

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 153/2007

FRIDAY THIS THE 13th DAY OF APRIL, 2007.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

K. Yousaf
WC Maistry
PWD Sub Division, Minicoy Islands
UT of Lakshadweep.Applicant

By M/s Babu S.Nair, Jijo Paul, Deepthi S Menon,
Abraham Samson, Syaja S.L. & Rajesh P.A.

Vs.

- 1 Union Territory of Lakshadweep
Represented by the Secretary (Works)
Public Works Department,
Kavarathi.
- 2 The Superintending Engineer
Public Works Department
UT of Lakshadweep,
Kavarathi.
- 3 The Assistant Engineer
Public Works Department
PWD Sub Division, Minicoy Islands
UT of Lakshadweep.Respondents

By Advocate Mr. S. Radhakrishnan

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The brief facts of the case are summarised as under. The applicant was placed under suspension while he was working as Work Charge Maistry in the PWD Sub Division, Minicoy, U.T. Of Lakshadweep Islands by Annexure A-1 w.e.f. 19.2.2006 on the ground that a criminal case was registered against him and he was detained in connection with the said case for more than 48 hours. Since the order placing the applicant on suspension was not reviewed or extended after the expiry of the period of 90 days, the applicant was constrained to approach this Tribunal in O.A. 798/2006 and by Annexure A-2 order the Tribunal allowed the O.A. declaring that the applicant's suspension had ceased to be valid after a period of 90 days from 19.2.2006 and the respondents were directed to take action accordingly and consequential benefits to be paid. According to the applicant the respondents did not allow him to join duty despite direction of this Tribunal. Subsequently, on 8.2.2007 an order was issued revoking the order of suspension. On the very same day another order Annexure A-5 was issued placing the applicant again under suspension. The applicant assails the above order on the ground that the order was issued with utmost disregard and disrespect of the order of the Tribunal and the orders of revocation and suspension were passed simultaneously on the very same day and served on the applicant rendering the entire proceedings of the Tribunal a mockery of justice and therefore it is

tainted with malice. It is also submitted that the applicant is due to retire in May, 2008. The following reliefs are sought:

- (i) Direct the respondents to reinstate the applicant in service after revoking Annexure A-5 order of suspension forthwith.
- (ii) Declare that the order of suspension passed as Annexure A-5 against the applicant, directly against the clear directions contained in Annexure A-2 order of this Hon'ble Tribunal
- (iii) Direct the respondents to pay the entire salary and other benefits due to the applicant, 90 days after passing Annexure A-1, as declared by this Hon'ble Tribunal in Annexure A-2 order.
- (iv) Grant such other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2 Per contra, the respondents have submitted that on 19.2.2006 the applicant was detained in custody for a period exceeding 48 hours in connection with Crime No. 4 of 2006 under section 409 of the Indian Penal Code, the allegation leveled against him was that he had committed criminal breach of trust in respect of 30 bags of cement entrusted with him in his capacity as a public servant and he committed criminal breach of trust in respect of that property by diverting the same to the residence of one of his friends instead of to the work site. Annexure A-1 order dated 21.2.2006 was therefore issued under Rule 10(2)(a) of the CCS (CCA) Rules stating that the applicant is deemed to have been suspended from the date of detention i.e. from the afternoon of 19.2.2006. The respondents admitted that under Rule 10(6) it is obligatory on the part of the

respondents to review the order of suspension before expiry of 90 days, from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and to pass orders either revoking or extending the suspension and that such a review ought to have been made on or before 20.5.2006. But unfortunately this aspect was not noticed and the order was not reviewed within the statutory period of 90 days. The applicant in the meanwhile filled O.A. 798/2006 on 21.11.2006 and under instructions the standing counsel conceded the position that statutory review was not conducted and the O.A was allowed. On receipt of the order, Annexure A-4 order dated 21.6.2006 was issued revoking Annexure A-1 order of suspension dated 21.2.2006 w.e.f. 20.5.2006 itself. In the meanwhile it was reported that the Police have filed chargesheet before the Judicial First Class Magistrate Court, Androt on 12.9.2006 and the case leveled against him is now pending trial. Therefore the first respondent decided to place the applicant under suspension under Rule 10 (1)(b) of the CCS (CCA) Rules and Annexure A-5 order was issued. The offence leveled against the applicant under Section 409 of the Indian Penal Code is a cognizable and non-bailable offence and as the offence is very grave, the first respondent decided to keep the accused person out of office so that he could not tamper with the records or influence the witnesses. It is further submitted that there is also no bar under CCS CCA Rules to place an employee under suspension even if the first suspension is revoked. The respondents have submitted that they have complied

with the directions of this Tribunal and the action taken by the m are with utmost respect and regard of the Tribunal and completely in accordance with the rules. The applicant is being given subsistence allowance as per rules and he has not been harassed in any way as alleged.

3 We have heard Shri Babu S. Nair the learned counsel for the applicant and Shri S. Radhakrishnan, the learned counsel appearing for the respondents.

4 Rule 10 of the CCS (CCA)Rules deals with Suspension. Rule 10(1) empowers the competent authority to place a government servant under suspension where a disciplinary proceeding against him is contemplated or is pending, where the Government servant is engaged himself in activities prejudicial to the interest of the security of the state or where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Sub Rule (2) of Rule 10 is a deeming provision by which a government servant shall be deemed to be placed under suspension w.e.f. the date of detention if he is detained in custody for a period exceeding 48 hours or if he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed, removed or compulsorily retired. Further sub rule 3, 4 & 5 deal with provisions regarding continued suspension and pendency of charges until it is modified or revoked by the authority competent to do so. By the OM dated 7.1.2004 issued by

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the Government of India, Department of Personnel & Training, it was decided to make a provision under the rules for review of the order of suspension by the competent authority on the recommendation of the Review Committee and also provide that an order of suspension issued under the above sub rule (1) or (2) of Rule 10 shall not be valid after 90 days unless it is extended after review. In accordance with the above decision sub rules (6) and (7) were inserted by DOPT notification dated 23.12.2003 and published in Gazette of India dated 3.1.2004 taking effect from 2.6.2004. The newly added provisions are extracted below:

"(6) As 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. Subsequently review 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 any thing contained in sub rule (5) (d) 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."

The case of the applicant is governed by the above provisions of Rule 10. The first order of suspension of the applicant at Annexure A-1 was issued under the deeming provision of Rule 10 sub rule (2). The second order of suspension Annexure A-5 would fall under Rule 10 sub rule (1).

5 The main question which arises for consideration before us is whether the second order of suspension is valid in law particularly when the first order has been revoked and has been declared to be not valid in accordance with sub rule (7) of Rule 10 and also the orders of this Tribunal in Annexure A-2. The learned counsel for the applicant argued that the very fact that both the orders revoking the order of suspension and the later order of second suspension have been issued on the same day, will indicate the legal malice, that the respondents have shown scant regard to the directions of this Tribunal and if such a course of action is permitted the respondents can repeat the same performance by revoking the suspension of the applicant again and again thus resulting only in harassment of the government servant and that is certainly not the intention in framing of the new rules. It is also argued that the respondents are very well aware that the case was under investigation even when the first order was issued and there were no fresh circumstances for them to arrive at a decision for suspending the applicant again after more than a year had elapsed. No disciplinary proceedings have been initiated against the applicant during this period.

6 The learned counsel for the respondents on the other hand contended that the first respondent had immediately complied with the directions issued by the Tribunal and had also conceded before this Tribunal that the statutory review was not conducted by the respondents as unfortunately this aspect was not noticed. It was

therefore on technical ground of having not reviewed the suspension order within the statutory period as per the CCS (CCA) Rules that the order was revoked and that the respondents were therefore not precluded from considering the case again in the light of gravity of the offence committed by the applicant and to keep the person out of office to avoid any tampering of the records, etc.

7 In the light of the above rival contentions we called for the file relating to the suspension from the respondents and have perused the same. We have already extracted the provision relating to 'suspension' under the CCS (CCA) Rules, as to when suspension can be resorted to. The provisions certainly provide that if a criminal offence is under investigation, inquiry or trial is pending against the government servant and his continuation in office can prejudice such an investigation/trial/enquiry, it can be considered an appropriate circumstances for invoking the power of suspension. Suspension is an executive action by which a government servant is kept out of duty temporarily pending a final action against him. The offence under Section 409 of IPC under which the applicant is charged cannot be considered to be a petty offence where suspension may not be warranted. On that ground, the suspension of the applicant cannot be held to be illegal or unwarranted. However, the main question here is whether the second suspension is valid or not especially when it has been revoked once. On this point the CCS (CCA) Rules certainly do not bar an employee being placed under

suspension even if the first suspension is revoked. The provision for automatic invalidation of suspension was brought in by an amendment and addition of the sub rule (7) which has been extracted above. It provides only that the suspension will not be valid after 90 days unless it is extended after the period and reviewed by a Committee as has been provided under sub rule (6). There is thus no doubt that sub rule (7) is intended to infuse an element of urgency and cast a mandatory duty on the authorities to review and re-examine the cases of suspension instead of allowing them to continue indefinitely in a casual manner. In this case it has been admitted by the respondents that they did not notice the provision regarding review at the appropriate time and perusal of the file produced by the respondents also corroborates this fact.

8 The following is the factual position emerging from the notings in the file. Though the applicant had been representing for subsistence allowance and for revoking his suspension, it is noted from the note file pages 9 to 11 that only when legal opinion was sought on his request for revoking suspension the Legal Cell advised that a review is obligatory under the CCS (CCA) Rules. Since the office in which the applicant is working is a subordinate office, the file was passed on to the Secretariat to hold a meeting of the Review Committee as the subordinate office were not aware of the existence of the Review Committee. By that time, the applicant had already approached the Tribunal and the Tribunal had passed the order that

his suspension ceased to be valid after a period of 90 days from 19.2.2006. Hence all the facts were reported to the Review Committee which met on 27.1.2007 and the minutes of the meeting are extracted as below:

MINUTES OF THE REVIEW COMMITTEE CONSTITUTED FOR REVIEW OF SUSPENSION OF GOVT. SERVANTS VIDE NOTIFICATION F.NO. 12/8/2004-SERVICES (1) DATED 4.6.2004 HELD ON 27.1.2007 IN THE CHAMBER OF THE SECRETARY (WORKS) TO REVIEW THE SUSPENSION OF SHRI K. YOUSEF, WC MAISTRY, LPWD MINICOY.

The Committee examined the case in detail. As per OM No. 11012/4/2003-Estt (A) dated 7.1.2004 of GOI Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training) an order of suspension made or deemed to have been sunder sub rules(1) or (2)of Rule 10 shall not be valid after 90 days unless it is extended after review for a further period before the expiry of 90 days. Shri K. Yousef, WC Maistry, LPWD Sub division, Minicoy was kept under suspension from the AN of 19.2.2006. The suspension was not reviewed before the expiry of 90 days from the date of suspension as per the OM cited above. Further the Hon. CAT Ernakulam bench ordered in O.A.NO. 798/06 filed by Shri K. Yousef that the suspension has ceased to be valid after a period of 90 days from 19.2.2006, the date from which he was kept under suspension

The Committee unanimously decided as follows. The proposal to review the suspension has become infructuous now. However,as the department submitted that the criminal case against him is under trial, the department may take action accordingly.

Sd-
Pravesh Ranjan Jha
Secretary (Admn)

Sd/-
S. Attakoya
Supdt. Engineer

Sd/-
A.K.Wasnik
Secretary(Works)

9 The Committee took note of the position that the Tribunal had already issued the orders that the suspension is not valid, therefore it

was stated that the proposal to review the suspension has become infructuous. Since the review committee had been informed that the case was under trial before the First Class Judicial Magistrate Court, and that he could be kept under suspension as per CCA Rule 10(1)

(b) the Committee advised the Department to take action accordingly. It was on the basis of the recommendation of the Review Committee as evidenced by the noting at para 51 to 57 that the said order of suspension was issued. Therefore, we do not find much merit on the contention of the applicant that the second order of suspension was issued to circumvent the direction of this Tribunal and was in defiance of its lawful authority. No doubt it is true that both the orders have been issued on the same date which could have perhaps been avoided. But this aspect would not materially affect the competency of the authority to reconsider the matter in the light of the gravity of the charge against the applicant, taking note of the fact that the case was pending trial. The respondents have no doubt complied with the order of the Tribunal by revoking the order of suspension w.e.f. 20.5.2006 i.e. after the lapse of 90 days from the original date of suspension. Therefore, the issue of both the orders on the same date does not have the effect of continuing the applicant on suspension from the initial date of suspension. He would be deemed to have been reinstated from 20.5.2006 and his next spell of suspension would commence from 8.2.2007 in terms of the second order of suspension and he would be eligible for full pay and allowances, etc. till that date.

10 We have also examined the legal position. The Apex Court had gone into the very same question and held that there is no restriction on the authority to pass suspension order a second time. In the case of UP Rajya Krishi Utpadan Mandi Parishad Vs. Sanjiv Rajan (1994 1 SLJ 28) The Apex Court held as follows:

"The High Court had misconstrued the nature and purpose of the power of suspension vested in the management. There was no restriction on the authority to pass a suspension order second time. The first order might be withdrawn by the authority on the ground that at that stage, the evidence appearing against the delinquent employee was not sufficient or for some reason, which was not connected with the merits of the case."

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"Since the allegation against the respondents were grave, the High Court should not have interfered with the order of suspension. In matter of this kind it is advisable the concerned employees are kept out of the mischief's range. Whether the employees should or should not continue in office during the period of inquiry is a matter to be assessed by the concerned authority. The Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a *prima facie* evidence on record connecting the employees with the misconduct in question. In this case after the receipt of inquiry report it was noticed that the employee could not be innocent. Since, this was the conclusion drawn by the management on the basis of material no conclusion to the contrary could be drawn by the Court at the interlocutory stage and without going through the evidence. Hence, there was no justification or the High Court to revoked the order of suspension which would stand revived."

The Court also further observed,

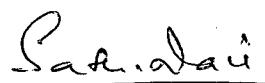
"whether the employee should or should not continue in office during the period of enquiry is a matter to be assessed by the concerned authority. The Court should not interfere with the order of suspension unless they are passed malafide without there being even the *prima facie* evidence on record connecting the employee with the misconduct in question."

11 As we have already stated above, there is nothing in the rules barring such a re-consideration of the order of suspension for a second time. Even if the argument of the learned counsel that the new sub rule (7) which has been introduced recently had not been taken into consideration in the earlier instructions relating to suspension, it cannot be denied that if such an intention was in the minds of the rule makers when this rule was introduced, a specific provision would have been made in the rule itself that once an order of suspension is revoked it cannot be revived. In the absence of any such provision and suspension being an executive action to be undertaken after the assessment by the concerned authority of the circumstances in each case to determine whether the suspension is warranted or not, we are of the considered view that no interference is called for from us particularly when no violation of the statutory rules has been brought to our notice. The O.A. is dismissed. No costs.

Dated 13.4.2007.



DR. K.B.S. RAJAN
JUDICIAL MEMBER



Sathi.nair
SATHI NAIR
VICE CHAIRMAN

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