

**Central Administrative Tribunal
Principal Bench, New Delhi**



**O.A. No. 3392 of 2019
With
O.A.No.3394 of 2019**

Orders reserved on : 09.10.2020

Orders pronounced on : 18.12.2020

(Through Video Conferencing)

**Hon'ble Mr. A.K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

O.A. No. 3392 of 2019

Mahesh Kumar, Aged 59 years, 'C'
s/o Sh. Prem Lal,
Working as Social Security Officer,
In ESIC, posted at Gurugram,
R/o H.No.1501, Sector 16, Faridabad (Har).

....Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. Employees' State Insurance Corporation,
Through its' Director General,
Panchdeep Bhawan, CIG Road, New Delhi-02.
2. The Commissioner, (Insurance)
Employees' State Insurance Corporation,
Headquarter Office,
Panchdeep Bhawan, CIG Road, New Delhi-02.
3. The Additional Commissioner & Regional
Director,
Employees' State Insurance Corporation,
Regional Office, Panchdeep Bhawan, Sector
16, Faridabad (Haryana).

...Respondents

(By Advocate: Ms. Jhum Jhum Sarkar)

O.A.No.3394 of 2019



Vijender Kumar Aggarwal, Aged 59 years, 'C'
s/o Sh. J.C. Aggarwal,
Working as Social Security Officer,
In ESIC, posted at Gurugram,
R/o H.No.677, Sector 29, Faridabad (Har).

....Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. Employees' State Insurance Corporation,
Through its' Director General,
Panchdeep Bhawan, CIG Road, New Delhi-02.
2. The Commissioner,
Employees' State Insurance Corporation,
Headquarter Office,
Panchdeep Bhawan, CIG Road, New Delhi-02.
3. The Additional Commissioner & Regional
Director,
Employees' State Insurance Corporation,
Regional Office, Panchdeep Bhawan, Sector
16, Faridabad (Haryana).

...Respondents

(By Advocate: Ms. Jhum Jhum Sarkar)

O R D E R

Hon'ble Mr. R.N. Singh, Member (J):

The aforesaid two Original Applications have been filed by the applicants herein under Section 19 of the Administrative Tribunals Act, 1985 against the respondents' orders of suspension dated 12.6.2019 and also against the action of the respondents vide which



the applicants have not been allowed to perform duties w.e.f. 10.9.2019 on the ground that in absence of any valid order for extension and continuation of their suspension, the applicants are entitled for being allowed to be reinstated in service and are also entitled to be allowed to perform their duties with all consequential benefits.

2. As the issue involved in both these OAs are same, facts are also identical, with the consent of the learned counsels for the parties, these matters have been heard together and are being disposed of vide common Order/Judgment.

3. For the sake of convenience, the facts are being taken from the pleadings available on record in OA NO.3392/2019.

4. The applicants, while working as Social Security Officers under the respondents and posted at Regional Office of the respondents at Faridabad, were placed under suspension vide order(s) dated 12.6.2019 (Annexure A/1) passed by Additional Commissioner and Regional Director on the ground that the case in respect of fraudulent Maternity Benefits payments is under investigation by Anti Corruption Branch, CBI,



Chandigarh. It is ordered therein in the said Order dated 12.6.2019 that the official is deemed to have been suspended with immediate effect in exercise of powers conferred by Regulation 10(1)(2) of ESIC (Staff and Conditions of Services) Regulations, 1959, as amended, (hereinafter referred to as 'the Regulations of 1959') and shall remain under suspension until further orders.

5. Both the applicants made representations dated 11.9.2019 (Annexure A/2) requesting therein for revoking their suspension and to reinstate them in service on the ground that even after lapse of 90 days, the said deemed suspension, no order after review has been passed for extending the suspension and keeping in view the provisions of Rules 10 (6) & (7) of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules of 1965'), Government of India's decisions and the law laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India and another**, reported in (2015) 7 SCC 291. The applicants have claimed that in spite of their aforesaid representations, remedial action was not taken by the respondents and even without any order of extension of their suspension after review they are kept under continued suspension.

In this background, the applicants have approached this Tribunal by way of the aforesaid OAs.



6. Pursuant to notice from this Tribunal, the respondents have filed counter replies and the applicants have filed their rejoinders.

7. We have heard learned counsel for the parties and we have also perused the pleadings available on record.

8. Though the applicants have pleaded in the OAs that the impugned orders dated 12.6.2019 (Annexure A/1) have not been passed by the competent authority, however, nothing on record has been placed to substantiate such averment. Moreover, learned counsel for the applicants has also not emphasised on this point and had mainly argued that continuation of the applicants under the suspension after completion of 90 days from 12.6.2019 i.e., w.e.f. 10.9.2019 is non-est in the eyes of law inasmuch as no order of extension of suspension has been passed in the matter of suspension of the applicants. In this regard, learned counsel for the applicants has referred and relied upon the provisions of Rules 10(5), (6) and (7) of the Rules of 1965 and in this regard, he has also placed reliance upon the



Order/Judgment dated 22.4.2009 of the Full Bench of this Tribunal in OA 527/2008 titled **S.K. Srivastava vs. Union of India and others**, reported in 2009 SCC online CAT 1641. He has also placed reliance on Division Bench Order/Judgment dated 12.8.2011 of this Tribunal in OA 217/2011 titled **Hari Om vs. Govt. of National Capital Territory of India and others** (Annexure RE-1) and also on the Order/Judgment dated 27.2.2013 in OA No.3628/2012 titled **Dr. Hari Prasad vs. Union of India and others** (Annexure RE-2).

9. Learned counsel for the applicants has submitted that the applicants are governed by the provisions of the Rules of 1965 and the provisions of the respondents' Regulations of 1959, as amended from time to time, are identical to the provisions of the Rules of 1965. This fact has not been disputed by the respondents.

10. With the assistance of the reply filed on behalf of the respondents, learned counsel appearing for the respondents has argued that the applicants were found to be involved in payments of fraudulent maternity benefits during the period from 1.1.2016 to 31.3.2019 and these facts came to the knowledge during special Audit. She has also argued that the applicants have deliberately concealed the fact that vide meeting dated



2.9.2019, the cases of suspension of the applicants were reviewed by the review committee and from the minutes of the meeting of 2.9.2019 (Annexure-1) followed by letter dated 29.10.2019 from Deputy Director (Admin) to the Dean, ESIC Medical College and Hospital, Faridabad, it is evident that the suspensions of the applicants were reviewed in the meeting held on 2.9.2019 and suspension was continued with no change in subsistence allowance. Similar meetings of review committee in respect of review of suspension of the applicants, which were held on 25.2.2020 (Annexure 3) and 19.8.2020 (Annexure 4) etc., have also been referred to by the learned counsel appearing for the respondents. She has further argued that Additional Commissioner is the competent authority for suspension and extension of the suspension in respect of the applicants and the said Review Committee consisted of the Additional Commissioners and the recommendations of the Review Committee has been informed to the Dean of the ESIC Medical College and Hospital, Faridabad and, therefore, there is no illegality in continuation of the suspension of the applicants. She further clarified that the recommendations of the Review Committees communicated to the Hospital deserve to be construed

as the orders of extension/continuation of suspension of the applicants.



11. Learned counsel for the respondents has also placed reliance on Order/Judgment dated 4.12.2018 of a Division Bench of this Tribunal in OA No.3505/2018 titled ***Vikas Kumar vs. Union of India and others*** to contend that the judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary*** (supra) is not a binding precedence inasmuch as even now the Rule 10 (7) of the Rules of 1965 remains in its original form and also it was not interpreted to mean something different by the Hon'ble Apex Court. She has also placed reliance on the Judgment of a Division Bench of the Hon'ble High Court of Himachal Pradesh, Shimla in CWP No.474/2020 titled ***Gian Chand Thakur vs. State of Himachal Pradesh and others*** to contend that if only the review of the suspension has been made in time, the necessary order is deemed to have been passed by the competent authority for extension of the suspension and no illegality is attributable to such extension of suspension.

12. In view of the fact that the applicants have not brought on record anything to show that the impugned orders dated 12.6.2019 have been issued by incompetent authority and keeping in view the fact that



Regulation 10(1) of the Regulations of 1959 provides that the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Director General by general or specific order, may place an employee under suspension and the applicants have admittedly been under the Additional Commissioner/Regional Director of the respondents, we are of the view that the impugned orders dated 12.6.2019 have been issued by the competent authority.

13. Now, the issue remains to be adjudicated in the present OAs is as to whether after completion of 90 days from the date of issuance of order of suspension, the applicants' continuation under suspension is valid or not. We may refer to the provisions of Rule 10 of CCS (CCA) Rules, 1965, which are as under:-

"Rule 10. Suspension

(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension –

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or



(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority –

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of forty-eight hours referred to in Clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon



a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(5)(a) Subject to the provisions contained in sub-rule (7), any 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.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before the 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 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.”

14. As during the course of hearing, learned counsel for the applicants has chosen not to refer to or rely upon the judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary** (supra) or the Government of India OM dated 23.8.2016 (Annexure A5), we find it not necessary for us to examine the applicability of the same or that of the judgment of this Tribunal in the case of **Vikas Kumar** (supra) relied upon by the learned counsel for the respondents.

15. Para 11 of the Full Bench judgment of this Tribunal in **S.K. Srivastava** (supra) reads as under:-

“11. Strictly speaking there is nothing to interpret in Rule 10 because it is free from any ambiguity and is very clear. A total reading of Rule 10 would clearly reveal that suspension made under Rule 10(1) has to be reviewed by the competent authority before expiry of 90 days from the date of order of suspension. The competent authority, on the recommendations of the Review Committee may extend the period of suspension up to 180 days at a time. The second, third, fourth etc. reviews shall be made before the extended period of suspension expires. If the extended period of suspension is for 180 days, the review could be made up to the 179th day and so on and so forth. The purport of the rule is that the competent authority has to review the order of suspension under Rule 10 (1) within 90 days of the original order of suspension, after which the



suspension will become invalid beyond the period of 90 days. Second, the competent authority could review the order of suspension before the period of 90 days from the date of original suspension also. On the first review after the original order of suspension, the suspension could be extended on the recommendation of the Review Committee for a period up to 180 days at a time. The period of suspension has to be reviewed again on the recommendation of the Review Committee before the expiry of the extended period of suspension which need not be 90 days. If the suspension is extended for say 60 days, the review would have to be done before the expiry of 60 days. If, as another example, the suspension is extended for 180 days, the review has to be before the expiry of 180 days. In case of deemed suspension, however, it would not be necessary to review the order of suspension till the employee under suspension is under detention. In such cases 90 days period for review would be counted from the date the Government servant detained in custody is released from detention.”

16. Para 6 of the Order/Judgment dated 12.8.2011 in the case of **Hari Om** (supra) of this Tribunal reads as under:-

“6. At the very outset, it would be useful to extract the provision of Rule 10(7) of the CCS (CCA) Rules, 1965.

These are as follows:

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 is extended after review, for a further period before the expiry of ninety days. A bare reading of the above would show that an order made under sub-rule (1) or (2) of Rule 10 of CCS (CCA) Rules, 1965 shall not be valid after a period of 90 days unless it is extended after review for a further period before the expiry of the 90 days.

Thus, there are two components of this requirement, namely,

- there should be a review, and

b) there should be an order extending the suspension order.



Thus, both these components are required to be done before the expiry of the period of 90 days.”

Para 8 of the said Order/Judgment reads as under:-

“8. In this view of the matter, the order dated 07.09.2010 is liable to be quashed and set aside. Once this order is quashed and set aside, the subsequent orders dated 24.11.2010 and 11.02.2011 issued based on this order, are also liable to be quashed and set aside.”

Para 8 of the Order/Judgment dated 27.2.2013 in the case of **Dr. Hari Prasad** (supra) of this Tribunal reads as under:-

“8. From the aforesaid provision, it is seen that Rule 10 (1) ibid the review has to take place before expiry of 90 days from the date of the order of suspension, and if the same is not done, the suspension will automatically become invalid beyond the period of 90 days. In this case, admittedly, order of suspension was issued on 10.6.2011 and 90 days period of suspension expired on 7.9.2011. The respondents have issued the order extending the period of suspension on 9.9.2011 i.e. after the expiry of the initial period of suspension of 90 days. This Tribunal in OA No. 217/2011 (supra) has already made it clear that reviewing the suspension order within the 90 days is not sufficient but the order reviewing and extending the period of suspension has to be communicated to the concerned employee before the expiry of 90 days period. When the Government's order and the judicial orders on the subject are very clear and the impugned orders have not been passed by the respondents in consonance with Rule 10 of the CCS Rule 1965, they are to be treated invalid and deserve to be set aside.”



17. From the provisions of Rule 10 of the Rules of 1965, as quoted hereinabove, it is evident that to extend the suspension or deemed suspension, it is necessary to be reviewed by the concerned Committee and there must be an order from the competent authority extending the order of suspension. It has also been so held by this Tribunal in the aforesaid Full Bench Judgment in **S.K. Srivastava** (supra) and other two Orders/Judgments, i.e. in the cases of **Hari Om** (supra) and **Dr. Hari Prasad** (supra). In the present case, it is evident that suspension of the applicants vide impugned orders dated 12.6.2019 have been reviewed from time to time within the stipulated period, however, on the basis of recommendations of such Review Committees or otherwise neither any order has been passed nor any order has been passed by the competent authority with regard to extension of such suspension of the applicants. The statement made by the learned counsel for the respondents that once the concerned Review Committees consisted of Additional Commissioners of the ESIC made the recommendations for extension of suspension of the applicants, the said recommendations of the Review Committees are required to be construed and treated as order(s) for extension of suspension of



the applicants, appears to be misconceived in view of the fact that the Committees which reviewed on 2.9.2019 consisted of two Additional Commissioners, i.e. Additional Commissioner (Vigilance) and Additional Commissioner (P&A) and there may be other Additional Commissioner(s) also under the respondent nos.1 and 2 and in the absence of any specific order from the competent authority on the basis of such recommendations, it cannot be construed that competent authority has ordered extension of suspension of the applicants. Learned counsel for the respondents has heavily relied upon the judgment of Division Bench of Hon'ble High Court of Himachal Pradesh in the case of **Gian Chand Thakur** (supra).

Paras 4 (ii) and para 4 (iii) whereof read as under:-

"4(ii). Rule 10(7) of CCS (CCA) Rules, being relevant, is extracted hereinafter:-

"(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.

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 suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will end 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."

There can be no quarrel with the settled legal position that the order of suspension made or deemed can be extended after a review for a further period of ninety days only if the review is carried out within a period of ninety days from the date of suspension under Rule 10(7) of CCS (CCA) Rules.

4(iii). In the backdrop of above legal position, we have perused the record produced before us by the respondents. The record shows that the department convened a three members' review committee headed by the Chief Secretary on 08.11.2019, i.e. before the expiry of ninety days from the date of deemed suspension, i.e. 12.08.2019. The review committee deliberated, reviewed and finally recommended extension of suspension of the petitioner for a further period of ninety days w.e.f. 10.11.2019 to 07.02.2020. The minutes of meeting were signed by all the members on 08.11.2019 itself. The Competent Authority, Hon'ble the Chief Minister, being out of station, could not approve the minutes on 08.11.2019. However, under Rules of Business, suspension of the petitioner on 08.11.2019 itself, order was issued extending the petitioner w.e.f. 10.11.2019 to 07.02.2020 after review of the same on 08.11.2019. Though the Competent Authority eventually approved the recommendations of the review committee dated 08.11.2019 on 18.11.2019, however, this alone will not make the review and extension of suspension of the petitioner ordered within prescribed period of ninety days as invalid as the review committee was actually convened within the prescribed period of ninety days, it deliberated, reviewed and recommended extension of petitioner's suspension on 08.11.2019, i.e. within prescribed period. As per reply, the Competent Authority had accorded its verbal approval on 08.11.2019 itself for extension of petitioner's suspension. Therefore, order dated 08.11.2019 extending suspension of the petitioner was rightly issued under the Rules of Business. No advantage can be taken by the petitioner by putting forth the written approval of Competent Authority on a later date of 18.11.2019. It is not the case of the petitioner that the Competent Authority had decided to revoke the suspension of the petitioner. Therefore, we do not find any substance in the argument advanced by the learned counsel for the petitioner that the review and extension of suspension of the

petitioner w.e.f.10.11.2019 to 07.02.2020 was carried out in violation of Rule 10(7) of CCS (CCA) Rules.”



18. From the aforesaid, it is evident that orders of suspension made or deemed suspension can be extended. However, the same is required to be done after review within a period of 90 days. In the case of **Gian Chand Thakur** (supra), the facts were different in as much as their Lordships of the Hon'ble High Court have recorded that the competent authority in that case, i.e., Hon'ble Chief Minister was out of station on relevant date, i.e., 08.11.2019. He could not approve the minutes on 08.11.2019. However, under the Rules of Business on 8.11.2019 itself, order was issued extending the suspension of the petitioner w.e.f. 10.11.2019 to 07.02.2020 after review of the same on 08.11.2019. Though the Competent Authority eventually approved the recommendations of the review committee dated 08.11.2019 on 18.11.2019, however, the suspension of the petitioner was ordered within the prescribed period of 90 days. The competent authority had accorded its approval on 08.11.2019 for extension of the petitioner's suspension. However, the facts of the cases in hand are different than those of **Gian Chand Thakur** (supra), as in the cases in hand, no specific order has been passed

by the competent authority for extension of suspension of the applicants after completion of 90 days.



19. in view of the aforesaid facts and discussion, we are of the considered view that the applicants being kept under suspension after completion of 90 days from 12.6.2019 and the applicants being not allowed to resume their duties are illegal and arbitrary.

20. In view of the aforesaid, the present OAs are partly allowed. It is held that applicants are entitled to be treated as deemed to be on duty w.e.f. 91st day of the impugned orders of suspension and the applicant are also entitled for consequential benefits, viz., difference of pay and allowances and any other benefits in accordance with rules which the respondents shall pay as expeditiously as possible and in any case within eight weeks of receipt of a copy of this Order. The matter of suspension for 90 days in view of the order(s) dated 12.6.2019 shall be decided by the respondents in accordance with the relevant rules on the subject.

21. However, in the facts and circumstances, there shall be no order as to costs.

22. Registry is directed to place a copy of this Order in another connected OA as well.



(R.N. Singh)
Member (J)

(A.K. Bishnoi)
Member (A)

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