

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 244 OF 2009

Tuesday, this the 19th day of January, 2010.

CORAM:

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

K. Mohanan,
Postal Assistant, (Under Suspension),
Ponnani Head Post Office,
Residing at Kalathingal House,
Andathode P.O. - 679 564.

... **Applicant**

(By Advocate Mrs. 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, Tirur Division, Tirur.
5. Senior Superintendent of Post Offices, Palakkad Division, Palakkad – 678 001. ... **Respondents**

(By Advocate Mr. M.M. Saidu Muhammed, ACGSC)

The application having been heard on 19.01.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's prayer in this O.A. is to quash and set aside the Annexure A1 memo No.F1/IV-4/07-08 dated 25.09.2007 and the Annexure A8 order No.F1/IV-4/07-08 dated 19.08.2008. By the Annexure A1 order dated 25.09.2007, the Competent Authority in the respondent Department, in

✓

exercise of the powers conferred by Sub Rule (1) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules,1965 placed the applicant under suspension. Since the aforesaid order was communicated to the applicant on 26.09.2007, it came into effect from that date. The Annexure A8 dated 19.08.2008 is the order by which the respondents have informed the applicant that the Annexure A1 Suspension order dated 25.09.2007 was reviewed by the Suspension Review Committee and recommended that his suspension should continue upto 17.03.2009. The applicant has also prayed for his reinstatement in the service with effect from 26.09.2007 considering the entire period as duty with consequential benefits.

2. Brief facts of the case are that the applicant while functioning as Leave Reserve Postal Assistant at Ponnani Head Post Office, received Annexure A1 memo No.F1/IV-4/07-08 dated 25.09.2007 from the Superintendent of Post Offices, Tirur Division, Tirur on 26.09.2007 placing him under suspension. As no charge sheet was issued or the suspension ordered was not revoked even after three months, he made the Annexure A2 representation dated 02.01.2008 to revoke the suspension and to reinstate him in service. However, the Department, proceeded against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and charge sheeted him vide Annexure A3 memorandum dated 23.06.2008 without reinstating him in service. The applicant has, therefore, sought the following reliefs in this Original Application :-

- (i) Quash and set aside Annexure A1 order No.F1/IV-4/07-08 dated 25.09.2007 and Annexure A8 order No.F1/IV-4/07-08 dated 19.08.2008.
- (ii) Reinstatement into service with entitlement to have the period of service from 26.09.2007 treated as duty with consequential benefits.

- (iii) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.
- (iv) Grant costs to the applicant.

3. Even though the applicant has sought an interim order to direct the respondents to stay the disciplinary proceedings initiated against him vide the Annexure A3 memorandum dated 23.06.2008, this Tribunal considered it not necessary to interfere with it at the interlocutory stage. Hence, we are considering only the limited issue regarding the maintainability of the Annexure A1 suspension order issued by the respondents in the face of Rule 10(7) of Central Civil Services (Classification, Control and Appeal) Rules, 1965, which reads as under :-

"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."

4. Applying the aforesaid rule in this case, the learned counsel for the applicant argued that the review of the Annexure A1 order dated 25.09.2007, which came into existence w.e.f. 26.09.2007, i.e., the date of its communication to the applicant placing the applicant under suspension should have been reviewed within 90 days i.e., latest by 24.12.2007. However, in the present case, the said suspension order was reviewed only on 19.08.2008 and recommended for continued suspension retrospectively upto 17.03.2009 by the respondent No.4 as intimated to the applicant by the Annexure A8 memo dated 19.08.2008. Therefore, the Annexure A1 order itself has become invalid and the said suspension order has to be revoked from the date of its issue. Consequently, the further continuance of the suspension ordered vide Annexure A8 will have no legal validity in the light of the aforesaid statutory provisions.



5. In this regard the applicant has relied upon the decision of a co-ordinate Bench of this Tribunal in O.A. No.2/2008, B. Ramachandran v. Senior Superintendent of Post Offices, Aluva Division, Aluva & ors. decided on 14.03.2008. The operative portion of this order is as under :-

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 (c) 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 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 a back 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 cost."

6. The respondents have filed their reply. They have submitted that the Review Committee met on 21.12.2007 and recommended the continued suspension of the applicant for a further period of 90 days from 24.12.2007 to 22.03.2008. They have also annexed a copy of the Minutes of the Suspension Review Committee Meeting (Annexure R1) stated to be held on 21.12.2007. According to the said Minutes, the Suspension Review Committee reviewed the suspension of the applicant and decided to recommend the extension of the continued suspension for a period of 90 days from 24.12.2007 to 22.03.2008. Further reviews of the suspension were made on 20.02.2008, 14.08.2008, 18.02.2009 and 30.04.2009 extending the period of suspension periodically for 180 days (Annexure R3, R4 & R5 refers). They have further submitted that the continued suspension of the applicant was, however, not communicated to him in respect of the first two reviews held on 21.12.2007 and 20.02.2008 by omission. However, the subsequent decisions of Respondent No.4 to extend the continued suspension based on the recommendations of the Review Committee Meetings dated 14.08.2008, 18.02.2009 and 30.04.2009 were communicated to the applicant vide his letters of even No. F1/IV-4/07-08 dated 19.08.2008, 24.02.2009 and 04.05.2009. The applicant was also paid the eligible subsistence allowance from time to time. The amount of subsistence allowance was also enhanced with effect from 01.08.2008 by 25% of the amount already sanctioned, as the delay in completion of the disciplinary proceedings was not attributable to the applicant.



7. The applicant's counsel has invited our attention to the Annexure R1 order of the respondents and submitted that no time or date of the Review Committee Meeting was indicated therein. Moreover, according to him, the date indicated in the endorsement of the order has been manipulated and overwritten as 21.12.2007 above the same date of 2008.

8. We have heard the parties and perused the records. The initial order of suspension was dated 25.09.2007. It was passed, of course, by the Competent Authority. To invoke the provisions of sub Rule (6) of Rule 10 of the CCS (CC&A) as extracted in the order dated 14.03.2008 in O.A. No.2/2008 (supra), the competent authority has to pass suitable orders on the recommendations of the review Committee before the expiry of ninety days of initial order of suspension, i.e. before 24.12.2007 in this case. The impugned Annexure A8 letter dated 19.08.2008 does not contain the crucial information regarding the date of the meeting of the Suspension Review Committee which recommended for the applicant's continued suspension. Similarly, the Annexure R1 letter stated to have been issued on 21.12.2007 also does not contain the date of the meeting of the Suspension Review Committee. Moreover, the said Annexure R1 letter cannot be relied upon as the date "21.12.2007" indicated therein is not its actual date. It was originally typed as "..... 2008" and thereafter it was over written in hand as 21.12.2007. Over the number "8" appearing in the figure '2008', somebody has corrected it as "7". However, all the subsequent R2, R3, R4, R5, R6 and R7 letters do contain the exact place, date and time of the respective meetings of the Suspension Review Committee. In any case, the respondents themselves have admitted that it was by the impugned Annexure A8 letter dated 19.08.2008 that they



have informed the Applicant for the first time that his suspension period has been extended. Sub-rule 10(7) of the CCS (CCA) Rules, 1965 is abundantly clear. Not only that a suspension is to be reviewed but it should be extended after review within 90 days from the date of suspension. The period of suspension is extended only by proper written communication. In other words, a mere recommendation by the review committee cannot be construed to be the order of the competent authority extending the period of suspension. There shall be a specific order of the competent authority based on the recommendations of the Review Committee, extending the period of suspension. And such an order has to be passed, as per the rules, within a period of ninety days. The sub rule (7) of Rule 10 of CCS (CCA) Rules, 1965 is very clear when it states that 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 of the suspension period and such extension should be preceded by a review and order extending the initial order of suspension shall be passed before the expiry of ninety days. In the instant case, the respondents have violated the aforesaid rule, as, admittedly the order extending the period of suspension was issued only on 19-08-2008.

9. In view of the above position, we allow this O.A and quash and set aside both Annexure A1 and A8. We also declare that the Annexure A1 order dated 25.09.2007, which became operative w.e.f. 26.09.2009 has become invalid by virtue of the operation of Rule 10(7) of Central Civil Services (Classification, Control and Appeal) Rules, 1965, after the expiry of 90 days i.e., with effect from 25.12.2007. Consequently, the subsequent Annexure A8 order dated 17.03.2009 has also become invalid. The applicant is deemed to

have been reinstated in service w.e.f. 25.12.2007 and he is entitled to have the subsequent period treated as spent on duty with full pay and allowances. The respondents are directed to pass suitable orders reinstating the applicant w.e.f. 25.12.2007 and to grant the arrears of pay and allowances from that date within one month from the date of receipt of this order. No costs.

(Dated, the 19th January, 2010.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

rkr