

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.143/2009

Jodhpur, this the 22nd March, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Om Prakash Bansal S/o Late Shri Tulsi Ram Bansal, aged about 46 years, R/o Type-III Quarter, 1st Floor, Income Tax Colony, Shastrinagar, Bhilwara, at present employed on the post of LDC (under suspension) in the office of Additional Commissioner of Income Tax, Shastrinagar, Bhilwara (Raj).

.....**Applicant**

Mr.J.K.Mishra, counsel for applicant.

Vs.

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Additional Commissioner of Income Tax, Bhilwara Range, Bhilwara (Raj).
3. Shri Raj Pal Singh, Additional Commissioner of Income Tax, Bhilwara Range, Bhilwara (Raj).
4. Commissioner of Income Tax, Jaipur Road, Ajmer.

...**Respondents**

Mr. Varun Gupta, counsel for respondents.

ORDER
Per Justice K.C. Joshi, Member (J)

The short question involved in this OA is that whether non-compliance of the Sub-Rule (6) and (7) of the Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules (for short called "CCS Rules") makes the suspension of an employee of the Central Government invalid, and entitlement for full pay and allowances by treating such period, as period spent on duty.

2. Facts of the case lie in a narrow compass.

3. The applicant namely Om Prakash Bansal is an employee of the Central Government, working in the office of Additional Commissioner of Income Tax, Bhilwara. By order dated 29.01.2009, he was suspended from the service by taking recourse to Rule 10 of CCS Rules by the respondent department. According to the applicant, the respondents failed on their part to pass any order of extension or revocation of the suspension order dated 29.01.2009 within 90 days from the date its passing, as provided under Sub Rule (6) and (7) of Rule 10 of CCS Rules, and hence order of suspension dated 29.01.2009 became inoperative and lost its efficacy on the expiry of 90 days from the date of its issuance. The applicant by way of this application sought the following relief(s):-

- "(i) That this Hon'ble Tribunal shall be pleased to declare the period of suspension in respect of application from 29.04.2009 and onwards as invalid as per Rule 10 (6) and (7) of the Rules. Consequently, the respondents may be directed to treat the period of service of applicant from 29.04.2009 and onwards as on duty for all purposes and allow all the consequential benefits including pay and allowances and make payment of arrears thereof along with interest at market rate.**
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.**
- (iii)That the costs of this application may be awarded."**

4. In the counter filed by the respondents, the facts of the suspension of the applicant dated 29.01.2009 are admitted, but it has been averred that Review Committee had reviewed the case of the applicant within 90 days. Not only this, a further review again within further 90 days was conducted by the Committee on 20.07.2009. The copy of the order dated 20.07.2009 has been filed with the reply as Annexure-A/17 and it is further averred that

as the review have been undertaken in time, therefore, the suspension order cannot be set aside or can be said to be invalid.

5. Heard both the counsels. Counsel for the applicant contended that although the respondents by way of reply or counter contended that the review was undertaken within 90 days but only the Minutes of Meeting dated 20.07.2009 have been annexed with the reply and from the record itself it cannot be said that the case of the applicant was reviewed within 90 days from the date of issuance of the order of suspension dated 29.01.2009.

6. Learned counsel for the respondents while referring to Rule 10 of the CCS Rules, contended that since the Reviewing Authority had taken up the case of the applicant for its review within 90 days from the date of the order and in furtherance thereof had also taken a decision on 20.07.2009 to extend its period beyond 90 days and hence the same should have been held as ensuring full compliance of Rules 10 (6) (7) of the Rules. Learned counsel urged that merely because the order of extension was not passed or not communicated to the applicant would not invalidate their action nor such lapse on their part would make the suspension order bad in law after 90 days of its passing. According to learned counsel for the respondents, it was not necessary to communicate extension order to the applicant.

7. We have considered the rival contention made by both the parties and perused the record of the case. Rule 10 of CCS rules

which is relevant for the disposal of this case reads as under:

"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.*

EXPLANATION - The period of forty-eight hours referred to in clause (b) of this sub-rule 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) *Subject to the provisions contained in sub-rule (7), 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 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 effective date 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) *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 of ninety days unless it is extended after review, for a further period before the expiry of ninety days :*

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later."

8. A plain reading of Rule 10(1) and (2) would go to show that Rule 10 recognises two types of suspension order. One is passed under sub Rule (1) whereas other falls in sub Rule (2). So far as the order falling in sub Rule (1) is concerned, it is passed in its actuality in the shape of "an order in writing" by the authority concerned whereas the other which falls in sub Rule (2) is in the nature of what is called "deemed order". In other words, in cases falling in sub Rule (2), no order in writing as such is required to be passed by an authority and all that is required in such case is to see as to whether such "deeming order" has come into existence or not and to see this, it is necessary to verify as a fact as to whether

the event specified in sub Rule (2) (a) or (b) has taken place in the case of delinquent employee or not? The day, the event specified in Clause (a) or (b) of sub Rule (2) occurs in case of any employee then he is deemed to have suffered the suspension order from the date of its occurrence. Such order when come into operation becomes an order at par with the order passed in sub-rule (1) and carries with it the same effect as if passed under sub-rule (1).

9. Sub-rule (6) provides a procedure to find out as to whether an order once passed either under sub Rule (1) or (2) is to be extended or revoked. In either case, the matter is required to be placed before the Reviewing Authority within 90 days from the date of its issuance. In other words, it is obligatory upon the Reviewing authority to decide within 90 days as to whether a case exists in their discretion to extend the period of suspension order beyond the period of 90 days or not? In either case, the decision on such issue has got to be taken by the reviewing authority specified in this behalf within 90 days else the consequence of not taking any decision and not communicating to employee is provided in sub-rule (7).

10. Sub-rule 7 provides a life for both the suspension orders i.e. the one passed under sub-rule (1) and other in sub-rule (2). It is 90 days for both. In other words, once a suspension order is passed whether under Rule (1) or(2), both survive only for 90 days from the date they come into operation. However, in case, if the reviewing authority for some reasons consider the suspension order to be further extended beyond the period of 90 days, then as

observed supra the matter regarding its extension or revocation is required to be placed before the Review Committee as provided in Rule 6 to enable it to pass appropriate orders. So far as deemed suspension is concerned, it has to be further considered by committee keeping in view the requirement of proviso to Rule 6.

11. Coming to the facts of this case, it appears that no documentary proof has been produced by the respondents regarding the reviewing the case of the applicant within 90 days, therefore, it appears evident that the reviewing authority failed to pass any order of extension as provided in sub Rule (6) within 90 days. Inasmuch as, no order extending the period of suspension order was sent to the applicant within 90 days from the date of its issuance i.e. 29.01.2009. As a result of this lapse on the part of reviewing authority, the suspension order came to an end on the expiry of 90 days as provided in sub-rule 7.

12. The submission of learned counsel for the respondents that because of subsequent review of the matter, lapse of 90 days will legalize the extension, does not hold any force.

13. In our view compliance of Rule is complete only when first decision is taken within 90 days and in consequence thereof its outcome, be that of extending its period or revocation, is communicated to delinquent employee.

14. Indeed, when the order of suspension once passed in sub Rule (1) is required to be served on the delinquent employee so as to make it operational against him, then as a necessary corollary,

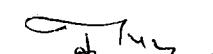
the order of extension or revocation once passed under sub Rule (6) and (7) is also required to be communicated to the delinquent employee before the expiry of 90 days. It is only then the life of original suspension order gets validly extended by further period as specified in extension order or till 180 days is known to employee. In other words, the communication of extension or its revocation to the delinquent employee is not an empty formality but is a mandatory requirement of the sub-rule 6 and 7 which is a inbuilt requirement provided in sub-rule 6 and 7. If delinquent employee is not informed of the extension of his suspension order then a right accrues in his favour on the expiry of 90 days to get benefit of the consequence provided in sub Rule 7. A statutory consequence provided in sub Rule 7 can be avoided only by passing an order of extension and its communication to the delinquent employee within 90 days of the order of suspension else the consequence provided under Rule 7 comes into play and ensures to the benefit of an employee.

15. Learned Counsel for the respondents then next contended that if the respondents have a power to suspend the delinquent employee then any order passed even after expiry of 90 days would also be legal and proper. There lies a fallacy in this submission. In a case of extension, if passed within 90 days the original suspension order continues to remain in operation even after expiry of 90 days without there being any break whereas in a case where the order of extension is passed after 90 days, then such order cannot be construed as an order extending the period of original suspension order but becomes a fresh order suspension

falling in sub-rule (1) of Rule 10. Both eventualities thus provides for different consequences so far as parties are concerned. In other words, in the case of former eventuality, the position of original suspension order remains the same as what it was prior to expiry of 90 days and subsequent thereto also whereas in the case of later, the suspension order comes to an end on 91st day and the status of order becomes that of a fresh order of suspension which comes into operation from the date of its issuance. This is how we answer the submission of learned counsel for the respondents.

16. In view of the forgoing discussions, the OA is liable to be allowed. Accordingly, the OA is allowed and it is hereby declared that the period of suspension in respect of application from 29.04.2009 and onwards is valid as per Rule 10 (6) and (7) of the CCS Rules. Consequently, the respondents are directed to treat the period of service of applicant from 29.04.2009 and onwards as on duty for all purposes and applicant is allowed all the consequential benefits including pay and allowances. Respondents are directed to make payment of arrears of salary and other benefits within four months from the date of receipt of a copy of this order. So far as interest at market rate is concerned, looking to the entire facts of the case and the fact that Department enquiry is pending against the applicant, we do not deem it fit to allow the interest at the market rate.


[Meenakshi Hooja]
Administrative Member


[Justice K.C. Joshi]
Judicial Member