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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O. A. No. 574/Jodhpur/2011

Date of decision: 09.08.2012

CORAM :

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

Jethmal Sharma S/o Shri Ambalal Sharma,
aged about 47
years resident of Village and Post Phalodi,
District Jodhpur,
presently working on the post of
Postal Assistant in the Shastri
Nagar Post Office, Jodhpur, Raj.

.....Applicant

[Mr. S.K.Malik,Advocate]

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Director, Postal Services, Rajasthan Western Region, Jodhpur.
3. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

.....Respondents

[Mr.Ankur Mathur for Mr. Vinit Mathur, Advocate]

ORDER

[PER HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER]

We have heard the learned counsel for the parties.

2. The above application is filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the legality and propriety of the orders Annex.A/1 to Annex.A/4 mentioned in the relief. Further relief of direction to the respondents to pay all the allowances due to the applicant along with interest @ 12% per annum.
3. After hearing the counsel from either side, it is an admitted fact that the applicant was suspended w.e.f. 04.09.2009 by



invoking Sub Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965. It is also admitted that the review committee recommended on 16.12.2009 and 14.12.2010 before completion of three months and six months respectively. But, no order has been passed within the period of 90 days as required under the rules. The learned counsel for the applicant relied upon the judgment of this Tribunal in **OA No. 225/2010 and 227/2010 decided on 25.01.2011 in Ram Singh and Ramu Lal's case** against the Union of India and Ors. Para 12 of the said judgment which is relevant is extracted hereunder :-

"12. I have perused the decision of the Hon'ble Apex Court in the case of Union of India and Others vs. Dipak Mali, (supra), which supports the contention of the learned advocate of the applicants that the suspension orders become invalid after expiry of period of 90 days if the same is not extended within a period of 90 days of issuance of the suspension order. On careful reading of sub-rule (6) and (7) of Rule 10 of CCS (CCA) Rules, 1965 I am of the view that under law it is mandatory for the competent authority to issue an office order for extension of period of suspension within a period of 90 days after recommendation for extension of period of suspension by the review committee, but admittedly in the present cases, although the review committee recommended for extension of period of suspension of the applicants within the period of 90 days but the competent authority failed to issue any office order extending the period of suspension of the applicants after review within a period of 90 days, therefore, I am of the view that after expiry of the period of 90 days, the orders of suspension of the applicants issued by the competent authority became invalid after the expiry of the period of 90 days from the date of suspension. My view finds support from the fact that when the respondents realized their mistake, they issued office orders in this regard in respect to both the applicants much after the expiry of the period of 90 days from the date of suspension. The office order in respect to Ram Singh is dated 03.09.2010, whereas the order in respect to Ranu Lal is also dated 03.09.2010. However, I am of the view that since both the orders were issued much after the expiry of the period of 90 days from the date of order of suspension, as such these orders cannot validate the original orders of suspension, which have become invalid in the eyes of law."

4. The counsel on either side admits that the said judgment has been upheld by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in D.B.Civil Writ Petition No. 3777/2011 decided on 13.08.2011. Considering the submission made from either side, it is evident that the respondents though they have



reviewed, no orders have been passed. The said judgment is squarely applicable to the present case.

5. The learned counsel for the respondents vehemently opposed the O.A. on the ground that review taken by the reviewing authority is sustainable in the eye of law but no orders have been issued which has been referred in the impugned order. We have considered the objection taken by the learned counsel for the respondents.

6. It has been argued emphatically by the learned counsel for the applicant that as per the decision in the Dipak Mali's case which has been cited in OA No. 225 and 227 of 2010 (supra) and have been subsequently affirmed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur implies that if no orders were passed extending the suspension within a period of 90 days the entire order of suspension is bad and ab initio void and seems to have been affected from the date of beginning. This has been opposed by the learned counsel for the respondents who is of the opinion that in such eventuality that an order for extension is not passed beyond the period of 90 days, the maximum effect that he will have is that it will cease to be in force beyond 90 days period. But, the applicant's first period of suspension of 90 days shall be hold good and binding.

7. In order to conclude these two positions it is necessary to look at Section 10 (6) and 10 (7) which reads as under :

"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 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-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."

8. It is to be mentioned that neither Sub Section 10 (6) nor 10 (7) can be viewed in isolation and are to be necessarily read conjointly and constructively. Sub Section 6 of Section 10 clearly provides that the order of suspension made under this rule shall be reviewed by the authority which is competent to modify or revoke suspension on the recommendation of the Review Committee. Sub Section (9) provides that an order of suspension made under sub-rule (1) or (2) shall not be valid after a period of ninety days unless it is extended after review, for a further period before expiry of ninety days.

9. Sub Section (6) also provides the modality how this is to be done for which it prescribes for constituting a review committee for this purpose. The other requirements would be that the decision of review committee would be taken in the existing circumstances and new facts as have arisen if any and on the basis thereof he will pass the order.

10. By a simple logic it is to be pointed out that how a suspension takes place. There is no doubt over the question that a suspension order passed under Sub Section (1) or Sub Section (2) has a period first binding and good within the period of 90 days. Sub Section 10(6) and 10 (7) cover the period beyond 90 days and we are clearly of the opinion that no retrospective effect can be given to that part of suspension covering the first 90 days and thus we agree with the submission of the learned counsel for the respondents. Therefore, we disagree with the arguments put forward by the learned counsel for the applicant.

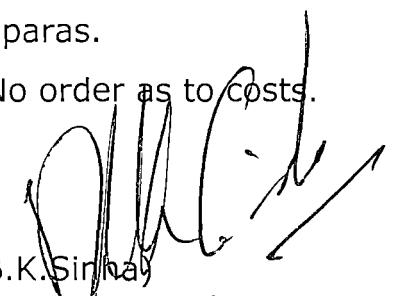


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11. For the foregoing reasons, we are of the considered opinion that the impugned orders Annex.A/2 to A/4 are not sustainable in the eyes of law. Accordingly, the same are quashed. The applicant is entitled to pay and allowances for the period covered subsequent to 90 days of the order of suspension till the date of payment without interest.

12. We dispose of this OA to the extent as observed in the earlier paras.

13. No order as to costs.


(B.K. Srinivas)

Administrative Member


(G. Shanthappa)
28/8/12
Judicial Member

jrm

Re: S. Curiale
06/11/12

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6/11/12