

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMADABAD BENCH  
Original Application No.227/2020  
Dated this the 21st day of January 2021**

**Date of Reserve :29.09.2020  
Date of Pronouncement :21.01.2021**

**CORAM:**

**Hon'ble Shri Jayesh V. Bhairavia, Member (J)  
Hon'ble Dr. A.K. Dubey, Member (A)**

Ashokbhai Manibhai Patel,  
Son of Manibhai Patel, Aged 53 years,  
Working as Postal Assistant,  
Res.C-152 Sayaji Township, Nr. Nehruchacha Awas,  
Ajwa Road, Vadodara – 390 019 ...Applicant

(By Advocate Mr.Joy Mathew)

Vs.

1. The Chief Post Master General,  
Gujarat Circle, Khanpur,  
Ahmadabad – 380 001.
2. Postmaster General, Vadodara Region,  
Fathegunj, Vadodara – 390 002.
3. Director of Postal Services Vadodara Region,  
Fathegunj, Vadodara – 390 002.
4. Senior Superintendent of Post Offices,  
Vadodara West Divisiuon,  
Vadodara – 390 002. ...Respondents

(By Advocate Mr.H.D.Shukla)

**ORDER**

Per Shri Jayesh V. Bhairavia, Member (J)

- 1 The applicant has sought the following reliefs:

“8(A) *quashing and setting aside Memo  
No.B2/SUSPN/AMP/2019-20 dated 27-01-2020 at  
Annexure A/1.*

(B) *quashing and setting aside Memo  
No.B2/SUSPN/AMP/2019-20 dated 30-04-2020 at  
Annexure A/2.*

- (C) *quashing and setting aside Memo No.B2/SUSPN/AMP/2019-20 dated 24-07-2020 at Annexure A/3.*
- (D) *directing the respondents to release full pay and allowance of the applicant from 25-402020 treating him as if he was not under suspension from this date with 12% interest and*
- (E) *passing any other appropriate order.”*

2. The brief facts of the case of the applicant are as under:-

- 2.1 The applicant had joined the respondent Postal Department as Postman on 24.01.1998. After he passed the Departmental Examination, he was appointed as Postal Assistant w.e.f. 03.11.2003.
- 2.2. While the applicant was working as SPM, Karkhadi SO, the respondent No.4 by exercising power under Sub rule (1) of Rule 10 of the CCS (CCA) Rules 1965 placed the applicant under suspension with immediate effect vide impugned order dated 27.01.2020 (Annexure A/1). It is stated in the said order that since a Disciplinary Proceeding against the applicant is contemplated/pending the respondent No.4 has issued the impugned order.
- 2.3 The respondent No.4 vide its order dated 07.02.2020 decided that the applicant would be paid 50% of his pay with admissible Dearness Allowance towards subsistence allowance. The said 50% pay and the allowances were ordered to be paid for three months (Annex.A/4).
- 2.4 By another order dated 30.04.2020, the respondent No.4 extended the suspension order for a period of 90 days. (Annex.A/2). Thereafter by order dated 24.07.2020, again suspension of the applicant has been ordered to be continued for further period not extending 180 days (Annex.A/3).

Being aggrieved by the continuation of suspension after 90 days from the initial suspension order dated 27.01.2020 the applicant has filed the present OA.

3 The learned counsel for the applicant Mr.Joy Mathew submitted as under:-

3.1 The respondent No.4 placed the applicant under suspension in exercise of powers conferred as per the provision of Rule 10 of CCS (CCA) Rules 1965. The suspension order dated 27.01.2020 does not specifically say that the suspension of the applicant is subject to the provisions of the Postal Manual. It is submitted that more than 8 months have passed, however no charge memorandum has been served upon him till date.

3.2 It is submitted that in the impugned order dated 27.01.2020 the period of suspension was not mentioned, however, as per the provisions of CCS (CCA) Rules, the suspension is valid only for a period of 90 days unless the same is reviewed and extended further within six months. In this regard, it is submitted that the respondents failed to extend and communicate the extension of suspension within 90 days. The period of 90 days got over on 25.04.2020. However, after the time limit of 90 days is over, the respondent vide impugned order dated 30.04.2020 extended the suspension which is illegal and in violation of CCS (CCA) Rules 1965.

3.3 Since suspension order dated 30.04.2020 is non-est from 25.04.2020, the subsequent order dated 30.04.2020 and 24.07.2020 are without any force under statutory rules and same is bad in law.

3.4 In support of aforesaid submissions and the prayer sought in this OA, Learned counsel has placed reliance on the order

passed by the Hon'ble Apex Court in the case of UOI & Ors vs. Dipak Mali (Annex A/5). In para 11 of the said judgment, it was held that the *“In this case, what is important is that by operation of sub rule (6) of Rule 10 of 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review has not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequently, review and extension, in our view could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.”*

- 3.5 It is further submitted that as per Rule 52 of Postal Manual Rules, a suspended employee is entitled to get 50% of his salary with Dearness Allowance and subsistence allowance for six months from the date of suspension. Thereafter, he is entitled to 100% salary with D.A. if, the enquiry is not proceeded for no fault of the delinquent. In the case of the applicant, no charge memorandum is issued till date. Therefore, from 27.07.2020, the applicant is entitled to 100% salary, D.A. and other allowances.
- 3.6 Learned counsel also placed reliance on the order passed by the Principal Bench of this Tribunal in OA No.4237/2011 decided on 26.11.2013 (Annex.A/6) and submitted that the department is required to review the suspension order within 90 days of its issuance and the concerned employee should be communicated the same within the stipulated period. It was also held that as per the provisions of Rule 10 of CCS (CCA) Rules, the review has to be taken before the expiry of 90 days and if the same has not been done, suspension will automatically become invalid.

- 3.7 It is further contended that as per the OM dated 02.11.2014 issued by the DoP&T, order of suspension made or deemed to have been made shall not be valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days. (Annex.A/7)
- 3.8 It is also stated that by referring to the judgment passed by the Hon'ble Apex Court in Ajaykumar Choudhari vs. UOI , the DoP&T had issued OM dated 03.07.2015, whereby instructions with regard to timely issuance of charge sheet and reiterated the instructions contained in OM dated 09.11.1982 that instructions laid down, inter alia, where a Govt. servant is placed under suspension on the ground of contemplated disciplinary proceedings, the existing instructions provide that every effort would be made to finalise the charges, against the Govt. servant within three months of the date of suspension. However, in the case of applicant the respondents failed to adhere to the said instructions/guidelines. Therefore, the suspension order dated 27.01.2020 and order of further extension of the suspension requires be quashed and set aside.

4. Per contra; respondents have filed reply and denied the contentions of the applicant. Respondents have mainly submitted as under:-

- 4.1 Respondents have raised primary objection with regard to the maintainability of the present application as the applicant has not availed the opportunity of representation to the department against the order of extension of his suspension by the Disciplinary Authority. Due to non exhaustion of departmental remedy the applicant has not fulfilled the mandate of Section 20 of AT Act, 1985 and directly filed the present OA before this Tribunal. Therefore, the OA is not maintainable.

4.2 It is contended that the applicant was working as Postal Assistant at Karkhadi SO which was attached to Padra SO Vadodara. There was misappropriation of Govt. money in MIS Sundry Account of Karkhadi Post Office and at the relevant time the applicant was attached as Postal Assistant at Padra Post office. While checking migrated data of Karkhadi Post Office, some suspicious transactions were noticed relating to withdrawal from MIS Sundry Accounts which were already closed. As per preliminary enquiry report, amount to the tune of Rs.3,23,700/- was withdrawn from MIS Sundry account which related to 19 closed MIS accounts of various depositors was alleged to be misappropriated by applicant while he was working as SPM Karkhadi SO. The case came to light during pre-post migration of Sanchaya with CBS data verification carried out through system admin. Therefore, the competent authority deemed it fit to contemplate disciplinary proceedings against the applicant and accordingly by exercising power under Sub Rule (1) of Rule 10 of CCS (CCA) Rules issued suspension order to the applicant on 27.01.2020. Before the suspension order could be served upon/communicate to the applicant, on 28.01.2020 he submitted his leave for 15 days by stating that his father was sick and not maintaining good health, he remained absent from 28.01.2020 to 02.02.2020 without obtaining the prior permission of the competent authority. (Annex.R/1). He resumed his duty only on 03.02.2020. The suspension order was served upon the applicant in person on the same day. He acknowledged the same. (Annex. R/2). On receipt of the suspension order dated 27.01.2020, the applicant has handed over the charge of office on 03.02.2020 and he was relieved accordingly. (Annex. R/3).

- 4.4. It is submitted that since the suspension order was served upon the applicant on his resumption of duty on 03.02.2020 the effective date of suspension of the applicant was 03.02.2020 A/N and accordingly, the period of 90 days suspension got over only on 02.05.2020.
- 4.5 It is submitted that the verification of all accounts and detailed investigation was under process, however, the same could not be completed due to lock down (at the relevant time). On account of COVID-19 Pandemic, suspension of the applicant was reviewed by the competent authority/committee on 28.04.2020 (i.e., before 02.05.2020) and committee had decided to continue the suspension of the applicant for a further period of 90 days w.e.f. 03.05.2020. Suspension case of the applicant was reviewed again by the committee on 23.07.2020 and recommended to continue the suspension for a further period of 180 days w.e.f 01.08.2020.
- 4.6 It is vehemently submitted that the guiding principle for deciding date of effect of suspension as stipulated in point no.10 of Chapter II of suspension digest (Swamy's compilation) clearly indicate that *"in the case where the Govt. servant is already on leave and hence not performing any official duties, the order of suspension, if any, should normally be given effect to only from the date the said Govt. servant returns from leave or desires to resume duty, as otherwise the Govt. servant becomes automatically entitled for payment of subsistence allowance for the period of non-duty. The competent authority should take the circumstances of each case into consideration and may direct that the order of suspension will take effect from the date of its communication to the Govt. servant."*

It is stated that in the case of applicant, the order of suspension was issued on 27.01.2020. However he was absent from duty without prior permission from leave sanctioning authority and resumed duty only on 03.02.2020. Hence, suspension of the applicant became effective from 03.02.2020 on his joining duty. The review took place on 28.04.2020, i.e. before the expiry of 90 days and vide order 30.04.2020 applicant was informed about further extension of his suspension.

4.7 It is submitted that the suspension order was issued in terms of Sub Rule (1) of Rule 10 CCS(CCA) Rules 1965 and the format of that order of suspension has been framed vide OM dated 05.03.1966 (Annex.R/6), in which there is no provision of mentioning period of suspension.

4.8 It is submitted that the periodical review of suspension of the applicant is in consonance with the rules. Therefore, applicant is not entitled for any relief as claimed in this OA.

5. The applicant has also filed his written submission. Additionally he submitted that in the case of S.K.Srivastava v/s Union of India, OA No.525/2008 decided on 22.04.2009 by the Principal Bench of this Tribunal it was held that “*competent authority has to review the period of suspension before expiry of 90 days from the date of order of suspension.*” (Annx. A).

5.1 Further, the learned counsel for applicant placed reliance on the order passed by Hon’ble High Court of Kerala in the case of Sr. Superintendent of Post Office, Aluva Division Aluva and others v/s B. Ramachandran, Son of Balakrishnan Nair, Sub Post Master Mudavoor W.P.(C) No.13530/2008 decided on 08.04.2016 wherein it was held that “.....Unless an order of suspension is reviewed by the authority competent to suspend an employee, on the recommendation of the Review Committee constituted for the purpose and unless orders extending the period of



suspension are passed within the period of 90 days stipulated therein, the order of suspension would not be valid. In other words, both the stipulations, namely, review of the suspension order by the competent authority as well as decision of the order either extending or revoking the period of suspension, are necessary to be satisfied within the period of 90 days stipulated by Rule 10(6)". (Annex.B). It is therefore argued that in the case of applicant, the competent authority failed to review the suspension from the date of issuance of the suspension order. Hence, the continuation of suspension and further extension is illegal.

5.2 The counsel for the applicant further submits that the Hon'ble Apex Court in the case of the Ajaykumar Choudhary vs. UOI (Annex.A/9) also directed that "currency of suspension order should not extend beyond 3 months, if within 6 months period memorandum of charge is not served on the delinquent officer/employee; if the memorandum of charges is served a reasoned order must be passed for the extension of the suspension." It is also argued that though more than six months of the suspension however till date the respondents have not issued charge memorandum against the applicant. Therefore continuation of the suspension is bad in law and needs to be quashed and the applicant is entitled to be reinstated in service with all consequential benefits.

6 Heard the counsel for parties and perused the materials on record.

7 From the above facts we find that while applicant was working as SPM, Karkhadi Sub Office attached to Padra SO, Vadodara, the Sr. Supdt. Of Post Office, Padra West Division, Vadodara by exercising power conferred to him under Sub Rule (1) of Rule 10 of the CCS (CCA) Rules 1965 (referred as CCS Rules for brevity) placed the applicant under suspension with immediate effect vide impugned order dated 27.01.2020 on

the ground that disciplinary proceedings against the applicant is contemplated/pending. The said order dated 27.01.2020 (Annex. A/1) and the further orders dated 30.04.2020 (Annex. A/2) and order dated 24.07.2020 (Annex. A/3) extending suspension of the applicant is under challenge in the present OA. In support of challenge to the said orders the counsel for the applicant mainly raised the issue that as per the CCS Rules, the suspension is valid for a period of 90 days unless the same is reviewed and extended further within this period. According to the applicant since the suspension order was issued on 27.01.2020, the 90 days period of suspension was over on 25.04.2020. It is stated that the respondents reviewed the suspension only on 30.04.2020 which is after the completion of 90 days, therefore the said review/extension of the suspension is in violation of the provision of Rule 10 (6) of CCS Rules.

8 On the other hand the counsel for respondent has denied the claim of applicant as also the submissions, he argued that the suspension order was issued on 27.01.2020 however before it could be served upon the applicant, he proceeded on leave from 28.01.2020 without prior permission. He had submitted leave application stating reason for leave that due to ill health of his father he could not attend the office. He remained absent from duty for the period 28.01.2020 to 02.02.2020 without prior approval of the leave sanctioning authority. He resumed his duty only on 03.02.2020 and on the same day the suspension order was served to him in person and the applicant acknowledged the same. The charge report placing him under suspension was also prepared on 03.02.2020 A/N. Therefore, according to the respondents the applicant was actually placed under suspension from 03.02.2020 A/N, hence the effective date of suspension of applicant was 03.02.2020. Accordingly period of 90 days of suspension was over on 02.05.2020.

9 It is also argued that the suspension of the applicant was reviewed by committee on 28.04.2020 (i.e. before 02.05.2020) and had recommended continuation of suspension for further period of 90 days w.e.f. 03.05.2020. Thereafter, the committee had again reviewed the case of

applicant on 23.07.2020 and recommended to continue the suspension for further period of 180 days. It is submitted that the effective date of suspension was from the date of communication of the said order. The counsel for respondent placed reliance on Sub Rule (6) of Rule 10 of CCS (CCA) Rules 1965 and instructions/guidelines with regard to effective date of suspension contained in the Swamy's Compilation of CCS (CCA) Rules as also Rule No.19 of Postal Manual Vol. III. and adduced that the respondents have followed the Rules as well as guidelines in reviewing the suspension order. It is further stated that on account of Covid 19 pandemic the detailed investigation which was under process was not completed due to lockdown. Under the circumstances the applicant is not entitled for the relief prayed in the OA.

10           At this stage, it is apt to note that Sub Rule (6) of Rule 10 of CCS(CCA) Rules 1965 stipulates that *“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 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 review 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”*.

It is noticed that undisputedly before the suspension order dated 27.01.2020 could be served upon or communicated to the applicant he proceeded on leave on 28.01.2020 that too without prior permission and resumed his duty only on 03.02.2020, the suspension order was served upon the applicant on 03.02.2020.. The applicant acknowledged the same and handed over charge of his office on 03.02.2020 he was relieved accordingly on the same day which means the suspension order became effective from this date i.e. 03.02.2020. The guidelines relied upon by the respondents with regard to date of effect of suspension stipulates that in the case where a government servant is already on leave or absent without prior permission and hence not performing any official duties, the order of suspension, should

normally be given effect only from the date the government servant returns from leave or desire to resume duty, as otherwise the government servant becomes automatically entitled to payment of subsistence allowance for the period of non duty. The Rule 19 of Postal Manual Vol. III stipulates the guidelines that in a case in which the Officers placed under suspension under CCS (CCA) Rules 1965 who are stationed at a place other than the headquarter of the competent authority, the order of suspension will take effect from the date of receipt of order by the employee or the date of his relief to be specified by the competent authority.

11 In the present case as noted hereinabove the effective date of suspension was undisputedly 03.02.2020, the date on which the applicant was served the order of suspension. Considering the said effective date, the competent authority has reviewed the suspension within the time period (i.e. before the expiry of 90 days). In the facts and circumstances as stated hereinabove the judgments relied upon by the counsel for the applicant in our considered view is of no help.

12 In view of the above factual matrix we are of the considered view that, the action of the respondents to review and further extension of suspension of the applicant is in line with the statutory provisions under the Rule 10(6) of CCS (CCA) Rules 1965, therefore it cannot be said that the impugned orders suffer from any infirmity. At the same time, since the investigation contemplated against the applicant is not completed till date, we direct the respondents to take a final decision expeditiously with respect to further continuation of suspension of applicant in accordance with Rules. Accordingly OA is disposed with above directions. No order as to costs.

(Dr A K Dubey)  
Member(A)

(J V Bhairavia)  
Member(J)

skv/abp

