

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 1047/94.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

DATE OF DECISION: DECEMBER 08, 1994.

Shri Vijay Ram Singh, Petitioner

Shri S. G. Aney, alongwith
Shri M. M. Sudame, Advocate for the Petitioner*

Versus

Union Of India & 2 Others,-----Respondents

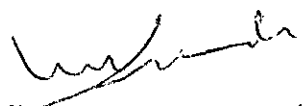
None. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

The Hon'ble Shri P. P. Srivastava, Member (A).

1. To be referred to the Reporter or not ? NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO


(M. S. DESHPANDE) .
VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NAGPUR CIRCUIT BENCH, NAGPUR.

O.A. NO.: 1047/94.

Shri Vijay Ram Singh ... Applicant

Versus

Union Of India & 2 Others ... Respondents.

CORAM :

Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

Hon'ble Shri P. P. Srivastava, Member (A).

APPEARANCE :

1. Shri S.G. Aney alongwith
Shri M. M. Sudame,
Counsel for the Applicant.

ORAL JUDGEMENT :

DATED : 08.12.1994.

¶ Per. Shri M. S. Deshpande, Vice-Chairman ¶.

1. By the present application, the applicant seeks quashing and setting aside the order dated 30.07.1994 by which the applicant was placed under suspension and a direction to the Respondents to reinstate ^{the} ~~that~~ applicant in service in the post of Dy. Conservator of Forests, East Melghat Division, Amravati, pursuant to an order of transfer dated 22.07.1994 and to restrain the respondents from conducting enquiry against the applicant in the matter of Gorewada and Ambazari plantation. The applicant who was working as a Deputy Conservator of Forests, was suspended by an order dated 30.07.1994. A Charge-Sheet was issued on 27.10.1994 but was received by the applicant on 1.11.1994. The applicant's grievance is that the suspension has not been done in the manner prescribed by Rule 3 (i) of All India Services (Discipline and Appeal) Rules, 1969. The

Respondent No. 2 informed the first respondent, i.e. Central Government, on 01.08.1994 that two of the officers were suspended and gave details of their irregularities in the letter dated 01.09.1994 to the Respondent No. 1. By the letter dated 02.09.1994, the Respondent No. 2 requested the Respondent No. 1 to permit them to initiate necessary proceedings against the applicant and one Shri Mishra, before the expiry of ⁴⁵~~90~~ days from the dates of ^{their}suspension, on the ground that there was an enormous documentary evidence consisting of nearly 30,000 vouchers submitted to the Accountant General, Maharashtra II Nagpur and extracts of nearly 33 Cash Books and therefore it would not be possible to prepare the Charge-Sheets by due date, that is before the expiry of a period of first 45 days as provided in 2nd proviso to Rule 3(1)(b) of the All India Services (Discipline and Appeal), Rules, 1969.

2. On 30.09.1994, we had passed an order directing the Union Of India to decide the appeal preferred by the applicant by end of October 1994, As the Counsel for the Respondents stated that the applicant had preferred an appeal but the appeal had not been decided within the period by the Union Of India and that period would be over by the end of October, 1994, The case was adjourned to 11.11.1994, when again it stood adjourned for today. The Learned Counsel for the Respondents is not present and we heard Shri Aney, Learned Counsel for the applicant. It is apparent that the 2nd proviso to sub-rule (1) of Rule 3 of the All India Service (Discipline and Appeal) Rules, 1969 provides that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which

the member is placed under suspension or such further period not exceeding forty-five days as may be specified by the Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.

3. In the present case, obviously, the request was for placing the applicant under suspension because the investigation could not be completed within the period of first forty-five days. The proviso is ^{concluded} ~~quashed~~ in negative terms, which ^{will} ~~shall~~ make the provision mandatory and it was, therefore, obligatory on the respondents, if the order was not passed during the period of first forty-five days to record the reasons in writing. This was not done. The validity of the order of suspension would be conditional upon the recording of reasons. The Respondents have not produced before us the office note or the correspondences which passed between the Respondents, to show that reasons had been recorded in writing in the present case, after the expiry of the first period of forty-five days. The order of suspension, therefore, cannot be sustained and shall have to be quashed and the Respondents shall have to be directed to reinstate the applicant in the post of Deputy Conservator of Forests.

4. In view of the ^{above} directions passed and since the disciplinary proceedings have already been initiated, Shri Aney, Counsel for the applicant, does not press for other reliefs, i.e., to restrain the respondents from conducting enquiry against the applicant. Those reliefs are therefore, not been granted. The O.A. is disposed of with the above directions.

5. At this stage, Shri Ghatge, Assistant from Mantralaya, Ministry of Environment, produces an application on behalf of the respondents for an adjournment because Shri G.K. Neelkanth, Counsel for the Respondents, is unable to attend the cases fixed for hearing today, due to the serious illness of his wife. Since we have already heard Shri Aney, who already concluded the argument and we have already passed an order and because this request was received after the order was passed, we do not think this request for adjournment can be granted and it is rejected.



(P.P. SRIVASTAVA)
MEMBER (A).



(M. S. DESHPANDE)
VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 14/95 in /and
O.A. 1047/94 / C.P.51/95

State of Maharashtra &
2 Others

.. Applicants
(Original respondents)

Vs.

V.R. Singh

.. Respondent
(Original applicant)

CORAM : 1. Hon'ble Shri Justice M.S.Deshpande, V.C

----- 2. Hon'ble Shri P.P. Srivastava, Member (A)

TRIBUNAL'S ORDER

DATED : 31/03/1995

(Per. Shri. M.S. Deshpande, Vice-chairman)

Heard Shri. S.G. Aney alongwith Shri.M.M.Sudame,
learned counsel for the original applicant and
Shri. G.K. Neelkanth, learned counsel for the original
respondents.

2. By this R.P, the applicants(original respondents)
seek review of our order dated 8/12/1994 in O.A.1047/94
by which we had quashed the order of suspension passed
against the original applicant on 30/07/1994. The
applicant was Dy.Conservator of Forests, East Melghat
Division, Amravati and he was placed under suspension
with effect from 30.7.94. Charge-sheet dated 27.10.1994
was served on him on 28.10.94 . On September 1 and
September 2, 1994, the State Government made two
reports to the Central Government (Exhibit 'A' & 'B').
By the first report, the circumstances which were to be
taken into consideration against the applicant were set-ou

It was mentioned by the state government in para 5 of the said letter that the material was being brought to the notice of Government of India in accordance with rule 3(6A) of the All India Services (Discipline and Appeal) Rules 1969, in continuation of earlier communication vide telegram dated 1.9.1994. By the second letter, the relevant provisions of Rule 3(1) were pointed-out and request was made to the Central Government to permit the State Government to initiate disciplinary proceedings against the applicant and Shri.S.S.Misra within 90 days of the date of their suspension as required under the Rules. It was pointed-out that the applicant and Shri.S.S.Misra were served with the suspension order on 1.8.1994 and 3.8.1994 respectively. This request was repeated by letter dated 23rd September 1994 for initiating disciplinary proceedings against these two officers (Exhibit 'C'). In reply to these communications, the Central Government (Respondent No. 1) sent a letter dt. 30th September 1994 (Exhibit 'D') in the following words :

"I am directed to refer your letter No.AFO 1094/CR 242/Pt-II/F-7 dated 1st September and 2nd September 1994 on the above mentioned subject and convey herewith the approval of the Government of India to the initiation of disciplinary proceedings against Shri.V.R.Singh and Shri.S.S.Misra within 90 days from the date of suspension."

3. The charge-sheet was not served ^{on} ~~against~~ the applicant within the first 45 days as required under the second proviso to Rule 3. The charge-sheet came to be served within the next 45 days, that is within 90 days, and this position is not disputed by the learned counsel for the respondents (applicants in this R.P). When we were hearing the matter earlier, the learned counsel for the original respondents was not present and we passed

the order quashing the suspension order only upon hearing the learned counsel for the original applicant. The submission of learned counsel for original respondent No. 2 in review petition, is that by obtaining the approval of the Central Government for initiating disciplinary proceedings and served ^{was} charge-sheet within 90 days, there was full compliance with the requirements of second proviso and therefore we should recall our order quashing the suspension by granting this review application.

4. Part II of All India Services (Discipline & Appeal) Rules 1969 deals with suspension and sub-rule 1 provides that if the State or Central Government is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may pass an order of suspension pending conclusion of the disciplinary proceedings and the passing of the final order in the case. The first proviso deals with the case of difference of opinion between the governments concerned and is not material for the purposes of this order. The second proviso is in the following terms:

"Provided further that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of fortyfive days from the date from which the member is placed under suspension, or such further period not exceeding fortyfive days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government".

5. As we have already pointed-out, the charge-sheet had not been served on the applicant within fortyfive days and what is to be seen is whether the action of the Central Government by sending letter (Exhibit 'D') to

which we have already referred, meets with the requirements of second proviso. The proviso is couched in negative terms and says that such order shall not be valid unless before the expiry of a period of fortyfive days from the date from which the member is placed under suspension, firstly either disciplinary proceedings are initiated against him or an order of suspension is confirmed by the Central Government. Both these requirements are not present in the present case, and ~~it~~ ^{we are} required ~~us~~ ^{the} to examine whether ~~the~~ other requirements are fulfilled namely whether within such further period of 45 days as may specified by Central Government for reasons to be recorded in writing, the disciplinary proceedings have been initiated against him or the order of suspension is confirmed by the Central Government. We have already pointed-out that in the communications at Exhibit 'A', 'B' and 'C' of the respondents No. 2, sent to the Central Government, the only request was that the period for initiating departmental proceedings should be extended. ^{Under Rule 3(6A)} ~~a~~ detailed report has to be sent to the Central Government ordinarily within a period of 15 days from the date a member of the service is suspended or deemed to have been suspended as the case may be. By none of these communications, was a request made for confirmation of the suspension imposed by the State Government nor the Central Government purportedly did so by the letter at Exhibit 'D' dated 30th September 1994.

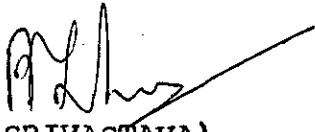
6. The learned counsel for the original respondent No.2 argued that notwithstanding this, if the approval has been granted by the Central Government for initiating disciplinary proceedings and they are initiated within a period of 90 days from the order of suspension, the suspension would still continue to be valid and that the

relevant Rules shall have to be read disjunctively. After considering these submissions, we find that the requirement is that even for utilising further period of 45 days the Central Government has to record the reasons in writing and this requirement is not fulfilled because the Central Government has not given any reasons in writing for the purpose as is the requirement but has granted only approval for initiating disciplinary proceedings. If the first period of 45 days it is allowed to pass, then in our view, the validity of the order of suspension would depend only on the Central Government recording its reasons in writing. Shri. Neelkanth, the learned counsel for the 2nd respondent urged that those reasons would be found in the letters at Exhibit 'A', 'B' and 'C' which have been sent by the State Government to the Central Government. May be, the circumstances of the case have been placed by the State Government before the Central Government for taking action in terms of the second proviso to sub-rule 1 of Rule 3. But it is not the narration of events by State Government which would meet the requirements but the application of mind by Central Government by recording its own reasons for permitting disciplinary proceedings to be initiated that would make the suspension valid after expiry of the first 45 days. The proviso is couched in negative terms and shall have therefore to be construed as being mandatory and it was therefore obligatory on the 1st respondent if the first 45 days were allowed to pass without initiating departmental enquiry, to record its reasons in writing.

The continuation of the validity of order of suspension would depend upon the recording of reasons in writing by the Central Government. No material has been placed before us except a letter, at exhibit 'D' which granted approval, without recording any reasons for initiating disciplinary proceedings within 90 days. We therefore are clear that having regard to the second proviso to sub-rule 1 of Rule 3, the suspension order could not have continued to be valid. We, therefore, see no merit in the present review application, it is dismissed.

C.P. 51/95

In view of the above order, Shri. Neelkanth, learned counsel for the respondents requests for time to file reply to C.P. Reply be filed within 2 weeks. The C.P should come-up at Nagpur on 27.4.1995.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE-CHAIRMAN

J*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH CAMP AT NAGPUR.

CONTEMPT PETITION NOS: 23/95 & 51/95
ORIGINAL APPLICATION NO:1047/94.

V.R.Singh

... Applicant.

V/s.

Union of India & 2 Others

... Respondents.

CORAM : Hon'ble Shri Justice M.S.Deshpande, Vice Chairman.

Hon'ble Shri P.P.Srivastava, Member(A).

APPEARANCES:

Shri Aney, Counsel
for Applicant.

Shri M.P.Bader, Counsel
for Respondents.

TRIBUNAL'S ORDER:

DATED : 27/8/95.

X Per Shri M.S.Deshpande, Vice Chairman. X

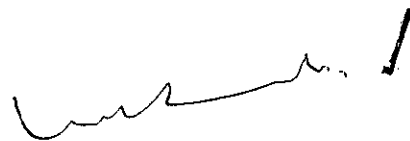
Shri M.P.Bader, Counsel for the respondents states that the applicant has been reinstated and this position is not disputed by the applicant. The question is about ^{the} amount of pay and allowances which should be payable to the applicant. The respondents should consider the question of payment of pay and allowances during the period of suspension within three months from the date of receipt of copy of this order.

With these directions, both CPs 23/95 and 51/95 are disposed of.



(P.P.SRIVASTAVA)
MEMBER(A)

abp.



(M.S.DESHPANDE)
VICE CHAIRMAN