

O.A.234/2006

CORAM:

**P.K.Vasumathy,
D/o late K.R.Kunju,
Sub Postmaster (Under Suspension),
Prayar, residing at KV Bhavan,
Alumpeedika, Via Prayar, Kollam.**

Vs.

- 1. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam.**
- 2. Director of Postal Services (HQ),
Office of the Chief Postmaster General ,
Kerala Circle, Thiruvananthapuram.**
- 3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.**
- 4. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.**

The application having been heard on 6.9.2007 the Tribunal on...3|7|07 delivered the following.

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

This O.A. is sequel to the earlier O.A. No. 526/04 which was disposed of by Annexure A-9 order dated 6.12.2004.

- 2. Succinctly stated, the applicant, while functioning as Sub Postmaster, Prayar under Kollam Postal Division, was placed under suspension by**

Annexure A1 order dated 8.11.2002 and was kept under continued suspension. By Annexure A-2 notification dated 23.12.2003 a new provision was introduced whereby, before expiry of ninety days of initial suspension, for continuance of such suspension, the order of suspension shall be reviewed by an authority competent to modify or revoke the suspension on the recommendation of the Review Committee constituted for the purpose. This Annexure A-2 notification having been published or having been gazetted with certain corrigendum etc., came into force with effect from 3.4.2004. Obviously, in respect of suspension orders passed prior to the coming into force of the aforesaid notification, the period of ninety days shall commence from the date of notification which was 3.1.2004.

3. By virtue of Annexure A-6 Minutes of the meeting dated 16.4.2004, the Review Committee did not recommend for revocation of suspension "at present". The recommendation of the Review Committee was accepted by the competent authority who had passed an order dated 6.9.2004 (Annexure A-7) extending the period of suspension by 180 days from 16.4.2004. Thereafter by order dated 29.11.2004 the suspension was further extended after review Committee assessed the situation in its meeting held on 14.10.2004.

(Annexure A-8 refers).


4. In fact, after the initial order of suspension dated 8.11.2002, as no communication or further extension was made to the applicant, the applicant filed O.A. No.526/04 which was registered on 12.7.2004. On the very first day of hearing, i.e. 13.7.04, the O/A was admitted. The respondents in that O.A. filed a reply statement on 10.9.2004 annexing thereto the Minutes of the Meeting held on 16.4.2004. In the said reply they had also stated that on the basis of the recommendations of the Review Committee, orders were

issued on 6.9.04 (extending the period of suspension). The applicant in that case filed a rejoinder also contending that after the admission of the O.A. on 13.7.2004, there was no scope of administrative authorities passing any orders in the subject matter and as such, the order dated 6.9.04 alleged to have been issued, was clearly hit by Section 19(4) of the Administrative Tribunals Act. When that O.A. came up for consideration, the Tribunal, after extracting the relevant provisions of suspension, held that, failure to pass an order under sub rule 6 of Rule 10 of CCA(CCA) Rules within the prescribed time limit would lead to the consequence of further period of suspension being rendered as invalid. In other words, attempt to extend the delay in passing the necessary order beyond the prescribed time limit, was to serve no purpose. Accordingly, the following order was passed;

"4. In the light of what is stated above we allow this application declaring that the suspension of the applicant made by Annexure A-1 order has become inoperative in view of the failure on the part of the competent authority to issue an order as required under Sub rule 6 of Rule 10 of CCS(CCA) Rules. Necessary legal consequences will follow."

5. In purported compliance of the order dated 6.12.2004, the Ist respondent on 27.1.2005, had passed the following order :-

"Now, therefore the undersigned hereby order that the suspension of Smt. P.K.Vasumathy is deemed to be revoked w.e.f.4.7.04 F/N and further order that the official is deemed to have been reinstated in service as PA, Karunagappally on 04.07.04 till 05.09.2004. It is further ordered that this office memo of even no. dated 06.09.2004 and 29.11.2004 are in force except for the period of reinstatement."

 **6. In the wake of the aforesaid order and the order of the Ist respondent the applicant preferred a representation dated 11.2.2005 requesting for**

reinstatement of the applicant into service with effect from 3.4.2004 with attendant legal consequences as declared by the Tribunal. In the said representation conspicuously it was also stated that, the disciplinary authority was at liberty, after such re-instatement, to decide whether the applicant has to be again suspended or not, and if so decided to suspend the applicant, the same could be only prospective.

7. The representation of the applicant was considered by the 2nd respondent who had, vide A-12 passed the following orders:-

"I have carefully gone through the representation. The only point to be considered in the representation is about the date of reinstatement honouring the judgement of the Hon'ble CAT in O.A. 526/04.

Sub Rule 6 of Rule 10 of CCS(CCA) Rules do not in any specific form mention about communicating the orders to the suspended official nor any time frame is fixed. The suspension of the official was reviewed by the duly constituted committee on 16.4.04, which is well within the time frame set by Directorate as per Directorate letter No. 4-2/04-Vig. dated 21.6.04 which clearly stipulates that all suspension cases ordered before 3.4.04 should be reviewed before 30.6.04 positively. In the instant case the review has been done well in advance i.e. 16.4.04 and orders extending the suspension passed. Hence there is no delay in reviewing the suspension.

I do not find any lapse in communicating the decision on 6.9.04 since no time frame has been mentioned in the Rules for communicating the decision of the committee to the suspended official/has not in any way affected the official also. The second due review as stipulated in the rules was also conducted on 14.10.04 and extension of suspension for another 180 days as recommended by the committee was communicated to the official on 29.11.04 by SSPOs, Kollam. Hence I do not find any merit in the representation of the official that she ought to have been reinstated w.e.f. 3.4.04. Hence, the representation is disposed of accordingly."

8. It is against the above order that the applicant had moved this OA.

claiming the following reliefs:-

ii) To declare that the applicant shall be deemed to have been reinstated into service on the expiry of 90 days from the

date of coming into force of Annexure A-2 CCS (CC&A) Amendment Rules, 2003 on account of failure to pass orders extending the initial order of suspension within the prescribed period by force of sub Rule(7) of the said Rule and the applicant has not been validly suspended thereafter entitling her to receive full salary and allowances for the period she has been prevented from discharging her duties attached to the post;

iii) to issue appropriate direction or order, directing the respondents to disburse to the applicant full pay and allowances from 23.3.2004 deducting the subsistence allowance already paid till such period she has been validly suspended from service;

iv) to issue appropriate direction or order directing the respondent to re-instate the applicant to the post of sub Postmaster, Prayer with effect from 23.3.2004 and treat the period she has been placed on deemed suspension as duty for all purposes including arrears of pay and allowances;"

9. Respondents have contested the O.A. According to them, order dated 6.9.04 in continuation of the original suspension order dated 8.11.2002 was in order and continuous. On the basis of the recommendations of successive Review Committee the period of suspension was got extended as per the provisions of CCS(CCA) Rules. As such, there is no scope for any period other than the period from 4.7.2004 to 5.9.2004 to be treated as of duty. Hence, the applicant is not entitled to any relief. It has also stated that by virtue of order dated 17.3.2006 (Annexure R-1), the disciplinary authority has awarded the penalty of removal from the service of the applicant after holding the necessary inquiry.

10. Senior Counsel for the applicant at the time of hearing, argued that, the entire action of the respondents in so far as continuation of suspension is concerned, is thoroughly illegal as this Tribunal by its order dated 6.12.2004 held accordingly. It has been submitted by the Senior Counsel that, the said order attained finality as the same was not challenged by the respondents before the Hon'ble High Court. The Senior Counsel has relied upon the following decisions in support of his case:

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| (1) AIR 1979 SC 1923 | (2) (2002) 2 SCC 560 |
| (3) (2001) 10 SCC 264 | (4) 1982 KLJ 149 |
| (5) CCS & CCA Rules | (6) AIR 1974 SC 1281 |

11. Counsel for the respondents submitted that as the original order of suspension was periodically reviewed and necessary orders passed, except for the period from 3.7.2004 to 5.9.2004, the applicant's suspension is thoroughly valid.

12. Arguments were heard and documents perused. Though, in the earlier order there has been no mention about the order dated 6.9.04 passed by the respondents to have the period of suspension continued, impliedly the said contention was rejected. It is evident from the fact that the Tribunal has held that no order has been passed after the expiry of the 90 days from the date of issue of notification. The decision relied on by the applicant vide AIR 1979 SC 1923 supports the case of the applicant.

13. A close look at Sub rule 6 of Rule 10 would go to show that it is mandatory on the part of the disciplinary authority to pass necessary orders either extending or revoking the suspension before the expiry of 90 days.

The said sub rule reads as under:

“(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority 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.”

14. The above rule contemplates the following:

- (a) Review by the authority competent to modify or revoke the suspension before the expiry of 90 days;
- (b) passing of orders either extending or revoking the suspension;
- (c) for the above purpose, to have the recommendations of the Review Committee constituted.

15. The term "before the expiry of 90 days" does not mean merely the recommendation of the review committee which takes place before the said expiry period, but it means that, on the recommendations of the Review Committee constituted, it is the responsibility of the authority competent to modify or revoke suspension to review the case before the said expiry period. Thus, in the instant case, though by 16.4.2004 the review committee recommended, there is no reference at all, much less in confirmation, by the authority competent to modify or revoke the order of suspension, to substantiate that review by the said authority did take place before the expiry of 90 days. As such, order dated 6.9.04 does not conform to the time period mandated in the aforesaid sub rule. Thus even if the earlier O.A. was not admitted prior to passing of the order dated 6.9.04, the said order dated 6.9.04 has no legal validity. Since the earlier O.A. stood admitted as on 13.7.04, order dated 6.9.04 is certainly hit by provisions of Section 19(4) of the AT's Act, 1985 as well.

16. The applicant was thoroughly right in her request for reinstatement with effect from 3.4.2002 on the strength of the earlier order of this Tribunal. Her attempt to inform the authorities of the fact that the discretionary power to pass a fresh order of suspension vide her representation dated 11.2.2005 (A-11) should have reminded the authorities of

the proper action to be taken in the matter but the authorities chose to ignore the same and hence, subsequent orders extending the period of suspension do not have any base, as such, orders passed by the respondents are not in tune with the mandatory provisions of the rules. It is worth citing the following observations of the Apex Court in the case of Laxmi Ram Bhuyan V. Hari Prasad Bhuyan, (2003) I SCC 197:

“An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine.”

17. It is declared that the applicant is deemed to have been reinstated in service with effect from 3.4.2004 and the period from that date till the date of her removal from service by the disciplinary authorities order dated 17.3.2006, has to be treated as of duty.

18. The question now is as to the entitlement of the applicant for her salary. In the case of Sukhdeo Pandey Vs. Union of India and another (C.A. 3888/07 decided on 24.8.2007, the Apex Court had held as under:

“It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of 'no work', no pay' is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied.”

19. If the above doctrine is applied it is to be seen that, whether there were any reason to the contrary which would enable the applicant to claim her full pay and allowances. The applicant had in her representation dated 11.2.2005 made genuine request for reinstatement and also expressed that, if the authorities wanted to put the applicant under suspension again, it could

have only prospective effect. This communication evidences the fact that, the applicant has been ready to serve the department but, she cannot do so save by a positive order of reinstatement. It is settled law that, when an individual was ever ready and available to perform his/her part of duty the failure on the part of the other side cannot be taken to deprive the legitimate benefits otherwise available to the individual. Applying the doctrine of equity, fair play and good conscious, the applicant does deserve fully her claim for full pay and allowances for the period beyond 3.4.2004 she was kept out of duties. Hence this OA.succeeds.

20. Respondents are directed to work out the pay and allowances of the applicant including increments if due for the period from 3.4.04 till the date of removal of the applicant from service and after deducting the extent of subsistence allowance paid to the applicant, the balance shall be paid to her. This drill shall be completed within a period of six weeks from the date of communication of this order. It is made clear that, this order is passed independent of the merit or otherwise of the final penalty order passed by the respondents vide Annexure R-1 dated 17.3.2006.

21. In the above circumstances, there shall be no order as to costs.

Dated the 13th September, 2007.


DR. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN