

Central Administrative Tribunal, Principal Bench

O.A. No. 2596/2004

New Delhi this the 27th day of January, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

R.C. Jain

R/o 537, Sector 29,
Faridabad.

...Applicant

By Advocate: Shri M.K. Bhardwaj.

Versus

Union of India and Others

1. The Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
New Delhi.
2. The Central Provident Fund Commission,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
Delhi-110 066.
3. The Additional Central Provident Fund Commissioner,
8th-9th Floor, Mayur Bhawan,
Connought Circus,
New Delhi.Respondents

By Advocate: Shri S.N. Anand, proxy counsel for Shri V.S.R. Krishna,
Counsel.

ORDER (ORAL)

Short question that arises for determination in this OA is whether the non-review of the suspension order by the respondents – authorities in accordance with these instructions contained in DOP&T OM No.11012/4/2003-Estt.-dated 7.1.2004 had

Answer

resulted in the revocation of the order by which the applicant was placed under suspension.

2. The facts are short. The applicant was working as Section Supervisor with the respondents organization, Central Provident Fund Commission, when on 19.4.2004, he was placed under suspension in contemplation of the disciplinary proceedings for committing misconduct under Rule 3 of CCS (Conduct) Rules, 1964. It is alleged that the respondents did not constitute a review committee for review of the suspension order before the expiry of 90 days in terms of DOP&T's OM dated 7.1.2004, therefore, the suspension order dated 19.4.2004 has become invalid. The representation of the applicant has fallen on the deaf ear. The applicant has prayed for quashing of the suspension order dated 19.4.2004 and his reinstatement in service with all consequential relief.

3. The defence of the respondents is that as per Rule 6 of EPF (CCA) Rules, 1971 which apply to the applicant and other employees of the respondent organization where disciplinary proceeding against an employee is contemplated or is pending, an employee may be placed under suspension and as per Rule 5 (a) of the above said Rules, "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 revised by the authority competent to do so". It is submitted that the applicant is not governed by the DOP&T's OM dated 7.1.2004 which is relied upon in this OA since the condition of his service and the disciplinary proceedings are governed by a different set of rules.

4. We have heard the learned counsel for the parties and perused the relevant record.

Referred to

5. The applicant is an employee of Central Provident Fund Commission (CPFC). His conditions of service are regulated by The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the Act) and the Employees' Provident Fund Staff (Classification, Control and Appeal) Rules, 1971 (the Rules). Section 7 of the Act which provided the mode of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner and other employees of the respondents has provided as under:-

“[(7)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be shall as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

(b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Government whose decision thereon shall be final]”.

6. Rule 6 of the Rules which govern suspension of the staff of the respondents organization reads as under:-

“Part-IV Suspension

6.(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority

Revised Form

11

empowered in that behalf by the Central Government/Central Board may place an employee under suspension:

(2)

(3)

(4)

(5)(a) 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.

(5)(b) Where an employee is suspended or is deemed to have been suspended, (whether in connection with any disciplinary proceedings 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 employee shall continue to be under suspension until the termination of all or any of such proceedings.

(5)(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".

7. Rule 10 of the CCS (CCA) Rules, 1965 which is applicable to the persons in civil service under the Government was amended by DOPT's OM dated 7.1.2004 providing for the constitution of the review committees for reviewing the suspension and its extension. It is also reproduced below:-

“ Suspension of Government servants –
Constitution of Review committees

The undersigned is directed to say that Rule 10 (Suspension) of the CCS (CCA) Rules, 1965 is being amended to provided that an order of suspension made or deemed to have been made under this Rule shall be reviewed by the Competent Authority on recommendation of the Review Committee constituted for the purpose. It is also being provided in the Rules that an order of suspension made or deemed to have been under

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sub-rule (1) or (2) of Rule 10 shall not be valid after 90 days unless it is extended after review for a further period before the expiry of 90 days. It is further being provided that extension of suspension shall not be for a period exceeding 180 days at a time (sl. No.22 of February, 2004). 12

2. It is, therefore, necessary to constitute Review Committee(s) to review the suspension cases. The composition of Review Committee(s) may be as follows:-

- (i) The Disciplinary Authority, the Appellate Authority and another officer of the level of Disciplinary/Appellate Authority from the same office or from another Central Government office (in case another officer of same level is not available in the same office), in a case where the President is not the Disciplinary Authority or the Appellate Authority.
- (ii) The Disciplinary Authority and two officers of the level of Secretary/Additional Secretary/Joint Secretary/who are equivalent or higher in rank than the disciplinary authority from the same office or from another Central Government officer (in case another officer of same level is not available in the same office), in a case where the Appellate Authority is the President.
- (iii) Three officers of the level of Secretary/Additional Secretary/Joint Secretary who are higher in rank than the suspended official from the same Department/office or from another Central Government Department/Office (in case another officer of the same level is not available in the same office), in a case where the Disciplinary Authority is the President. The Administrative Ministry/Department/Office concerned may constitute the review committees as indicated above on a permanent basis or ad hoc basis.

3. The Review Committee(s) may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice to the forgoing if the officer has been under suspension for one year without any charges being filed in a court of law or no charge-memo has been issued in a department enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in Police/judicial custody or is accused of a serious crime or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned.

↳ See

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued in consultation with the Comptroller and Auditor-General of India.
5. All Ministries/Departments are requested to bring the above instructions to the notice of all disciplinary authorities under their control and ensure that necessary Review Committees are constituted accordingly. It may also be impressed upon all concerned that lapsing of any suspension order on account of failure of review the same will be viewed seriously.”
8. Before we advert to the legal question raised in the OA it is appropriate to notice that the applicant was placed under suspension on 19.4.2004 by the competent disciplinary authority of the respondents organization and thereafter, the suspension order has not been reviewed. Relying upon Rule 6 of the Rules, reproduced above, the contention of the respondents is that it has no legal obligation to review the order since the suspension order once passed shall continue till it is revoked by the appropriate authority. It is fervently argued on behalf of the respondents that DOP&T's OM dated 7.1.2004 would not, ipso facto, apply to the employees of the respondents organization in view of a clear provision in the Rules regulating the suspension..
9. It is abundantly clear from Section 7 of the Act that the Rules and orders applicable to the officers and employees of the Central Government would mutatis mutandis apply to the employees of the respondent organization. The exception is where the Central Board of the respondent organization takes a conscious decision for deviating from those rules and orders in the matter of mode of recruitment, salary and allowances discipline and other conditions of service. If it is done, it should be with the prior approval of the Central Government. As such the provisions of CCS (CCA) Rules, 1965 will govern the employees of respondent organization in the matter of the disciplinary proceedings, including the suspension in contemplation or in a pending disciplinary

Leave to file

proceedings except where the Central Board of the respondent organization, with the prior approval of the Central Government has decided to make a departure from the said Rules.

10. Rule 6 of the Rules is similar to the Rule 10 of the CCS (CCA) Rules, 1965. The Rule was framed in 1971. The DOP&T's OM dated 7.1.2004, quoted above, came into force on 7.1.2004. They have made a significant change in Rule 10 of the CCS (CCA) Rules, 1965. In terms of Section 7 of the Act, these instructions mutatis mutandis would be applicable to the employees of the respondent organization. These instructions having come to force on 7.1.2004 and having been incorporated in Rule 10 of the CCS (CCA) Rules, 1965 would apply to the employees of the respondent by virtue of Section 7 of the Act unless and until the Central Board of the respondent organization takes a conscious decision that it was necessary to make a departure from the rules or the orders which were applicable to the employees of the Central Government drawing the corresponding scales of pay. Admittedly, after the DOP&T instructions dated 7.1.2004, no decision has been taken by the Central Board to make a departure from the Central Government rules and the orders applicable in the matter of suspension. It is not permissible for the respondents to take shelter behind Rule 6 of the Rules particularly Sub-Rule5. Sub-Rule 5(a) simply provided that suspension order shall remain in force till it is modified or revoked. It cannot be said to be a departure made by the Central Board of respondent organization from Rule 10 of CCS (CCA) Rules as amended by order dated 7.1.2004. Sub-rule^u(b) is not attracted to the present proceedings since it was not a case where the applicant was placed under suspension in contemplation or a pending disciplinary proceeding and during the continuance of this suspension another disciplinary proceeding

marked a/c

15
was commenced against him. It is not a case that a second disciplinary has commenced against the applicant after he was placed under suspension in a particular disciplinary proceeding. As regards sub-clause~~s~~(c) it simply gave power to the competent authority who had placed the employee under suspension to revoke or modify the suspension order. The DOP&T's OM dated 7.1.2004 is not in conflict with clause (c) of the Rules either.

11. The OM dated 7.1.2004 has regulated the period of suspension and in accordance with it the suspension order shall not be valid after 90 days unless it was extended after review for a further period before the expiry of 90 days and further that the extension of the suspension period shall not be for a period extending 180 days at a time. Importantly the review of the suspension has to be done before the expiry of 90 days by a review committee constituted for this purpose and the extension would not be for a period exceeding 180 days "at a time". In other words, firstly the review committee has to be constituted for reviewing the suspension of an employee for the review of suspension before the expiry of first 90 days, and if the review committee has recommended the extension of the suspension order, the extended period would not be more than 180 days at a time. Before the expiry of the extended period another review is called for and the extension, if any, may be done in accordance with the view of the Review committee. What will be the composition of the review committee has also been provided in these instructions, which are now part of the CCS (CCA) Rules, 1965.

12. From the above discussion, it is clear that DOP&T's OM dated 7.1.2004 being not in derogation of any provisions of the Act and the Rules, would apply to the suspension of the employees in the respondent organization. Concededly, no review of the suspension order has taken place by a properly constituted committee before the expiry

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of 90 days and further extension of the suspension order is also not in accordance with the instructions contained in the OM dated 7.1.2004. That being so, the continuance of the suspension of the applicant is, therefore, illegal and invalid.

13. Learned counsel for the applicant has placed reliance on an order of the Chandigarh Bench of this Tribunal dated 8.3.1991 in OA 853/1990 G.S. Gill Vs. U.O.I. and on an order of the Hyderabad Bench of the Tribunal dated 28.6.1993 passed in OA 583/1992 Mr. L. Balaiah Vs. The Superintendent of Post Offices, Kurnool and Others. which are cases of Central Government employees, who were placed under suspension, and thereafter were not served with a charge-sheet. The Tribunal observed that as per OM dated 4.2.1971 the charge-sheet was to be served within three months and if it could not be done, reasons were required to be communicated to the employees undoubtedly after expiry of time limit. Tribunal quashed the suspension order and directed reinstatement. But this order was passed before Rule 10 of CCS (CCA) Rules, 1965 was amended by OM dated 7.1.2004 and its implementation have not been taken into consideration and The Tribunal would not dwell deep into the merit of the allegations made against the applicant for which the disciplinary proceedings against him are in the offing lest it causes prejudice to any of the parties.

14. Consequently, the OA is allowed. The suspension order dated 19.4.2004 having not been extended in terms of the DOP&T OM dated 7.1.2004, has lapsed and is no more valid, accordingly, stands quashed. The respondents are directed to reinstate the applicant. The applicant should be paid the consequential benefit from the date 90 days had expired from the date of suspension, i.e., 19.4.2004. But it will be open to the respondents to pass appropriate orders regarding suspension also afresh, strictly in

rescued order

17

accordance with the provisions of the Rules, 1965. In the light of the observation made above, parties are left to bear their own costs.

M.A. Khan
(M.A. Khan)
Vice Chairman (J)

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