

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 2 of 2008

Friday, this the 14th day of March, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER

B. Ramachandran,
S/o. Balakrishnan Nair,
Sub Postmaster Mudavoor (Under Suspension),
Residing at Lakshmi Vihar, Velloorkunnam,
Muvattupuzha Market P.O.

... Applicant.

(By Advocate Mr. P.C. Sebastian)

versus

1. The Senior Superintendent of Post Offices,
Aluva Division, Aluva.
2. The Director of Postal Services,
Central Region, Kochi - 682 011.
3. The Union of India, represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.

... Respondents.

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

The Original Application having been heard on 11.03.08, this Tribunal
on 14.3.08, delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The question involved in this case relates to interpretation of sub rule
(6) and (7) of Rule 10 of the CCS (CCA) Rules, 1965.

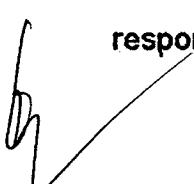
2. Briefly stated, the applicant while functioning as Sub Postmaster,
Mudavoor, was placed under suspension vide Annexure A/1 order dated

22.05.2006 on contemplation of a disciplinary proceeding. By Annexure A/4 order dated 13.10.2006, the period of suspension was extended for a period of 180 days with effect from 20.08.2006. Subsequently also by Annexure A/5, A/8 and A/9 orders, the period of suspension was extended.

3. Vide Annexure A/6 dated 21.02.2007, the applicant was preferred an appeal before the Director of Postal Services, Kochi. This was considered and rejected vide Annexure A/7 order dated 10.05.2007.

4. The applicant has challenged the order of suspension, its extension orders as well as A/7 order rejecting his appeal. The main ground taken by the applicant is that under sub rule (7) of Rule 10 of CCS (CCA) Rules, 1965, the order of suspension passed under sub rule (1) of Rule 10 shall not be valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days. And in the instant case, the initial suspension order being dated 22.05.2006, such an extension after review should have been passed on or before 20.08.2006 whereas, admittedly the order was passed only on 13.10.2006 with retrospective effect from 20.08.2006.

5. The respondents have contested the O.A. As per their version, Suspension Review Committee constituted for the purpose on 18.08.06, i.e., before the expiry of 90 days, reviewed the suspension of the applicant, periodical reviews were again made by the Committee and the period of suspension extended. There is nothing unjust in the action of the respondents in keeping the applicant under suspension.



6. Counsel for the applicant argued that unlike the unamended rule, after insertion of sub Rule 6 and 7 of Rule 10 of the CCS (CC&A) Rules, 1965, there shall be a positive act of extension of the order before the expiry of ninety days of suspension. And if the period of suspension is not so extended, then the earlier order of suspension loses its validity. Once the original suspension order itself becomes invalid beyond ninety days, further orders of extension of suspension do not have any legal validity. Thus, in the case of the applicant, since the order of suspension initially passed vide Annexure A-1 has become invalid, inasmuch as it had not been extended before the expiry of ninety days from 22nd May 2006 (i.e. before 20th August, 2006), the said Annexure A-1 order dated 22nd May, 2006 has lost its validity and thus, the applicant is entitled to the relief he has claimed vide para 8 of the O.A. The applicant relied upon the decision by the Gujarat High Court reported in ATJ 2006(1) 82 – **Dependra Keshavlal Mehta vs State of Gujarat and another.**

7. Counsel for the respondent on the other hand submitted that inasmuch as the decision by the review committee has been taken within ninety days of initial order of suspension, the further extension is valid, notwithstanding the fact that the first extension order was passed beyond ninety days. It has also been submitted that further extensions were within time.

8. Arguments were heard and documents perused. Sub Rule (6) and (7) of Rule 10 of CCS(CC&A) Rules have been introduced in 2003, effective from 2nd June, 2004 and the same read as under along with sub rule (5)(a):-

"(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.



(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.

(7) Notwithstanding anything contained in sub-rule (5) (a), an order of suspension made or deemed to have been made under sub-rule(1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

9. The above sub rule 6 talks of two authorities – (a) authority which is competent to modify or revoke the suspension and (b)Review Committee (constituted for the purpose of review). The former is, vide sub rule(1) of Rule 10 of the CCS (CC&A) Rules, the appointing authority or any authority to which it is subordinate or the Disciplinary authority or any other authority empowered in that behalf by the President by general or special order,. The latter, i.e. the Review Committee cannot under any circumstances take the place of the authority which is competent to modify or revoke the suspension. Its powers are limited only to the extent of making recommendations. That far and no further.

10. In the case of *Bachhittar Singh v. State of Punjab*, 1962 Supp (3) SCR 713 , a question relating to transaction of Government business was considered. The Apex Court in that case held as under:-

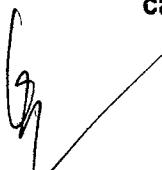
"8. What we have now to consider is the effect of the note recorded by the Revenue Minister of PEPSU upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary.What we must first ascertain is whether the order of the Revenue Minister is an order of the State Government i.e. of the Governor.



9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file (emphasis supplied)."

11. The above decision clearly provides that (a) for an order to be held valid, it must be passed by that authority which is competent to pass such an order, (b) such an order must be passed in a manner provided for/prescribed and © such an order should be communicated. With this rule position in mind, the case in hand has to be viewed.

12. The initial suspension order is dated 22nd May, 2006. It was passed by the competent authority. To invoke the provisions of sub Rule 6 of Rule 10 of the CCS (CC&A), it is for the competent authority to pass suitable orders before the expiry of ninety days of initial order of suspension, i.e. before 20th August, 2006 on the recommendations of the review Committee. A mere recommendation by the review committee cannot be construed to be the order of the competent authority and it is only a specific order of the competent authority based on the recommendations of the Review Committee that is required to be passed. And such an order has to be passed, as per the rules, within a period of ninety days. The sub rule is very clear when it states, "an order of suspension..... shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days." Thus, there should be an extension, that extension should be preceded by review and order extending the initial order of suspension shall be passed before the expiry of ninety days. In the instant case, the review was no doubt conducted within ninety days. But that alone is

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insufficient to have the suspension order extended. It should be duly extended by the competent authority and such extension shall be before the expiry of ninety days. Admittedly order extending the period of suspension was issued only on 13-10-2006 vide Annexure A-4. By the time the extension order was issued, the original order has become invalid from 20-08-2006 i.e. after ninety days of 22nd May, 2006.

13. Vide para 19 of the Posts and Telegraphs Manual Vol. III, an order of suspension will normally take effect from the date on which it is made and cannot be given effect to from aback date. Admittedly, in this case the order being at least 52 days after the date of expiry of ninety days of initial date of suspension, the said order does not comply either with the requirement as provided for under the above said rule or under Sub Rule 7 of Rule 10 of the CCS (CC&A) Rules, 1965. Once the initial order of suspension has become invalid, subsequent orders extending the initial suspension period also become invalid.

14. In view of the above, the OA fully succeeds. It is declared that Annexure A-1 order dated 22nd May, 2006 having become invalid by virtue of operation of Rule 10(7) of the CCS (CC&A) Rules, 1965, subsequent impugned orders, i.e., Annexure A-4 dated 13-10-2006, Annexure A-5 dated 09-02-2007, Annexure A-6 dated 09-08-2007, Annexure A-9 dated 06-11-2007, are all held invalid and hence quashed and set aside. The rejection of appeal, vide appellate order dated 10-05-2007 (Annexure A-7) also is quashed and set aside. The applicant is entitled to be reinstated forthwith and is also entitled to have the period from 20-08-2006 treated as spent on duty, and consequently, he is entitled to full pay and allowances for the said period. Respondents are directed to pass suitable



orders for reinstatement of the applicant and also work out the amount due to the applicant. While reinstatement shall take place within two weeks from the date of communication of this order, payment of the amount due to the applicant be made within two months thereafter.

15. There shall be no order as to costs.

(Dated, the 14th March, 2008)



(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.