

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 290/00041/14

Jodhpur this the 02nd January, 2015

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Judl. Member

Abhendra Bhardwaj S/o Late Mahavir Prasad, aged about 60 years, b/c Brahaman, R/o 11/70 Mukta Prasad Colony, Bikaner District – Bikaner, (Superannuated on 31.10.2013 from service (Postal Department) worked as SPM Chhatargarh, Bikaner).

.....Applicant

(By advocate : Mr S.P. Singh)

Versus

1. Union of India through Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur-302 007.
3. The Director, O/o Post Master General, Western Region, Jodhpur.
4. Superintendent of Post Offices, Bikaner Division, Bikaner.

.....Respondents

(By Advocate : Ms K. Parveen)

ORDER (Oral)

By way of this application, the applicant has challenged the action of the respondents by which the respondents have not paid the pay and allowances of suspension period from the date of suspension i.e. 16.08.2012 to 31.10.2013 on superannuation.

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2. The brief facts of the case, as averred by the applicant, are that the applicant while posted at Chattargarh Post Office as SPM was issued charge sheets under Rule 16 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 hereinafter mentioned as CCS CCA Rules, 1965 and was awarded minor punishment. The applicant was placed under suspension on 16.08.2012 and the competent authority of respondent-department passed an order dated 11.05.2013 in which it has been said that the Review Committee met on 07.11.2012 and suspension of the applicant was extended for a period of 180 days w.e.f. 15.11.2012 but did not communicate the same to the applicant. Therefore, the suspension period is invalid if it is not communicated to the applicant under sub rule (6) and (7) of Rule 10 of CCS CCA Rules, 1965. It has also been averred that if the official is suspended and the Disciplinary Authority has awarded minor punishment then suspension period should be treated as duty for all purposes in accordance with DoPT OM dated 03.12.1985. The respondent-department vide letter dated 11.05.2013 informed the applicant that his suspension is extended w.e.f. 15.11.2012 which infers that the respondent did not pass the extension order of suspension period before expiry of 90 days, which is mandatory by virtue of sub rule (6) & (7) of Rule 10 of CCS CCA Rules, 1965. Therefore, being aggrieved of the illegal and arbitrary action of the respondents, the present OA has been filed by the applicant seeking following relief (s) :

- (i) That impugned order vide Memo No. F/Misc/Chattargarh/12-13 dated 16.08.2012 (Annexure A/1) and Memo No. F/Misc/Chattargarh/12-13 dated 11.05.2013 (Annexure A/2) forwarded by Respondent No. 4 may kindly be declared illegal, unjust and deserved to be quashed and set aside.
- (ii) By writ, order or direction the respondent may kindly be directed to treat the intervening period from 16.08.2012 to 31.10.2012 as duty and pay all consequential benefits to the applicant.
- (iii) That the impugned order vide Memo No. F/Mis/Chattargarh/12-13 dated 06.08.2013 (Annexure A/3) forwarded by Respondent No. 4 may kindly be declared illegal, unjust and deserves to be quashed and set aside.

- (iv) 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.
- (v) That the costs of this application may be awarded to the applicant.

3. By way of reply, the respondents have denied the claim of the applicant and further averred that due to gravity of offence committed by the applicant, he was placed under suspension w.e.f. 16.08.2012 (A/N) for 90 days due to misappropriation of Government money to the tune of Rs 1,58,360.85 vide memo dated 16.08.2012. Thereafter, a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was served upon the applicant on 12.10.2013 and the departmental case is still pending for examination of the prosecution witnesses and the fact regarding issuance of charge sheet under Rule 16 of CCS (CCA) Rules, 1965 has no relevance with the case of suspension and it is a separate case with the history that the applicant had not submitted copy of SO Account for the month of May, 2008 to August, 2008 and from January, 2009 to July, 2012, which concluded in stoppage of next one increment for three months without cumulative effect vide Memo dated 04.05.2013. The applicant moved an application on 16.05.2013 stating therein that he was placed under suspension on 16.08.2012 but no charge sheet has been issued to him, therefore, he requested to increase subsistence allowance which substantiates the fact that both disciplinary proceedings have been conducted separately. The respondents have further averred that the applicant was placed under suspension w.e.f. 16.08.2012 (A/N) and the period of 90 days completed on 14.11.2012 and the suspension of the applicant was reviewed on 07.11.2012 by the Suspension Review Committee. The suspension of the applicant was further extended for a period of 180 days w.e.f. 15.11.2012 and the same was communicated to the official vide OM dated 09.11.2012 and it was delivered to him on 10.11.2012. The suspension of the applicant was further reviewed by the

Suspension Review Committee on 11.05.2013 and recommended to continue suspension of the applicant for a period of 90 days w.e.f. 14.05.2013 and the intimation regarding review of suspension and extension of the same has been sent to the applicant vide office memo dated 11.05.2013 and it has been delivered to the official on 13.05.2013. The suspension of the applicant was further reviewed by the Suspension Review Committee on 05.08.2013 and the Committee recommended extension of suspension period for 81 days from 12.08.2013 to 31.10.2013 vide OM dated 06.08.2013 and the same was delivered to the applicant on 08.08.2013. The applicant has retired from service after attaining the age of superannuation on 31.10.2013. The respondents have averred that the facts of D.B.C.W.P. No. 3777 of 2011 decided by Hon'ble Rajasthan High Court on 13.09.2011 are not applicable in the present case and the facts mentioned by the applicant are also vague, baseless and misleading, therefore, prayed to dismiss the OA.

4. Heard both the parties. Counsel for applicant contended that the applicant has been served the charge sheet after lapse of one year of the alleged misconduct. The respondent-department passed suspension order on 16.08.2012 but did not pass any order on expiry of 90 days in accordance with law, thus, the suspension order is invalid by virtue of sub rule (6) & (7) of Rule 10 of CCS (CCA) Rules, 1965. He further contended that suspension period is required to be extended or revoked before expiry of 90 days on the recommendation of review committee but the review committee did not pass any order within stipulated period, therefore, the order for further extension of suspension period for 6 months is illegal. Counsel for applicant further contended that it is settled principle of law that period of suspension is to be treated as duty if only minor

penalty is imposed. Therefore, the applicant is entitled for pay and allowance of the intervening period from 16.08.2012 to 31.10.2013.

5. Per contra, counsel for respondents vehemently argued that no case is made out in favour of the applicant for interference by this Tribunal with the orders of respondent-department as the applicant has not sought any relief for salary of the above period and he only prayed for regularization of the suspension period as duty for all purposes.

6. As the case of the applicant that his suspension was not reviewed within 90 days is not made out as per Annexs. R/6, R/7 and R/8 submitted by the respondents which dispute the fact stated by the applicant, therefore, looking to the entire facts and circumstances of the case, I deem it fit to dispose of this OA with certain directions.

7. Accordingly, OA is disposed of with the direction to the applicant to file a representation before competent authority within 15 days from the date of receipt of this order and thereafter the competent authority shall pass an order as per law within 3 months from the date of receipt of such representation keeping in view DoPT OM dated 11012/4/2003-Estt (A) dated 07.01.2004. There shall be no order as to costs.



(JUSTICE K.C.JOSHI)
Judicial Member

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