

Central Administrative Tribunal
Jaipur Bench,

Jaipur, this the 23rd day of March, 2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

OA No. 289/2006

Manohar Singh Meena,
s/o Shri Munshi Lal Meena,
r/o Jaipur, c/o S.K.Jain, Advocate,
Nanaji Ka Bagh, Fateh Tiba Marg,
M.D.Road, Jaipur working as Supdt. Surveyor

..... Applicant

(By Advocate: Shri S.K.Jain)

- Versus -

1. Union of India, through the Secretary to the Govt. of India
Ministry of Science and Technology, New Delhi..
2. Surveyor General of India, Survey of India, P.B. No.37,
Dehrudun, Uttarakhand.

..... Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER

Per Hon'ble Mr. M.L.Chauhan

The grievance of the applicant in this case is regarding his
suspension vide order dated 24.3.2006 and another order dated
26.6.2006 whereby consequent upon review, the period of

suspension was further extended for a period of three months w.e.f. 27.6.2006 or till the conclusion of the disciplinary proceedings against the applicant, whichever is earlier. It has been mentioned in this order that the order will be effective w.e.f. 27.6.2006. At the outset, it may be stated that the original order of suspension dated 24.3.2006 (Ann.A/1) was subject matter of challenge in another OA i.e. OA No.148/2006 and this Tribunal disposed of the OA on the ground that the same is premature and the applicant should have availed the remedy by way of appeal.

When notice was issued by this Tribunal vide order dated 8.8.2006 it was specifically observed that notice is confined only to the order dated 26.6.2006 (Ann.A/1A) whereby consequent upon review the period of suspension of the applicant was further extended for a period of three months commencing from 27.6.2006. Accordingly, this Tribunal is required to examine validity of the order dated 26.6.2006 (Ann.A/1A). The applicant has challenged validity of the order dated 26.6.2006 on the ground that the applicant was placed under suspension vide impugned order 24.3.2006 (Ann.A/1) with immediate effect whereas the first review of the order of suspension was conducted by the respondents and order was issued in that behalf after expiry of 90 days, as can be seen from the order dated 26.6.2006 (Ann.A/1A), as such, the said order is inoperative in view of the provisions contained in sub-rule (6) and (7) of Rule 10 of CCS (CCA) Rules, 1965.

2. The stand taken by the respondents in the reply is that the applicant was placed under suspension under Rule 10 of CCS

(CCA) Rules as disciplinary proceedings against him were contemplating. According to the respondents, the order of suspension was issued after obtaining proper approval from the competent authority vide letter dated 21.3.2006 and it is only after receiving such approval from the competent authority order of suspension was issued vide order dated 24.3.2006 and the same was served on the applicant through the concerned Additional Surveyor General. The respondents have also placed on record photocopy of the letter dated 21.3.2006 as Ann.R/1. The respondents have further stated that as per DOPT. OM dated 7.1.2004, the competent authority should take circumstances of each case into consideration and may direct for suspension which would be effective from the date of its communication to the Govt. servant, which received by the applicant on 29.3.2006, as such, the applicant's case was reviewed before completion of 90 days which is in order.

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

4. The sole question which requires our consideration is whether the first review order of suspension was done by the competent authority within a period of 90 days as stipulated under sub-rule (6) and (7) of Rule 10 of CCS (CCA) Rules and if not what is the effect of such review after a period of 90 days as stipulated in the aforesaid rules.

5. In order to decide this issue, it will be useful to quote relevant portion of Rule 10 as was in vogue at the time of issuance of the

order of suspension in respect of the applicant. Before we reproduce the relevant portion of Rule 10 of CCS (CCA) Rules, it may be relevant to mention here that as per the old rule which continued to remain in force till June, 2004, there was no time frame within which order of suspension was required to be reviewed or modified. Sub-rule 5(a) of Rule 10 of CCS (CCA) Rules in fact provided that an order of suspension made or deemed to have been made under Rule 10 of the Rules shall continue to remain in force until it was modified or revoked by the authority competent to do so. Sub-rule (6) and (7) of Rule 10 were inserted after the Hon'ble Supreme Court in various judicial pronouncements manifested the need for periodical review of suspension cases and deprecated the prolonged suspension of the Govt. servant without good reasons. The Govt. in its vision thought it proper to restrict the power of administrative machinery in this regard and fixed 90 days limit for review and extension or revocation of the order of suspension. Since according to the old rules, no statutory time limit was prescribed to review the suspension cases, though the competent authority was forced to review the suspension cases periodically, as such sub-rule (6) and (7) of Rule 10 were inserted thereby prescribing maximum time limit for reviewing and extending the period of suspension and also what is the effect in case the order of suspension is not reviewed and extended within the time prescribed under sub-rule (6) of Rule 10. Accordingly, amendment was carried in Rule 10 of CCS (CCA) Rules effective from 2.6.2004 by inserting sub-rule (6) and (7) of Rule 10 as inserted vide DOPT notification dated 23rd

December, 2003 effective from 2nd June, 2004 as per the notification dated 2nd April, 2004 published as ESR 249 (E) in the Gazette of India (Extraordinary) and thus reads:-

"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 is pending; or

.....

(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 ninety days unless it is extended after review, for a further period before the expiry of ninety days."

6, It is admitted case between the parties that after the said amendment in rules, the applicant was placed under suspension vide order dated 24th March, 2006 (Ann.A/1) which is in the following terms:-

.....

Dated: 24th March, 2006

Whereas a disciplinary proceeding against Shri Manohar Singh Meena Superintending Surveyor of Rajasthan

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Geo-spatial Data Centre, Survey of India, Jaipur is contemplated.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule (1) of Rule 10 of Central Civil Service (Classification, Control and Appeal) Rules, 1965 hereby suspends the said Shri Manohar Singh Meena, Superintending Surveyor, under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarter of Shri Manohar Singh Meena, Superintending Surveyor will be Jaipur and the said Shri Manohar Singh Meena, Superintending Surveyor shall not leave the headquarter without obtaining the previous permission of the undersigned..."

It may be relevant to mention here that as per the stand taken by the respondents themselves this order of suspension was issued on the basis of the approval given by the competent authority vide letter dated 21st March, 2006 (Ann.R/1), relevant part whereof is being extracted hereunder:-

"The undersigned is directed to refer to your letter No.C-182/BE(M.S.Meena) dated 16th January, 2006 on the subject mentioned above and to convey the approval of the competent Disciplinary Authority as to place Shri M.S.Meena, Superintending Surveyor, Rajasthan Geospatial Data Centre, Survey of India, Jaipur under suspension under Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 for conducting himself in an unbecoming manner during the office hours on the 9th December 2005 from the date of receipt of this letter on acceptance of the recommendations of Surveyor General as evinced from the preliminary inquiry report. The period of suspension of the officer may be reviewed as per Government instructions on the subject and orders for his subsistence allowance may be passed.."

As can be seen from the letter dated 21st March, 2006, suspension order was to become effective when approval is received by the competent authority. Based on this approval the

competent authority has issued order dated 24.3.2006. As can be seen from Para-2 of this order which has been reproduced in the earlier part of this judgment, the order was to become effective with immediate effect. Thus, from the reading of these two documents it is clear that the order of suspension was passed on 24.3.2006 and also that it was also made effective from the said date. Admittedly, the order of suspension was reviewed on 26th June, 2006 (Ann.A/1A) and it was made effective w.e.f. 27.6.2006. If the time is calculated from the date of issuance of the suspension order dated 24th March, 2006, admittedly the first review and extension of suspension period was not done before expiry of 90 days from the date of the order as stipulated under sub-rule (6) of Rule 10 of CCS (CCA) Rules. This order dated 26th June, 2006 which has been passed after expiry of 90 days rendered the said order illegal and invalid in terms of sub-rule (7) of Rule 10 which has been reproduced above.

7. The stand taken by the respondents that the order of suspension was served upon the applicant on 29.3.2006 and the order of suspension was reviewed vide order dated 26.6.2006 within 90 days as stipulated under sub-rule (6) cannot be accepted in view of clear and unambiguous language of sub-rule (6) of Rule 10. Sub-rule (6) of Rule 10, inter-alia, clearly mandates that the order of suspension made shall be reviewed by the authority which is competent to modify or revoke the suspension before the expiry of 90 days from the date of order of suspension. What is meaning of expression 'from the date of the order' used in sub-rule (6) aforesaid requires no further interpretation as the language is simple and

unambiguous. Literal meaning of this expression is that the stipulated time will be calculated from the date on which order was made. The initial suspension shall be reviewed and extended within 90 days of the suspension order. In other words, if the suspension order is not reviewed before expiry of 90 days, such order will become invalid. This is clear mandate of sub-rule (7) of Rule 10. As already stated above, there is no dispute that the order of suspension was passed on 24.3.2006. Further perusal of the order dated 24.3.2006 (Ann.A/1) also makes it clear that it will become effective with immediate effect. Admittedly, the order of suspension was reviewed by the respondents themselves on 26.6.2006 effective from 27.6.2006 (Ann.A/1A) beyond the period of 90 days. As such, according to us, the impugned order dated 26.6.2006 is illegal and invalid in view of the provisions contained in sub-rule (6) and (7) of Rule 10 as reproduced above. The contention of the respondents that period of 90 days has to be computed when the order has become effective and the same becomes effective when it was served upon the applicant on 29.3.2006, cannot be accepted. As already stated above, the language used in sub rule (6) is 90 days from the date of order of suspension and not from the date when suspension order has become effective. It may be relevant to state here that sub-rule (6) of Rule 10 was further amended as per CCS (CCA) Amendment Rules, 2007 which came into force w.e.f. 16.6.2007 when such amendment was published in official gazette and in sub-rule (6) for the words 'before expiry of 90 days from the date of order of suspension', the words 'before expiry of 90 days

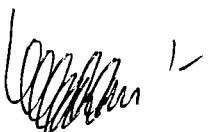
from the effective date of suspension' was substituted, besides further amendment carried in sub-rule (5) and sub-rule (7). As already stated above, the amendment as incorporated by amended Rules of 2007 was not applicable in the case of the applicant in whose case the review of suspension order was carried in the year 2006 when the amendment carried out to the aforesaid effect in sub-rule (6) was not present in the statute book. Thus, for the purpose of computing the period of 90 days, it is the date of order of suspension which is relevant and not the date when the order of suspension has become effective. Even otherwise also as stated above, as can be seen from the approval dated 21st March, 2006 (Ann.R/1) and order dated 24th March, 2006 (Ann.A/1) the respondents have also mentioned the date when the order of suspension has become effective which, as already stated above, also turns out to be 24.3.2004 and not 29.3.2009 as contended by the learned counsel for the respondents.

8. Thus, viewing the matter from any angle, we are of the view that the order dated 26.6.2006 vide which the order of suspension was further extended for a period of three months was passed beyond the period of 90 days, as such, it is invalid and inoperative in view of the provisions contained in sub-rule (6) and (7) of Rule 10 of CCS (CCA) Rules, 1965. Accordingly, the impugned order dated 26.6.2006 (Ann.A/1A) is quashed and suspension of the applicant is liable to be revoked and is hereby revoked. It is however, clarified that anything stated hereinbefore shall not be taken as opinion on
Abd

the merit of the applicant's case and as curtailing the respondents power of suspension as permissible under the rules.

9. The OA is allowed in the above terms. No costs.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

R/