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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2088 of 2004

New Delhi, this the 18th day of October, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

RAM KUMAR MEENA,
SREO/Welfare Officer,
Directorate of Employment,
Government of NCT of Delhi,
R/o WZ-89, Raj Nagar Part-II,
Palam Colony,
New Delhi-110091

... Applicant.

(By Advocate: Shri S.N. Anand)

-VERSUS-

1. Government of NCT of Delhi Through
The Chief Secretary,
Government of NCT of Delhi,
Delhi Secretariat,
IP Estate,
New Delhi.
2. The Secretary-cum-Director (Employment),
Government of NCT of Delhi,
2, Battery Lane,
Delhi-110054.

.... Respondents.

(By Advocate: Shri Ajesh Luthra)

ORDER

By this O.A, applicant has challenged the order dated 28.03.2002 (Page 10) whereby applicant was deemed to have been suspended with effect from the date of detention i.e. 6.3.2002, in terms of Rule 10 (2) of the CSS (CCA) Rules, 1965 until further orders.

2. It is submitted by applicant that though he was taken in custody on 6.3.2002 but he was bailed out on 14.3.2002. Thereafter, there was no justification to keep him under suspension and as per instructions, respondents ought to have reviewed his suspension from time to time but since no review was carried out, the prolonged suspension amounts to a penalty.



3. Counsel for the applicant relied on O.M. dated 7.01.2004 to state that since review has not been carried within 90 days from the date of suspension, therefore, the suspension order has become void ab initio in view of Rule 10 (6) & (7) of the CCS (CCA) Rules incorporated vide notification dated 23.12.2003. Having no other option, applicant had to file the present O.A. He has relied on the following judgments.

- (i) **State of Himachal Pradesh Vs B.C.Thakur** (1994 SSC (L&S) 835);
- (ii) **U.O.I. & Anr. Vs G. Ganayutham** (JT 1997(7) SC 572);
- (iii) **U.O.I. & Ors. Vs Udai Narayan;**
- (iv) **B.C.Chaturvedi Vs U.O.I.** (1995 (6) SCC 749); and
- (v) **Bani Singh Vs U.O.I. & Ors.** (OA 833/2000).

4. Respondents have opposed this OA. They have stated that applicant's suspension was reviewed twice, once on 18.10.2002 and second time on 18.3.2004 and even now file for periodical review is under process even before the notice was received in OA. Review has been done vide order dated 21.10.2004. They have produced the orders dated 8.10.2002 and 21.10.2004 with their reply. They have explained that Shri R.K. Meena, Welfare Officer (under suspension) while working as A.C.C./Assistant Employment Officer, in connivance with the then SREO Sh. K.L. Kadamb (presently removed from service in another Departmental Case) sponsored the names of ineligible candidates by forging and destroying official records for unlawful gain to themselves and unlawful loss to the genuine and eligible candidates awaiting for sponsorship of their names (Page 33). The Addl. Commissioner of Police, Crime Branch ^{had} ~~was~~ requested vide office letter No. F.7(10)/Emp/Vig./97/6988 dated 8.7.1999 to register and investigate the case and culprits may be dealt with under the relevant sections of Indian Penal Code. After lodging FIR and Investigation, Shri R.K. Meena was arrested on 6.3.2002 from his House No. 89/A, Raj Nagar Part II, Palam, New Delhi. Shri Meena was suspended vide order NO.F.57(10) /97/Vig. /Emp/2538-2545 dated 28.3.2002 w.e.f. the date of



his arrest i.e. 6.3.2002 (Page 34). The said case is still pending wherein challan was filed in February, 2003.

5. Applicant was also charge-sheeted in the above case under Rule 14 of CCS(CCA) Rules (Page 35). As far as O.M. dated 7.01.2004 is concerned, they have stated that the quoted instructions are not applicable in the present case. Invalidity after 90 days is regarding those cases, which are to be reviewed for the first time after the suspension of any employee. Here in this case, Department has already reviewed his case twice before the new rules came into force w.e.f. 22.3.2004 because as per last para of Page No. 1 of circular letter No. F.9(4)/2003/SIV/346, dated 9.3.2004, new rules came into force on the expiry of ninety days from 23.10.2003 i.e. w.e.f. 22.3.2004. whereas this department had already reviewed his case twice i.e. on 18.10.2002 and 18.3.2004. Now for the third time, his case has also been reviewed vide order dated 21.10.2004. Therefore, this case calls for no interference.

6. They have further submitted that applicant had given his reply only in Dec. 2003/ Jan. 2004 after over 2 years when 3 enquiries were decided against him. 1st report is dated 8.10.2002, 2nd is dated 18.12.2003 FIR challan was filed in Feb. 2003. They have also relied on CVC instructions dated 25.9.2000 wherein it is provided as under:

"Officers facing the criminal /departmental proceedings on serious charges of corruption should be placed under suspension as early as possible and their suspension should not be revoked in a routine manner..."

They have thus prayed that since applicant is involved in serious matter involving corruption and his review has been periodically reviewed this O.A. may be dismissed. Counsel for the respondents also placed on record letter dated 5.10.2004 to show that review committee itself was constituted by the Govt. of NCT of Delhi for purpose of review of suspension cases on 5.10.2004 and within 15 days thereafter the suspension was reviewed. He has also produced the order dated 26.8.2005 whereby applicant has been ordered to



remain under suspension till the outcome of criminal case pending before the Hon'ble Court of Law.


7. Applicant has not filed any rejoinder but counsel for the applicant submitted even the order dated 26.8.2005 is bad in law inasmuch as it has extended the suspension till the disposal of case whereas suspension cannot be extended beyond 180 days as per Rule 10 (6) of CCS(CCA) rules.

8. I have heard both the counsel and perused the pleadings. The contention of applicant's counsel that the order dated 28.3.2002 has become void ab initio since no periodical review has been carried out is not sustainable in law. It is seen that vide order dated 28.3.2002 applicant was put under deemed suspension w.e.f. 6.3.2002 in view of his detention. The fact that applicant was detained in custody is not disputed, therefore, I do not find any illegality in the order dated 28.3.2002 as he was rightly put under deemed suspension as per Rule 10 (2) of CCS (CCA) Rules, which for ready reference reads as under:

"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".

9. As far as periodical review is concerned, it is correct that earlier also, there were instructions issued by Govt. of India that suspension should be reviewed periodically but those instructions were not mandatory in the sense no consequence was mentioned as to what would happen if those instructions are not complied with. The question whether deemed suspension would come to an end when employee is bailed out and whether prolonged suspension is bad in law came up for consideration before Hon'ble Supreme Court in the case of **Union of India and Ors. Vs. Rajeev Kumar and Anr.** reported in AISLJ 2004 (1) SC 1. Hon'ble Supreme Court held as under:



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"Rule 10 (2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness.....Therefore, it is urged that the order is effective for the period of detention alone. The plea is clearly without any substance because of sub-rules 5 (a) and 5 (c) of Rule 10. The said provisions refer to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under sub-rule (2). The said provision under Rule 10 (5) (a) makes it crystal clear that the order continues to remain in force until it is modified or revoked by an authority competent to do so while Rule 10 (5) (c) empowers the competent authority to modify or revoke also. No exception is made relating to an order under Rules 10 (2) and 10 (5) (a). On the contrary, specifically it encompasses an order under Rule 10 (2). If the order deemed to have been made under Rule 10 (2) is to loose effectiveness automatically after the period of detention envisaged comes to an end, there would be no scope for the same being modified as contended by the respondents and there was no need to make such provisions as are engrafted in Rules 10(5)(a) and (c) and instead an equally deeming provision to bring an end to the duration of the deemed order would by itself suffice for the purpose.

13. Thus, it is clear that the order of suspension does not loose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10 (5) © and until that order is made, the same continues by the operation of Rule 10 (5) (a) and the employee has no right to be reinstated to service".

24. The inevitable conclusion therefore, is that the order in terms of Rule 10 (2) is not restricted in its point of duration or efficacy to the period of actual detention only. It continues to be operative unless modified or revoked under sub-rule 5 ©, as provided under sub-rule 5 (a)".

10. The above said judgment was given on 18.7.2003, therefore, till such time the view taken was that order in terms of Rule 10 (2) is not restricted in its point of duration or efficacy to the period of actual detention only. It continues to be in operation unless modified or revoked under sub-rule 5 (c), as provided under sub-rule 5 (c) of Rule 10 of the CCS (CCA) Rules.

11. It was only thereafter that an amendment was carried out in Rule 10 of the CCS (CCA) Rules vide Notification dated 23.12.2003 whereby sub-rules 6 and 7 were added in Rule 10 of the CCS (CCA) Rules. In the said Notification dated 23.12.2003, it was made clear that the amendment shall come into force on expiry of 90 days from the date of their publication in the official gazette.



However, subsequently an amendment was carried out vide Notification dated 2.4.2004 whereby the President directed the Notification dated 23.12.2003 to come into force on 2.6.2004, meaning thereby that the Notification dated 23.12.2003 would come into force on 2.6.2004. In this backdrop, we have to see what was the amendment carried out under Rule 10 of the CCS (CCA) Rules which, for ready reference reads as under:

- (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 expiry of ninety days from the date of order 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) Notwithstanding anything contained in sub-rule (5) (a), 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".

Since this amendment was to be given prospective effect, an order of suspension passed after 2.6.2004 had to be reviewed before the expiry of 90 days from the said date of suspension. The period of suspension could not exceed 180 days at a time. As per sub-rule 7, it was further made clear that notwithstanding anything contained in sub-rule (5) (a), 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. Thus, the consequence was laid down in sub-rule 7 of Rule 10 for the first time to the effect that if review is not carried and extended before the expiry of 90 days after 2.6.2004, the suspension order shall not be valid after 90 days. Earlier sub-rule (5) (a) provided that an 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. Therefore, sub-rule (7) has been inserted by stating irrespective of sub-rule (5)(a) meaning thereby that even in those cases where suspension had been ordered until further orders, it was still required to be reviewed after 2.6.2004 and in case



the suspension was not reviewed or extended before the expiry of 90 days from the date this amendment came into force suspension shall not be valid from that day onwards.

12. In the instant case, applicant was deemed to have been suspended w.e.f. 6.3.2002 i.e. the date of his detention in terms of Rule 10 (2) of the CCS (CCA) Rules until further orders (page 10) which was very much in consonance with Rule 10(2) of the CCS (CCA) Rules. Therefore, it is wrong on the part of applicant's counsel to suggest that after the amendment came into being his suspension would become void ab initio unless the review is carried out within 90 days of the issuance of the same. Counsel for the applicant is misreading the provisions, therefore, his contention that suspension has become void ab initio is rejected.

13. Since this amendment has been made effective from 2.6.2004, review was to be carried out and suspension extended, if required before the expiry of 90 days, respondents ought to have passed the order of extension of suspension before 31.8.2004 whereas in the instant case admittedly respondents have themselves stated that they reviewed suspension of applicant first on 8.10.2002, second time on 18.3.2004, third time on 21.10.2004 and lastly on 26.8.2005. Even though respondents have issued orders on subsequent dates to extend his suspension but no order of extending the suspension was issued before 31.8.2004 which ought to have been done in terms of sub-rules 6 and 7 of Rule 10 of the CCS (CCA) Rules. We have already quoted above that the consequence of not extending the suspension before expiry of 90 days from 2.6.2004 would be, that the said suspension order would become invalid after 90 days. In this case, since 90 days expired on 31.8.2004 after the amendment came into being and no order for extending the suspension was issued before 31.8.2004, therefore, his suspension order dated 28.3.2002 becomes invalid after 31.8.2004.

14. Contention of the counsel for respondents that this amendment will not be applicable on the suspension orders which were already issued prior to the amendment is also absolutely misconceived. Respondents' counsel has also

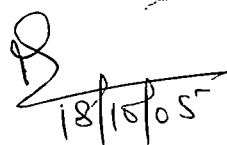


misread the provisions, therefore, his contention is also rejected. Sub-rule 7 of Rule 10 is absolutely clear which has already been explained above.

15. Counsel for the applicant further submitted that the orders dated 21.10.2004 and 26.8.2005 are bad in law because his suspension was continued till the outcome of criminal case whereas sub-rule (6) makes it absolutely clear that suspension cannot be extended beyond 180 days at a time. However, since applicant has not challenged the validity of orders dated 21.10.2004 and 26.8.2005 in this O.A., I need not go into this question especially when it is already held that applicant's suspension order dated 28.3.2002 is not valid after 31.8.2004.

16. In view of the above discussion, O.A. is partly allowed. It is declared that suspension order dated 28.3.2002 has become invalid after 31.8.2004. Accordingly, applicant shall be treated to be in service w.e.f. 1.9.2004. Respondents shall pass orders in accordance with law for deciding the intervening period from 1.9.2004 till date within a period of two months from the date of receipt of copy of this order. However, if there is a separate cause for putting the applicant under suspension, due to some other inquiries, it would be open to the respondents to pass fresh appropriate orders in that context in consonance with Rule 10 of the CCS (CCA) Rules.

17. O.A. is accordingly partly allowed with above directions. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'