

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.68/2013

Thursday, this the 30th day of June, 2016

CORAM:

HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER

S.Attakoya,
S/o.late Pookkoya,
Superintending Engineer (under suspension),
PWD, Kavaratti.
Residing at Government Quarters,
Near District Court, UT of Lakshadweep,
Kavaratti – 682 555.

...Applicant

**(By Advocates Mr.M.R.Rajendran,Sr.
alongwith Mr.P.V.Mohanan)**

V e r s u s

1. Union of India
represented by the Secretary to Government of India,
Department of Urban Development,
New Delhi – 110 001.
2. Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
3. Director (Services),
Union Territory of Lakshadweep,
Kavaratti – 682 555.

...Respondents

**(By Advocates Mr.K.S.Dileep,ACGSC [R1]
&Mr.S.Radhakrishnan[R2-3])**

This application having been heard on 7th June 2016, the Tribunal
on 30th June 2016 delivered the following :



ORDER

HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant commenced service in the year 1983 was placed under suspension by order dated 27.4.2012 pending trial in a criminal case wherein final report under Section 173 of the Code of Criminal Procedure was laid after investigation on 14.5.2009 and 13.7.2010. No charge sheet has been framed by the Sessions Court in the above cases till date. Applicant apprehends that it may take nearly a decade to complete the trial in the above two cases. O.A.No.348/2012 challenging the order of suspension was dismissed. However, the Hon'ble High Court by Annexure A-3 judgment dated 13.7.2012 directed the Administration to consider the representation seeking review of suspension. The Administration by Annexure A-1 impugned order dated 9.8.2012 rejected the representation seeking review of suspension. Aggrieved, the above O.A is filed contending inter alia that the impugned order of suspension is vitiated by malafides both factual and legal and extraneous consideration.

1.2 To substantiate legal malafides the applicant has produced Annexure A-7 to Annexure A-23 proceedings. The applicant submits that the order of suspension is issued because he obtained judicial orders from the Tribunal and Hon'ble High Court of Kerala in the matter of consideration for promotion to the post of Superintending Engineer



which was due to him in the year 2003. The direction by the Hon'ble High Court of Kerala to consider his claim by DPC has not been honored till date. The applicant has not been paid eligible subsistence allowances till date.

1.3 The Central Bureau Investigation, after investigation, submitted final reports under section 173 of Code of Criminal Procedure in RC 5 (A)/2009/CBI/KER on 14.5.2009 and RC 4 (A)/2009/CBI/KER on 13.7.2010 respectively. No other criminal cases are pending trial against the applicant. There are no possibilities of suborning the witnesses and tampering with the evidences in the event the applicant is reinstated in service, as the Sessions Court is seized of the matter and all documents and materials leading to criminal cases are within the custody of the Court.

1.4 It is submitted that one Shri.A.Hamza who is also arrayed as an accused in an identical case, was reinstated in service and was transferred to some other identical cadre post pursuant to the order passed by the Tribunal. The applicant is similarly placed like Shri.Hamza. In fact, the following personnel employed in UT of Lakshadweep and against whom charges are framed by Central Bureau of Investigation for the offences under the Prevention of Corruption Act and pending trial are continuing in service, namely, Shri.Jadave, Chief Executive Officer, District Panchayat; B.V.Selveraj, IAS (then Administrator), presently working at Delhi;



Abraham Varikka Makkal (then Collector cum Development Commissioner, Lakshadweep); Shri.M.Sayed Ismail Koya, Director, Port (convicted and punished by Sessions Court); M.K.Abdul Salam, Executive Engineer, PWD and K.Abdulla, Head Drafts Man, LPWD, Division Office, Kochi.

1.5 Applicant was promoted as Executive Engineer on adhoc basis by order dated 1.4.1998. Later he was granted regular promotion as Executive Engineer with effect from 7.3.2001, after intervention of the Court. On the date of occurrence of vacancy of Superintending Engineer, the applicant was qualified. The request for promotion by reckoning adhoc service as qualifying service in the cadre of Executive Engineer was turned down. He approached this Tribunal by filing O.A.No.559/2002 which was partly allowed by order dated 2.6.2003 directing to reckon the adhoc service as qualifying service for promotion. The respondents by proceeding dated 25.8.2003 put the applicant in additional charge of Superintending Engineer, LPWD and the applicant had been discharging the duties and responsibilities attached to the post of Superintending Engineer without granting scale of pay attached to the post. By proceeding dated 14.2.2008 the applicant was appointed as Secretary, Lakshadweep Building Development Board, and was also given additional charge of Executive Engineer, Kalpeni and Superintending Engineer, LPWD, without additional remuneration and without scale of pay attached to the post of Superintending Engineer.



1.6 The applicant was appointed on deputation as Project Director, Lakshadweep Drinking Water, Sewage and Sanitation Board (LDWSSB) based on the decision taken by the Governing Body of LDWSSB by proceeding dated 24.2.2009 with additional charge of Superintending Engineer, LPWD, Executive Engineer, PWD, Kalpeni and Secretary (EE), LBDB without any extra remuneration. The pay was fixed in the post of Project Director on a scale equivalent to that of Superintending Engineer. Applicant admits that on performing the duties of higher post, the applicant was given the pay of the said post.

1.7 In the meantime, steps were initiated to repatriate the applicant as Executive Engineer, in the lower time scale of pay. Aggrieved by that, the applicant filed O.A.No.662/2009. The applicant sought for an interim direction not to repatriate him from the post of Project Director, LDWSSB or in the alternative to direct that the pay band and grade pay drawn by him shall not be reduced. An interim order of status quo was ordered by this Tribunal on 29.9.2009 in the above O.A.No.662/2009. By order dated 11.11.2009 this Tribunal in O.A.No.662/2009 directed payment of salary and allowances attached to the post of Project Director, uninterruptedly. By order dated 12.8.2011 the above O.A was allowed directing to consider the claim of the applicant for regular promotion to the cadre of SE in consultation with the UPSC. It was further directed that if regular promotion cannot be granted, adhoc promotion as SE must be granted.



1.8 The Administration by proceeding dated 18.2.2012 issued Memorandum of Charges under Rule 14 of CCS (CCA) Rules. The applicant denied charges by explanation dated 7.3.2012. The respondent Administration by proceeding dated 7.3.2012 relieved the applicant of the charges of Superintending Engineer and Executive Engineer and appointed him as a Project Director for one year. An officer far junior to the applicant, Shri.Muhammed Kudage, was given additional charge of Superintending Engineer for a period of one year. In O.A.No.211/2012 filed by applicant before this Tribunal, the Tribunal directed maintenance of status quo. The above O.A was dismissed by order dated 10.4.2012 of this Tribunal holding that the above order was only an order of transfer. The applicant challenged the above order in OP (CAT) No.1363/2012. The Hon'ble High Court of Kerala by interim order dated 13.4.2012 directed to maintain status quo noting that no orders can be issued affecting the consideration of the petitioner by the UPSC as directed by the Tribunal. The applicant was placed under suspension by order dated 27.4.2012 (Annexure A-4) and a junior incumbent was placed in charge of the post of Superintending Engineer. Though the applicant challenges the order of suspension dated 27.4.2012 in O.A.No.348/2012 the same was dismissed by Annexure A-149 order dated 5.6.2012. Aggrieved by Annexure A-19 the applicant filed OP CAT No.2216/2012, which was heard and disposed of along with OP CAT No.1363/2012 dated 13.7.2012 by Annexure A-3 judgment. OP (CAT) No.2216/2012 was disposed of with a direction to consider the



representation submitted by the applicant to revoke his suspension within 4 weeks and OP (CAT) No.1363/2012 was dismissed. His right to have promotion in the cadre post of Superintending Engineer is recognized by judicial pronouncements but the same is not granted. In view of Annexure A-1 the applicant is now repatriated to the cadre of Executive Engineer in a lower time scale of pay from the post of Project Director which he was holding in a higher time scale of pay from 2009 onwards. The applicant is denied eligible subsistence allowances due to him by reckoning the pay in the cadre of Project Director. Reliefs sought by the applicant is to direct the respondents to reinstate him in the cadre of Project Director, LDWSSB, in charge of Superintending Engineer and Executive Engineer LPWD Kavaratti forthwith with all consequential benefits including the scale of pay attached to the post of Project Director and to direct the respondents to disburse the arrears of subsistence allowances from 27.4.2012 till the date of reinstatement.

2. The applicant in his rejoinder submits that the CBI has filed only two cases against him in the CBI Court at Ernakulam and at Kavaratti. Charges have not been framed by the Court till date. The departmental enquiry initiated against him has been completed. Both the Presenting Officer and the applicant have submitted written brief for consideration. Despite direction from this Tribunal to consider promotion of the applicant the Administrator had only furnished information to UPSC stating that the



representation against the ACR is not received from the applicant. In fact the applicant had submitted reply against the ACR grading, but no order has been passed.

3. Respondents in their reply submit that on the recommendation of CBI, Cochin Branch, the applicant, Executive Engineer/Superintending Engineer in charge, LPWD was placed under suspension by the Competent Disciplinary Authority i.e., Administrator of U.T of Lakshadweep under rule 10 (1) of CCS (CCA) Rules, 1965, by order F.No.5/37/2009-CVO dated 27th April, 2012, due to his involvement in four criminal cases registered by CBI/ACB, Cochin under Prevention of Corruption Act, 1988 and Indian Penal Code, besides pending disciplinary proceedings against him. The Competent Disciplinary Authority had issued prosecution sanction against the applicant in four criminal cases, and as per information received from CBI, by letter No.2193/3/9(A)/20110/SPE/KER dated 15.06.2012, charge sheets have been filed in the Court of Special Judge-I, CBI, Ernakulam in two cases and the cases are pending trial in the Court. In the remaining two criminal cases, the CBI is processing the final report to submit charge sheet in the Court. In addition to the criminal cases, in one case, he has been charge sheeted for major penalty under rule 14 of CCS (CCA) Rules, 1965 and departmental inquiry is in progress. In two cases, departmental proceedings for major penalty are contemplated against him, as the matter has been referred to the Central Vigilance Commission, Govt.



of India for first stage advice. Subsequently Shri. Mohammed Kudage, Executive Engineer, LPWD was also placed under suspension and Shri.Arun Jadhav, Executive Engineer has now been put in charge of SE, LPWD. The Lakshadweep Drinking Water Sewage and Sanitation Board is a registered Society under Societies Registration Act, 1860 by F.No.40/5/2009-Coop dated 18.02.2009. The Board had created the post of Project Director on 23.07.2009 in the Grade Pay of Rs. 8700/-. The applicant, Executive Engineer, with Grade Pay of Rs.6600/- was appointed as Project Director, LDWSSB for a period of six months or till the necessity ceases, whichever is earlier, by order No.113/01/2009-S4/276 dated 24.02.2009 without obtaining vigilance clearance as he was not cleared from vigilance angle. The applicant filed an O.A. No.662/2009 and this Tribunal had passed an interim order on 30.09.2009 to maintain status-quo with regard to his posting as Project Director. While disposing of the O.A.No.662/2009 the CAT in its order dated 12.08.2011 directed the Administration to make a proposal to UPSC to hold a DPC meeting to consider the promotion of the applicant as per rules and instructions, and the respondents were given liberty to repatriate the applicant from the post of Project Director, LDWSSB, after implementing the above direction. Accordingly as per the Tribunal direction, a detailed proposal for promotion to the post of Superintending Engineer was sent to UPSC on 29.11.2011. The UPSC considered the proposal and conveyed by letter dated 28.06.2012 that in view of the fact that the applicant has been placed under suspension



with effect from 27.04.2012, the officer cannot be considered for adhoc promotion to the post of SE(Civil). The UPSC further informed that he can be considered for regular promotion to the post in sealed cover as per the DoPT instructions. In view of non extension of his posting as Project Director, LDWSSB and in view of order of the Tribunal in O.A.No.662/2009, the applicant cannot be considered as holding the post of Project Director after 22.08.2011 in the absence of any extension beyond it. The applicant holding the charge of Superintending Engineer, LPWD was placed under suspension with immediate effect under Rule 10(1) of CCS(CCA) Rules, 1965 by order F.No.5/37/2009-CVO, dated 27.04.2012 due to his involvement in four criminal cases registered by CBI/ACBI, Cochin under Prevention of Corruption Act, 1988 and Indian Penal Code, and also pending major penalty disciplinary proceedings. There are four criminal cases pending against him in which prosecution sanction has also been accorded by the Administration. His suspension has been periodically reviewed from time to time by the duly constituted Review Committee which recommended extension of his suspension. Since the applicant has been placed under suspension, keeping in view the provision vide Rule 20(2) (ii) of CCS(CCA) Rules, 1965, the Administrator and Chairman of LDWSSB was the competent authority to repatriate him to the post of Executive Engineer, LPWD and on repatriation his pay has been fixed in PB-3 with Grade Pay of Rs. 6600/- for the purpose of payment of subsistence allowance. Payment of subsistence allowances in higher PB or



Grade Pay is therefore not admissible. Respondents aver that due to pendency of criminal cases on corruption charges, and pending/contemplated major penalty proceedings against him, in public interest, his suspension is justified and needs no interference.

4. Replying to the M.A.No.93/2015 filed for a direction to reinstate the applicant in service the respondents submit that the CBI Cochin Branch has now registered four Criminal Cases under various sections of IPC and POC Act 1988 viz. RC 4(A)/2009-KER, RC5(A)/2009-KER, RC2(A)/2010-KER and RC9(A)/2010-KER against the applicant. The CBI has recommended prosecution in all the four cases and Regular Departmental Action(RDA) in three cases. On the request of CBI, the Lakshadweep Administration granted prosecution sanction against the applicant by F.No.5/37/2009-CVO dated 10.06.2010, F.No.5/32/2009-CVO dated 17.08.2010, F.No.5/10/2010-CVO dated 11.04. 2012 and F.No.5/13/2012-CVO dated 27.01.2012. The CBI has filed charge sheets and the cases are under trial. As recommended by the CBI, the three RDA were initiated against the applicant, as below :

i) The CBI recommended Regular Departmental Action in case RC2(A)/2010. Accordingly the Lakshadweep Administration initiated RDA by charge memo F.No.5/10/2010-CVO/192 dated 18.03.2013. The Inquiry completed and the Inquiry Report submitted by the Inquiry Authority on 30.10.2015 has been forwarded to the MHA along with corresponding documents for further action.

ii) The CBI recommended Regular Departmental Action in case RC9(A)/2010. As such the Lakshadweep Administration initiated RDA by charge memo F.No.5/13/2012-CVO/457 dated 31.05.2013. The Inquiry completed and the Inquiry Report submitted by the Inquiry Authority has been forwarded to the MHA along with corresponding documents for further action.



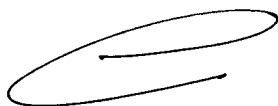
iii) The CBI recommended Regular Departmental Action in case RC5(A)/2009.

The RDA in RC 5(A)/2009 is completed and after obtaining CVC's advice, a penalty of compulsory retirement from the Govt. service was imposed on the applicant by Annexure MA1 order F.No.5/34/2009-CVO/360 dated 03.07.2015. Challenging the order of imposition of the penalty of compulsory retirement, the applicant filed an OA No.181/00071/2015 before the Hon'ble CAT and the said penalty of compulsory retirement from service was withdrawn by Annexure MA3 order dated 07.10.2015.

Respondents aver that Rule 10(4) of CCS(CCA) Rules, 1965, states :-

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. 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 Govt 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 order 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".

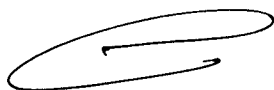
5. Accordingly Annexure MA3 order F.No.5/34/2009-CV0/541 dated 07.10.2015 was issued placing the applicant under suspension from the date of issue of original order Annexure MA1 F.No.5/34/2009-CVO/360 dated 03.07.2015 under Rule 10(4) of CCS (CCA) Rules, 1965 as the disciplinary proceedings were to be continued from the stage of Rule 15 of the CCS(CCA) Rules, 1965. The order dated 07.10.2015 necessitated the



review of suspension of the applicant. Respondents brings to notice Annexure MA 2 order dated 14.10.2015 in O.A.No.71/2015, this Tribunal observed in paragraph No.3 as follows :-

“It is stated that the applicant was under suspension as per order dated 27.04.2012 (Annexure A4), whether it is to be revived or not is the decision to be taken by the competent authority. It is left to the competent authority. As Annexure A8 (Annexure MA1 order dated 03.07.2015) is proposed to be withdrawn by the respondents, the disciplinary proceedings can be continued as per Rule 15 of the CCS(CCA) Rules, 1965.”

6. Thus, this Tribunal granted liberty to the respondents to proceed in the enquiry under Rule 15 of the CCS (CCA) Rules. Hence, Rule 10(4) of the CCS (CCA) Rules came into operation and by virtue of the liberty granted by this Tribunal the appointing authority decided to place the applicant under suspension, pending enquiry. The Suspension Review Committee under the chairmanship of Joint Secretary (UT), MHA, Govt. of India, in its meeting held on 10.11.2015, has reviewed and recommended the continuation of suspension of the applicant for a further period of 180 days with effect from 07.10.2015 and the suspension of the applicant was extended with effect from 07.10.2015. The suspension of an employee is based on the facts and circumstances of a particular case and cannot be compared with any other case. Shri.Mohammed Kudage, was charge sheeted for an action alleged to be committed while he was in charge of another Department and not in his parent Department (i.e. LPWD). The CBI has not recommended any RDA against Shri. Mohammed Kudage, but



CBI has recommended three RDA against the applicant. The duly constituted Suspension Review Committee has extended the suspension of the applicant under Rule 10(6) of CCS(CCA) Rules, 1965 due to the pendency of the disciplinary proceedings, criminal cases and due to the fact that the continuance of the delinquent officer in service will not be in the best interest of the department and the Administration. That the continuance of such a delinquent officer in service would give a wrong message to other officers of the Administration and therefore the Suspension Review Committee had decided to continue with the suspension of the applicant under Rule 10(6) of CCS(CCA) Rules, 1965.

7. In reply to M.A.No.1035/2013 the respondents submit that since the applicant has been placed under suspension, the Administrator and Chairman of LDWSSB is competent to repatriate him to the post of Executive Engineer, LPWD. In view of non extension of his posting of Project Director, LDWSSB and in view of order of CAT in O.A.No.662/2009 the applicant cannot be considered as holding the post of Project Director after 22.8.2011 in the absence of any extension beyond it. It is also submitted that as per O.M.No.2/29/91-Estt (Pay II) dated 5.1.1994 of Government of India, Ministry of Personnel, Public Grievances & Pensions, DoPT instructions an officer who may be holding a higher post on adhoc basis in the cadre at the time of proceeding on deputation/foreign service would be considered to have vacated the post held on adhoc basis



and proceeded on deputation/foreign service from his regular post. As laid down in Rule 20(2)(ii) of CCS (CCA) Rules, if the borrowing authority is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the enquiry and thereupon the lending authority may, if it is the Disciplinary Authority, pass such orders thereon as it may deem necessary, or, if it is not the Disciplinary Authority, submit the case to Disciplinary Authority which shall pass orders on the case it may deem necessary. More over in the order F.No.5/37/2009-CVO dated 27.4.2012 it was clearly mentioned that orders regarding subsistence allowances admissible to him during the period of his suspension will be issued separately. Respondent submits that by order F.No.12/68/2001 – Services dated 1.9.2012 he was repatriated from the post of Project Director, Lakshadweep Drinking Water Sewage and Sanitation Board with effect from 27.4.2012 (Annexure A-20). Hence the applicant cannot claim subsistence allowances in the pay attached to the post of Project Director, LDWSSB.

8. Heard the counsel for the parties and considered the detailed written submissions made. Applicant's prayer is to reinstate him in the cadre of Project Director, LDWSSB, in charge Superintending Engineer and Executive Engineer LPWD. Whereas the first two posts are promotion



posts, the third is a regular post he was promoted to prior to suspension. We will examine the case for the promotion post of Project Director, LDWSSB and in charge Superintending Engineer first.

9. The CCS (CCA) Rules on promotion/confirmation of officers under suspension or against whom disciplinary/criminal cases are pending are as follows :

(17) Promotion/Confirmation of officers under suspension or against whom disciplinary/criminal cases are pending - The procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (OM No. 39/3/59-Estt.A dated 31.08.1960, 7/28/63-Estt.A dated 22.12.1964, 22011/3/77-Estt.A dated 14.07.1977, 22011/1/79-Estt.A dated 31.01.1982, 22011/2/1986-Estt.A dated 12.01.1988, 22011/1/91-Estt.A dated 31.07.1991), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

2. **Cases to whom sealed cover procedure applicable** - At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 **Procedure to be followed in respect of those under cloud** - The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of in respect of Shri (name of the Government servant). Not to be opened till the termination of the



disciplinary case/criminal prosecution against Shri The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 Procedure by subsequent DPC - The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. Action after completion of disciplinary case/criminal prosecution - On the conclusion of the disciplinary case/criminal prosecution which result in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstance where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of 'censure' should be imposed.

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the case of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects :-

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- (d) Whether the delay in the finalisation of proceeding, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- (e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that :-

- (i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

10. The applicant argues that since sealed cover has been opened and he is found fit for promotion, he should be promoted. The above provisions of CCS CCA Rules were not brought to the notice of the Bench in the earlier hearing. The applicant had obtained on 12.8.2011 an order in O.A.No.662/2009 to :

- (1) Be retained as Project Director LDWSSB,
- (2) Be paid the salary and allowances attached to the post,
- (3) Be considered for regular promotion to the cadre of Superintending Engineer in consultation with UPSC.
- (4) If non closure of the proceedings stand in the way of regular promotion, adhoc promotion of the applicant be considered.

In view of above provisions of CCS (CCA) Rules relating to promotion of an officer against whom criminal/disciplinary case is pending, the



applicant's prayer to reinstate him as Superintending Engineer/Project Director, LDWSSB can only be considered as per provisions of para 3, 3.1, 4 and 5 of CCS (CCA) Rules brought out at prepage. Hence, the first stage to be crossed in the above process outlined in CCS (CCA) Rules is completion of action on the departmental disciplinary cases and the CBI registered cases.

11. The learned counsel for the respondents informs us that CBI, Cochin has registered four criminal cases under various sections of IPC and POC Act, 1988 vide RC 4(A)/2009 – KER, RC 5(A) 2009 KER, RC 2(A) 2010 KER and RC 9(A) 2010 KER. CBI has recommended for prosecution in all the four cases. In three other cases CBI has recommended Regular Departmental Action. The Lakshadweep Administration has granted prosecution sanction against the applicant on 10.6.2010. The CBI has filed charge sheets and the cases, the respondents aver, are under trial. His subsistence allowance was also enhanced to 50% with effect from 26th July, 2012. The suspension was reviewed from time to time and is in effect till date. The applicant was placed under suspension under Rule 10(1) of CCS (CCA) Rules, 1965 by order F.No.5/37/2009-CVO dated 27.04.2012. (Annexure A4) due to his involvement in four criminal cases registered by CBI/ ACB, Kochi under prevention of Corruption Act, 1988 and IPC, and also due to pending departmental major penalty disciplinary



proceedings against him. Vide judgment dated 13th July, 2012 in OP(CAT) No. 1363/2012 and 2216 of 2012 (Annexure A3) filed by the applicant Hon'ble High Court of Kerala, without interfering with the suspension Order, directed the Administrator to consider his representation within four weeks. The Administrator, UTL considered the representation of the applicant and could not find any merit in the same due to following reasons :

(i) All the details have been regularly sent by the Administration to the concerned Ministry as well as to the UPSC regarding his promotion to the post of Superintending Engineer, LPWD.

(ii) The CBI, Cochin had registered several criminal cases against Shri.S.Attakoya under Prevention of Corruption Act, 1988 and Indian Penal Code. Due to pendency of four criminal cases against him, in which prosecution sanction has also been accorded by the Administration and initiation of major penalty proceedings against him. Applicant has been placed under suspension as per provision under Rule 10(1) of CCS (CCA) Rules, 1965. His suspension has also been reviewed by the duly constituted Suspension Review Committee, which has resolved to extend the suspension for a further period of 180 days.

(iii) Each and every case is considered by the appropriate authority, keeping in view the facts and circumstances of that case, and action is taken against an officer on merit, and no uniformity can be maintained in such matters.

Accordingly, his representation was disposed by the Administrator by Annexure A1 Order F.No.12/32/2011-Services dated 09.08.2012. Hence prayer of the applicant for reinstatement as Executive Engineer is not admissible in view of four criminal cases registered under various sections of the IPC and PC Act, 1988 and two departmental enquiries where CBI had recommended RDA.



12. In the case of Shri.A.Hamza, DANICS Officer, respondents argue that he was placed under suspension by MHA/GOI, being Competent Disciplinary Authority in his case, by Order No.14033/8/2010-UTS-II dated 02.11.2010, due to pending criminal proceedings against him. However, CAT, Ernakulam Bench vide order dated 13.12.2010 in O. A. No.1063 of 2010 granted interim relief to Shri.A.Hamza, and operation of suspension order was stayed. In the case of Shri.S.K.S.Yadav, the then CEO, Dist. Panchayath, Shri.B.V.Selvaraj. IAS, the then Administrator and Shri.Abraham Varickamackal the then CDC, UTL Administration is not the Competent Disciplinary Authority, and the officers are no more in Lakshadweep Administration service. In the case of Dr.M.S.Sayed Ismailkoya, Dy. Director, Science & Technology, UTL Administration, the matter has been taken up with the Ministry of Science & Technology, Govt. of India, and the action is pending with the Ministry. As regards Shri.M.K.Abdul Salam, Exe. Engineer, LPWD, departmental proceedings are already pending against him. In the case of Shri.K.Abdulla, Draft Man, LPWD Division, he has already been placed under suspension as per Order F.No.2/5/2012- C1-LPWD dated 01.10.2012 and is still under suspension. Respondents argue that every case is considered by the appropriate authority, keeping in view the facts and circumstances of the case, and action is taken on merit, and no uniformity can be argued to be maintained in such matters. The Order of suspension was issued by the Competent Disciplinary Authority, on the recommendation of CBI, due to several



criminal proceedings as well as departmental proceedings pending against the applicant, relating to corruption, misuse of official power etc. Based on the Order issued by the Tribunal in O.A.No.559/2002, the respondent had sent the proposal for promotion to UPSC through concerned Ministry by letter No.12/68/2001- Services dated 20.12.2007. The proposal was considered by the UPSC and the Administration was asked to furnish the Integrity Certificate and Vigilance Clearance in respect of the applicant. However, the Administration was not in a position to issue Vigilance Clearance Certificate and Integrity Certificate, due to pending criminal as well as disciplinary proceedings against him. This was communicated to UPSC. The Administration had also forwarded a proposal for promotion to the post of Superintending Engineer, LPWD to the UPSC by Administration's letter No.12/68/2001-Services dated 29.11.2011. The UPSC considered the proposal of the UTL Administration and conveyed that "in view of the fact that Shri.Attakoya has been placed under suspension w.e.f. 27.04.2012, the officer cannot be considered for ad-hoc promotion to the post of SE, LPWD as directed by the CAT". The UPSC further informed that he can be considered for regular promotion to the post in sealed cover as per the existing instructions of the DoPT. The below bench mark grading in the ACRs of the officer were also communicated to the officer for submitting a representation, if any, to be disposed off with a speaking order. But no reply has been received from him, and the fact was communicated to the UPSC.



13. The applicant has been charge sheeted for major penalty under rule 14 of CCS (CCA) Rules, 1965, due to the grave misconduct committed by him. The departmental inquiry is in progress. The Lakshadweep Drinking Water and Sanitation Board was constituted to provide clean and hygienic water and to set up scientific sewage disposal system and to provide better sanitation with a view to upgrade the standard of living of people in all walks of life and to protect the fragile ecology of the island territory. But this project could not be fully implemented, as the applicant was holding the dual charges of Superintending Engineer, LPWD and Project Director, LDWSS Board. Shri.Mohammed Kudage, Executive Engineer, LPWD, Kalpeni who was second in the seniority list of Executive Engineers, was made to hold the full additional charge of Superintending Engineer, LPWD for a period of one year. The Hon'ble High Court of Kerala in its order dated 13.07.2012 dismissed the OP (CAT) No.1363 of 2012 stating that there is no change of place of work, as he was posted at Kavaratti itself and the Project Director's Office is also housed at Kavaratti and as such the transfer which is made in public interest, cannot be challenged.

14. The applicant's prayer in this O.A is to direct the respondents to reinstate him in the cadre of Project Director, LDWSSB and in charge of Superintending Engineer and Executive Engineer LPWD Kavaratti forthwith with all consequential benefits including the scale of pay attached to the post of Project Director. The post of Project Director, LDWSSB and



Superintending Engineer are promotion posts. The promotion of any official in the Government is dependent on two factors other than qualifying service conditions and annual performance ie. the vigilance clearance given at the time of holding DPC and the vigilance clearance prior to posting on promotion. Based on the nature of vigilance clearance given at the time of holding DPC, the DPC takes a decision to place/not place the DPC result in a sealed cover. In the case of the applicant the DPC had decided to place the DPC result in sealed cover. The CCS (CCA) Rules brought out above clearly lay down the conditions under which the sealed cover procedure is to be followed. The respondents had given sanction for prosecution on 10.6.2010, 17.8.2010, 11.4.2012 and 27.1.2012 in four cases. The CBI has registered four criminal cases under various sections of the IPC and POC Act, 1988. Three departmental enquiries were held where CBI had recommended RDA and in two cases the inquiry report has been forwarded to MHA for further action. Hence the sealed cover procedure was adopted in view of pending disciplinary proceeding and sanction for criminal prosecution. The sealed cover is not to be opened till the termination of disciplinary case/criminal prosecution of the applicant. Hence the reinstatement of applicant as Project Director, LDWSSB and in charge Superintending Engineer, which are promotion posts, are covered by CCS (CCA) Rules cited in pre-paras and the prayer of the applicant for the same is not merited.



15. The second aspect is vigilance clearance prior to posting on promotion. This ensures that only persons whose integrity is not in doubt are made eligible to hold higher posts on promotion. In the case of the applicant the registration of four criminal cases and the two departmental enquiry report pending for action the outcome of which is not yet known, need to be taken note of before any promotion is effected. Any movement for promotion is to be preceded by these two conditions. These conditions have been imposed by Government of India post Supreme Court judgment in **Union of India vs. K.V.Janakiraman AIR 1991 SC 2010**. The suspension of the applicant was on account of registration by CBI of four criminal cases and two pending departmental disciplinary cases as brought out in O.A.No.559/2013 and we see no reason to interfere in the suspension order. Hence the prayer of applicant for reinstatement as Executive Engineer also goes.

16. During the pendency of O.A, M.A.No.93/2015 has been filed by the applicant challenging Annexure M.A.3 order of suspension dated 7.10.2015. Annexure M.A.1 order dated 3.7.2015 was issued by the Disciplinary Authority whereby penalty of compulsory retirement from service of the applicant was ordered. That was challenged by the applicant before this Tribunal in O.A.No.71/2015. When the O.A was taken up for consideration, it was submitted by the learned counsel for the respondents that the impugned order therein (Annexure A-8) was proposed to be



withdrawn. A request was made by the learned counsel for the respondents that as stated in the last paragraph of the reply statement filed in that case, that the order of suspension may stand revived. Considering that request the following order was passed by the Tribunal :

“It is stated that the applicant was under suspension as per order dated 27.4.2012, whether it is to be revived or not is the decision to be taken by the competent authority. It is left to the competent authority. As Annexure A-8 is proposed to be withdrawn by the respondents, the disciplinary proceedings can be continued as per the Rule 15 of the CCS (CCA) Rules, 1965.”

17. Annexure A-8 order of penalty therein happened to be withdrawn since the 2nd respondent was not competent to impose the major penalty of compulsory retirement mentioned therein. Therefore, it was on that ground the respondents were permitted to proceed with the inquiry under Rule 15 CCS (CCA) Rules, 1965. It was pursuant thereto Annexure MA -3 impugned order of suspension was passed by the 2nd respondent on 7.10.2015. It was clearly stated that the earlier order of suspension dated 27.4.2012 was due to the pendency of the disciplinary proceedings, criminal cases and due to the fact that continuance of the delinquent officer in service will not be in the best interest of the Department and the Administration, since there is every likelihood of the applicant tampering with the records and influencing the witnesses. So many other reasons have also been stated. A detailed departmental enquiry was conducted against the applicant. A report finding the applicant guilty of the charges (1) and



(2) mentioned therein was submitted. Thereupon the Disciplinary Authority, after following the procedure prescribed, imposed the penalty. It was mentioned in Annexure MA-3 :

“And whereas, on a reconsideration of the entire facts and circumstances of the case, the undersigned feels that for the purpose of ensuring complete fairness and justice to the delinquent officer, the order dated 3.7.2015 is to be withdrawn and the disciplinary proceedings will have to be continued in accordance with Rule 15 of the CCS (CCA) Rules, 1965 from the stage after the submission of enquiry report by reviving the order of suspension.

Now, therefore, the undersigned orders that the order F.No.5/34/2009-CVO/360 dated 3.7.2015 referred to as No.6 above is stand withdrawn by keeping the charged officer Shri.S.Attakoya on suspension by reviving the order of suspension originally imposed vide order dated 27.4.2012, which was continuously extended by the Suspension Review Committee under Rule 10(6) of the CCS (CCA) Rules. The disciplinary proceedings will be continued from the stage of Rule 15 of the CCS (CCA) Rules, 1965. Shri.S.Attakoya is deemed to have been placed under suspension from the date of issue of order F.No.5/34/2009-CVO/360 dated 3.7.2015 under Rule 10(4) of CCS (CCA) Rules, 1965.”

18. It is vehemently argued by the learned counsel for the respondents that as directed by this Tribunal disciplinary proceedings had to be continued from the stage of Rule 15 of the CCS (CCA) Rules and so the applicant must be deemed to have been placed under suspension from the date of issue of the order dated 3.7.2015, namely, the date on which the order was passed by the disciplinary authority (reference Annexure MA -1 referred to above).



19. The applicant contends that no order was passed on or before 10.7.2015 extending the suspension for a further period and therefore the applicant must be deemed to have been on duty with effect from 10.7.2015. Thus, according to the applicant, the order of suspension dated 27.4.2012 cannot be revived by operation of law and hence Annexure MA -3 order of suspension treating the applicant on continued suspension is without any authority. It is argued by the learned counsel for the applicant that the applicant must be deemed to have been reinstated in service by operation of law with effect from 3.7.2015 since Annexure MA -1 order was withdrawn by them which has been recorded in the order passed by this Tribunal (Annexure MA -2). If the applicant is deemed to be reinstated in service, the applicant is also entitled to be reinstated in service with all consequential benefits. This contention is resisted by the respondents stating that the order of suspension was earlier passed as recommended by the CBI and also because three Regular Departmental Actions were initiated against the applicant. The fact that there were four cases registered by the CBI was not disputed. That enquiry under Rule 14 of the CCS (CCA) Rules was initiated against the applicant was also not disputed. It was one such enquiry which culminated in the order dated 3.7.2015. That happened to be withdrawn since the 2nd respondent, Administrator, was not competent to impose the major penalty. Therefore, as stated by the Tribunal in Annexure MA -3, it has to be proceeded further under Rule 15. It is submitted that thereafter the procedure prescribed under Rule 15 has also

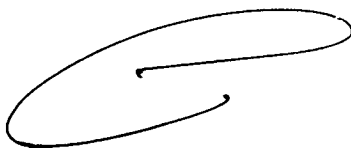


been completed and what remains is only the approval of the UPSC for finalization of that proceeding. The main argument now advanced by the learned counsel for the applicant is that deemed suspension as mentioned in Rule 10 (4) cannot be made applicable to the facts of this case since the penalty of dismissal, removal or compulsory retirement from service which was imposed on the applicant was not set aside by this Tribunal nor was it declared or rendered void in consequence of or by a decision of a court of law. It is only in these circumstances the question of deemed suspension would arise and not otherwise, learned counsel for the applicant submits.

20. In this connection it is submitted by the learned counsel for the respondents that when the O.A was filed and when the matter came up for consideration, learned counsel could see that the impugned order therein was passed by the 2nd respondent who was incompetent to impose the major penalty and realizing that fact, as advised, the order of penalty was withdrawn. So, it cannot be said that there was no intervention of the Court/Tribunal in causing withdrawal of that order. It is submitted that the withdrawal of the case was a consequence of the matter being taken up before the Tribunal and on realizing the fact that the order of major penalty was imposed by an incompetent authority. It is further submitted that since the entire process is over and only the final verdict has to be given, there can be no justification for interfering with the order of suspension issued by



the 2nd respondent, especially taking note of the fact that the applicant is a person against whom four criminal cases have been registered by the CBI for offences under Prevention of Corruption Act, and charge sheets had been filed in two cases before the Court of Special Judge, CBI cases. Further the fact remains that the disciplinary enquiry has also been completed and that only approval of the UPSC is required for culmination of the same. Hence the request for revocation of suspension cannot be sustained. Rule 10(3) of the CCS (CCA) Rules also has to be seen in this connection. Here also, it may be argued that penalty of compulsory retirement passed against the applicant was not set aside in appeal or on review under these rules, and the case is remitted for further enquiry or action with any other direction, in which case the order of suspension shall be deemed to have continued in force on or from the date of original order of dismissal, removal or compulsory retirement and it shall remain in force until further orders. On a conjoined reading of Rules 10(3) and 10(4) of CCS (CCA) Rules, it can be seen that the intend or object behind is to see that the suspension is not revoked and that it is allowed to continue by virtue of this deeming clauses. Rule 10(7) says that the order of suspension made or deemed to have been made under Sub Rule 1 or Sub Rule 2 shall not be valid after a period of 90 days unless it is extended after review. Since the order of suspension does not fall under Sub Rule 1 or Sub Rule 2 of Rule 10 it has no application at all.



21. To summarize the position, going by Sub Rule (4) of Rule 10 of CCS (CCA) Rules, Annexure MA -1 order of suspension issued by the 2nd respondent is not liable to be set aside and hence O.A is dismissed but we direct the 1st respondent, namely, Union of India represented by the Secretary to Government of India, Department of Urban Development to finalize the disciplinary cases initiated against the applicant (or at least one of the disciplinary cases) within 30 days from the date of receipt of a copy of this order. In view of the order in O.A., M.A.No.162/2013, M.A.No.568/2014, M.A.No.38/2015 & M.A.No.93/2015 are closed. No order as to costs.

(Dated this the ^{30th}..... day of June 2016)


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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