

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2078/1999

New Delhi, this 28th day of July, 2000

Hon'ble Justice Shri V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

G.P. Sewalia, IAS
E-4/3, MS Flats, Sector XIII, R.K. PURAM,
New Delhi .. Applicant

(By Shri M.Chandrashekar, Sr.Advocate with S/Shri
M.K. Gupta and C.Harishankar, Advocates)

versus

Union of India, through
Secretary
Ministry of Home Affairs
North Block, New Delhi .. Respondent

(By Shri N.S.Mehta, Sr. Advocate)

ORDER(oral)
By Justice Shri V.Rajagopala Reddy

The applicant was appointed to IAS in 1974. He was appointed as Secretary, Health & Family Welfare, Govt. of NCT of Delhi. CBI registered a case against him under the Prevention of Corruption Act in 1990 and a charge-sheet was filed in the Court of Special Judge, Delhi on 27.2.1998. The applicant however was released on bail. On 7.1.99 the applicant was placed under suspension under Sub-rule 3 of Rule 3 of All India Services (Disciplinary & Appeal) Rules, 1969 (for short, Rules). The review committee extended the suspension of the applicant by order dated 13/16.8.99 which was again extended on 31.3.2000 until further orders. The continuance of suspension and the subsequent orders of review are challenged in this OA.

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2. It is the contention of the learned senior counsel for the applicant Shri M.Chandrashekar that under sub-rule 8(a) of Rule 3 of the above Rules, the period of suspension should not exceed 90 days unless is extended meanwhile and if no extension was made, the order of suspension stands revoked. It is therefore contended that since the period of 90 days expired by 7.4.99, and as no extension was passed till 16.8.99, the order of suspension stood revoked. It is further contended that the subsequent orders passed by the review committee extending the order of suspension also are invalid as the initial order of suspension itself stood removed.

3. The learned counsel for the respondent however submits that the sub-rule 8(a) of Rule 3 is not mandatory and it should be held as only a directory and its violation would not amount to revocation of order of suspension.

4. We have given anxious consideration to the above contentions.

5. Before we consider the contentions, sub-rule 8 of R-3 has to be noticed, which reads as under:

"8(a) An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time, unless revoked earlier.

(b) An order of suspension made or deemed to have been made or continued, shall be reviewed by the competent authority on the recommendations of the concerned Review Committee.

(c) The composition and functions of the Review Committees and the procedure to be followed by them shall be as specified in the Schedule annexed to these rules.

(d) The period of suspension under rule (1) may, on the recommendations of the concerned Review Committee, extended for a further period not exceeding one hundred and eighty days at a time:

provided that where no order has been passed under this clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed."

(9) Every order of suspension and every order of revocation shall be made, as nearly as practicable, in the appropriate standard form appended to these rules."

6. A perusal of the above sub-rule makes it manifest that an order of suspension is valid not exceeding ninety days and that where no order has been passed within the period of ninety days, the order of suspension shall stand revoked w.e.f. the date of expiry of the order. Learned counsel for the respondents does not dispute this proposition. He however contends that sub-rule 8 is only directory which, in our view, is not acceptable. Sub-rule 8(a) clearly stipulates the period during which the order of suspension would be valid. it is only for ninety days. It further stipulates that if it was extended it would be valid for another period of 180 days and no further. The proviso to clause (d) stipulates the consequence of failure of further extension, the order stands revoked. In clause (b) and (c), it is stated how the Review Committees ^{are} to be constituted and the procedure to be followed by them.

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7. It is also clear from the language employed in the rule that the rule is mandatory. The expression "shall" be valid for a period not exceeding ninety days," appears to be peremptory and unambiguous in its meaning. The suspension, therefore, cannot be valid exceeding the period of ninety days unless it was extended. The argument that the expression 'shall' may not always be indicative of the rule ^{being mandatory} cannot hold good in the face of the expression used and the intendment of the framers of the rules in employing the language of the rules.

8. The learned counsel relies upon the case of L.Hazari Mal Kuthiala Vs. IT Officer, Special Circle, Ambala Cantt. & Anr. AIR 1961 SC 200 in support of his contention that the rule is directory. In the said case ~~it was the validity of~~ the failure of the Commissioner of Income-Tax to exercise his power without consulting the Minister incharge, was held to be only directory. The Supreme Court, considering the nature of the provisions requiring consultation and that to hold null and void acts done in the performance of a public duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, ~~and at some times~~ ^{held that} it has been the practice to hold such provisions to be directory only.

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9. In the case on hand, it cannot be denied that the placing of an officer under suspension would not only cast stigma on him but also bring ^{him} into disrepute in the eye of the public. He would also be not paid the full salary during the period of suspension. Hence, the framers of the rules have ^a taken all possible precautions to see that an officer is placed under suspension and continued to be on suspension only strictly in accordance with the rules. The decision of the Supreme Court, cannot be said to be a principle ~~decision~~ ^L which is to be followed in the case of placing an officer under suspension on all occasions. In the circumstances, we hold that the order is mandatory. The contention is, therefore rejected.

10. In view of the aforesaid discussion we are of the view that ^{L extension of the period of suspension under the} the impugned order of suspension is not in accordance with law and hence ^{it} stood revoked.

11. The OA is accordingly allowed. We do not, however, order costs.

12. It is, however, open to the respondents to take such action, if they so desire, as is permissible under the law.

Shanta Shastry
(Smt. Shanta Shastry)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman(J)

/gtv/