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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH;
AT HYDERABAD

ORIGINAL APPLICATION NOS. 583 of 1992
AND
584 of 1992

DATE OF JUDGMENT: 28th June, 1993.



BETWEEN:

O.A.NO. 583 of 1992

Mr. L. Balaiah ..

Applicant

AND

1. The Superintendent of Post Offices,
Kurnool Division,
Kurnool-1.
2. The Postmaster General,
A.P. Southern Region,
Kurnool-5.
3. The Director General of Posts,
New Delhi. ..

Respondents

O.A.NO. 584 of 1992

Mr. C. Ramanjaneyulu ..

Applicant

AND

1. The Superintendent of Post Offices,
Kurnool Division,
Kurnool-1.
2. The Post Master General,
A.P. Southern Region,
Kurnool-5.
3. The Director General Of Posts,
New Delhi. ..

Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANTS: Mr. Krishna Devan, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. N.V. Ramana, Addl. CGSC

contd....

CORAM:

Hon'ble Shri Justice V. Neeladri Rao, Vice Chairman

Hon'ble Shri P.T. Thiruvengadam, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

These two OAs can be conveniently disposed of by a common Judgment as the same point falls for consideration. While the applicant in the OA 583/92 is LSG Sub Post Master, the applicant in OA 584/92 is Treasurer. Both of them ^{have} ~~was~~ suspended by separate orders in regard to the same incident. Both the applicants submitted representations to the Appointing Authority and later to the Appellate Authority and further later to the Authority higher than the Appellate Authority by alleging that they were suspended even though they have not indulged in ^{any} misconduct. The two OAs were filed assailing ^{the} ~~those~~ orders of suspension dated 13.1.1992 and 25.1.1992 respectively. The charge memo to the applicant in OA 583/92 was issued on 10.6.1993 while the charge memo to the applicant in the other OA was issued on 26.2.1993. The learned counsel for the applicants submitted that the orders of suspension stood revoked on the expiry of three months from the date of suspension as envisaged under Para 3 of DP&AR O.M.No.35014/1/81-Ests.(A), dated 9.11.1982 and it reads as under:-

"The undersigned is directed to say that under Rule 10(1) of the CCS (CCA) Rules, the competent authority may place a Govt. servant under suspension -

(a) where a disciplinary proceedings against him is contemplated or is pending;

contd....

strictly adhered to, a Government servant who is placed under suspension on the ground of contemplated disciplinary proceedings will become aware of the reasons for his suspension without much loss of time. However, there may be some cases in which it may not be possible for some reason or the other to issue a chargesheet within three months from the date of suspension. In such cases, the reasons for suspension should be communicated to the Government servant concerned immediately on the expiry of the aforesaid time limit prescribed for the issue of a charge sheet, so that he may be in a position to effectively exercise the right of appeal available to him under Rule 23(1) of the CCA (CCA) Rules, 1965, if he so desires. Where the reasons for suspension are communicated on the expiry of a time limit prescribed for the issue of a charge sheet, the time limit of forty-five days for submission of appeal should be counted from the date on which the reasons for suspension are communicated.

4. The decision contained in the preceding paragraph will not, however, apply to cases where a Government servant is placed under suspension on the ground that he has engaged himself in activities prejudicial to the interests of the security of the State.

5. Ministry of Finance etc. are requested to bring the contents of this Office Memo to the notice of all administrative authorities under their control for their guidance and strict compliance."

contd....

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(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interests of security of the State; and

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

The Government servant is also deemed to have been placed under suspension by an order of the competent authority in the circumstances mentioned in Rule 10(2) of the aforesaid rules.

2. Where a Government servant is placed under suspension, he has a right to appeal against the order of suspension vide Rule 23(1) of the CCA (CCA) Rules, 1965. This would imply that a Government servant who is placed under suspension should generally know the reasons leading to his suspension so that he may be able to make an appeal against it. Where a Government servant is placed under suspension on the ground that a disciplinary proceeding against him is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial, the order placing him under suspension would itself contain a mention in this regard and he would, therefore, be aware of the reasons leading to his suspension.

3. Where a Government servant is placed under suspension on the ground of "contemplated" disciplinary proceeding, the existing instructions provide that every effort would be made to finalise the charges, against the Government servant within three months of the date of suspension. If these instructions are

contd....

Further, the fact that the applicants made representations even to the Appellate Authority suggests that they were aware of the circumstances under which the orders of suspension were issued, and the Appellate Authority treated them as appeals and disposed the same and hence no prejudice is caused to the applicants when the reasons for suspension as contemplated under Para-3 of the OM dated 9.11.1982 were not issued.

4. It is now well established that it is open to the executive to issue instructions in order to meet situation for which statutory rules are silent. In such a case, it is necessary to consider as to whether those instructions are merely directory or whether they are mandatory. The right of appeal is available to the delinquent employee under Rule 23(1) of the CCS (CCA) Rules, 1965 as against an order of suspension pending enquiry. One cannot effectively exercise right of appeal if the delinquent is not given reasons for suspension. Ofcourse if charge memo is issued, the delinquent employee can know from the same as to why he is suspended. There may be cases where for some reason or other it is not possible to issue the charge sheet within the reasonable time after the order of suspension is passed. The Department of Personnel felt that generally the charge sheet can be given within three months from the date on which the order of suspension is passed, and then the delinquent employee if so advised can prefer an appeal against order of suspension, on charge sheet being issued. But when it is not possible to issue the charge sheet within the time referred to above, and if the order of suspension is silent about the reasons

2, It is manifest from the above that if it is not possible for some reason or other to issue charge sheet within three months from the date of suspension, the reasons for suspension should be communicated to the Government servant concerned immediately on the expiry of the said time limit so that he may be in a position to effectively exercise right of appeal available to him under Rule 23(1) of the CCS (CCA.) Rule, 1965.

3, But Mr. N.V.Ramana, learned Standing Counsel for the respondents submitted as under:-

O.M. dated 9.11.1982 referred to above is not having any statutory force, for it is not a rule that was framed under Article 309 of the Constitution. Para 5 of the same makes it clear that it is for the guidance of the concerned authorities. The Supreme Court held in AIR 1990 SC 1423 "Director General & Inspector General of Police Vs. K. Ratnagiri", that the order of suspension does not stand revoked when it was not reviewed as referred to in the instructions. In AIR 1990 SC 1157, "Government of A.P., Vs. Sivaraman", the Supreme Court has not accepted the contention that the order of suspension stands abated if no order is passed for continuation of the order of suspension. In 1990 (5) SLR 491, "Conservator of Forests, Yavatmal Vs. Shamrao Ramkrushna Deshmukh", the Bombay High Court held that if the inquiry is not completed within a period of six months, the inquiry does not stand cancelled. Hence, whenever time limit is fixed for completion of the inquiry or for reviewing the order, the same can be held as merely directory but not mandatory. If in the same manner, para 3 of the O.M. dated 9.11.1982 is considered, it can be stated that even if the reasons for suspension are not communicated within the period stipulated, the same cannot be held as revoked.

the suspension is not justified in the circumstances of the case. Ofcourse, the question as to whether in fact there was negligence as alleged for the respondents or whether the applicants are in no way responsible for the same, is a matter for consideration in the inquiry. Thus, when there are no grounds to revoke the suspension now, it is necessary to consider as to what ^{order} has to be passed in regard to suspension from the date of expiry of three months from the date of serving the order of suspension till the date on which the charge sheet is served, which we hold as not valid for non compliance of para-3. As the suspension for the above period is not valid, we feel that it is just and proper to hold that the applicants are entitled to full emoluments for the above period.

5. In the result, the suspension from the date on which the three months period from the date of service of the suspension order expired till the date on which the charge sheet was served upon the respective applicants is treated as not valid and hence the applicants have to be paid the salary and other allowances for the said period. Time for implementation of this order is three months from the date of receipt of this order.

6. The OA is ordered accordingly. No costs.

CERTIFIED TO BE TRUE COPY

Date..... 8/3
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

for initiating disciplinary action, it is stated as per the para-3 of the OM dated 9.11.1982 that reasons for suspension should be communicated to the Government servant. Purpose for such instructions is also referred to therein i.e., to enable the delinquent to effectively exercise his right of appeal. Then, can it be stated that it is merely directory? If such direction is not complied with and if it takes years to complete the preliminary inquiry for the purpose of issue of the charge sheet, the delinquent employee will be without effective remedy of preferring the appeal as against the order of suspension. Hence, in view of the necessity to give reasons for having effective remedy of appeal, it has to be held that the time limit prescribed in para-3 of the OM dated 9.11.1982 is mandatory.

4. Thus, it is necessary to consider as to what relief can be passed, when after the charge memos are issued to these applicants, they were in a position to effectively exercise the right of appeal as against the order of suspension. It depends upon the question as to whether it is a case where the orders of suspension have to be revoked on merits. It is alleged in the counter that there is prima-facie case of negligence on the part of the applicants which resulted in financial loss of Rs.1,70,000. The Supreme Court held in AIR 1992 SC 1233, "Union of India and others Vs. N.Saxena", that it is not proper to stay the departmental inquiries when serious charges are alleged. Any how, when admittedly there is a financial loss of Rs.1,70,000 and when the respondents are urging that there is prima-facie material to show that the loss is due to the negligence on the part of the applicants, it is not proper to say that

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To

1. The Superintendent of Post Offices,
Kurnool Division, Kurnool-1
2. The Postmaster General, A.P. Southern Region, *Ashok Nagar,*
Kurnool-5.
3. The Director General of Posts, New Delhi.
4. 2 copies to Mr. Krishna Devan, Advocate, CAT. Hyd.
5. One copy to Mr. N.V. Ramana, Addl. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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