hon’ble Apex Court has held as under:

*“7. As would appear from the perusal of that decision, the law with regard to “communication” and not “actual service” was laid down in the context of the order by which services were terminated. It was based on a consideration of the earlier decisions in **State of Punjab v. Khemi Ram**, (1969) 3 SCC 28, **Bachhittar Singh v. State of Punjab**, AIR 1963 SC 395, **State of Punjab v. Amar Singh Harika**, AIR 1966 SC 1313 and **S. Partap Singh v. State of Punjab**, AIR 1964 SC 72. The following passage was quoted from **S. Partap Singh** judgment:*

“It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making

such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the government servant concerned, it must be held to have been communicated to him, no matter when he actually received it.”

8.4 In the case of ***M.R. Mondal*** (supra), the Hon’ble Apex Court has held as under:-

“16.An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of law or claim to have come into operation and effect.”

8.5 All the above judgments have been summarised in the case of Greater Mohali (supra) which is as under:-

*“23. Constitution Benches of this Court in **Bachhittar Singh Vs. State of Punjab & Anr.** AIR 1963 SC 395; and **State of Punjab Vs. Amar Singh Harika** AIR 1966 SC 1313, have held that an order does not become effective unless it is published and communicated to the person concerned. Before the communication, the order can not be regarded as anything more than provisional in character. A similar view has been reiterated in **Union of India & Ors. Vs. Dinanath Shantaram Karekar & Ors.** AIR 1998 SC 2722; and **State of West Bengal Vs. M.R. Mondal & Anr.** (2002) 8 SCC 443. In **Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr.** (2003) 5 SCC 413, this Court held that the order of the authority must be communicated for conferring an enforceable right and in case the order has been passed and not communicated, it does not create any legal right in favour of the party. Thus, in view of the above, it can be*

held that if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of Law, as it does not become effective till it is communicated."

9. The common thread in all the above cited pronouncements of Hon'ble Supreme Court is that it is not sufficient to pass an order on file. The process is completed only after the said order is communicated. Till such time the order is not communicated, it is only provisional.

10. This Tribunal also had an occasion to adjudicate the case of Anil Kumar Yadav (supra) wherein the orders of extension of suspension period was not communicated timely. The said Original Application was allowed and the respondents were directed to reinstate the applicant after expiry of suspension period as communicated in the previous order.

11. Perusal of the record and pleadings available very clearly indicates that though the review order was done on 06.02.2018, but it has been dispatched from the office only on 04.06.2018. Therefore, the provisions, as per the law settled, have not been followed in this case. Hence, suspension beyond the extension provided by order dated

10.11.2017 (Annexure A-5) cannot survive in the eyes of law.

12. Accordingly, we direct the respondents that the applicant should be treated as on duty after the period of extension allowed as per order dated 10.11.2017 (Annexure A-5) is over. He shall be entitled to all consequential benefits.

13. At this stage, the applicant submitted that he has submitted representations to the respondents praying for different reliefs, which are filed as Annexure A-8, A-9, A-11 and A-12 in the OA. He submits that these representations have still not been decided.

14. We further direct the respondents that the above said representations shall be decided by the competent authority, as per law, if not already decided, within 60 days from the date of receipt of certified copy of this order through a speaking order and the same should be communicated to the applicant.

15. The respondents are directed that the office order to post the applicant should be issued within 15 days and payment of entitled dues should be done within 60 days of receipt of certified copy of this order.

16. Accordingly, the Original Application is allowed in above terms. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-