

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2283/2004

with

OA 2285/2004

New Delhi, this the 16th day of February, 2005

Hon'ble Sh. M.K.Misra, Member (A)

OA 2283/2004

Ram Surat Patel
S/o Sh. Thakur Singh Patel
R/o Postal Colony Virbhadra
Rishikesh, Dehradun.

OA 2285/2004

Devendra Singh Rawat
S/o Sh. Mangal Singh Rawat
R/o Virbhadra, Rishikesh, Dehradun.

...Applicants

(By Advocate Ms. Tani Sudan in both cases)

V E R S U S

1. Union of India through
Secretary, Department of Post
Ministry of Communication
New Delhi.
2. Director Postal Service
Department of Post
Region Dehradun
Dehradun.
3. Senior Superintendent of Post Office
Dehradun Division, Dehradun - 248 001.

...Respondents

(By Advocte Sh. D.S.Jagotra in both cases)

ORDER

The applicants Sh. R.S.Patel and Sh. D.S.Rawat are employees of Postal Department. Since the cause of action is the same in both the cases they are being disposed by this common order. While they were in service, they were suspended vide order dated 25-1-96 with immediate effect. They, therefore, challenged the suspension order dated 25-1-96 as invalid before this Tribunal and seeks the following reliefs: -

"8.

- i) to declare that the order dated 25.1.96 whereby the applicants were placed on suspension has become invalid since no review having taken place as per the provisions of rule 10 (7) of CCS (CCA) Rules.

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- ii) to direct the respondents to assign duties to the applicant and pay him his full salary and allowances w.e.f. 3.4.2004.
 - iii) any other order or direction which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may be passed.
 - iv) to allow the cost of the OA.
9. Pending final adjudication of the OA, it is humbly prayed that the Hon'ble Tribunal may be pleased to direct the respondents to release the full salary of the applicant."

2. Briefly the facts of the cases are that the Postal Department lodged FIRs on 26-7-96 against Sh. R.S.Patel and on 25-7-96 against Sh. D.S.Rawat along with the orders to hold disciplinary enquiry. The amendment clause made by the President of India through Gazetted Notification dated 23-12-2003 under Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 in the following manner:-

"G.S.R. 2. --- In exercise of the powers conferred by the proviso 10 Article 309 and Clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Service (Classification, Control and Appeal), Rules, 1965, namely:-

1. (1) These rules may be called the Central Civil Services (Classification, Control and Appeal) Amendment Rules, 2003.

(2) They shall come into force on expiry of 90 days from the date of their publication in the Official Gazette.

(2) In the Central Civil Service Classification, Control and Appeal Rules, 1965, in rule 10, after sub-rule 5 (c), the following sub-rules shall be added, namely:-

"(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 90 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 180 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-rules (1) of (2) of this rule shall not be

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valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days."

3. The applicants' claim is that since amended rules were not followed by the competent authority, therefore, suspension orders have become invalid in both the cases and the applicants should be allowed to join the duty immediately.

4. The first journey was made to this Tribunal by the applicant No. 1 Sh. Ramsurat patel through OA 2503/2000 and by the applicant No.2 Sh. D.S.Rawat through OA 2504/2000 disposed of on 5.10.2001. The Hon'ble Tribunal vide order dated 28.9.2001 in OA 2503/2000 in para 7 held as under: -

"7. Relying on the ratio in the matter of Capt. M.Paul Anthony (supra) and the possibility of the applicant's defence being prejudiced in the criminal case, in case the departmental proceedings are continued simultaneously, we are of the view that interest of justice would be duly met if the departmental proceedings are stayed till the conclusion of the criminal case. We dispose of this OA by ordering so accordingly.

The Hon'ble Tribunal also vide order dated 5.10.2001 decided the similar issue in OA No.2504/2001 in the case of Shri D.S. Rawat in the same manner.

5. In the light of that Notification, DoPT issued Instructions vide letter dated 7.1.2004 directing all the Ministries/Departments to constitute Review Committees and also to take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case. IT was also directed that all the disciplinary authorities are to ensure that necessary Review Committees are constituted and the suspension order are reviewed as per directions issued in the Notification. Again the directions were issued by the DoPT on 19.3.2004 reminding the Ministries/Departments in respect of the amended rules. Since the Instructions were not followed by the disciplinary authority in the case of the applicant, therefore, the applicants seek reliefs in the light of the amended rule of Rule 10 relating to suspension with the prayer that the suspension be revoked with all consequential benefits to the applicants.

6. Learned counsel for the respondents submitted at great length that the respondent department had gone in appeals to the Delhi High Court against the Tribunal's order in OAs 2503/2000/2504/2001, which are still pending for hearing on rule. Therefore, the OAs are pre-

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mature and deserve to be dismissed accordingly. It was further submitted by the learned counsel that the applicant No.1 was working as Postal Assistant in Dehradun Division and was later on posted as S.P.M. in Rishikesh District during the period from 11-2-94 to 16-6-94 and applicant No.2 was also working as Postal Assistant in Dehradun Division and was later on posted as S.P.M. S.N.T. (Rishikesh) from 3.3.91 to 24.5.95. The applicant No. 1 made payment of 283 bogus Money Orders amounting to Rs.94,031/- and applicant No. 2 made payment of 168 bogus Money Orders amounting to Rs.63,361/- to one Sh. Ravindra Kumar Gupta. The matters were reported to the Police and on 26-7-96 FIR was lodged against applicant No.1 Sh. R.S.Patel and on 25-7-96 against applicant No.2 Sh. D.S.Rawat under Indian Penal Code and the same are pending before the Munsif Magistrate, Rishikesh. The applicants, therefore, were placed under suspension vide order dated 25.1.96 and the charge-sheets were also issued under Rule 14 of CCS (CCA) Rules, 1965 vide Memo dated 25-11-97 and 4-2-98 respectively. The respondents' department was of the opinion that criminal proceedings in the Court of Law as well as in the departmental disciplinary proceedings can go together simultaneously against the applicants, therefore, the departmental proceedings were also initiated against them which was stayed vide order dated 28.9.2001 in OA 2503/2000 and vide order dated 5.10.2001 in OA 2504/2000 in view of Capt. M.Paul Anthony's case decided by the Apex Court (1999 (3) SCC 679). The respondent department went in appeal before Delhi High Court against the order of the Tribunal which are still pending.

7. I have heard the learned counsel for both the parties at great length and also perused the material available on record. It is observed that it is an admitted fact that amendment to Rule 10 of CCS (CCA) Rules, 1965 have been amended vide Notification dated 23.12.2003. The order came into force on expiry of 90 days from the date of their publication in the Official Gazette. Sub-rules 6 & 7 are relevant in the case of the applicants, which clearly indicate that an order of suspension made or deemed to have been made under Rule 10 shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of 90 days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose as per DoPT Instructions dated 7.1.2004 and subsequent reminder dated 19.3.2004 and such constituted

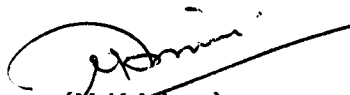
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Review Committees shall pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding 180 days at a time. Rule 7 provides that notwithstanding anything contained in sub-rule 5 (a), an order of suspension made or deemed to have been made under sub-rules 1 of Rule 2 of Rule 10 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.

8. It is observed that above amended rules have not been followed by the respondent department and there is nothing in the reply of the respondents to indicate that such exercise was taken by them in the light of the sub-rules 6 & 7 of Rule 10 which came into effect after 90 days from the date of their publication in the Official Gazette, i.e., dated 23.12.2003. I am, therefore, of the considered view that such exercise should have been carried out by the respondent department by the competent authority in this respect immediately after the amended rules came into force and since the same has not been done, the respondents are directed to impress upon the disciplinary authority to carry out such exercise as per amended sub rules 6 & 7 of Rule 10 of CCS (CCA) Rules, 1965 in the case of the applicants.

9. In view of above discussions, the respondents are directed to consider the case of the applicants particularly the suspension order dated 25.1.1996 in the light of the amended sub-rules 6 & 7 of rule 10 and pass a speaking order on the basis of the material available on record as well as the facts and circumstances of the cases within a period of two months from the date of receipt of a copy of this order and communicate the same to the applicants. The liberty is granted to the applicants in case they are aggrieved with the respondents, they may approach the appropriate forum meant for removal of such grievances. OAs are disposed of accordingly. No order as to costs.

A copy of this order be placed in another file.


(M.K. Misra)
Member (A)