

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1891/2004

New Delhi this the 7th day of April, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Sh. Zile Singh,
S/o late Sh. Pratap,
C-1, Central Jail Tihar,
New Delhi-64.

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Applicant

(through Sh. Y.S. Chauhan, Advocate)

Versus

1. Govt. of NCT through
Lt. Governor Delhi,
Raj Niwas, Delhi.
2. Principle Secretary Home (Jail),
Players Building,
Indra Gandhi Indoor Stadium,
I.P. Estate,
New Delhi.
3. Director General,
Prison Head Quarter,
Near Lajwanti Garden,
Central Jail Tihar,
New Delhi-64.
4. Sh. Ajay Aggerwal,
Director General,
Prison Headquarter,
Near Lajwanti Garden,
Central Jail Tihar,
New Delhi-64.

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Respondents

(through Sh. Vijay Pandita, Advocate)

ORDER

Applicant has sought the following reliefs:-

- “(i) to quash the order dated 12.7.2004 whereby the suspension of Applicant was further extended for a period of 180 days w.e.f. 15.6.04 in violation of Statutory Rules.

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- (ii) to declare that the Order of suspension has lapsed in view of provisions of rule 10 of CCS(CCA) as amended by notification dated 3.1.2004 and as per O.M. No. 11012/4/2003-Estt.(A) dated 19.3.04.
- (iii) Such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances may also be passed.

2. Applicant, on account of disciplinary proceedings, was placed under suspension on 25.3.2004. On 23.12.2003, an amendment has been carried out in Rule 5 (c) of the CCS (CCA) Rules, 1965, by inserting clauses 6 & 7 according to which, suspension, deemed to have been made under these rules, would not be valid after a period of 90 days unless it is extended after review.

3. Learned counsel of the applicant states that vide Office Memorandum dated 19/03/2004 it was made necessary to review pending cases in which suspension has exceeded 90 days by 2.4.2004. As in the present case, a review was done on ^h15.6.2004 the same does not sustain and is nullity in law.

4. On the other hand, respondents' counsel has vehemently opposed the contentions and stated that suspension period was reviewed on several occasions and orders passed are within the guidelines issued on amendment under CCS (CCA) Rules (supra).

5. I have carefully considered the rival contentions of the parties and perused the material placed on record.

6. By a corrigendum issued on 02.04.2004, the President of India has decided to have the effect of letter dated 03.01.2004 from 02.06.2004. Accordingly, 90 days would be reckoned from the aforesaid date. If a review has not been done within 3 months from 2.6.2004, the suspension would not be valid. In this conspectus, a Division Bench of Principal Bench in OA-3011/2004 decided on 18.1.2005 (*Dharam Pal Vs. U.O.I. & Ors.*), has observed as under:-

“13. As regards the second plea of the learned counsel, we can easily revert to the fact that after the decision in the case of *Union of India vs. Rajiv Kumar* (supra), which was rendered by the Supreme court on 28.7.2003, it was felt that there should be, in all cases of suspension, a review which should be effected periodically.

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On 23.12.2003, the Union had come up with the Notification. In pursuance of the same, sub-rules (6) & (7) have been added to Rule 10 of the Rules and further it provided that this amendment would take effect after 90 days from the publication of the Notification in the Official Gazette. It was published in the Official Gazette on 03.01.2004. However, subsequently a corrigendum had been issued firstly on 29.3.2004 followed by an amendment that has been effected on 02.04.2004. The said amendment reads:


"Amendment to CCS (CCA) Rules, 1965

G.S.R.....(E)...In exercise of the powers conferred by the provision to Article 309 of the constitution in partial modification of sub-paragraph (2) of paragraph 1 of the Notification of Government of India in the Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) dated 23.12.2003 (Sr. No. 18 of Swamy's Annual 2003(GSR-2, dated 3.1.2004 published in the Gazette of India in Part-II, Section 3, Sub-section (i)], the President hereby directs that said notification shall come into force on 2.6.2004."

It is obvious from the amendment that has been effected that the provisions that have been amended would come into play only from 2.6.2004.

14. Under sub-rules (6) & (7) of the added provisions to Rule 10 of the Rules, it is obvious that notwithstanding anything contained in sub-rule (5), to which we have referred to above, and order of suspension which has been made, shall not be valid after 90 days unless it is extended after a review. This is mandatory provision. The language is clear and unambiguous. It casts a duty on the concerned authority to review the orders that have been passed suspending persons within three months of the coming into force of the amendments, to which we have referred to above. A review necessarily has to be effected within 90 days from 2.6.2004."

7. If one has regard to the above, in the present case the review has been done on 15.6.2004. As such, the same has been done within 90 days and the suspension would not come to an end and continued suspension of the applicant is valid in law. Accordingly, finding OA bereft of merit, is dismissed. No costs.


(Shanker Raju)
Member(J)