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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.NO.177/2009**

**FRIDAY, this, the 19th day of February, 2010**

**CORAM:**

**HON'BLE SRI GEORGE PARACKEN, MEMBER(J)  
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)**

O.V.Subramanian, S/O Govindan(Late),Aged 47,  
Postal Assistant Calicut Head Post Office,  
Under Suspension, residing at  
Onivayal House, Kariyambadi (PO),  
Meenangadi-673591.

.. Applicant

By Advocate:Ms. R.Jagada Bai

vs.

1. Union of India, represented by the Secretary to Department of Posts, New Delhi.
2. Chief Postmaster General, Kerala Circle, Thiruvananthapuram-695 033.
3. Post Master General, Northern Region, Kerala Circle, Kozhikode-673 011.
4. Director of Postal Services, Northern Region, Kerala Circle, Kozhikode 673 011.
5. Senior Superintendent of Post Offices, Kozhikode Division, Kozhikode 673 001.
6. Senior Post Master, Head Post Office, Kozhikode-673 001.
7. Sri K. V. Anil Kumar, Inquiring Authority & Assistant Superintendent, Calicut South Sub Division, Kozhikode-673 001.

.. Respondents

By Advocate:Sri S.Abilash, ACGSC

The application having been heard on 8.02.10 ,the Tribunal on 19-02-10

delivered the following:-

**ORDER**

**HON'BLE MR.K.GEORGE JOSEPH, MEMBER(A):**

In this O.A. the applicant prays for setting aside the order placing him under suspension from 4.7.2006 and the chargesheets dated 25.01.2008 and 5.12.2008 and for reinstatement service with entitlement to have the period of service from 4.7.2006 treated as duty with consequential benefits.

2. On detecting a number of cases of misappropriation of huge amounts by the applicant while he was working as Postal Assistant at Sultan Bathery Main Post Office and as Sub Post Master at Sultan Bathery East Post Office during 2003 to 2005, he was suspended with effect from 4.7.2006. The applicant was chargesheeted under Rule 14 of the CCS(CCA) Rules, 1965 by the Disciplinary Authority vide memo dated 30.11.2006. This chargesheet was cancelled on 25.1.2008. A revised chargesheet was issued on the same day on the same charges. The revised chargesheet also was withdrawn on 10.9.2008 on technical grounds pending issue of a revised chargesheet. A revised charge sheet was issued on 5.12.2008. The order of suspension of the appellant was reviewed periodically by a review committee and the suspension of the applicant was extended from time to time.

3. The applicant contends that his suspension is not valid after a period of 90 days as it was not reviewed within a period of 90 days from the date of suspension. He was suspended on 4.7.2006. Orders regarding review of extended suspension should have been issued latest by 1.10.2006. But his suspension was extended retrospectively with effect from 2.10.2006 thereby making it invalid. The charge sheet dated

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30.11.2006 was simply cancelled on 25.1.2008 without assigning any reason. When the disciplinary case is cancelled by the Disciplinary Authority he is liable to be reinstated in service with all consequential benefits from the date of his placing under suspension. Once the power to cancel the charges is exercised by the Disciplinary Authority, the suspension which precedes the Departmental action so cancelled will automatically become nullified. Therefore the applicant should be reinstated in service with all consequential benefits from 4.7.2006.

4. The respondents contested the O.A. The order extending suspension of the applicant for a further period of 90 days from 2.10.2006 was issued only on 25.10.2006. Annexures R1 and R2 clearly show that the suspension of the applicant was reviewed by the Review Committee well before the expiry of the period of 90 days. The charge-sheet issued against the applicant had to be withdrawn for technical reasons. This does not in any way reduce the gravity of the offence committed by him, nor does it give any entitlement to him for reinstatement in service. There is no violation of any statutory provisions or denial of natural justice. The charge-sheet dated 30.11.2006 was cancelled because some of the documents listed in the charge-sheet were later found to be not traceable. The reason for cancellation of the charge-sheet was omitted and no intimation to this effect was given to the applicant. A revised charge-sheet was issued on the very same day, i.e., 25.1.2008. As the enquiry proceeded it was found that originals of certain documents listed in the charge-sheet were not available. Therefore the revised charge-sheet dated 25.1.2008 had to be withdrawn but it was clearly mentioned that said charge-sheet was being withdrawn on technical grounds and pending issue of revised charge-sheet intimating the intention of the Disciplinary Authority to proceed with the disciplinary proceedings. A revised charge-

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sheet was issued on 5.12.2008 and the enquiry is in progress. Mean while a representation dated 23.9.2008 to the Director of Postal Services, Northern Region, Calicut requesting to restrain the Disciplinary Authority from issuing another charge-sheet was rejected. A representation against the rejection order is pending with the Post Master General, Northern Region, Calicut. Criminal case No.396/06 was registered against the applicant . It is now under trial at JFCM Court No.I,Sulthan Bathery. Therefore the O.A. is devoid of any merit and is liable to be dismissed.

5. In the rejoinder the applicant reiterated that once the proceedings initiated under Rule 14 or Rule 16 of the CCS(CCA) Rules, 1965 are dropped, the Disciplinary Authorities are debarred from initiating fresh proceedings against the delinquent officers unless the reason for cancellation of the original charge-sheet is appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. He also submitted that the first review of his suspension order in accordance with Rule 10(6) and (7) of CCS(CCA) Rules, 1965 was required to be carried out within 90 days from the effective date of suspension, i.e., before 1.10.2006 but as per Annexure R2 the first review was conducted only on 4.10.2006 viz., on the 93<sup>rd</sup> day from the date of suspension. Annexure R1 is not related to the first review and hence fetches no merit and Annexure R2 speaks against the respondents.

6. In the additional reply statement the respondents submitted that considering the magnitude and complexity of the irregularity committed by the applicant, some delay in initiation of disciplinary proceedings and minor short-comings in issue of charge-sheet etc. are nothing but natural. While producing Annexure R1 an inadvertent mistake



was committed by the respondents. Annexure R4 makes it crystal clear that the continued suspension of the applicant was recommended on 28.9.2006 well before 90 days.

7. In the additional rejoinder the applicant submitted that the minutes of the suspension review committee at Annexure R2 bears no date or time in the text even though it is considered to be vital ingredient . Annexure R4 read with Annexure R2 proves that the review of suspension ordered vide Annexure A1 was reviewed only after the expiry of 90 days . It makes Annexure A1 a nullity.

8. Arguments were heard and documents perused.

9. Sub rules (5)(a),(6) and (7) of Rule 10 of CCS(CCA)Rules, 1965 state as under:-

“(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.”

  
The rules make it absolutely clear that an order of suspension made or deemed to have been made under sub rule 1 or 2 of Rule 10 will not be valid after a period of 90

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days unless it is extended after a review for a further period before the expiry of 90 days. The review of the order of suspension is to be carried out on the recommendation of the Review Committee constituted for the purpose. The review and the extension of the suspension order should be before the expiry of 90 days from the date of order of suspension. Otherwise the order of suspension will become invalid after a period of 90 days. Subsequent review shall also have to be made before the expiry of the extended period of suspension. The function of the Review Committee is to make recommendation. The date of making recommendation cannot be taken as the date of the order of extension of suspension by the competent authority, nor a recommendation of the Review Committee be construed as an order of extension passed by the competent authority. An order to be held valid, should be passed by the competent authority, in the prescribed manner and should be communicated, as held by the Apex Court in Bachhittar Singh v. State of Punjab; 1962 Supp.(3) SCR 713:-

“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 Govt. i.e. of the Governor.

9. The question, therefor, 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.”



10. In the instant case, the applicant was suspended with effect from 4.7.2006 vide Annexure A1. His suspension was reviewed by the Review Committee only on 4.10.2006 vide Annexure R2, i.e., on the 93<sup>rd</sup> day after the order of suspension was effected. Annexure R2 is reproduced below:-

#### **“MINUTES OF THE SUSPENSION REVIEW COMMITTEE MEETING**

The Suspension Review Committee meeting consisting of Shri Shibu M.Job Director of Postal Services, Northern Region, Calicut, Shri V.K.Balan, Senior Superintendent of Post Offices, Calicut Division and Shri E.Balan, Assistant Director(Staff) Office of the Postmaster General, Northern Region, Calicut, reviewed the Suspension case of the following officials and decided to recommend the extension of suspension as mentioned below:-

- |   |   |
|---|---|
| 1. Shri T.K.Girish Kumar, PA, Kunnamangalam MDG – upto 31.10.2006 |   |
| 2. Smt.Jayashree Rajkumar, SPM, Pulpalli                          | -for a period of sixty days from 29.09.2006.  |
| 3. Shri O.V.Subramanian,PA, Calicut HO                            | -for a period of ninety days from 02.10.2006. |

Sd/- Shibu M.Job Director	Sd/- V.K.Balan Senior Superintendent	Sd/- E.Balan Asst.Director(Staff)
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Endt.No.JNV/SUS/rev/5/Dlg

dated at Calicut-11 the 04.10.2

Forwarded to:

1. The Senior Superintendent of Post Offices, Calicut Division, Calicut 673003.
2. Suspension file, RO
3. Office copy.

Sd/- “

The minutes of the Suspension Review Committee meeting is remarkable for (i) it does not record the time, date and place of meeting and (ii) only one of the members has put date below his signature. It amply displays the casual and perfunctory manner of the authorities in dealing with suspension cases. The suspension was extended retrospectively by the competent authority only on 25.10.06 vide Annexure A5. The

review by the Review Committee was not conducted within 90 days. It was reviewed only on the 93<sup>rd</sup> day. The order of extension of the suspension order by the competent authority was issued 24 days after the date of expiry of 90 days from the date of suspension. The said order does not comply with the mandatory requirement of Rule 10(7) of the CCS(CCA)Rules,1965 that unless the order of suspension is extended after review, before the expiry of ninety days from the date of order of suspension, it shall not be valid, after the period of ninety days . Hence the order of suspension and all orders extending the period of suspension beyond 90 days from the date of suspension are invalid and liable to be quashed and set aside.

11. In O.A.2/2008 this Tribunal held as under:-

“14. In view of the above, the O.A fully succeeds. It is declared that Annexure A-1 order dated 22<sup>nd</sup> 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.”

The order of this Tribunal in the said O.A. was stayed by the Hon'ble High Court of Kerala. The stay by the Hon'ble High Court restricts only the operation of that order until the pronouncement of final orders and hence has no bearing on other cases as upheld by the Apex Court in Alpana V.Mehta vs. Maharashtra Board of Secondary Education & Others;AIR 1984 SC 1827.



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12. The first charge sheet under Rule 14 of the CCS(CCA) Rules, 1965 was issued to the applicant on 30.11.2006. It was cancelled as under:-

‘Department of Posts, India  
Office of the Senior Superintendent of Post Offices,  
Calicut Division, Calicut-673003

No.F1/9/05-06      dated at Calicut.673003      the 25.1.2008

This office memo issued under No.F1/9/05-06 dated 30.11.06 is hereby canceled.

Sd/-  
Senior Superintendent of Post Offices,  
Calicut Division, Calicut.673003

Regd/AD

To,

Sri O.V.Subramanian,  
PA (under suspension)  
Calicut HO 673 001.”

The cancellation of the first charge-sheet is without assigning any reason after a lapse of about 14 months. A second charge sheet was issued on the same day, i.e. 25.1.08 but the Disciplinary Authorities are debarred from initiating fresh proceedings against the delinquent officers unless the reason for cancellation of the original charge sheet is mentioned and it is duly stated in the order of cancellation that the proceedings are being dropped without prejudice to further action. This is clearly stated in the D.G., P&T's letter No.114/324/78-Disc.II dated the 5<sup>th</sup> July,1979 as under:-

“(3) Reasons for cancellation of original charge-sheet to be mentioned if for issuing a fresh charge-sheet -- It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS(CCA)Rules,1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the Delinquent Officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original

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one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on.

(D.G., P.&T.'s Letter No.114/324/78-Disc.II, dated the 5<sup>th</sup> July, 1979)"

13. The second charge-sheet was amended on 24.6.2008 vide Annexure A19. The enquiry was set in motion after the submission of list of defence documents. Even the second charge-sheet was withdrawn on 10.9.08 due to technical reasons pending issue of revised charge-sheet. A third charge-sheet was issued on 5.12.2008. All the three charge-sheets are on the same facts and reveal only slight errors which could have been avoided with a little care and diligence. As the first charge-sheet was cancelled without assigning any reason, the respondents are debarred from initiating further proceedings. Therefore the second and third charge-sheets are invalid and are liable to be quashed.

14. Suspension is not a form of penalty but it definitely causes great hardship to the affected employee as he is not allowed to perform legitimate duties and earn his salary but is paid only a subsistence allowance. It causes lasting damage to his reputation and it's stigma is not washed away even if he is ultimately exonerated. During suspension Govt. bears infructuous expenditure by way of paying subsistence allowance without utilizing the services of the employee. Therefore utmost caution and circumspection should be taken before passing an order of suspension. The power to suspend an employee is to be exercised very sparingly, for valid reasons, only when it is absolutely essential. An employee is suspended for the purpose of taking disciplinary action against him. More often than not, authorities dither over disciplinary action after passing an order of suspension in a casual manner. Natural

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justice and prudence require that the period of suspension should be reviewed periodically to keep it to the barest minimum. With this purpose CCS(CCA)Rule 10 has been amended making the order of suspension invalid after 90 days unless it is extended after review before the expiry of 90 days. The purport of the amendment is totally lost on the respondents.

15. In the instant case the respondents could not serve the order of suspension immediately although it was to take effect immediately. It took 19 days to effect the order of suspension dated 15.6.2006. The first review was conducted on the 93<sup>rd</sup> day and the order of extension was issued on 114<sup>th</sup> day making the suspension order invalid. The charge-sheet was dropped without assigning any reason after a lapse of about 14 months thereby debarring themselves from issuing fresh charge-sheet. From the very beginning there is utter lack of diligence and care in proceeding against the applicant. Delay in completing departmental proceedings protects the guilty to the very last and harms the innocent to the maximum extent. In the interest of justice the guilty should be punished without loss of time and the innocent should be set free at the earliest. Utmost diligence and speed are required in conducting departmental enquiries, which are quasi judicial in nature. Liberty cannot be taken with mandatory requirements. Decision to extend the suspension of the applicant was not taken within 90 days as stipulated in the rules. Cancellation of the first charge sheet without assigning any reason, and that too after a lapse of about 14 months, debarred the respondents from issuing subsequent charge-sheets as per instruction contained in the letter of D.G.,P&T dated 5<sup>th</sup> July, 1979. These grave failures on the part of the respondents vitiated the proceedings against the applicant and made them liable to be set aside.

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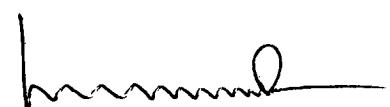
16. However, the prayer of the applicant to reinstate him in service with effect from 04.07.2006 is not tenable. A plain reading of sub rule (7) of Rule 10 of CCS (CCA) Rules, 1965, makes it abundantly clear that the order of suspension made or deemed to have been made under sub rule (1) or (2) of Rule 10 **shall not be valid after a period of 90 days** unless it is extended after review before the expiry of 90 days. The suspension order became invalid after 90 days if it is not extended after a review within 90 days of the initial order of the suspension. It remains valid for 90 days even if review is not done. In O.A. No. 2/2008, this Tribunal held that the applicant therein is entitled to have the period from the 91<sup>st</sup> day after the order of suspension treated as spent on duty. Therefore, the applicant is not entitled to get the initial order of suspension set aside as it remains valid for 90 days.

17. In the result, the O.A. is allowed to the extent as shown below:-

Annexure -A5 order extending the period of suspension from 2.10.2006 with all subsequent orders of extension of period of suspension and the third Memorandum of Charges dated 5.12.2008 are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service with entitlement to have the period of suspension from 2.10.2006 treated as duty with consequential benefits within a period of one month from the date of receipt of a copy of this order. They are at liberty to proceed in accordance with rules once the outcome of the criminal case against the applicant is known.

No costs.

  
(K. GEORGE JOSEPH)  
MEMBER (A)

  
(GEORGE PARACKEN)  
MEMBER (J)

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