

OPEN COURT**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD****Original Application No.1565 of 2005.****Allahabad, this the 05th day of April ,2006.****Hon'ble Mr. K.B.S. Rajan, Member-J
Hon'ble Mr. A.K. Singh, Member-A**

Pawan Kumar Misra, S/o Sri Sidh Nath Misra, Postal Assistant,
R/o 87 Amritpuram, New Azad Nagar, Kanpur,

....Applicant.

(By Advocate : Shri M.P. Sharaf)

Versus

1. Union of India, through the Secretary, Department of Posts, Ministry of Communication, New Delhi.
2. Chief Post Master, Kanpur. nsi Division, Jhansi.

.....Respondents.

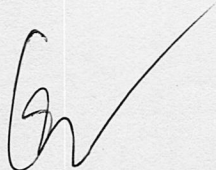
(By Advocate : Shri S. Srivastava)

ORDER**BY K.B.S. RAJAN, MEMBER-J**

The latest rule on suspension, especially extension of suspension is reproduced below:

"10. Suspension

- (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*



(13)

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."*

2. The applicant contends that provisions of Rule 10(6) and (7) should be strictly followed and any violation thereof would have to go in favour of the applicant. These rules are recently added to the statute book and they are specific that suspension cannot be extended save with the recommendations of the Review Committee.

3. In this case, the following are the legal flaws:

- a) The date of review committee meeting is not reflected in the respective minutes of the meeting. This is indeed surprising. Even if the review committee meeting takes place by way of what is called 'circulation', then again, those who are signatories are expected to reflect the date when they append their signatures. In that event, the latest would be taken as the holding of the meeting. The covering letter in respect of the first review committee meeting indicates the date as 31-08-2005. Earlier than this date there is no question of the authority which passed the order dated 29-08-2005 of extension of suspension to know the mind of the Review Committee. Yet, two days in advance, it passed the order!

- b) The second review committee meeting was held in February, 2006 and order extending the suspension of

the applicant was no doubt dated 26-02-2005, but it was not served upon the applicant before the expiry of the first extension of suspension. It was served as late as 31st March, 2006.

- c) There is no authority to keep the applicant under suspension beyond 29-08-2005, as the order dated 29-08-2005 continuing the suspension is totally illegal. Hence, the suspension is deemed to have been revoked w.e.f. 29-08-2005, as further extension on the basis of the illegal order dated 29-08-2005 has no legal base to stand.

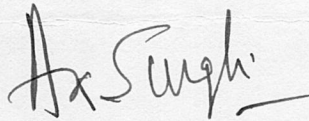
4. With the above legal lacuna, the continuance of suspension cannot stand judicial scrutiny. In fact, even if the above grave legal lacuna were not there, if the sequence of events is analyzed, the initial order of suspension was dated 06-06-2005 and there was no sign of any issue of charge sheet till March, 2005. The charge sheet already stands issued. All the relevant documents identified and so are the witnesses. Under these circumstances, keeping the applicant in continued suspension is not warranted.

5. Look from any angle, the continuance of suspension is not only warranted but in fact thoroughly illegal. Hence, the OA fully succeeds. The applicant is deemed to be in service on and after 29-08-2005. He is entitled to necessary pay and allowance for the said period. Respondents are directed to permit the applicant to join duty forthwith and pay the arrears of pay and allowance, after adjusting the subsistence allowance,

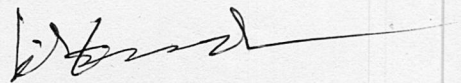
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if any, already paid to the applicant for the period in question within a period of three months.

6. We have not expressed any opinion on the merit of the charge sheet or the alleged misconduct. No cost.



MEMBER-A



MEMBER-J

GIRISH/-