

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

17.7.09

Mr. C.B. Sharma Counsel for applicant
 Mr. Brajesh Jain, Counsel for respondents

Heard learned Counsel for the
 parties.

For the reasons dictated separately,
 the DA is disposed of.

(B.L. Khatri)
 M(A)

(M.L. Chauhan)
 M(S)

RECORDED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 17th day of July, 2009

ORIGINAL APPLICATION No.398/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Pratibha Hada,
w/o Shri Laxman Singh Hada,
aged about 48 years,
r/o 151, Ballabh Badi, Kota,
presently working as Postal Assistant,
Savings Bank Control Organisation,
Head Office, Kota.

.. Applicant
(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communication and Information Technology, 20-Ashok Road, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Jaipur.
3. Director, Postal Services, Southern Region, Ajmer.
4. Senior Superintendent of Post Offices, Kota Postal Division, Kota.

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.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) That entire record relating to the case may kindly be called for from the respondents and after perusing the same suspension memo dated 29.9.2004 (Annexure A/1) with the further orders passed by the respondents in connection with suspension be quashed and set aside with all consequential benefits.
- (ii) That the respondents may be further directed to release difference of pay and allowances for the period 29/9/2004 to 30/6/2005.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant while working on deputation as Postal Assistant (SBCO) NG Mandi Head Office, Kota was placed under suspension vide order dated 29.9.2004 as disciplinary proceedings against her were under contemplation.

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Subsequently, major penalty chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued on 6.12.2004. The suspension of the applicant was reviewed by the Review Committee and the Review Committee recommended revocation of suspension with immediate effect vide order dated 10.1.2005 (Ann.A/6) after expiry of 90 days. However, suspension of the applicant was revoked vide order dated 16.3.2005 (Ann.A/8) with immediate effect. The applicant has also placed on record order dated 14.3.2005 (Ann.A/7), perusal of which shows that the applicant was transferred from Kota to Dungarpur on account of revocation of suspension, although the order of suspension was revoked two days later i.e. on 16.3.2005, as noticed above. Pursuant to the order dated 16.3.2005, the applicant was also relieved w.e.f. 17.3.2005 (A/N).

The applicant has also challenged the order of transfer by filing separate OA No.217/2005 and this Tribunal granted ex-parte stay on the ground that the applicant could not have been transferred vide order dated 14.3.2005 on account of revocation of suspension order whereas in fact the order of suspension was revoked subsequently on 16.3.2005. It is further stated that pursuant

to passing of the ex-parte stay order dated 6.5.2005 in OA No.217/2005, the applicant was not allowed to join the post, as such, a Contempt Petition was filed and it was only thereafter that the applicant was permitted to join the post vide order dated 28.6.2005 and in fact the applicant joined the post on 2.7.2005. It is on the basis of these facts the applicant has filed this OA thereby praying for the aforesaid reliefs.

One of the grounds taken by the applicant in this case is that in the light of the statutory provisions as contained in sub-rule (6) and (7) of Rule 10 introduced in CCS (CCA) Rules, 1965 vide GSR dated 23.12.2003, the suspension of the applicant was not reviewed within 90 days, as such, the order of suspension has become invalid and is liable to be quashed besides the fact that the order of suspension has been issued by the incompetent authority.

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts as stated above have not been disputed. The fact that the order of suspension was reviewed after 90 days has

been admitted by the respondents. However, in the reply it has been stated that efforts were made to review the case of the applicant on 20.12.2004 but due to some unavoidable circumstances, the Review Committee could meet only on 10.1.2005, recommendation of which has been placed on record by the applicant as Ann.A/6.

The respondents have also stated that the Disciplinary Authority of the applicant is Senior Superintendent of Post Offices, Kota who has placed the applicant under suspension as the applicant was a Group-C employee. For that purpose, the respondents have placed on record the extracts of the relevant rules as Ann.R/1. It is further stated that the applicant did not join pursuant to her relieving on account of transfer which was delivered to her on 17.3.2005. It is further stated that the applicant was not ~~be~~ allowed to join pursuant to the order dated 6.5.2005 as there was no vacant post available in Kota at that time and subsequently she was adjusted at Kota when a vacancy arose due to promotion and transfer of Shri G.R.Choudhary. Thus, according to the respondents, the applicant is not entitled for salary w.e.f. 17.3.2005 to 6.5.2005 when she remained absent from duty willfully.

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Similarly, the respondents have stated that the applicant is not entitled to full pay and allowances during the period she remained under suspension from 29.9.2004. However, the claim of the applicant for pay and allowances for remaining period is under consideration.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The learned counsel for the applicant argued that in view of the provisions contained in sub-rule (7) of Rule 10 of CCS (CCA) Rules, 1965, it was incumbent upon the authority concerned to review the order of suspension before expiry of 90 days from the date of suspension and the order of suspension made or deemed to have been made shall not be valid after the period of 90 days unless it is extended after review, for a further period before expiry of 90 days. At this stage, it will be useful to quote relevant portion of Rule 10 of the CCS (CCA) Rules, 1965, which is attracted in the instant case and thus reads:-

10.

"10. Suspension

(1) 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, may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or it pending; or
- (aa).....

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 90 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 180 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-rules (1) or 2 of this rule shall not be valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days."

6. It is not in dispute that provisions of sub-rule (6) and (7) of Rule 10 of CCS (CCA) Rules inserted by notification dated 23.12.2003 were already in force when the

applicant was put under suspension vide order dated 29.9.2004. Further, it is also admitted case between the parties that the order of suspension has not been reviewed within 90 days which period has to be counted w.e.f. 29.9.2004. Sub-rule (6) provides that the order of suspension made or deemed to have been made shall be reviewed by the authority before expiry of 90 days from the date of order of suspension on the recommendations of the Review Committee. Sub-rule (7) which starts with non-obstinate clause, inter-alia stipulate that the order of suspension made under sub-rule (1) shall not be valid after a period of 90 days unless it is extended after review for further period before expiry of 90 days. In view of this statutory mandate, suspension of the applicant beyond the period of 90 days was without any authority of law and, as such, invalid.

7. At this stage, it will also be relevant to mention that sub-rule (6) and (7) of Rule 10 of CCS (CCA) Rules, 1965 were also interpreted by the Full Bench at Principal Bench, New Delhi in the case of D.R.Rohilla vs. Union of India and

ors., 2006 (3) ATJ 11 and it was held that the first review of suspension order has to be made before expiry of 90 days.

8. Similar view was also taken by another Full Bench at Principal Bench, New Delhi in OA No.527/2008, S.K.Srivastava vs. Union of India decided on 22nd April, 2009 whereby it was held that suspension made under Rule 10(1) has to be reviewed by the competent authority before expiry of 90 days from the date of order of suspension and after first review of the order of suspension, further suspension can be extended for a period upto 180 days at a time and order regarding such further extension has to be made before expiry of 180 days.

9. Similar view has also been taken by the Division Bench of the Punjab and Haryana High Court in the case of Union of India and Anr. vs. Ambresh Jain and Anr., 2007 (1) SLR 56 whereby after considering Rule 10(6) and 10(7) of the CCS (CCA) Rules, it was held that suspension order was to be reviewed within 90 days and it was held that amended rules came into force w.e.f. 2nd June, 2004 and up

prior to that old rules continue to remain in force till 1st June, 2004.

10. Accordingly, the order of suspension shall be deemed to have become inoperative after the period of 90 days from the date of passing of the original order dated 29.9.2004 and, as such, the applicant shall be deemed to have been reinstated after expiry of 90 days from the date of passing of the original order of suspension dated 29.9.2004 till the suspension order was revoked by the respondents vide order dated 16.3.2005. Accordingly, the applicant shall also be entitled to consequential benefits for the aforesaid period.

11. So far as contention of the learned counsel for the applicant that applicant is also entitled to full pay and allowances for the period w.e.f. 29.9.2004 when the applicant was under suspension till the order of suspension was deemed to have been revoked, we are of the view that such a relief cannot be granted to the applicant as full pay and allowances for the aforesaid period will depend upon ultimate decision of the disciplinary

proceedings which are pending against the applicant. Similarly, we are also not inclined to grant any relief regarding pay and allowances for the period from 17.3.2005 till 30.6.2005, as according to the respondents, the applicant was willfully absent from duty from 17.3.2005 to 6.5.2005 and she did not join at the new place of posting and also for the period from 6.5.2005 till 28.6.2005 when there was no vacancy of PA (SBCO) in Head Office, Kota against which the applicant could have been allowed to work pursuant to the stay order granted by this Tribunal, as the claim of the applicant is under consideration. It will be open for the applicant to raise this dispute by filing a separate OA in case claim of the applicant is rejected by the respondents and we wish to make it clear that we have not examined this issue on merit.

12. With these observations, the OA stands disposed of with no order as to costs.


(B.L.KHATTRI)
Admv. Member


(M.L.CHAUHAN)
Judi.Member

R/