

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.150/2011

Jodhpur this the 25th day of September, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)

Karni Singh Rathore S/o Shri Bhikh Singh, aged about 59 years, resident of Indira Colony, back side of Roadways Depot, Bikaner, at present employed on the post of PA (SBCO) Nagaur HO, Nagaur.

.....Applicant

By Advocate: Shri J.K.Mishra

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Communication and Information Technology, Deptt. of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur
3. The Post Master General, Rajasthan Western Region, Jodhpur
4. Superintendent of Post Offices, Bikaner Division, Bikaner.

.....Respondents

By Advocate : Mr. Aditya Singhi, on behalf of Smt. K.Parveen

ORDER (Oral)

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

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:-

- (i) *That impugned order dt. 17.4.2010 (Annexure-A1), passed by 4th respondent and order dated 23/24.8.2010, Annexure A/2, passed by 3rd respondent, may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits treating the suspension period as spent on duty for all purposes.*

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- (ii) *That the respondents may be directed to release the due benefits of 3rd MACP to the applicant as per order dated 19.4.2010 (Annexure A/7) forthwith and the due arrears may be ordered to be paid along with interest at the market rate.*
- (iii) *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.*
- (iv) *That costs of this application may be awarded."*

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed as LDC on 5.3.1975. He was promoted to the post of UDC and enjoyed benefits of Time Bound one Promotion and Biennial Cadre Review scheme on completing 16 and 26 years of service. The applicant was placed under suspension vide order dated 17.4.2010 but in this order neither any reason nor any reference to any of the sub-clause of Rule 10(1) of the CCS (CCA) Rules has been indicated. It is further stated that at the relevant time no disciplinary proceedings were pending as no chargesheet was issued to him. Simultaneously, the applicant was transferred vide order dated 19.4.2010 without revocation of his suspension order. Then he preferred appeal against the suspension and transfer vide letter dated 5.5.2010. He also apprised the 3rd respondent regarding final report by Police, concluding that the applicant was involved in the incident, but still the learned CJM took cognizance against the applicant and learned Sessions Judge, Bikaner granted stay order on 14.7.2010 on the order of cognizance. Respondent No.3 in appeal passed order dated 23/24.8.2010 making mention that applicant's suspension was revoked vide letter dated 23.9.2010 but the same was not received by the applicant. It is further

stated by the applicant that one could be placed under suspension when a disciplinary proceedings is contemplated of pending and none of the conditions under Rule 10 of CCS (CCA) Rules prevailing in the instant case and suspension of the applicant has not been reviewed. Further stated that he was granted benefit of 3rd MACP on completion of 30 years service w.e.f. 19.2.2008 vide order dated 19.4.2010. His name was placed at Sl.No.46, but the same was not given effect to on the ground that he was under suspension. According to the applicant, the said benefit was accrued to him on 1.9.2008 and at that time there was nothing against him so as to obstruct the release of the same. The so called suspension order, disciplinary proceedings and criminal cases mentioned are subsequent events and would not have any effect on the accrued/due benefits admissible during the previous period. Therefore, aggrieved with the action of the respondents, the applicant has filed this OA, praying for the reliefs as mentioned in para-1 above.

3. By way of filing reply to the OA, the respondents have denied the claim of the applicant. The respondents have submitted that the applicant was placed under suspension under Rule 10(1) of CCS (CCA) Rules, 1965 for the reason that the disciplinary proceedings were contemplated due to his involvement in a criminal case. It is further stated that there is no provision under the rules to elaborate the reasons of suspension in the order placing under suspension. The applicant has allegedly beaten an official of Inspector cadre and disciplinary proceedings for this misconduct was

contemplated against him, thus there were sufficient ground for placing the applicant under suspension. The respondents have further submitted that there is no restriction in the rules for change of headquarters of an official who is under suspension. Regarding taking cognizance against him by the Court of learned chief Judicial Magistrate and granting stay, the respondents submitted that no conclusion can be drawn about guilt or otherwise of the applicant on the basis of stay granted by the concerned court. So far as review of suspension is concerned, the respondents have stated that the suspension review committee meeting was held on 23.9.2010 and passed order to revoke the suspension w.e.f. 24.9.2010 and order was delivered to the applicant under receipt on 25.9.2010. As far as the date of memo for revising his posting on revocation is concerned, it is submitted that the memo was written erroneously as 23/24 August 10 instead of 23/24 September 10 due to typographical mistake. Actually, the meeting of the suspension committee was held on 23.9.2010. The respondents have further stated that orders regarding MACP was reviewed on 20.4.2010 and at that time the applicant was under suspension w.e.f. 17.4.2010 and a criminal case was under investigation against him and disciplinary case was also contemplated against him. It has been clearly mentioned in para (4) and para (5) of the MACP memo dated 29.4.2010 that placement of the official to the next higher grade is subject to the condition that no disciplinary/vigilance case is pending/contemplated against the official and the official against whom any punishment is current, he should not be granted financial up-gradation to the next higher

grade before expiry of currency of punishment. Therefore, the applicant is not entitled to any relief.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA to which the respondents have filed additional affidavit.

5. Heard both the parties. Counsel for the applicant contended that the applicant was suspended vide order dated 17.04.2010 by Superintendent of Post Office, Bikaner and although as per the reply filed by the respondent his case was reviewed on 09.07.2010 and the minutes of the same were also drawn vide Annexure-R/3, but the applicant was not communicated any result of the minutes of the meeting dated 09.07.2010; therefore his suspension order beyond 90 days is illegal in the light of the judgment of the Hon'ble Rajasthan High Court passed in DB Civil Writ Petition No.3777/2011 (Union of India vs. Ram Singh) in which the Hon'ble High Court while discussing the provisions of Rule 10 of CCS Rules observed that Rule 10 recognizes 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 or in other words, in cases falling in sub Rule (2), no order in writing as such is required to be passed by any 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.

6. The sub-rule (6) provides a procedure to find out as to whether an order once passed either under sub-rule (1) or (12) 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).

7. The sub-rule 7 provides a life for both the suspension orders i.e. one passed under sub-rule (1) and other in sub-rule (2). It is for 90 days to both the cases. 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 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. It is a settled rule of interpretation that when the

language of rule is plain and unambiguous, then words used therein must be given their normal and literal meaning. So is the case here when we read Rule-10.

8. Counsel for the applicant contended that in the absence of any communication to the applicant, it cannot be said that any order has been passed for extension of suspension period because the Hon'ble Rajasthan High Court in the above case held that compliance of the Rule-10 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. In this case, the delinquent officer has not been communicated about the result of the meeting of the Reviewing Committee, therefore, Annexure-R/3 in itself cannot be said to be an order of extension of the suspension period.

9. Per contra, counsel for the respondents contended that the applicant has been informed about the extension of the suspension period.

10. We have perused the record. Although the respondent department has annexed Annexure-R/3 in support of hi submissions, but no such order has been placed by the respondents, which shows that the applicant has been informed about the suspension period. We have also considered the judgment of the Hon'ble Rajasthan High Court passed in the case of Union of India & ors. vs. Ram Singh (supra) which clearly laid down that in case of compliance of sub-rule (6) of order 10, it is necessary to inform the

delinquent employees about the result of the proceedings. In the absence of any documents produced by the respondents, it cannot be said that the delinquent employee has been informed by the respondent department about the extension of suspension period.

11. Accordingly, in our considered view the applicant is entitled to get the salary after the lapse of 90 days' suspension period (i.e. 17.04.2010 to 16.07.2010) from 17.07.2010 to 24.09.2010 i.e. the date of expiry of 90 days to the date of revocation of the suspension order, as per rules. Further, as the departmental enquiry is pending therefore about these 90 days suspension period's salary (i.e. 17.04.2010 to 16.07.2010), the concerned authority shall decide it after completion of the enquiry.

12. So far as the second relief is concerned, counsel for the applicant submits that 3rd MACP has already been granted to the applicant. Therefore there is no need to discuss about this issue.

13. Accordingly, the OA is allowed as stated above with no order as to costs.


[Meenakshi Hooja]
Administrative Member

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[Justice K.C. Joshi]
Judicial Member

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