

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.657/2001

New Delhi this the 20th day of August, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Dr. (Mrs.) Rekha Sharma,
W/o Dr. Ashwani Sharma,
presently working as Senior
Medical Officer,
in NDRI, Karnal, Haryana.

...Applicant

(By Advocate Shri Sachin Chauhan)

-Versus-

1. Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110001.
2. Dr. B.N. Mathur,
Director, National Dairy Research Institute,
(I.C.A.R.) Karnal, Haryana. ...Respondents

(By Advocate Shri N.S. Dalal)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant in this OA has assailed the suspension order dated 11.8.2000 and action of the respondents whereby the appeal preferred against the order has not been considered. The applicant seeks here re-instatement as Senior Medical Officer with all consequential benefits and also review of subsistence allowance.

2. Briefly stated, the applicant has been working as a Senior Medical Officer at NDRI Karnal, the headquarter office of which is situated at Delhi. On 1.5.2000 certain records have been missing and the matter was reported to the Police and consequently a FIR No.397 under Section 360/456 IPC was registered. The applicant was called upon before a departmental committee where she has given her explanation. By an order dated 11.8.2000 the

10

applicant was placed under suspension on contemplation of a disciplinary proceeding. The order has been passed by the Director, respondent No.2. Another letter of the same date was issued where the suspension was to commence on 18.8.2000. Till now, no chargesheet has been issued to the applicant. The applicant further states that his subsistence allowance has not been reviewed. A news article has been published whereby the Director, respondent No.2 reported that the applicant has been facing certain serious charges, including smuggling of medicines. The applicant wrote a letter to the Director to clarify the press cutting but the same has not been answered to. The appeal preferred by the applicant against the order of suspension and representation later on are also not answered.

3. The learned counsel of the applicant has assailed the order of suspension, *inter alia*, on the following grounds:

(i) the suspension ordered by the Director is without jurisdiction and is void, *ab initio*. By placing reliance on the ICAR Hand Book on Technical Services and its clause 9 it is stated that the applicant is working in grade T-7 and for which the appointing as well as the disciplinary authority is the Director General, ICAR. In this background it is stated that as provided under Rule 10 of the CCS (CCA) Rules, 1965 it is only the appointing authority and the authority empowered by the President by general/special orders is only competent to place a Government

(3)

servant under suspension on contemplated disciplinary proceedings. It is stated that as per the proviso even if the order of suspension is made by an authority lower than the appointing authority the same shall be forthwith reported to the appointing authority and as per the OM No. 7/4/74-Estt.A dated 9.8.74 where the supervisory officers in the offices located away from the headquarter in order to prevent abuse of the power of the suspending authority the circumstances are to be reported to the next higher authority and the order of suspension should become ab initio void unless confirmed by the reviewing authority within a period of one month from the date of order and as, admittedly, the order of suspension was passed on 11.8.2000 and as transpired from the letter of the respondents dated 15.9.2000 with the approval of DG, ICAR for ratification of suspension has been accorded on 14.9.2000 the suspension order has become ab initio as the confirmation was taken beyond one month from 11.8.2000 as such the order of suspension is not legally tenable and the applicant is deemed to be in service with all consequential benefits. The learned counsel of the applicant has also stated that there is nothing on record to show that the power of suspension has been delegated by respondent No.1 to the Director. The learned counsel of the applicant has placed reliance on a decision of the Apex Court in Chairman and Managing Director, Andhra Bank and Others v. Ramoo Ramesh &

(4)

Another, 1997 (11) SCC 610 to contend that an incompetent order cannot be legalised by subsequent approval of the competent authority. The applicant has also cited the ratio of R.K. Misra v. Union of India, 1991 (16) ATC 426, the decision of the Principal Bench of this Tribunal wherein it has been held that the suspension must be ordered by the authority empowered on his behalf and subsequent authorisation cannot cure the initial infirmity. Even if there is implied power of supervisory officer to suspend the subordinate the failure to submit a report to the higher authority within the stipulated period makes the suspension as void, *ab initio*.

(ii) The applicant has also assailed the order of suspension on the ground that the same is not in accordance with the guidelines on the subject as the suspension was resorted to on account of contemplated disciplinary proceedings. Firstly the reasons for suspension have not been communicated and failure of the respondents to issue a chargesheet under Rule 14 of the CCS (CCA) Rules within a period of 90 days from the date of suspension clearly shows that the applicant was arbitrarily placed under suspension and there was no contemplation of the enquiry. The learned counsel of the applicant has placed reliance on OM dated 16.12.72.

(5)

(iii) The applicant has further assailed the suspension on the ground of malafides of respondent No.2, i.e, Director Sh. B.L. Mathur to contend that as per the instructions contained under clause 9 before passing the order of suspension the authority proposing to make the order should verify as to whether he is competent to do so. Secondly it is stated that without the issuance of the chargesheet to the applicant the matter has been reported to the Press wherein 8 charges have been levelled against the applicant which amounts to projecting false acquisition against the applicant and as the matter was before the departmental committee and no conclusion was forthcoming, he pre-determined the charge against the applicant. The Press cutting was put to him for seeking clarification by making a representation which has not been responded too as such in these circumstances and also on the ground that whereas in similar circumstances where the employees of the same categories have been involved in criminal cases pertaining to murder are not placed under suspension and even in cases of transfer the competent authority is DG, ICAR, the respondents with a view to save certain persons resorted to misuse of the power without competence.

(iv) Lastly, it is stated that the suspension of the applicant has not been reviewed with regard to the subsistence allowance, which is an illegality as laid down under the guidelines of the Government.

4. The learned counsel for the respondents, strongly rebutting the contentions of the applicant stated that there is a distinction between the suspension and a disciplinary action and as provided under proviso to Rule 10 *ibid* in exigencies of service the lower authority than the appointing authority can place the Government servant under suspension and it is only the circumstances are to be informed to the competent authority which has been done in the present case immediately and vide order dated 15.9.2000 approval was accorded by DG, ICAR. As the approval has legalised the suspension order the irregularity, if any, was cured. The same has been done within one month as prescribed under the guidelines. It is also stated that under Rule 10 (5) (b) of the Rules the authority referred to is not the appointing authority. By placing reliance on the decision of the Allahabad High Court in Bireshwar Chakravarti v. L.N. Kaula & Others, AIR 1957 (Alld.) 671 as well as Mohd. Aslam v. State of J & K, 2000 (1) SLR Vol.45 530 it is contended that in disciplinary proceedings involving serious charges the competent authority can place a Government servant under suspension. In case the suspension is approved later on by the competent authority under the relevant rules the same would not be illegal. It is also stated that subsequently the subsistence allowance of the applicant has been reviewed to 75% and the grievance of the applicant and his prayer to this regard has become

infructuous. As regards the malafides it is stated that the fact of malafide is to be founded and facts therein are to be brought on record as nothing has been proved with regard to the malafides of R-2. The applicant has misused the process of law. The paper cutting would not be taken cognizance of and except this there is absolutely no material to prove the malafide. As regards the chargesheet is concerned, it is stated that the matter has been sent to the CVC and the draft is in the final stage and the department has lastly taken up the matter with the CVC by letter dated 7.8.2000th. It is also stated that the record was brought to the notice of the department and that the appeal made by the applicant was pending at the time when the DG had accorded the approval and the same is deemed to have been considered by him, including the objection. Lastly it is strongly contended that as the applicant has not filed any rejoinder, whatever has been stated in the counter-affidavit has not been controverted and is deemed to have been admitted by the applicant.

5. I have carefully considered the rival contentions of the parties and perused the material on record. As regards the grievance of the applicant regarding not reviewing the subsistence allowance the learned counsel of the respondents has stated that the same have been reviewed and the same has been raised to 75% as provided under law as such this prayer of the applicant has already been meted out by the respondents themselves and as such the same does not subsist and has become infructuous.

(8)

6. As regards the contention of the applicant regarding competence of the Director to issue the order of suspension and subsequent violation of the guidelines of the Government is concerned, I am of the considered view that the order of suspension though passed by an incompetent authority not being the appointing authority the respondents have failed to take the necessary approval as stipulated in the OM referred to above, within a period of one month from the date of the order of suspension which makes the order of suspension as void *ab initio*. As provided under Rule 10 of the Rules *ibid* only the appointing or disciplinary authority are competent to place the Government servant under suspension and this can also be resorted if the authority is empowered by the President by general or special orders. As admitted by the respondents and also as per the rules of ICAR for grade T-7 employees to which the applicant belongs the appointing and the disciplinary authority is the Director General, ICAR. In one of the guide-lines it is also provided that before resorting to suspension the concerned authority should ensure that whether he is competent to do so or not. However, in the proviso under rule 10 it is provided that in case the order of suspension is made by a lower authority the report shall be forthwith sent to the appointing authority and in this regard the relevant instructions of the Government of India are reproduced as under:

"(8) Empowering all superior officers to suspend their subordinates.--In its report in Personnel Administration, the Administrative Reforms Commission had recommended as under--

"53(2) --All Supervisory Officers should be empowered to suspend a subordinate officer (in circumstances disclosing gross dereliction of

duty), subject, however, to a review of the order of suspension, within a short time, by the next higher authority."

2. This recommendation has been accepted subject to the following modification:--

Only supervisory officers in office located away from headquarters need be specially empowered to suspend a subordinate officer in cases involving gross dereliction of duties. In order to prevent abuse of this power the suspending authority should be required to report the facts of each case immediately to next higher authority, and all such orders of suspension should become ab initio void unless confirmed by the reviewing authority within a period of one month from the date of orders.

3. As the Ministry of Finance, etc., are aware under Rule 10 of the Central Civil Services (Clarification, Control and Appeal) Rules, 1965, the following authorities are competent to place a Government servant under suspension--

- (i) Appointing authority
- (ii) Any authority to which the appointing authority is subordinate;
- (iii) Disciplinary authority; and
- (iv) Any authority empowered in that behalf by the President by a general or special order."

7. As per these guidelines which are not inconsistent with the statutory rule 10, rather supplementing the same it is incumbent in such like cases and more particularly in the instant case where the headquarter is situated at Delhi, the Director being the supervisory officer although competent to place the Government servant under suspension but as it has been ensured to prevent abuse of power the facts and circumstances are to be reported immediately to the next higher authority and it is to be confirmed by the reviewing authority within a period of one month from the date of order. If this is not done, the suspension becomes void ab initio. The supervisory officers in these guidelines have been empowered to place the officers under suspension but subject to para 2 of the guidelines as provided in Rule 10

of the rules. Now applying the aforesaid guidelines to the facts and circumstances of the present case I find that admittedly the applicant has been working at Karnal under ICAR, whose headquarter is situated at New Delhi, the Director, R-2, is not the competent authority, i.e., neither appointing authority nor disciplinary authority, applicant being in T-7 grade as a supervisory officer he placed the applicant under suspension on 11.8.2000 and the report of which was sent to the appropriate higher authority, i.e, appointing authority of the applicant, DG, ICAR, who accorded the approval and ratified the suspension by his order dated 14.9.2000 which has been communicated to the Director vide letter dated 15.9.2000. The order of suspension was passed on 11.8.2000 and one month's time had elapsed on 11.9.2000 by which there was no approval accorded by the DG, ICAR, as such as per the guidelines which are forming part and parcel of Rule 10 and are not inconsistent in any manner and rather supplementing the rules which ensure abuse of process of suspension the order of suspension has become void ab initio. The resort of the respondents to show that by an order dated 11.8.2000 the suspension has been made effective from 18.8.2000 would be of no avail to them as what matters is the date of order of suspension which is 11.8.2000 in any event. Having failed to obtain approval of the higher authority within a period of one month from the date of suspension the suspension has become void ab initio and cannot be sustainable in the eye of law. The ratio cited by the applicant of the Principal Bench has also dealt with this issue and therein also it is observed that in case the subsequent ratification beyond the period and also otherwise would not legalise the order

(11)

of suspension passed by an incompetent authority. I agree with the same.

6. As regards the issuance of the chargesheet is concerned, though I find that the order of suspension was made on 11.8.2000 simultaneously a committee was formed and the matter has been referred to the CVC but till then even after the expiry of one year the chargesheet is yet to be issued to the applicant. As provided under general instructions on suspension and as per the OM dated 16.12.72 in cases where the chargeheet has not been filed for six months the matter is to be reported to the next higher authority explaining the reasons. It is also provided under OM No.35014/1/81-Estt.A dated 9.11.92 that where the Government servant is placed under suspension on ground of contemplated disciplinary proceedings every effort should be made to finalise the chargesheet within a period of three months from the date of suspension so that the Government servant is become aware of the reasons for suspension. In case the chargesheet is not filed within three months the reasons for suspension should be communicated to the Government servant immediately after that so that he gets an opportunity to effectively exercise the right of appeal. The respondents in their reply have contended that the matter is being sent to CVC and draft chargesheet will be finalised. Except this, they have not stated as to why they took so long to draft the charge-sheet even after expiry of more than one year. In this view of the matter and the statement of the respondents that the CVC is also requested to finalise the

chargesheet it appears that the resort to suspension of the applicant on contemplated proceedings was not justified at all.

9. In the result and having regard to the discussion made above, the present OA is partly allowed. The request of the applicant for review of the subsistence allowance has already been meted out and has become infructuous. As regards the order of the suspension, as the same has not been passed by the competent authority and there was no valid approval as per the guidelines the same is quashed and set aside. The respondents are directed to re-instate the applicant in service forthwith. The applicant shall also be entitled to all consequential benefits, including difference in pay and allowances. The respondents are directed to comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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