

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/81/2020

ORDER RESERVED ON 07.06.2021

DATE OF ORDER: 06.07.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Chandigarh Bench, Chandigarh)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from his residence at Bangalore)

Smt.Veena P. Oak, 55 years

W/o Sri. Prakash Oak

Occn: District Informatics Officer

O/o Deputy Commissioner & District Magistrate

Bengaluru Rural District

1st Floor, District Complex

Beerasandra Village, Kundana Hobli

Devanahalli Taluk

Pin Code: 562 110.

....Applicant

(By Advocate Shri P.A.Kulkarni – through video conference)

Vs.

1. Drawing and Disbursing Officer

National Informatics Centre

Karnataka State Unit

6th floor, Mini Tower

Dr. Ambedkar Veedi

Bengaluru: 560 001.

2. Deputy Commissioner & District Magistrate

Bengaluru Rural District

1st Floor, District Complex

Beerasandra Village, Kundana Hobli

Devanahalli Taluk

Pin Code: 562 110.

3. National Informatics Centre (NIC)

Karnataka State Unit

6th floor, Mini Tower

Dr. Ambedkar Veedi
Bengaluru: 560 001.

To be represented by its State Informatics Officer Respondents

(By Advocates Shri S.Sugumaran for R1 & 3 & Shri M.V.Ramesh Jois for
R2 – through video conference)

O R D E R

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- a. Quash the orders bearing No:ELN.CR.60/2018-19, dated 18.04.2019, (Annexure-A2) and No:ELN.CR.60/2019-20, dated 10.05.2019, (Ann-A5), passed by Deputy Commissioner & District Magistrate, Bengaluru Rural District (R-2 herein).
- b. Direct the Respondent No.1 to forthwith refund a sum of Rs.1,44,857/- recovered from applicant's November 2019 salary as evidenced by Ann-A6 in tune with grant of relief (a) above.
- c. Direct the respondents to cause removal of the service book entry made in connection with treating of the suspension period and the warning issued by R-2 under the impugned order Ann-A5 bearing No: ELN.CR.60/2019-20, dated 10.05.2019, passed by Deputy Commissioner & District Magistrate, Bengaluru Rural District (R-2 herein).

2. The applicant, in his pleadings, filed through her Counsel Shri P.A.Kulkarni, has averred as follows:

- i. The applicant was appointed as District Informatics Officer w.e.f. 11.04.1991 in National Informatics Centre(NIC) of Government of India and posted to Bengaluru.
- ii. The applicant was working under the Deputy Commissioner & District Magistrate Bengaluru Rural District at the time of general elections 2019 for Lok Sabha which came to be notified by Election

Commission of India on 08.02.2019. The Deputy Commissioner & District Magistrate Bengaluru Rural District appointed the applicant on 28.02.2019 as a Nodal Officer for technical support regarding appointment of Poll Personnel, NERP, Samadhan, Suvidha and Sugam, CVIGIL and other ICT Software.

- iii. The Deputy Commissioner & District Magistrate, Chikkaballapur happened to be Returning Officer for 27 Chikkaballapur Lok Sabha Constituency, whereas the Deputy Commissioner & District Magistrate Bengaluru Rural District happened to be District Election Officer in respect of the said constituency.
- iv. While the applicant has performed all the allotted functions as listed above to the total satisfaction of all concerned, her Controlling Authority Deputy Commissioner & District Magistrate Bengaluru Rural District(Respondent No.2) placed the applicant under suspension vide office memorandum dated 18.04.2019 with immediate effect on the ground that she failed to report in the office of DEO& DC on the poll day of 18.04.2019 at 6.30 AM as instructed, but reported at about 11.00 AM. This non-reporting on time for Election duty is *prima facie* considered to be dereliction of duty by the said Authority under Section 134 of the Representation of People Act 1951.
- v. The applicant submitted her explanation on 25.04.2019 stating that after exercising her right to vote in her constituency wherein her residence is situated at Bengaluru, her reaching office at Beerasandra Devanahalli Taluk could not happen earlier than 11.00 AM since on

that day public transport regular timing buses were not operating due to utilization of all the buses for election work and she was not given any staff transport facility for attending to election work. This however has not hampered/caused any inconvenience to the election duty as she was monitoring the duty allotted to the sub-ordinates from time to time until reaching the office. More so, she never received any communication asking her to be present in office by 6.30 AM as mentioned in the suspension order.

- vi. In addition to the above, the Deputy Commissioner Chikkaballapura /Returning Officer of the Chikkaballapura Lok Sabha constituency vide his communication dated 29.05.2019 addressed to DC Bengaluru Rural District (Applicant's controlling authority) has clarified the position that there is no fault of the applicant in any manner as Sri Ravishankar District Information Officer NIC Chikkaballapura was entrusted the work of monitoring for poll day. Accordingly, Shri Ravi Shankar has performed the duty satisfactorily.
- vii. Subsequently, the Deputy Commissioner Bengaluru Rural District in his capacity as a District Election Officer has revoked the suspension order of the applicant vide order dated 10.05.2019. However, while revoking the suspension order, he ordered treating of the suspension as 'leave without pay'. The legality and correctness of the treating of the suspension period as leave without pay is under challenge in the present OA.

viii. The applicant's coming to office by 11.00 AM on the polling day cannot be construed as dereliction of duty under Section 134 of RP Act 1951 for the following reasons:

- a. She was duty bound to exercise her right of voting in the constituency where she is residing at Bengaluru and after exercising that right/duty, her reporting at 11.00 AM cannot be found fault with as she did not get any communication to be in office at 6.30 AM on polling day as mentioned in the suspension order.
- b. A bare reading of Section 134 of the RP Act 1951 makes it clear that very application of the same as contended by the suspending authority is doubtful in the instant case.
- c. For ready reference that section is reproduced herein below:

“134. Breaches of official duty in connection with election. – (1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

1 [(1A) An offence punishable under sub-section (1) shall be cognizable.]

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the district election officers, returning officers, assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or

counting of votes at an election; and the expression “official duty” shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.”

- ix. In the operative portion of the order, the authority has stated that in the light of the explanation given by the applicant herein and being convinced with the explanation submitted, the suspending authority has decided to revoke the suspension order. When that is so, with the acceptance of the explanation offered by the applicant, it is not open for the said authority to issue a warning to the applicant as issuance of such warning is not in accordance with law. Even if a warning by way of a penalty is to be imposed against the applicant, regular procedure provided under the CCS (CCA) Rules 1965 applicable in case of the applicant was required to be followed. In the absence of the same, warning issued to the applicant is clearly without authority of law. Treating of the suspension period as leave without pay in the instant case without following the procedure laid down under Rule 54-B is also clearly untenable in law.
- x. GOI instruction No.3 under FR 54-B issued under DOPT OM No:11012/15/85-Estt.(A) dated 3.12.1985 makes it clear that period of suspension is to be treated as duty if a minor penalty only is imposed. In the instant case, there is not even a minor penalty. Mere mention of a word ‘warning’ in the operative portion of the order in question cannot be brought under the minor penalty clause as listed under Rule 11 of the CCS(CCA) Rules 1965 which lists the penalties that can be imposed on a Government Servant for good and sufficient reasons.

xi. Since the warning issued under Ann-A5 does not amount to recordable warning in its ordinary sense, hence, the red-ink entry made in the service book of the applicant is also untenable.

xii. The respondent No.1 while crediting the pay allowances of the applicant has caused recovery of a sum of Rs.1,44,857/- from the salary of the month of November, 2019. Since the treatment of suspension period as leave without pay is untenable in law, hence this recovery is also without any authority of law and needs to be revoked. The amount so deducted, showing it as excess payment towards suspension period, should be refunded to the applicant.

3. The respondents have filed their detailed reply statements to the OA.

4. The respondents No.1 & 3 in their reply statement have averred as follows:

i. The applicant was placed under suspension for dereliction of duty under Sec. 134 of the Representative People's Act 1951. Not only the applicant failed to report for duty at the office of the DEO & DC on the polling day i.e. 18.04.2019 from 6.30 am to 11 am but also left the station without prior permission/approval. In this regard copy of the notification No.ELN/CR/60/2018m-1 dtd.28.02.2019 is enclosed as Annexure-R1 and notification dtd.15.03.2019 (Role & responsibility of District IT) enclosed as Annexure-R2.

ii. Further to exercise the right to franchise the applicant need not have gone to her constituency but could have done the same through Postal ballot and sought for the same.

- iii. Despite being informed about the presence of all connected officials at 6.30 am on the polling day, arriving at 11 am is not at any rate the timing of election scheduled. Wherefore the applicant was placed under suspension vide order dated 18.04.2019(Annexure-R3).
- iv. Though the applicant stated to have entrusted the work to all Assistant Election Officers through WhatsApp group, the applicant cannot absolve her responsibility to be personally present in time on the polling day. She was the focal person for all ICT applications, and her presence at the time of start and close of mock poll and subsequent events was essential.
- v. The suspension period was regularised as leave without pay(EOL) and as per instruction contained in GOI MFUO No.3409 iv 153 etc., no leave salary is admissible.

5. Respondent No.2 has also filed his reply statement wherein he has averred as follows:

- i. The applicant was specifically instructed and requested to be present in the office by 6.30 AM on 18.04.2019 to attend to Election duty. However, she failed and neglected to do so, thereby she was guilty of dereliction of duty. Under such circumstances, suspension order was rightly issued by respondent No.2. It is denied that the applicant had never received any communication asking her to be present in the office by 6.30 AM as mentioned in the suspension order. However, it is true that the applicant had given an explanation letter as per Annexure-A3.

- ii. The Deputy Commissioner of Chikkaballapura District had sent a communication vide Annexure-A4 to R-2. However, it is denied that DC, Chikkaballapura has clarified in Annexure-A4 that there is no fault on the part of the applicant in any manner.
 - iii. The respondent No.2 has issued Annexure-A5 order against the applicant and it was issued correctly and as per law in the light of dereliction of duty shown by the applicant.
 - iv. The explanation of the applicant was accepted by respondent No.2 only for the limited purpose of revoking her suspension order but not to let her off from the negligence and dereliction of duty in the election matter. Annexure-A5 order was legally and rightly passed by respondent No.2 by taking into account the negligence and dereliction of the applicant related to Election Duty. The applicant is not entitled to all or any of the reliefs claimed. Hence, the OA is liable to be rejected.
 - v. The warning given and treating the period of suspension as leave without pay is commensurate with the deliberate act and conduct and negligence shown and exhibited by the applicant in the matter of Election duty.
6. Heard learned counsels for both the parties and perused the material submitted by them in their respective pleadings.
7. The facts of the case, as revealed through the pleadings made by the applicant as well as by the respondents, indicate that the applicant has been considered to have committed the misdemeanour of not coming on time on polling day and

reporting at around 11.00 AM instead of 6.30 AM as directed by respondent No.2.

8. In her pleadings, the applicant however has categorically stated that she was not informed about the requirement for her to be physically present at 6.30 AM on the polling day (18.04.2019). She has also categorically stated that she had not received any communication asking her to be present in office by 6.30 AM as mentioned in the suspension order.

9. On the other hand, respondent No.2, in his reply affidavit, has categorically stated that the applicant was specifically instructed and requested to be present in the office by 6.30 AM on 18.04.2019 to attend to election duty. There is, however, no copy of any such written communication/directions produced by Respondent No.2 in support of his contentions made in his pleadings before this Tribunal.

10. The applicant has furnished the details of the actual work carried out by her for Lok Sabha Elections 2019 till the polling day i.e. 18.04.2019 in the written explanation submitted by her to Respondent no: 2. She has also claimed that she had adequately briefed both the Additional Deputy Commissioner and the Nodal Officer Shri Shivarudrappa for poll day monitoring before leaving the office on 17.04.2019. She also stated that she did not receive any communication to be in the office by 6.30 AM on 18.04.2019.

11. The Returning Officer of 27 - Chikkaballapur Lok Sabha Constituency (Deputy Commissioner, District Chikkaballapur), vide a letter addressed to Deputy Commissioner, Bengaluru Rural District, has also mentioned that the applicant had entrusted the work of the polling day to all Assistant Election Officers in

the Whatsapp group and Shri Ravi Shankar, District Informatics Officer NIC, Chikkaballapur was required to submit all the information regarding the polling date progress. Accordingly, Sri Ravi Shankar, after obtaining the information from all the Assistant Election Officers had performed the duty satisfactorily.

12. The detailed explanation given by the applicant has been accepted as convincing by the Deputy Commissioner, Bengaluru Rural District. In his letter/order dated 10.05.2019, he has specifically stated that “*in the light of the explanation given by the concerned official and being convinced with the explanation submitted, I Karee Gowda, IAS, Deputy Commissioner & District Election Officer, Bangalore Rural District, hereby revoke the suspension order of Smt. Veena P.Oak, DIO, NIC, Bangalore Rural District passed vide ref.(3), with a warning to henceforth act as “Responsible Officer” without giving any room for such dereliction of duty, specially in matters related to the process & conduct of elections. The period under suspension to be treated as leave without pay.*”

13. The Department of Personnel and Training (DoP&T), Govt. of India had issued consolidated instructions on suspension vide their OM No.11012/17/2013-Estt (A) dated 02.01.2014. As per these guidelines, the following general instructions/guidelines have been reiterated:

Suspension, though not a penalty, is to be resorted to sparingly. Whenever a Govt. servant is placed under suspension not only does the Govt. lose his services but also pays him/her for doing no work. It also has a stigma attached to it. Therefore, the decision to place a Govt. servant under suspension must be a carefully considered decision and each case would need to be considered on merits.

Disciplinary Authority may consider it appropriate to place a Government servant under suspension in the following circumstances. These are only intended for guidance and should not be taken as Mandatory: -

- (i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);
- (ii) where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;
- (iii) where the continuance in office of the Government servant will be against the wider public interest [other than those covered by (i) and (ii)] such as there is public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;
- (iv) where allegations have been made against the Government servant and preliminary inquiry has revealed that a *prima facie* case is made out which would justify his prosecution or is being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

*NOTE: In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established.*

Suspension may be desirable in the circumstances indicated below: -

- (i) any offence or conduct involving moral turpitude;
- (ii) corruption, embezzlement or misappropriation of Government Money, possession of disproportionate assets, misuse of official powers for personal gain;
- (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;
- (iv) desertion of duty;
- (v) refusal or deliberate failure to carry out written orders of superior officers.

In respect of the types of misdemeanor specified in sub clauses (iii) and (v) discretion has to be exercised with care.

14. With regards to treatment of the period of Suspension after conclusion of Departmental Proceedings, in these instructions issued by the DoP&T, GOI, vide OMNo.11012/17/2013-Estt (A) dated 02.01.2014, it has been categorically stated as follows:

On Conclusion of Proceedings

A. If Exonerated

- a) *Where the Competent Authority is of the opinion that the suspension was wholly unjustified, the Government servant may be paid full pay and allowances.*
- b) *Where the Competent Authority is of the opinion that the proceedings were delayed for reasons directly attributable to the Govt. servant, it may after notice to the Govt. servant and considering his representation-if any, order a reduced amount to be paid.*
- c) *The period of suspension will be treated as period spent on duty for all purposes.*

B. Minor Penalty is imposed

Where the proceedings result only in minor penalty being imposed, then the suspension is treated as wholly unjustified.

(DoPT O.M. No. 11012/15/85-Estt (Al dt, 3-12-1985)

15. A perusal of the DoP&T OM No: 11012/15/85- Estt dated 03.12.1985 indicates that it contains the following guideline/instructions:

“The Government servant could be placed under suspension if a prima-facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty, The Staff Side of the Committee of the National Council set up to review the CCS(CC&A) Rules, 1965 had suggested that in cases where a government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension Period. Government have accepted this suggestion of the staff accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR(54-3) and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B”.

16. The facts of the case clearly reveal that the applicant has been considered to have committed the misdemeanour of not coming at 6:30 AM on polling day (18.04.2019) as directed and reported for duty at around 11.00 AM instead of 6.30 AM. However, putting the officer under suspension for this misdemeanour, appears to be excessive and does not seem to be covered under the guidelines relating to suspension issued by DoP&T. In these guidelines, it has been advised that suspension needs to be resorted to sparingly. Whenever a Govt. servant is placed under suspension not only does the Govt. lose his/her services but also pays him/her for doing no work. It also has a stigma attached to it. Therefore, the decision to place a Govt. servant under suspension must be a carefully considered decision and each case needs to be considered on merits.

17. The circumstances under which a Govt. servant may be placed under suspension have also been delineated under these guidelines. As per these guidelines, suspension may be resorted to in cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry, or likely to seriously subvert discipline in the office in which the public servant is working or where the continuance in office of the Government servant will be against the wider public interest. The facts of the case do not make it out as a case covered under these circumstances. It could be considered as a case of not following instructions (if any) to come early for election duty at 6:30 AM on the polling day. However, there is no evidence of any written instruction to the applicant issued by the respondent 2. Moreover, in the present communication age where the applicant has been in constant communication on Whatsapp with all concerned on polling day right from early morning, there is no evidence of any reminder or communication to her between 6:30 AM to 11.00 AM relating to her either being late or not being physically present at 6:30 AM as required.

Hence, *prima-facie*, it does not appear to be a fit case for placing the applicant under suspension for this misdemeanour.

18. Subsequent to the issuance of the suspension order dated 18.04.2019, the applicant furnished her detailed reply on 25.04.2019, in which she listed out complete details of the work entrusted to her as well the status of execution of the same. She also stated that all the works assigned to her had been completed. With regards to poll day monitoring, she stated that the DC office had appointed Shri Shivarudrappa as the nodal officer. She also stated that she had not received any communication to be in office by 6:30 AM on 18.04.2019.

19. The Deputy Commissioner Chikkaballapur who was the Returning Officer in these elections for 27-Chikkaballapur Constituency, in a letter dated 29.05.2019 addressed to Respondent No: 2, has stated that on 17.04 2019 itself, the applicant had entrusted the work of the polling day to Shri Ravi Shankar DIO NIC Chikkaballapur. Shri Ravi Shankar DIO NIC was required to submit all the information which had been done satisfactorily.

20. Respondent No.2 considered the reply furnished by the applicant and accepted the explanation furnished by her. He revoked her suspension order on 10.05.2019 with a warning to 'henceforth act as a responsible officer'. He further directed that the period under suspension be treated as leave without pay.

21. A careful reading of the order issued by Respondent-2, (District Magistrate, Bengaluru Rural District) indicates that this warning clearly does not amount to imposition of any formal punishment in terms of minor penalty of Censure. The period of suspension from 18.04.2019 to 10.05.2019 has been directed to be treated as "*leave without pay*".

22. As per the DoP&T guidelines, issued vide DoP&T OM No: 11012/15/85- Estt dated 03.12.1985, even in cases where a minor penalty is imposed, the suspension can be said to be wholly unjustified in terms of FR 54(3) and the employee concerned should be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

23. Hence the order to treat the period of suspension as leave without pay is clearly in violation of DOPT instructions on the subject. Even placing the applicant under suspension, is not justified keeping in view the specific circumstances of the case and the fact that, ultimately, no penalty was imposed on the applicant.

24. Keeping the above in view, the OA deserves to be allowed.

25. Accordingly, the Original Application is allowed and the orders dated 18.04.2019 (Annexure-A2) and orders dated 10.05.2019 (Annexure-A5) are hereby quashed and set aside. Consequent thereto, the respondents are directed to refund a sum of Rs.1,44,857/- to the applicant within a period of two months from the date of receipt of a certified copy of this order. A further direction is issued to the respondents to remove the entry made in applicant's service book, pursuant to order dated 10.5.2019 (Annexure-A5).

26. Ordered accordingly. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

/ps/

(SURESH KUMAR MONGA)
MEMBER(JUDL)