

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH**

O.A. 239/2005

Lucknow this the /~~8~~ day of September , 2005

HON. SHRI S.P. ARYA, MEMBER (A)  
HON. SHRI M.L. SAHNI, MEMBER (J)

Prabhu Narain Jhingaran, aged about 52 years, son of Dr. Shiv Narain  
Jhingran, r/o 11/6, Dalibagh, Lucknow.

Applicant

By Advocate Shri Raj Singh.

Vs.

Union of India through the Secretary, Govt. of India Ministry of  
Information and Broadcasting 'A' Wing, Shastri Bhawan, New Delhi.

Respondent

By Advocate Shri Deepak Shukla for Shri Prashant Kumar.

Order

By M.L. SAHNI, Member (J)

1. The applicant who was working as Director Doordarshan Kendra, Prasar Bharti, Lucknow was suspended on 1.7.04 w.e.f. 18.6.04 under sub- rule (2) of rule 10 of the Central Civil Service (Classification Control and Appeal ) Rules, 1965 (hereinafter called Rules, 1965) on account of his having been arrested in a case under the Prevention of Corruption Act and had remained more than 48 hours in judicial custody. He has challenged the validity of the suspension order dated 1.7.04 (Annexure 1) and also the subsequent orders passed on 15.9.04 and 14.3.05 (Annexures 2 and 3) respectively whereby his suspension had been extended under sub rules(6) and (7) of Rule 10 of Rules, 1965 read with DOPT office Memo dated 7.1.04 (Annexure



12). He has asked for setting -aside/quashing of the impugned orders after summoning the original records from the respondents and for directions to not to give effect to those orders and to reinstate the applicant forthwith as Junior Administrative Grade Officer in the pay scale of Rs. 12000-16,500. He has also claimed full pay and allowances for the period of his suspension as if he has not been suspended.

2. The applicant prayed for interim relief reiterating his prayer for summoning of the record of proceedings of the review committee which met prior to issuance of the order dated 15.9.04 and 14.5.05 and also to pay him subsistence allowance for the period of his suspension w.e.f. 18.6.04. After due consideration, this Tribunal directed the respondents to ensure that subsistence allowance at the rate admissible was paid to the applicant promptly subject to his fulfillment of the condition, if any, as per rules.
3. We have heard the learned counsel for the parties and have given our thoughtful consideration to the case law and the rule position as cited before us. We have also examined various documents referred to on behalf of parties during the arguments, copies of which are annexed with pleadings.
4. Indisputable facts of this case, briefly stated, are that a case R.C. No. 6/2004 was registered against the applicant by the Central Bureau of investigation (CBI) who had arrested the applicant while demanding and accepting a sum of Rs. 1,00,000/- from one Shri Vishal Chaudhari of Mumbai on 18.6.04, as illegal gratification. Since the applicant remained more than 48 hours in custody, he was



placed under deemed suspension, being a Group 'A' officer as per provisions of Rule 10(2) of Rules, 1965 w.e.f. the date of his arrest, vide order dated 1.7.04 (A-1) his suspension was reviewed from time to time and it was extended vide orders dated 15.9.04 and 14.3.05 (Annexure A-2 and A-3) receptively for a period of 180 days on each count. After the sanction for prosecution was obtained by the CBI they filed the charge sheet against the applicant in the criminal court for trial, which is pending.

5. As contended on behalf of the applicant, the suspension order and extension of suspension orders thereafter passed in this case are contrary to the instructions contained in Office Memo dated 7.1.04 (Annexure 12) which, interalia, provides in clause (iii) of para 2 that it would be necessary to constitute Review committee(s) to review the suspension cases and the composition of the review committee would be of "three officers of the level of Secretary/Additional Secretary/Joint Secretary who are higher in rank than the suspended official from the same Department/Office (in case another officer of same level is not available in the same office), in a case where the Disciplinary Authority is the President. The Administrative Ministry/Department/Office concerned may constitute the review committees as indicated above on a permanent basis or ad hoc basis." It is further stated in this Office Memo that "the review committee(s) may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employer concerned to undue hardship, involve



payment of subsistence allowance without the employee performing any useful service to the Government." It is submitted on behalf of the applicant that from the impugned orders it is nowhere indicated as to who constituted of the Review committees and what were the deliberations which took place while deciding to continue the suspension of the applicant. It is also alleged that the so-called Review committees have not taken into consideration the circumstances and the facts that undue long suspension would put the applicant to undue hardship or that paying subsistence allowance without getting any useful work from the applicant involves Govt. exchequer, therefore, the orders passed by the disciplinary authority are bad in law and are in contravention of the instructions issued vide Annexure No. 12.

6. It is also contended that in the present case, no Review committee had ever been constituted before passing extension orders dated 15.9.04 or orders dated 14.3.05, because had such Review committee been constituted, it would have considered the representations submitted by the applicant, because circumstances, as stated his various representations would have been taken into consideration which tantamount to non-compliance of rules and instructions as contained in Annexure-12. Impugned orders are therefore, liable to be set aside. It is also alleged on behalf of the applicant that the criminal case has been falsely hoisted upon the applicant who had a very clear record and even earned laurels for his good work; and that the complainant lodged a false criminal case against him because the applicant



had started action for recovery of dues from him, which were huge amounts. It has also been submitted on behalf of the applicant that the respondents have delayed subsistence allowance without any rhyme or reason and that in their counter-affidavit, even went to the extent of making a false statement on oath by stating that the payment of a sum of Rs. 23, 679 had been made vide Cheque No. 035268 dated 18.6.05 while actually it was paid much later and was credited to the account of the applicant only on 22.8.05 showing different Cheque Number. The learned counsel for the applicant vehemently argued for taking action against the person who has sworn the Affidavit on behalf of respondents because he has made a false statement voluntarily and hence is liable to be prosecuted for making a false statement before the court of law. He has also challenged the authority of Dr. Ashok Tripathi to swear any such affidavit and file Counter reply on behalf of respondents especially when no authority letter to this effect in his favour has been filed on record, nor there is anything to suggest that he was ever authorized or by whom. He has also contended that Dr. Tripathi is not a party to the proceedings and the Secretary, Ministry of Information and Broadcasting who has been arrayed as respondents on behalf Union of India has not given any such authorization to Dr. Tripathi.

7. Assailing the impugned orders he has submitted that these do not disclose the reasons. Being non-speaking these are non-est in the eyes of law.
8. To fortify his arguments, learned Counsel for applicant, he has placed reliance on 1995(1) SCC 421, (Chandra Shashi vs. Anil Kumar



Verma) and referred to the observations of their lordships as made in para 3,4 and 7. This case deals with contempt matter under the Contempt of Courts Act, 1979 wherein the husband, by playing a fraud on the court and producing false and fabricated documents with oblique motive wanted to get the case transferred for which contempt proceedings were initiated and the Hon'ble Supreme Court observed that "Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court's order, but also to keep the stream of justice clear and pure (which was highlighted more than two and half centuries ago by Lord Hardwicke, L.C. in St. James's Evening post case(1742) 2 Atk 469) so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples."

9. According to learned counsel for the applicant, since the respondents have falsely stated in the affidavit filed by Dr. Tripathi that the payment of subsistence allowances has been made vide Cheque No. 35268, while Cheque No. actually is 193386, as is evident from the Bank Pass Book produced in original before us. We have carefully examined this contention of the learned counsel for the applicant, and though we find that there is an error in the Cheque No. as credited to the account of the applicant, yet this mistake of giving different cheque number in the Affidavit in para 24 of the Counter reply is not such a 'purgery or fraud' as contemplated in the above cited decision especially for any




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oblique motive. Such an error could occur in the course of official business because the person who has sworn the Affidavit has relied upon the letter issued by the Senior Accounts Officer, Pay and Accounts Office IRLA Govt. of India on 23.6.05, copy of which is placed on record by the respondents at pager 28. The ruckus created on behalf of the applicant in this regard appears to us without any substance. It is only an empty vessel making much noise.

10. Proviso to rule 14 of Order 6 of the C.P.C. provides that where a party pleading by reason of absence or for other good cause, is unable to sign the pleadings, these may be signed by any person duly authorized by him to sign the same, or to sue or to defend on his behalf." In this case the respondents have filed the Counter Affidavit of Dr. Ashok Tripathi who is presently working as Director Doordarshan Kendra Lucknow, categorically stating that he has been authorized to file the reply on behalf of answering respondents, i.e. Secretary, Ministry of Information and Broadcasting, New Delhi. His statement on oath to this effect is sufficient to comply with the requirement of above stated provision of law and hence we fail to find any merit in the contention of the learned counsel for applicant, that no authorization in favour of Dr. Tripathi has been filed on the record.

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11. It is then submitted relying upon **1978(1) SCC 405, 2002 (7) SCC, 142 (Sher Bahadur vs. Union of India and others) and 2003 (6) SCC, 545, Chandra Singh and others vs. State of Rajasthan and another** that the impugned orders since do not contain reasons, therefore, the



orders are liable to be quashed in view of the law as laid down in the cited judgments. While, we could not lay our hands on the judgment cited by the learned counsel for the applicant reported as 1979 (1) SCC 405, ~~However~~, other judgments cited by him are carefully gone-through. These are not applicable to the issue involved in the present case. For example, in the case of Sher Bahadur (supra) reference is made to para 7 where findings of the enquiry officer have been discussed by their lordships, who had observed inter alia that "the finding of the enquiry officer that in view of the oral,, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const). Was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside." Similarly, in the case of Chandra Singh (supra) reference is made to para 31 which deals with the question as to whether the action of the High Court in making assessment of the appellants prior to 31.3.1999 stands the scrutiny of Rule 53 of the Rajasthan Civil Services (Pension) Rules, 1996 and it has been observed by their lordships:



"It will bear repetition to state that in terms of Rule 53 of the Pension Rules, an order for compulsory retirement can be passed only in the event the same is in public interest and/or three months' notice or three months' pay in lieu

thereof had been given. Neither of the aforementioned conditions had been complied with."

12. On behalf of respondents, conversely, it is contended that no reasons are required to be stated in the suspension order or the extension orders as held by their lordships in **(1990) 3 SCC 60, Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others vs. K. Rafnagiri**. Reference has been made to paras 3, 4 and 6 in this regard. In their reply it has been submitted on behalf of the applicant that this judgment has no relevance in the present case because the suspension order passed originally, has been extended under sub-rules (6) and (7) of Rule 10, which have been incorporated on 23<sup>rd</sup> December, 2003.

13. The learned counsel for the respondents further submitted that it has been categorically held in **(1994) 2 SCC, 617 State of Haryana vs. Hari Ram Yadav** that non mentioning of the reasons of extension of suspension order does not invalidate the suspension order. In this decision it has been held:

"Mere fact that the impugned order of suspension does not contain a recital does not render the said order invalid. In cases where exercise of statutory power is subject to fulfillment of a condition then recital in the order about the condition having been fulfilled, raises a presumption about fulfillment of such condition. The burden is on person who challenges validity of order to show that the said condition was not fulfilled. In a case where the order does not contain such recital, the burden to prove that the condition was fulfilled would be on the authority passing the order."

14. In the Counter-reply, it has been unambiguously stated that the impugned orders had been passed after taking into consideration the facts and circumstances of the case and the recommendations of the Review committee constituted in terms of instructions issued



vide order dated 7.1.04 and it is fully justified that since the applicant has been involved in the commission of serious offence of illegal gratification, while working as Director Doordarshan, therefore, continuance of suspension is duly warranted and the orders passed in this respect by the competent authority are perfectly justified. The respondents have also submitted that the meeting of the duly constituted review committee was convened under the chairmanship of Secretary, Information and Broadcasting and all the facts pertaining to the case of the applicant were placed before the committee, who after considering the same, recommended for continuance of suspension, whereupon the competent authority/disciplinary authority decided to extend the suspension period of the applicant from time to time. The contention of the learned counsel for the applicant that no review committee was ever constituted or that it did not consider the facts and circumstances or the developments as explained by the applicant in his representation are not taken into consideration, have no basis because it does not lie within the purview of the applicant to know as to what proceedings of the review committee had taken place. His prayer for requisitioning the record of proceedings was turned down at the initial stage when his and Misc. Application No. 1092/05 was disposed of by a speaking order on 27.5.05. Even otherwise, we find no need to call for record as asked by the applicant to make roving enquiry into the bald allegations of the applicant that no review committee comprising of competent personnels had been held for considering extension of suspension of the applicant. The




law as laid down in Hari Ram's case (supra) can be reiterated to fortify our view. A perusal of impugned orders nowhere lack in any requisite details and are found perfectly in accordance with the form as prescribed for the purpose and has been made available in Swamy's CCS(CCA) Rules, which also contains Chapter II dealing with suspensions. Its para 9 speaks for orders of suspension. Sub paras (3) and (4) of para 9 of Chapter II are quite relevant for our purpose :

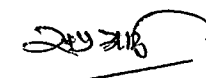
"3. In case of deemed suspension under Rule 10(2), (3) or (4), suspension takes effect automatically even without a formal order. Though the validity of the suspension is not affected by the non-issue of a specific order of suspension, but all the same it is desirable for purpose of administrative record to make a formal order. The standard form in this regard is also given at the end of Chapter 1.

4. It is not the intention that each word of the forms should be strictly adhered to in all circumstances. It has been clarified that, if the forms are not found to fully meet with the requirements of any case, then the competent authority should amplify/modify the same suitably to meet the requirements of the case."

Note appended below standard form of order of suspension under Rule 10(1), categorically prohibits disclosing of reasons to the officer to be suspended.

15. From the above, it is clear that the impugned orders suffer from no infirmity or illegality as alleged on behalf of the applicant. We, therefore, find the O.A. sans merit and hence dismiss the same but without any order as to costs.

  
(M.L.SAHNI)  
Member(J)  
s.d.

  
(S.P. ARYA)  
Member (A)