



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2336/2014

Tuesday, the 21st day of January 2020

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

R.S. Jeph, Age 50 years
STO
s/o Shri Saita Ram
r/o RZ-58A, Data Ram Park
Near Deen Pur, Najafgarh
New Delhi – 43

..Applicant

(Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD
Through Chief Secretary
Delhi Secretariat,
IP Estate, New Delhi
2. The Commissioner (VAT)
Dept. of Trade & Taxes
Vyapar Bhawan, IP Estate
New Delhi
3. The Secretary (Services)
Govt. of NCT of Delhi
Delhi Secretariat,
Players Building, IP Estate,
New Delhi – 110 002

..Respondents

(Mr. Ramesh Shukla, Advocate for Mr. Amit Anand, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was working as Sales Tax Officer in the Government of National Capital Territory of Delhi (GNCTD).



He was placed under suspension on 09.03.2005 along with many officials of the Department. He was also dismissed from service on 05.10.2006, by invoking Article 311 (2) of the Constitution of India and Rule 19 (ii) of CCS (CCA) Rules, 1965 (for short “the Rules”). It is stated that the applicant filed O.A. No.1704/2008 challenging the order of dismissal dated 05.10.2006 and that the same was allowed on 19.04.2010. The order in the O.A. became final with the dismissal of Writ Petition and SLP filed by the, respondents, and the applicant was reinstated into service on 01.04.2010.

2. The applicant contends that the suspension ordered against him on 09.03.2005 was reviewed on 24.08.2005, w.e.f. 08.06.2005 and that the same is opposed to sub-rule 7 of Rule 10 of the Rules. He submits that once the order of suspension was not reviewed before expiry of 90 days, it ceases to be operative and in that view of the matter, it deserves to be set aside, and he is entitled to the benefits as a result of such deemed reinstatement. Reliance is placed upon the quite large number of O.As. decided by this Tribunal.

3. It is relevant to note that during the pendency of O.A., the applicant was dismissed from service after conducting the detailed inquiry.



4. The respondents filed counter affidavit opposing the O.A. It is stated that the applicant did not raise any objection when he challenged the order of dismissal dated 05.10.2006, and it is not open to him, to challenge the suspension, at this stage. They have also raised objection on the ground of delay and placed reliance upon quite large number of judgments of Hon'ble Supreme Court.

5. We heard Mr. Sachin Chauhan, learned counsel for respondents and Mr. Ramesh Shukla for Mr. Amit Anand, learned counsel for respondents, at length.

6. The challenge in this O.A. is to the order of suspension dated 09.03.2005 and the order dated 24.08.2005, through which the suspension was extended. The applicant claims the benefit similar to the one, extended by this Tribunal, through order dated 06.03.2006 in O.A. No.1943/2005 filed by Mr. K P Gupta. Though the applicant challenged the order dated 09.03.2005, hardly, we find any ground for accepting the same. The reason is that the applicant does not state that the authority, who passed the order of suspension, is not vested with the power. The objection, if at all, is to the subsequent extension, through order dated 24.08.2005. The limited ground urged in this behalf is referable to sub-Rule 7 of the Rules. It reads:



“(7) 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.”

7. From the perusal of above, it is clear that the order of suspension ceases to be operative if it is not reviewed within 90 days, while it was in force. Had it been a case where the applicant was still under suspension, the challenge to subsequent review after lapse of time stipulated under the sub-Rules 6 & 7 of Rule 10 of the Rules, would have certainly been valid.

8. Some important developments have taken place after the applicant was placed under suspension. The applicant was dismissed from service on 05.10.2006 and thereby, the order of suspension merged into it. With the dismissal of an employee, order of suspension does not exist independently. The second aspect is that the applicant did challenge the order of dismissal dated 05.10.2006. However, he did not claim any relief vis-a-vis extension of suspension beyond 90 days from 09.03.2005. Either he is deemed to have given-up the plea, or has acquiesced in it. He is also precluded from raising it by operation of the principle of constructive *res judicata*.

9. Once the applicant has been granted the relief in the O.A. filed against the order of dismissal dated 05.10.2006 and he



joined the service on being reinstated on 01.04.2010, without any demur, he cannot raise this plea several years thereafter. Apart from the question of merger of suspension order in the order of dismissal and operation of the principle of constructive *res judicata*, the delay also operates against the applicant. By no stretch of imagination, he can challenge the order of extension of suspension dated 24.08.2005, in the year 2014.

10. What makes the things still complicated is the fact that the applicant has been dismissed from service during the pendency of O.A., after conducting departmental proceedings. It is also brought to our notice that the applicant filed a separate O.A. in this behalf.

11. It is true that in O.A. No.1943/2005 and O.A.No.1704/2008, the Tribunal granted the relief of setting aside of order of suspension beyond 90 days, on the ground that the review was not conducted within the stipulated time. However, the principles of merger, and constructive *res judicata* were not taken note of.

12. In **Sub Inspector Rooplal & another v. Lt. Governor through Chief Secretary, Delhi & others** (2000) 1 SCC 644, the Hon'ble Supreme Court emphasized the necessity to follow the judgment of coordinate Bench. However,



once we notice a serious infirmity in the orders passed earlier, we cannot blindly follow them.

13. The question of accepting the challenge to the order of suspension in the year 2005, that too, after two consecutive dismissal of the applicant, does not arise. As observed earlier, apart from question of delay, the principles of merger and constructive *res judicata* operate.

14. We do not find any merit in this O.A. It is accordingly dismissed. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

January 21, 2020
/sunil/