

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No OA 259 of 2018

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (A)
Hon'ble Mr. Anand Mathur, Member (J)

Sanjay Kumar Behera, aged bout 47 years, S/o Late Pradeep Charan Behera, At/PO-Bahalada (near Kits Palace), Dist.- Mayurbhanj, presently working as Postal Assistant, Rairangpur Head Post Office3, Rairangpur, Dist.-Mayurbhanj.

.....Applicant
VERSUS

1. Union of India represented through its Director General of Posts, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist.- Khurda-752001.
3. Director, Postal Services (HQ), O/o Chief PMG, Odisha Circle, Bhubaneswar, Dist.-Khurda-751001.
4. Superintendent of Post Offices, Mayurbhanj Division, Baripada, Dist.-Mayurbhanj-757001.

.....Respondents

For the applicant : Mr.S.Patra-1, counsel

For the respondents: Mr.P.K.Mohanty, counsel

Heard & reserved on : 6.1.2021 Order on : 01.02.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

“(a) The order dtd. 27.03.2018 under Annexure-A/5 and further extension of suspension period of the applicant be quashed after declaring those as illegal.

(b) The respondents be directed to reinstate the applicant w.e.f. 17.10.2017 with all consequential benefits.

(c) Pass any other order/orders as would be deemed just and proper.”

2. The facts of the case in a nut shell are that the applicant joined in postal services as Group D employee on 5.1.1991 in Damdapada Sub Post Office in the district of Sundergarh. He was then promoted to PA cadre w.e.f. 25.11.2011 and accordingly the applicant joined at Dehenkanal head Post Office. Thereafter being transferred the applicant joined at Bahalada Sub Post Office on 4.8.2014 and during October 2016 he was transferred to Rairangpur Head Office and since then the applicant had been discharging his duties

there. Vide order dated 17.7.2017 (Annexure A/1) the applicant was put under suspension contemplating the disciplinary proceeding w.e.f. 19.7.2017. As per law the said suspension order ought to have been reviewed by the competent authority before expiry of 90 days from the effective date of suspension. Since no action was taken by the respondents pursuant to Rule 10(6) of the CCS (Classification, Control and Appeal) Rules, 1965 [hereinafter 1965 Rules], the order of suspension became invalid in view of Rule 10(7) of the Rules, 1965 on 17.10.2017. The applicant submitted a representation before respondent No.2 on 27.1.2018 (Annexure A/2) indicating the facts and with a prayer to reinstate the applicant w.e.f. 17.10.2017 with all consequential benefits. Vide memo dated 21.1.2018 (Annexure A/3) the applicant was informed regarding proposal of taking action against him under Rule 16 and he was directed to make representation against the proposal. Accordingly the applicant submitted representation with a prayer to drop the proceeding. Vide memo dated 13.3.2018 (Annexure A/4) the applicant was intimated by respondent No.4 that it is proposed to hold an enquiry against the Article of charges as indicated therein. Vide order dated 27.3.2018 (Annexure A/5) the representation of the applicant was rejected and vide memo dated 4.4.2018 (Annexure A/6) the applicant was served the copies of the Review Committee minutes wherein it was stated that the Review Committee has reviewed the suspension of the applicant on 12.10.2017 and 26.3.2018 and recommended continuance of suspension for a period of 180 days w.e.f. 16.10.2017 and 13.4.2018 respectively.

The applicant has taken the ground that, since he was put under suspension w.e.f. 19.7.2017 and as per settled principle of law, the suspension order should have been reviewed by the authority before expiry of 90 days from the effective date of suspension, the said suspension ought to have been reviewed by the authority before 16.10.2017. But in the present case the respondent No.4 vide memo dated 4.4.2018 communicated the recommendation of Review Committee. Hence no suspension existed on the date of communication of the order dated 4.4.2018 as per Rule 10(7) of the

Rules, 1965 and therefore in terms of those Rules, the action extending the suspension of the applicant is not valid. Thus in view of the above mentioned facts and circumstances the order dated 27.3.2018 (Annexure A/5) for continuance of suspension of applicant are not sustainable in the eyes of law and are liable to be quashed. Hence the present OA.

3. The respondents have filed their Counter stating therein that in the order dated 27.3.2018 the respondent No.2 while disposing of the representation of the applicant had precisely mentioned that the continuation of the suspension of the applicant has been made by a review committee considering the various parameters and gravity of offence committed by the applicant while working as Postal Assistant, Bahalda Sub Office, based on review dated 12.10.2017 and 26.3.2018. During preliminary inquiry the financial irregularity committed by the applicant was established and hence in view of the disciplinary proceeding initiated against the applicant under rule 14 of CCS (CCA) Rules, 1965, continuation of suspension was felt necessary. It is further stated by the respondents that the applicant has not availed the departmental remedies available to him under service rules. Moreover, the applicant has already been reinstated in service since 27.9.2018 (Annexure R/15) as per recommendation of the constituent committee. Hence the grievance of the applicant has been redressed and the present OA is liable to be dismissed. It is also submitted that the applicant is not co-operating in the departmental inquiry initiated against him under rule 14 of CCS (CCA) Rules, 1965.

4. We have heard both the learned counsels and perused the pleadings on record.

5. Learned counsel for the applicant has filed written note of submission along with the citations of the cases relied upon by him in support of his case –

- i) OA 3173/2012, CAT, PB, New Delhi
- ii) WPCT No. 43 of 2010, disposed of on 28.7.2010 by Hon'ble High Court of Calcutta
- iii) OA 628 of 2017
- iv) WP(C) No. 21276/2020 dismissed on 20.11.2010 confirming the order dated 2.1.2020 of this Tribunal passed in OA 628/2017

6. The applicant was placed under suspension w.e.f. 19.7.2017, therefore the review committee should have reviewed the suspension of the applicant prior to 16.10.2017 i.e. prior to expiry of 90 days from the effective date of suspension. The applicant has claimed that no separate order has been passed for extending the period of suspension from 16.10.2017 onwards on the basis of any decision taken by the review committee. In this regard the applicant has further claimed that his representation vide Annexure A/5 dated 27.3.2018 was rejected and the applicant was served as per memo dated 4.4.2018 vide Annexure A/6, wherein the copies of minutes of review committee was enclosed to show that the review committee has reviewed the suspension of the applicant on 12.10.2017 and 26.3.2018 and had recommended the continuation of suspension for a period of 180 days w.e.f. 16.10.2017 and 13.4.2018 respectively. Although the respondents have claimed that review committee had considered the matter on 12.10.2017 and 26.3.2018 about the continuation of the suspension of the applicant, no order has been issued on the basis of the decision by the review committee on any dates i.e. precisely on 12.10.2017 and 26.3.2018, as claimed by the respondents. The pleadings is completely silent in this regard. No affidavit of document has been filed to show that any such orders has been passed on the basis of the decision taken by the review committee on both the occasions and that the said orders on both the occasion have been communicated to the applicant or not.

7. This Tribunal had occasion to deal with similar matter in OA 612/2019 Sarat Chandra Sahoo -vs- UOI which was disposed of by order dated 27.2.2020. In that case the subsequent action extending the suspension of the applicant for further period was found to be not legally valid and the applicant in that case was directed to be reinstated with all consequential service benefits as per rules. In a similar matter the Principal Bench of this Tribunal had decided the point in OA 3392/2019 (Mahesh Kumar -vs- ESIC) with OA 3394/2019 (Vijendra Kumar Aggarwal -vs- ESIC) on 18.12.2020. The Principal Bench in the said occasion had referred to the decision of Hon'ble Supreme Court in the case of Ajay Kumar Choudhary -vs- UOI & Ors. [(2015) 7 SCC

291] and in para 16 of the said order had referred to case dealt by Principal Bench in Hari Om –vs- National Capital Territory of Delhi case which was decided on 12.8.2011, stating that -

“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,

- a) 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.”

It was specifically found that there are two components of the requirement as per rules 10(7) of the CCS (CCA) Rules, 1965 namely (a) there should be review and (b) there should be an order extending the suspension period and thus both these components are required to be done before the expiry of period of 90 days.

8. By applying the said principle of law as mentioned above, in this case this Tribunal finds that there is absolutely no material on record to show that in fact such an order has been passed and communicated to the applicant on the basis of any recommendation made on any particular date by the review committee. The same having been not done within the period of 90 days from the date of suspension of the applicant w.e.f. 19.7.2017, this Tribunal finds the subsequent extension of suspension period beyond 16.10.2017 to be illegal and not in accordance with law.

9. As a necessary corollary, this Tribunal would have directed for immediate reinstatement of the applicant in service. But it is seen that the respondents have already reinstated the applicant in service w.e.f. 27.9.2018 vide Annexure R/15. Accordingly this Tribunal finds further period of extension beyond 16.10.2017 being illegal, the applicant is entitled to all consequential service benefits as per rules. The respondents are directed to take necessary steps to

comply with the order within a period of three months from the date of receipt of this order if there is no other legal impediment to do so. This Tribunal finds that the applicant will be entitled to be deemed on duty with effect from 91st day of impugned order of suspension i.e. w.e.f. 17.10.2017 and shall be entitled to all consequential benefits including difference of pay and allowances and other benefits in accordance with rules. The matter regarding suspension of period w.e.f. 19.7.2017 to 16.10.2017 to be decided by the respondents in accordance with relevant rules on the subject, taking into consideration all relevant factors.

10. The OA is accordingly allowed to the said extant. There will be no order as to costs.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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