

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 535 OF 2009

...*THURSDAY*..., this the 19th day of November, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

S. Subashchandran,
Sorting Assistant (BCR)(Under Suspension),
Head Record Office, RMS "EK" Division,
Kochi - 682 016, residing at "Souhrada Nilayam",
Parambithara Road, Panampilly Nagar P.O.,
Kochi - 682 036.

... Applicant

(By Advocate Mr. O.V. Radhakrishnan, Sr. with
Advocate Ms. Rekha Vasudevan)

versus

1. Superintendent,
Railway Mail Service (RMS),
"EK Division, Ernakulam,
Kochi - 682 011.
2. Director of Postal Services,
Office of the Postmaster General,
Central Region, Kochi - 682 018.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Union of India, rep. by its Secretary,
Ministry of Communications,
New Delhi.

... Respondents

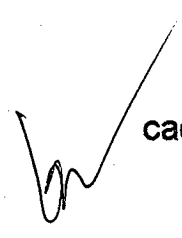
(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 16.11.2009, the Tribunal
on ...19-11-2009... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, initially recruited as sorter in 1969, and now in the
cadre of Sorting Assistant (BCR) under the Head Record Office, RMS "EK"



Division, Ernakulam, was placed under suspension under Rule 10 of the CCS (CC&A) Rules as "a disciplinary proceeding has been contemplated" against him, vide order dated 29th October 2007. Annexure A-1 refers. The suspension was from 31st October, 2007. The applicant has been afforded necessary subsistence allowance vide Annexure A-2. The initial period of ninety days of suspension was to expire on 29th January 2008, unless a review was held on time and recommended continuation of suspension. Vide Annexure A-3, the suspension was reviewed by a Review Committee which recommended to keep the applicant under continued suspension for a further period of 180 days w.e.f. 29-01-2008. The period of 180 days was to expire on 27th July 2008 and the respondents have, vide Annexure A-4 communicated to the applicant that the review committee reviewed the case of the applicant on 04-07-2008 and recommended to continue the suspension for a further period of 180 days w.e.f. 27-07-2008. Again the review committee considered the case of the applicant and on its recommendation, the period of suspension was further extended from 23-01-2009 for a period of 180 days, vide Annexure A-5. The extended period of suspension by 180 days was to expire on 22-07-2009. Before the said expiry date, the review committee once again considered the case of the applicant on 15-07-2009 and recommended continuation of suspension for a further period of 180 days, w.e.f. 22-07-2009. As the applicant was to superannuate w.e.f. 31-12-2009, he had penned a representation vide Annexure A-6 to the appellate authority. The first respondent, vide Annexure A-7 issued an addendum stating that the the applicant be placed under suspension for the period from 22-07-2009 to 31-12-2009.

2.

Respondent No. 4 also appointed an ad hoc Disciplinary authority

vide order dated 5th January 2009 for the reason that the present incumbent who otherwise would function as Disciplinary authority happens to be lower in rank than the initial appointing authority of the applicant. Annexure A-8 refers.

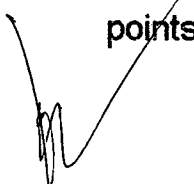
3. Till the time of the filing of the O.A. no charge sheet was issued against the applicant for any alleged misconduct, on the contemplation of which the applicant has been kept under suspension since 31st October, 2007.

4. The applicant has filed this O.A. challenging the order of suspension, the order extending the period of suspension and the order appointing the ad hoc disciplinary authority, i.e. Annexure A-1 to A-5, A-7 and A-8.

5. Though as early as 10th August, 2009, notice was issued, no counter could be filed by the respondents. Of course, there has been a change in the Senior Central Government Standing Counsel, on whose request, two weeks' time was given vide order dated 19th October 2009 and the respondents were directed to produce the relevant records on the next date of hearing, scheduled on 6th November 2009.

6. Though the Senior Central Government Standing Counsel could receive the para-wise comments, no counter could be filed on the date scheduled. However, copy of the Minutes of the Review Committee have been made available for our perusal.

7. The facts being not in dispute, the issue related only to the legal points on the subject. Hence, keeping in view the fact that the applicant is due



for superannuation w.e.f. 31-12-2009, which justified the need to take up the case for final hearing, the OA was heard.

8. Senior Counsel appearing on behalf of the applicant submitted that rules are clear on the following points:-

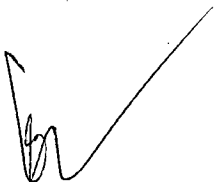
(a) **Circumstances under which it would be appropriate to place a Government servant under suspension.** In this regard, the senior counsel referred to annexure A-9 which inter alia gives out the circumstances, which include the following:-

(i) Cases where continuance in office of the Government Servant will prejudice the investigation, trial or any inquiry (eg., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government Servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) Where the continuance in office of the Government Servant will be against the wider public interest other than those covered by (i) and (ii) such as there is a public scandal and it is necessary to place the Government Servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where allegations have been made against the Government Servant and the preliminary inquiry has revealed that a prima facie case is made out which would



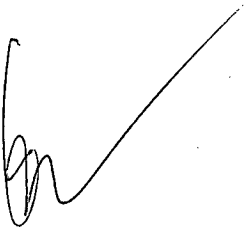
justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service."

Note (b) of the order at Annexure A-9 also explains certain types of misdemeanor where suspension may be desirable in the above mentioned four circumstances and the same are as under:-

- (i) any offence or conduct involving moral turpitude;
- (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official power for personal gain;
- (iii) Serious negligence and dereliction of duty resulting in considerable loss to Government;
- (iv) desertion of duty;
- (v) refusal or deliberate failure to carry out written orders of superior officers.

(b) **Para 3 of order dated 7th September, 1965 (Annexure A-10), wherein it has been stipulated as under:-**

"3. It has, therefore, been decided that in cases of officers under suspension, the investigation should be completed and a charge sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officer in cases of departmental proceedings within six months



as a rule. If the investigation is likely to take more time, it would be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence, etc., or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order."

(c) O.M. dated 14th September 1978

(Annexure A11): In this O.M., need to observe scrupulously the time limits laid down with regard to suspension of officials has been reiterated.

9. In addition, the senior counsel referred to the decision of the Government of India issued on 7th January 2004 which stipulates as under:-

"Without prejudice to the foregoing, if the officer has been under suspension for one year without any charges being filed in a court of law or no charge memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in Police/Judicial custody or is accused of a serious crime or a matter involving national security, the review committee may recommend the continuation of the suspension of the officer concerned."

10. The senior counsel had referred to the following decisions in support of his case:-

(a) 1987 (4) SCC 328

(b) 1994 (2) KLT 162

(c) 1967 SLR 519



11. Senior Central Government Standing Counsel for the respondent submitted that the applicant's suspension falls under the provisions of item (iv) of order dated 22-10-1964 at Annexure A-9. His continuation of suspension is as per the recommendation of the Review Committee, which considered periodically within the time limit prescribed and on the ground that disciplinary action was pending, recommended the suspension. And the applicant shall be kept under suspension till 31st December, 2009, when he would superannuate. It has also been informed that charge sheet had been issued on 05-10-2009. Senior Counsel has also submitted that the applicant has been involved in a fraudulent case wherein, without verifying the credit, he had accepted articles bearing franking machine impressions licensed to use by a particular concern, for a total of over one lakh of rupees, while the credit amount in the account of the party was just Rs.15000/- and thus there has been a loss caused to the department to the tune of over Rs.94000/-. As regards delay in initiating the proceedings, it has been submitted that since departmental inquiry was underway, issue of charge sheet could be possible only on the conclusion of the circle level inquiry. All these aspects have been examined by the review committee which recommended continuance of the suspension of the applicant on different occasions. The senior counsel had also made available a copy of the para-wise comments received by him from the department (copy not furnished to the opposite side) wherein it has been asserted that the Apex Court in the case of Addl. Supdt. Of Police Vs T. Natarajan (1999) SCC (L&S) 646 has held that mere delay in initiating proceedings would not vitiate inquiry unless the delay results in prejudice to the delinquent officer. In the instant case, according to the department, there has been no prejudice that would be caused.



12. Arguments were heard and documents perused. The relief sought in this case is limited to quashing and setting aside of orders at Annexure A1, A2 to A5 and A7, which relate to suspension/continuation of suspension, and the consequential reinstatement of the applicant in service and, payment of full pay and allowance for the period of suspension after deducting the extent of subsistence allowance granted. The applicant had no occasion to challenge the issue of charge sheet as the same was not issued till the time the O.A. was filed. The decision relied upon by the respondents has no relevance in the instant case as the case of the applicant is not that the inquiry is vitiated by delay in initiation. In fact, his claim is that if there be a delay of over one year from the date of suspension in initiating the proceedings, the suspension should terminate. And reliance has been placed upon the government of India decision dated 7th January 2004, extracted above. This order has been issued on the close heel of the provisions of Rule 10(6) of the CCS(CC&A) Rules which was passed on 03-01-2004, whereby for the first time, constitution of review committee to consider continuation of suspension has been introduced. The said sub rule 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 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."

13. Again, the afore said order dated 7th January 2004 does refer to the



above mentioned sub Rule and also specifies that the Review Committee may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government.

14. Thus, the question is whether the applicant's continuation of suspension beyond one year without issue of charge sheet is justified and whether his claim for reinstatement and payment of salary for the full period of suspension is legally valid.

15. As stated above, when no charge sheet is issued within a period of one year from the date of suspension, the individual may **ordinarily be reinstated**, without prejudice to the case against him. The term "ordinarily" means 'exclusion of extra ordinary or special circumstances'. In the instant case, period of one year expired in October, 2008 and the Review Committee sat at least on two occasions i.e. on 08th January 2009 and 22nd June 2009 after the expiry of one year. The Minutes of the review committee on the above two meetings are as under:-

"(A)

MINUTES OF THE REVIEW COMMITTEE
CONSTITUTED FOR REVIEW OF SUSPENSION CASES
OF DEPARTMENTAL EMPLOYEES OF RMS 'EK'
DIVISION.

Dated the 8th January, 2009.

Present :

1.

Mariamamma Thomas,
Director of Postal Services,
Central Region, Kochi-682018.



2. T. Koshy,
Superintendent,
RMS 'EK' Division,
Kochi-682011.
3. G. Mohanaprasad,
Dy. SP, Ernakulam Division,
Kochi-682011.

The Committee met at 1300 hrs on 8.1.2009 in the office of the PMG, Central Region, Kochi to review the case of suspension of Shri. S. Subash Chandran, SA(BCR), HRO, RMS 'EK' Division, Kochi-682016. The official was placed under suspension with effect from 31.10.07(F/N). The period of suspension extended by the Review Committee held on 4.7.08 would expire on 22.1.2009.

The official was suspended on 31.10.07 for the alleged acceptance of the items posted by M/s. Travancore Publishers, Kadavanthra whereas the licence given was to "Findex Solutions, Vyttila."

Since the police and departmental investigation and disciplinary action against the official are pending, it is necessary that the official shall continue under suspension. The Committee therefore recommends to keep the said Shri. S. Subhash Chandran under suspension for a further period of 180 days with effect from 23.01.2009.

Sd/-	Sd/-	Sd/-
(Mariamma Thomas)	(G. Mohanaprasad)	(T. Koshy)
Director of Postal Services	Dy. SP, Ekm Divn.	SRM, RMS 'EK' Dn.
Central Region, Kochi-682018	Kochi-682011	Kochi-682011"

“(B)

**MINUTES OF THE REVIEW COMMITTEE
CONSTITUTED FOR REVIEW OF SUSPENSION CASES
OF DEPARTMENTAL EMPLOYEES OF RMS 'EK'
DIVISION.**

Dated the 22nd June, 2009.

Present :

1. Mariamma Thomas,
Director of Postal Services,
Central Region, Kochi-682018.
2. T. Koshy,
Superintendent,
RMS 'EK' Division,
Kochi-682011.
3. K.C. Sukumaran,
Assistant Director (Staff),
RO, Kochi.

The Committee met at 1300 hrs on 22.6.2009 in the office of the PMG, Central Region, Kochi to review the case of suspension of Shri. S. Subash Chandran, SA (BCR), HRO, RMS 'EK' Division, Kochi-682016. The official was placed under suspension with effect from 31.10.07(F/N). The period of suspension extended by the Review Committee held on 8.1.09 would expire on 21.7.2009.

The official was suspended on 31.10.07 for the alleged acceptance of the items posted by M/s. Travancore Publishers, Kadavanthra whereas the licence given was to "Findex Solutions, Vyttila."

Since the police and departmental investigation and disciplinary action against the official are pending, it is necessary that the official shall continue under suspension. The Committee therefore recommends to keep the said Shri. S. Subhash Chandran under suspension for a further period of 180 days with effect from 22.7.2009.

Sd/-	Sd/-	Sd/-
(Mariamma Thomas)	(K.C. Sukumaran)	(T. Koshy)
Director of Postal Services	Asst. Director (Staff)	SRM, RMS 'EK' Dn.
Central Region, Kochi-682018	RO, Kochi	Kochi-682011"


16. The main ground for recommendation for continuation of suspension of the applicant is that police investigation and departmental action against the official are pending. The Review Committee has assumed that the departmental action is pending even without ascertaining whether charge

memo has been issued. Under the provisions of Rule 9(6) of the CCS (Pension) Rules, departmental proceedings are deemed to have been initiated on the date on which the statement of charges is issued to the Government servant. In the instant case, the same is only on 5th October, 2009 and not earlier. As such, the Review Committee has misdirected itself in assuming that in the instant case as on the two occasions, i.e. January and June, 2009, departmental action is pending.

17. In its judgment in the case of ***Delhi Development Authority v. H.C. Khurana, (1993) 3 SCC 196***, the Apex Court has interpreted issue of charge sheet as under:-

"14. 'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to despatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee."

18. Thus, the rule should be so construed that beyond ninety days, when the review committee considers continuation of suspension, it could so recommend depending on the gravity of the case, upto one year, even where no charge sheet is issued or the charges filed in criminal court; however, beyond one year from the date of initial suspension, the Review committee should ensure whether the charges were filed before the criminal court or charge memo issued to the individual under suspension and if not issued, then it has to consider whether any extraordinary or special circumstances exist to recommend continuation of suspension. The Apex Court has held



that the term 'ordinarily' has to be interpreted in the facts and circumstance of the case but in general, it has held in the case of ***State of A.P. v. V. Sarma Rao***, (2007) 2 SCC 159, as under:-

The expression "ordinarily" may mean "normally", as has been held by this Court in *Kailash Chandra v. Union of India* and *Krishan Gopal v. Prakashchandra* but, the said expression must be understood in the context in which it has been used. "Ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the court would not be subordinate to it. **When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception.** It never means "primarily". In *Kailash Chandra v. Union of India* it is stated:

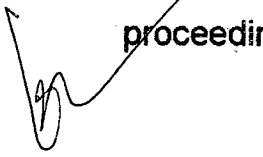
"This intention is made even more clear and beyond doubt by the use of the word 'ordinarily'. 'Ordinarily' means 'in the large majority of cases but not invariably'." (emphasis supplied)

19. In the instant case, it is evident that the Review Committee did not consider the matter on the above lines. The Committee held its meeting only to complete formality, without appreciating the spirit behind such reviews. Though the para wise comments as made available for perusal state that the fact of delay in issuing the charge sheet had all been considered by the Review Committee, the same is not true, as the minutes of the meeting nowhere reflect such a consideration by the Review Committee. The minutes of the review committee are stereo typed ones, with changes only of dates of meetings held and date from which the further period of suspension is extended. Thus, decision to continue suspension of the applicant beyond one year when no charge memo has been issued, is not in accordance with the laid down norms and hence has to be held as legally impermissible. The decisions cited by the senior counsel for the applicant as well as the ones

referred to above would all support the case of the applicant that suspension beyond one year in the case of the applicant is illegal.

20. The Review committee's meeting prior to completion of one year of suspension, took place 04-07-2008, when it recommended continuation of suspension for 180 days from the date when the previous period of suspension expired. Thus, suspension continued upto 23-01-2009 on the basis of the earlier recommendation dated 04-07-2008. There is no stipulation that on completion of one year of suspension, there shall be one more review. Thus, suspension upto 23-01-2009 could well be treated as legal, notwithstanding the fact that the period of suspension extended beyond one year by that date. And the applicant has moved his appeal before the authorities on 19-01-2009 vide Annexure A-6, clearly stating that no proceedings were initiated against him nor has he been informed the reasons for suspension.


21. In view of the above, the OA is allowed to the extent that suspension upto 23rd January, 2009 is held valid and suspension beyond the said date has to be held as legally invalid. The order of suspension is deemed to have been revoked from 24-01-2009 and applicant is deemed to have been reinstated in service from that date and he is thus, entitled to full pay and allowance for the period from that date. The applicant shall therefore be permitted to perform his duties as and when he reports (within one week from the date of pronouncement of this order). Reinstatement in service or revocation of suspension from 24-01-2009 would not, as stated in the administrative instructions dated 7th January 2004, preclude the respondents from proceeding with the disciplinary proceedings in pursuance of the issue of



charge sheet. Its consequences would not be hampered by this order. Formal orders of revocation of suspension be issued and the applicant be paid the arrears of salary before his retirement.

22. Under the circumstances, there shall be no orders as to cost.

(Dated, the 19th November, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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Dr. K.B.S. RAJAN
JUDICIAL MEMBER