

(A)

OA 767/96
MA 369 & 370/97

5

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
5	27-8-97	<p>In this disposed of matter, learned lawyer for the petitioner, Shri P.K.Padhi has filed two Misc.Applications (M.A.Nos.369 and 370 of 1997) which have been set down for orders today. I have heard the learned lawyer for the petitioner, Shri Padhi, and the learned Senior Standing Counsel, Shri Ashok Mohanty appearing on behalf of the respondents, on the two M.As. which are taken up in seriatim. For considering the submissions with regard to these M.As, a few facts of O.A.No. 767 of 1996, out of which these two M.As. have arisen, will have to be referred to.</p> <p>2.The petitioner was working as a Postal Assistant in Baripada Head Post Office and was in charge of Stamps. According to the application, on 28.12.1995 Stamps were verified and there was allegedly a shortage of Postal Stamps of Rs.3520.42. The fact of this shortage is contested by the applicant. But according to him, he was directed to credit the amount of shortage and accordingly, he credited the above amount of Rs.3530.42 under the heading "Unclassified Receipt" on 29.12.1995.</p>	

J.P.M.
27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
	<p>27.8.97</p>	<p>3. In M.A.No.369/97, he has made a prayer for refunding the amount to him with 18% compound interest. Case of the applicant is that total value of Stamps with him was more than Rs.6.5 lakh and the counting was done by the verifying officer in a hurried manner. The applicant, according to him, prayed for a re-count which was not done. Subsequently, after he was placed under suspension and he handed over charge, the Stamps were re-counted and no shortage was found. This fact has also been mentioned by him in his explanation dated 4.4.1996, which is ^{at} Annexure-2 to the O.A. . I have considered the submissions of the learned lawyer for the petitioner. It is admitted by the petitioner that the amount has been deposited by him voluntarily even though on direction from the higher authorities. The fact of this shortage is item No.1 in the charge-sheet against him and once the disciplinary proceedings are completed and if according to him, no shortage is established and the deposit of money by him is found to be in excess, then naturally he will get back the amount. At that stage, if he has a</p>	

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p data-bbox="331 328 1264 1032">grievance, he will be free to come before the Tribunal. For the present, when the disciplinary proceedings against him are pending and his submission that actually there was no shortage is yet to be proved or disproved, it would not be correct to pass an order to return the amount of Rs.3520.42 deposited by him that too with 18% compound interest, as claimed by him. This M.A.No.369/97 is, therefore, rejected.</p> <p data-bbox="331 1097 1271 2296">4.In the second M.A.No.370 of 1997, the petitioner has prayed that the order dated 2.1.1996 placing him under suspension, which is at Annexure-A/1 of the M.A., should be quashed. In the O.A., under paragraph 8 the applicant had prayed for a direction to respondents 2 and 3 to revoke the suspension order dated 2.1.1996. Alternatively, it was prayed that appropriate direction be issued to expedite the disciplinary proceeding within a period to be fixed by the Tribunal. Thus from this paragraph, it is clear that the above two prayers were alternative. The O.A. was disposed of in order dated 28.11.1996. From a perusal of this order, particularly paragraph 2 thereof, it</p>	

27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>is clear that the prayer for revocation of suspension was not pressed. The relevant portion of this order dated 28.11.1996 is quoted below:</p> <p style="text-align: center;">"...The only prayer of the learned counsel for the applicant is that a time-frame be fixed by this Court for completion of the disciplinary proceedings."</p> <p>Accordingly, as per the prayer of the learned lawyer for the petitioner in the O.A. and in consultation with the learned Senior Standing Counsel, a direction was issued to the disciplinary authority to complete the disciplinary proceedings within a period of six months from the date of receipt of copy of the order.</p> <p>5. In the present M.A., the applicant has come up with the prayer for revoking the order of suspension on the following grounds:</p> <p>(i) In a similar case dealing with analogous matter in OA No.629 of 1995 and MA No.222/96, the suspension order was revoked because the enquiry was not completed within the time period</p>	

✓
27.2.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>fixed. Copy of the orders passed in the O.A. and M.A. has been submitted by the learned lawyer for the petitioner along with his note of argument.</p> <p>(ii) The second ground is that the order of suspension has been passed by the disciplinary authority at the behest of the Assistant Director (Vigilance) and going by the ratio of the decision of the Hon'ble High Court of Kerala in the case of <u>C.E.Eranimose, Circle Inspector of Police, Kayamkulam v. State of Kerala and another</u>, 1970 (Vol.4) SLR 520, such suspension order cannot be allowed to continue.</p> <p>(iii) Thirdly, it has been submitted that the position of law is well settled that if an employee continues to be under suspension for a long time without tangible progress in the enquiry, then the suspension should be set aside.</p>	

J.P.M.
27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>(iv) It has been submitted that Government of India's instructions provide for completion of the departmental enquiry within a period of six months when the employee is under suspension. If the enquiry cannot be completed during the period, then orders of superior authority will have to be obtained. In the present case, no such order having been obtained, the suspension cannot be allowed to continue.</p>	
<p>✓ Jm 27.8.97</p>		<p>(v) It is also submitted that cases where departmental proceedings are continuing for long time and the employee is under suspension, those cases are to be reviewed from time to time with a view to ascertaining if the employee could be released from suspension. The contention is that no such review having been done in this case, the suspension</p>	

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>should be revoked.</p> <p>vi) It is further submitted that during the period of suspension, the applicant has been put under undue hardship in the sense that he has been asked to attend office from 10.00 A.M. to 5.00 P.M. and to sign the Attendance Register. Such direction is illegal and on this ground also, the suspension order should be revoked.</p> <p>The above contentions of the learned lawyer for the petitioner are considered below.</p> <p>6.I have looked into the orders passed in O.A.No.629/95 and M.A.No.222/96. The O.A. was disposed of in order dated 15.11.1995 with a direction to the respondents to complete the disciplinary enquiry within a period of three months from the date of receipt of the order. M.A.No.222/96 was disposed of in order dated 22.3.1996. It was noted in this order that the background facts are that there was shortage of paper in the Postal Printing Press to the tune of Rs.8,70,074.60 and the matter was entrusted to C.B.I. for investigation. Till the date of the order, the C.B.I. had not submitted its report. The applicant in that case was in charge of the Store. His case was that the C.B.I. had not given its investigation report and it was not known why the shortage had taken place and who were responsible for the shortage and if at all the</p>	

J.Jm.
27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>applicant could be held responsible. There had also not been any preliminary enquiry on facts. In consideration of the fact that the departmental authorities were awaiting the C.B.I.'s report and the applicant was kept under suspension and he was going to retire in October 1996, the Tribunal ordered for revocation of the suspension order. From the above, it is clear that the facts of that case are widely different from the present case. In this case, charges were served on the applicant expeditiously and the enquiry is in progress. It is a fact that the enquiry has not been completed within a period of six months, as ordered by the Tribunal. That may conceivably give rise to the contempt proceedings, if the petitioner is so advised. But on the analogy of the orders passed in MA No.222/96, an order of reinstatement cannot be issued, because in that case prima facie liability of the person put under suspension had not been established even after the applicant had been placed under suspension and no chargesheet had been served on the delinquent officer by the time the order revoking the suspension was passed. This contention of the learned lawyer for the petitioner, therefore, cannot be sustained.</p>	

Jdm.
27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
J.V.M. 27.8.92		<p>7.As regards the second contention, I have looked into the case of C.E.Eranimose, Circle Inspector of Police, Kayamkulam (supra). That was a case where a Circle Inspector of Police was placed under suspension after he ordered lathi charge and firing. Immediately after the incident, a renowned political leader called for stern action against the police officer. Even before the suspension order was passed, the local newspaper of the concerned political party came out with a report that the officer had <u>been</u> placed under suspension. Considering the facts of the case, the Hon'ble Judge of the High Court of Kerala came to the conclusion that the suspension in that case was ordered under political pressure. In this case, there is nothing on record that the suspension order has been passed at the instance of the Assistant Director (Vigilance). In any case, the Assistant Director (Vigilance) along with others verified the Stamp account. There is nothing on record that he had moved the disciplinary authority for suspension of the applicant. Even if it is taken for argument's</p>	

(A) O A 767/92

13

Serial No. of Order	Date of Order.	Order with Signature	Office note as to action (if any) taken on order
		<p>sake that the Assistant Director had moved for suspension of the applicant, the same cannot be taken to be an extraneous authority. He is a superior officer in the Department and was involved in the verification of the Stamp account. This contention of the learned lawyer for the petitioner also fails.</p> <p>8. On the third point, the learned lawyer for the petitioner has referred me to a large number of reported decisions, some of which are not applicable to the facts of this case. In the case of <u>P. Eswar Jitendra v. General Manager, Indian Government Mint, Hyderabad and others,</u> (1988) 8 ATC 469, the suspension was revoked because the same was continued without issuing of chargesheet and it was held that if there is a long gap between the suspension and the issuing of chargesheet, the suspension becomes penal in character. In this case, chargesheet has been issued and therefore, the above decision is not relevant for the present purpose. In the case of <u>State of Madras, Industries Labour & Housing Department v. K.A. Joseph,</u> 1969 (Vol. 3) S.L.R. 691,</p>	

15

(A)

OA 767/96

15

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>it was held that in case of prolonged suspension where charges have not been framed, the Court can order Government to allow the official to resume duties. That is also not a case which is applicable to the facts of this matter because the charges have already been framed. In the case of <u>O.P.Gupta v. Union of India and others</u>, AIR 1987 SC 2257, suspension continued for eleven years and the departmental proceedings were kept pending for twenty years. In that case, the order of suspension was revoked by the departmental authorities, but the departmental proceedings were kept alive and without completing the departmental enquiry, the order of compulsory retirement was passed. That case is also not relevant for the present purpose. The subject-matter in O.P.Gupta's case (supra) was withholding of increments at Efficiency Bar without giving the applicant an opportunity. In the case of <u>State of H.P. v. B.C.Thakur</u> (1994) 27 ATC 567, the Hon'ble Supreme Court upheld the Tribunal's decision to set aside the suspension order on the ground that continued suspension for nearly two years without</p>	

JSM,
27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>substantial progress in the departmental enquiry cannot be allowed to sustain. The order of the Tribunal quashing the chargesheet was, however, set aside by the Hon'ble Supreme Court. In this case, the applicant is under suspension for a period of one year and eight months. Apart from the shortage in the Stamp account, there are two other charges in the charge-memo served on him. The departmental authorities should have completed the disciplinary enquiry within the period of six months^{as} indicated by the Tribunal in the order dated 28.11.1996. But failure to complete the enquiry may give rise to the contempt proceedings, as indicated earlier. But merely because the proceedings have not been completed, the suspension order cannot be revoked.</p> <p>9. The fourth and fifth submissions of the learned lawyer for the petitioner can be taken up together. The proposition is unexceptionable that the departmental enquiry must be completed expeditiously, moreso when the delinquent officer is under suspension. Ministry of Home Affairs'</p>	

2/2/97
27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
	J. Dom, 27.8.92	<p>circulars dated 4.2.1971, 16.12.1972, 14.9.1978 and 18.2.1984 lay down that when it is not possible to conclude the departmental enquiry within a period of six months, approval of the higher authority should be obtained. This is mentioned at page 145 of G.B.Singh's Law of Suspension, Penalties and Departmental Enquiries, Sixth Edition. Central Administrative Tribunal in the case of <u>D.Mangaleswaran v. C.I.T., Tamil Nadu</u>, (1987)2 ATC 828, have held that these instructions are mandatory in nature. It is submitted that in this case, approval of higher authority has not been obtained. This certainly can be taken to be a lapse. But from that it will not necessarily follow that if the departmental proceedings are continued beyond the period of six months and approval of higher authority is not obtained, then automatically suspension should be revoked. This contention is, therefore, rejected. As regards the other proposition that in case of long period of suspension, the possibility of engaging the employee in useful work should be examined from time to time. This is really a matter for the departmental authorities. In the instant case, the</p>	

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>charges relate to defalcation with regard to postal Stamps and also with regard to falsification of accounts and alleged selling of service postage stamps against cash when according to instructions service postage stamps can be sold only against cheques. It is for the departmental authorities to decide whether pending enquiry, the delinquent officer can be entrusted with any position of responsibility and trust. It would be difficult for the Tribunal</p> <p>unaware, as it is, of the inner working of a Department or an office to impose its judgment on the departmental authorities in this matter.</p> <p>10. The last contention of the learned lawyer for the petitioner is that during the period of suspension the applicant is being put to undue hardship in the sense that he is being asked to attend office from 10.00 A.M. to 5.00 P.M. and to sign the Attendance Register.</p> <p>This matter was considered in the case of <u>Nazmul Hasan v. Senior Superintendent, R.M.S., Gorakhpur and others</u>, 1986 ATC 537. The view taken in Nazmul Hasan's case is that a suspended employee is debarred from performing any duty and to mark</p>	

27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>attendance is a duty and therefore, it would be illegal to ask the employee to mark his attendance. In consideration of that, the Tribunal following the decision of the Hon'ble High Court of Andhra Pradesh in the case of <u>Zonal Manager, Food Corporation of India v. Khaleel Ahmed Siddiqui</u>, 1982 Lab. IC 1140 (AP), held that the applicant was entitled to reimbursement of the expenditure incurred by him in coming to office and signing the Attendance Register in compliance of the instruction given to him when he was under suspension. In the instant case, it is submitted that the applicant is being forced to sign the Attendance Register and to remain in office from 10.00 A.M. to 5.00 P.M. The legality of that order is certainly doubtful in view of the pronouncement of the Hon'ble High Court of Andhra Pradesh and also the decision of Central Administrative Tribunal, Allahabad Bench, referred to above. But there is no specific prayer regarding any direction to the departmental authorities to desist from requiring the applicant to sign the Attendance Register everyday. The prayer is for revocation of the suspension order on the above ground. No</p>	

J. J. M.
27.8.97

Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
		<p>authority is placed before me in support of the contention that in case an employee, who is under suspension, is forced to attend office from 10.00 A.M. to 5.00 P.M. and sign the Attendance Register, the suspension order should be revoked. This contention must, therefore, be rejected.</p> <p>11. There is one further ground on which this M.A. must be rejected and I have kept it at the end, because in consideration of the evident pains taken by the learned lawyer for the petitioner to place various decisions before me, I felt that it would be proper to deal with the various contentions of the learned lawyer for the petitioner as I have done in the preceding paragraphs. The last point on which the M.A. must be rejected is that in the O.A., revocation of the suspension and issuing of a direction to the departmental authorities to complete the disciplinary proceedings within a specific time-frame were put forth as alternative prayer. At the time of disposal of the O.A., the prayer for revocation of suspension was not pressed. The alternative prayer for fixing a time-frame for completion of the disciplinary proceeding was</p>	

27-8-97

Serial
No. of
OrderDate of
Order

Order with Signature

Office note as to
action (if any)
taken on order

pressed and accordingly a direction was issued to the departmental authorities and the O.A. was disposed of. In consideration of this, it would not be open to the petitioner to come and press for the other alternative prayer for revocation of the suspension through an M.A. as he has done in this case. For this, if he is so advised, the petitioner has to file another O.A.

12. In the result, therefore, I hold that M.A.No.370/97 is without any merit and the same is rejected.

Let copy of this order be given to the learned counsels for both sides.

(SOMNATH SOM)
VICE-CHAIRMAN