

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application NO. 178 of 2009**

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

**CORAM:**

**HON'BLE SRI GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE SRI K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

V.P. Ashokan,  
S/o. Pokkan,  
Sub Post Master, Parakkadavu  
(Under Suspension),  
Residing at Vadakkeyil Poil House,  
P.O. Cherapuram, Kakkattil,  
VADAGARA : 673 507

... **Applicant.**

(By Advocate Ms. R. Jagada Bai)

versus

1. Union of India, represented by the Secretary to Department of Posts, New Delhi.
2. Chief Postmaster General, Kerala Circle, Thiruvananthapuram.
3. Director of Postal Services, Northern Region, Kerala Circle, Kozhikode
4. Superintendent of Post Offices, Badagara Division, Vadagara : 673 101
5. Head Post Master, Head Post Office, Vadagara : 673 101
6. Shri P.K. Shivadasan, Assistant Superintendent of Post Offices, Vadagara South Sub Division, Vadagara : 673 101

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Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

(The Original Application having been heard on 08.02.10, this Tribunal on 19.02.10, delivered the following) :

**O R D E R**  
**HON'BLE MR. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

In this O.A., the applicant seeks following reliefs :

(i) Quash and set aside Annexure A/1 order dated 14.08.2006 placing the applicant under deemed suspension, Annexure A/3 order dated 3.12.2008 rejecting the appeal against continued suspension filed by the applicant, Annexure A/4 order dated 04.12.2008 and Annexure A/5 order dated 04.02.2009 both extending the suspension ;

(ii) Reinstatement in service with entitlement to have the period of service from 10.08.2006 treated as duty with consequential benefits.

2. Facts in brief : While officiating as Sub Post Master, Parakadavu Sub Post Office during the period from 01.02.2005 to 02.06.2006, the applicant was involved in a number of fraudulent transactions amounting to lacs of rupees. A criminal complaint was filed against him. He was arrested and detained in police custody with effect from 10.08.2006 to 23.08.2006. He was placed under deemed suspension with effect from 10.08.2006 in terms of sub-rule (2) of Rule 10 of the CCS (CCA) Rules, 1965, vide Annexure A-1 order dated 14.08.2006. His appeal against the suspension was rejected by the Director of Postal Services vide Annexure A-3 order dated 31.12.2008. His suspension was extended from time to time. Hence this O.A.

3. The applicant contends that he was placed under deemed suspension under Rule 10(2) of CCS (CCA) Rules, 1965. Rule No. 10 (7) of the said rules stipulate that an 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 for a further period before expiry of 90 days. The initial order placing him under suspension was with effect from 10.08.2006. Hence the orders regarding the review of extended suspension should have been issued by the competent authority within 90 days, i.e. on or before 07.10.2006. However, the order of extension was issued only on 04.12.2008. The order of deemed suspension dated 14.08.2006 with effect from 10.08.2006 became invalid beyond 90 days and further orders of extension have no legal validity.

4. Further, the action on the part of the respondents in not complying with the direction contained in Government of India DOP&T O.M. No. 11012/4/2003-Estt.(A) dated 07.02.2004 is vitiated by legal malice because he is not reinstated in service

inspite of his being under suspension for more than one year without any charges being filed in the Court of law.

5. The respondents contested the O.A. The applicant was involved in 30 fraudulent transactions amounting to Rs. 12 lacs involving 30 deposit accounts. Therefore, a criminal complaint was filed against him. On his being detained more than 48 hours, he was placed under deemed suspension. This suspension was reviewed within three months by the Review Committee on 09.11.2006. However, the results of the past five reviews were omitted to be communicated to the applicant. The decision of the competent authority to extend the continued suspension upto 26.01.2009 based on the 6<sup>th</sup> and 7<sup>th</sup> reviews held on 08.07.2008 and 06.07.2009 were communicated to the applicant. The applicant cannot be reinstated in service as an investigation is going on and the O.A. lacks merit and is liable to be dismissed.

6. In the rejoinder, the applicant submits that based on the admission upon the violation of statutory provisions, the impugned order of suspension is a nullity and liable to be set aside because the review of suspension was not carried out within 90 days. He relied upon the decisions of the Principal Bench of Central Administrative Tribunal in OA No. 1157/08 and OA No. 2146/08 in support of his contention.

7. Arguments were heard and documents perused.

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

**"Rule 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 evoked by the authority competent to do so.

**Rule (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 90 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.

**Rule (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."

It is quite clear that the order of suspension or deemed suspension should be extended by the competent authority before expiry of 90 days from the date of deemed suspension on the recommendation of the Review Committee. The recommendation of the Review Committee is made on 9.11.2006, i.e., on the 92<sup>nd</sup> day from the date of the effective suspension on 10.08.2006. The deemed suspension was extended retrospectively vide order dated 04.12.2008 after a lapse of over two years. The review was done after the stipulated period of 90 days from the effective date of suspension. The order of extension of the deemed suspension by the competent authority was late not by two days but over two years. It is meaningless to extend an order of suspension that became invalid two years ago. It is mandatory to take the decision to extend suspension within 90 days by the competent authority. The Review Committee is different from the competent authority. The function of the Review Committee is to review the suspension order and to make recommendation on extension or revocation of the suspension and nothing more. The competent authority may extend or revoke the suspension taking into account the recommendations of the Review Committee. 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 the case of ***Bachhittar Singh vs. State of Punjab***, 1962 Supp (3) SER 713. The relevant extract from the cited case is reproduced 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 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.”

The impugned order dated 04.12.2008 extending the suspension with retrospective effect and upto 26.01.2009 issued vide Memo No. F1/IV-1/06-07 is bad in law for three reasons :

- (i) The decision of the Review Committee made on 09.11.2006 was not the decision of the competent authority, besides beyond the stipulated period of 90 days;
- (ii) The competent authority did not decide on the extension of the order of suspension within the mandatory period of 90 days; and
- (iii) The extension of the order of suspension was omitted to be communicated to the applicant.

The Annexure A-3 order dated 31.12.2008 rejecting the appeal failed to take note of the above lapses which vitiated the order of extension of suspension. The rejection of appeal itself became bad in law on account of the above failure on the part of the appellate authority.

9. Although a criminal case No. 163/06 was filed in the month of June, 2006, no charge sheet has been filed before the Court of law so far. According to the instructions contained in Government of India DOP&T O.M. No. 11012/4/2003-Estt.(A) dated 07.02.2004 “if the officer has been under suspension for one year without any charges being filed in a Court of law or no charge-memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him.” The respondents failed to consider this instruction while extending the order of suspension.

10. Suspension is not a penalty that can be imposed on an employee for any misconduct or violation of rules. It is not a remedy for corruption, indiscipline and such other ills afflicting administration. It is an administrative measure to be resorted to very sparingly for valid reasons after due consideration. The power to suspend an employee should not be exercised casually or perfunctorily. Suspension results in infructuous expenditure on Government by way of giving subsistence allowance to the suspended employee. It causes mental agony, loss of prestige and casts a stigma on the employee that cannot be washed away even on his exoneration and reinstatement in service. Once an order of suspension is issued, it is generally observed that a debilitating slackness creeps into administration keeping the employee in suspension for years and years. To end this sickening state of affairs, it is mandated to review the order of suspension periodically. Period of suspension is to be kept to the barest minimum, as short as possible. The provision to extend after review an order of suspension within 90 days is mandatory. It cannot be taken lightly as the respondents have done. Failure to extend after review an order of suspension within the stipulated period, invalidates the order of suspension beyond 90 days or further extended time.

11. In O.A. No. 02/2008, this Tribunal had 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.

12. As the order of deemed suspension dated 14.08.2006 is valid for 90 days, the question of setting aside the same does not arise. The applicant has relied upon the decisions rendered by the Principal Bench of C.A.T. in OA Nos. 1157/08 and 2146/08 for setting aside the order of deemed suspension dated 14.08.2006. However, the facts of the instant case differ from the facts of the cited cases. It is quite clearly and unambiguously stated in sub rule (7) of Rule 10 of CCS (CCA) Rule, 1965, that an 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 ninety days unless it is extended after review, for a further period before the expiry of ninety days. The suspension order becomes invalid after 90 days if it is not extended after review within ninety days from the date of the initial order of suspension. In other words, the order is valid for 90 days only. It becomes invalid after expiry of 90 days i.e. on 07.10.2006 in the instant case. Therefore, the applicant is entitled to be reinstated in service from 07.10.2006 only. In O.A. No. 02/2008, wherein facts and legal issues are similar to those in the present case, the Tribunal had reinstated the applicant, who was suspended on 22.09.2006, in service with effect from 20.08.2006, i.e. on the 91<sup>st</sup> day after the initial order of suspension.

13. In the result, this Original Application succeeds but limited to the extent indicated below:

Annexure A-3 order dated 03.12.2008 rejecting the appeal against the continued suspension of the applicant, Annexure A-4 order dated 04.12.2008 and Annexure A-5 order dated 04.02.2009 both extending the deemed suspension of the applicant are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service with entitlement to have the period of service from

7.10.2006 treated as duty with consequential benefits, within 30 days from the date of receipt of a copy of this order. The reinstatement of the applicant will not affect the departmental enquiry or the criminal complaint.

14. No order as to costs.

(Dated, the 19<sup>th</sup> February, 2010)

  
(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER

  
(GEORGE PARACKEN)  
JUDICIAL MEMBER

cvr.