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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.39 of 2009
Cuttack, this the ~~07th~~ day of September, 2011

Alok Kumar Nayak Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? X
2. Whether it be circulated to all the Benches of the CAT or not? X


(A.K.PATNAIK)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A No. 39 of 2009

Cuttack, this the ~~07th~~ day of September, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Alok Kumar Nayak, aged about 37 years, Son of Late Ullash Chandra Nayak, Clerk (under suspension), Office of the Accountant General (A&E), Orissa, Bhubaneswar-751 001, presently residing in Qr.No.H-195, AG Colony, Unit-IV, Bhubaneswar-751 001.

.....Applicant

By legal practitioner: M/s. Ganeswar Rath, A.K.Mohanty,
S.Rath, B.K.Mohanty-3, Counsel.

-Versus-

1. Union of India represented by the Comptroller & Auditor General of India, 10, Bahadur Saha Zafar Marg, New Delhi-110 002.
2. The Sr. Dy. Accountant General (Admn.) Office of the Accountant General (A&E), Orissa, Bhubaneswar-751 001.
3. The Accountant General (A&E), Orissa, Bhubaneswar-751 001.

....Respondents


By legal practitioner: Mr.B.K.Mohapatra, ASC

ORDER


MR.C.R.MOHAPATRA, MEMBER (A):

The Applicant, while working as Clerk in the Office of the Accountant General (A&E), Orissa, Bhubaneswar, was appointed on deputation basis as Data Entry Operator in the higher scale in the same office w.e.f. 04-02-1999. For an alleged omission and commission, he along with two Section Officers of the same Office were placed under suspension w.e.f. 17.02.2005 and simultaneously, the Applicant was repatriated to his original post of Clerk. His order of suspension



✓  was periodically reviewed and extended from time to time. On 08.11.2006 his suspension period was extended upto 06.02.2007 and further review was conducted only on 12.2.2007 and order to that effect was issued on 12.2.2007 vide OOC No. 784. In terms of Rule (6) and (7) below Rule 10 of CCS (CC&A) Rules, 1965, as contended by the Applicant the extension of suspension order on 12.2.2007 was invalid in the eyes of law since it was not reviewed and issued before the expiry of the period of suspension and hence the applicant is deemed to have been reinstated in service w.e.f. 7.2.2007 onwards. Applicant submitted representation for issue of orders of his reinstatement in service w.e.f. 7.2.2007. As it was not considered he submitted appeal on 12.9.2008 and 28.12.2008. Alleging no action on his representation/appeal, he has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985. His prayer in this OA is to direct that the applicant is deemed to have been reinstated to service w.e.f. 07.02.2007 as his order of suspension had spent its force with effect from that date and directing payment of full salary retrospectively.

2. Respondents in their counter rebutted the contentions raised by the Applicant especially the stand taken by the Applicant that there was no timely review of the order of suspension. The Respondents contend that the applicant was initially suspended with



effect from 17.02.2005 and thereafter, his case has been reviewed from time to time. In regard to the specific allegation in this OA, the stand of the Respondents is that the Review Committee reviewed the case on 05.02.2007 and orders to that effect have been issued on 12.02.2007. Hence, Respondents while opposing the contention of the Applicant have prayed for dismissal of this OA.

3. In the rejoinder, the Applicant has pointed out some facts which have not been stated in the OA nor do they have any relevance in so far as deciding the present dispute as these pertain to Disciplinary Proceedings initiated against the Applicant. In regard to conducting timely review and extending the suspension of the applicant it has been stated that the applicant had asked photocopy of the minutes of the review committee under the RTI Act and the same was supplied to him on 10.2.2009 from which it transpires that minutes of the Review Committee were manufactured to legalize the illegality committed by the Respondents in keeping the applicant under suspension beyond the period without any review. ~~practically~~ ~~done~~. Hence he has prayed for the relief claimed in this OA.

4. Besides reiterating the stand taken by him in the OA that there was no recommendation of the Review Committee after expiry of the period from 07-02-2007 he has argued that non-communication of the order after recommendation of the Review Committee, if any,

cannot be brushed aside for granting the relief claimed by him. He has also argued that even if the Review Committee considered the extension of the suspension of the applicant there was no specific recommendation to allow the suspension of the applicant beyond the extended period of 180 days w.e.f. 7.2.2007. Hence by no stretch of imagination it can be said that there was a valid order of suspension/extension of the suspension of the applicant. As such, his stand is that he is entitled to the relief claimed in this OA.

On the other hand, this argument of the Applicant's counsel was strongly refuted by Mr. B.K.Mohapatra, Learned Additional Standing Counsel appearing for the Respondents. His contention is that the argument of the Learned Counsel for the Applicant is based on conjecture and surmises. He has contended that on each occasion further continuance or other wise of the order of suspension was placed before the Review Committee and on the recommendation of the Committee the suspension order of the applicant was extended from time to time well within time. This was also duly intimated to the Applicant. Hence, he has contended that this OA being devoid of any merit is liable to be dismissed.

5. In this context, after having heard the arguments advanced by the rival parties, we have perused the materials placed on record including the departmental file (No.Admn.I-16-76(M)) dealing

with the suspension of the applicant, produced by Learned ASC appearing for the Respondents.

Before proceeding to record our view on the above issue, it is worthwhile to quote the relevant provision of Rule 10 of the CCS (CC&A) Rules. It reads as under:

SUSPENSION

10. Suspension

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor - General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) With effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

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EXPLANATION - The period of forty-eight hours referred to in clause (b) of this subrule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(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.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding 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 Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by

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the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

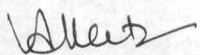
(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purpose and 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 be for a period exceeding one hundred and eighty days at a time.


(7) Notwithstanding anything contained in sub-rule (5), an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period ninety days unless it is extended after review, for a further period before the expiry of ninety days”.

6. From the facts and arguments advanced by Learned Counsel for the Applicant, we have to decide as to whether there has been review of the order of suspension within the stipulated period i.e. prior to 06-02-2007 and whether communication of the order beyond the period would invalidate the order of suspension. On perusal of the original file dealing with the suspension and review of suspension of the Applicant it is noticed that a note dated 05-02-2007 signed by the Senior Accounts Officer (Admn.) was submitted to the Review Committee constituted to review the suspension cases and thereafter minutes of the Review Committee were drawn. Though there is no date given by any of the Members of the said Committee which recommended to extend the suspension of the Applicant for a further period of 180 days, after the earlier extension which was valid upto 06-02-2007, subsequently vide OOC No.784 dated 12-02-2007 an order

was issued extending the suspension of the applicant for a further period of 180 days from 7th February, 2007. It is also seen from the Office note signed by Senior AO (A) and Senior DAG on 05-02-2007 that the office had prepared a note for review of the period of suspension. It, therefore, cannot be said that no review had taken place before expiry of the suspension period on 06-02-2007 though formal order extending the period of suspension was issued by the concerned officer on 12.02.2007. The mere fact that the Members of the Review Committee had not put date below their signatures cannot lend credence to the allegation that the papers relating to review have been manufactured. Incidentally, we may observe that the applicant raised the allegation that the report of the Review Committee was manufactured yet he did not make any of the Members of the said Committee as party.

7. For the reasons explained above, we hold that this OA being devoid of any merit stands dismissed. No costs.


(A.K.PATNAIK)
Member(Judl.)


(C.R.MOHAPATRA)
Member (Admn.)