

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 31st day of May, 2011

ORIGINAL APPLICATION NO. 329/2007
WITH
MISC. APPLICATION NO. 321/2010

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Dharmendra Kumar Singhal son of shri Bhag Chand Agarwal, aged about 35 years, resident of G-26, Major Shaitan Singh Colony, Shastri Nagar, Jaipur (under Suspension).

.....Applicant

(By Advocate: Mr. V.D. Sharma proxy to Mr. Ashok Gaur)

VERSUS

1. Union of India through its Secretary, Ministry of Communications & Information Technology, Department of Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. Director (VA), Department of Telecommunications, 1112, Sanchar Bhawan, 20, Ashoka Road, New Delhi.

.....Respondents

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

The present OA is directed against the office order dated 28.04.2005 (Annexure A/1) whereby the applicant has been placed under suspension and against the orders dated 08.08.2005, 31.01.2006, 19.06.2006, 14.12.2006 and 11.05.2007 (Annexure A/2 to A/6 respectively).

2. Brief facts of the case are that the applicant had participated in the Civil Services Examinations, 1997. He was declared successful and was appointed to the Indian P &T Accounts and Finance Services Group 'A' vide order dated 22.12.1998 (Annexure A/7) and was sent



for training from 07.03.1999 to 10.03.2001. After completion of the said training, the applicant was posted as Assistant Chief Accounts Officer in March 2001 in BSNL Rajasthan Circle, Office of PGMTD, Jaipur.

3. The applicant was promoted to the post of Chief Accounts Officer (ST scale) on 26.06.2002 and worked as officiating DGM (Finance) since 10.01.2003 till date of suspension i.e. 28.4.2005.

4. The applicant while working as Deputy General Manager (Finance) in the office of PGMTD, BSNL, Jaipur was suspended by DOT order dated 28.4.2005 under sub rule (1) Rule 10 of CCS (CCA) Rules, 1965 and suspension of the applicant was extended vide order dated 08.08.2005, 31.01.2006, 19.06.2006, 14.12.2006 and 11.05.2007.

5. A written complaint dated 23.04.2005 was filed by one Dr. Naresh Goyal alleging that he alongwith his wife was running an Orthopedic Hospital at Mansarovar, Jaipur and one Shri O.P. Garg, JTO and Shri S.K. Meena, Deputy General Manager (Admn.), Office of PGMTD, BSNL demanded Rs.20000/- as bribe from hi for showing favour in the matter of empanelment of his hospital for the employees of BSNL.

6. On the basis of aforesaid complaint dated 23.04.2005, Superintendent of Police SPE, CBI, ACB, Japur registered a case against Shri O.P. Garg, JTO and Shri S.K. Meena, Deputy General Manager (Admn.), Office of PGMTD, BSNL, Jaipur and entrusted the case to one Shri R.A. Soni, Inspector of Police, SPE, CBI, Jaipur. The trap proceedings were laid at the house of Shri Santosh Kumar Meena,



Shri O.P. Garg and after recovering amount, an FIR was registered in the Police Station SPE, CBI, Jaipur on 23.04.2005 (Annexure A/8).

7. The applicant was neither named in the FIR nor there any allegation of demand of bribe against him. However, the Police after completing the investigation filed charge sheet in the court of Special Investigation filed charge sheet in the court of Special Judge (CBI Cases) Jaipur and made the applicant accused by adding Section 120-B. The charge sheet was filed under Sections 120 B, Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

8. Vide order dated 09.05.2006 (Annexure A/10), the Director (Vigilance), Department of Telecom, New Delhi accorded sanction for prosecution of the applicant alongwith two other persons under Section 19 of the Prevention of Corruption Act.

9. Regarding the same incident, memorandum dated 22.09.2006 (Annexure A/11) was issued to the applicant alleging therein that the applicant failed to maintain absolute integrity, devotion to duty and committed grave misconduct and such he violated the provisions of Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

10. In response to the Memorandum, the applicant preferred reply denying the allegations. After considering the reply to the memorandum of charge sheet, vide order dated 17.08.2007 (Annexure A/13), DDG (MIS) was appointed as Inquiry Officer to hold departmental inquiry under Rule 14 of the CCS (CCA) Rules, 1965 against the applicant.



11. With regard to the suspension, the applicant referred to Rule 10(1) of the CCS (CCA), 1965, which deals with the suspension, which reads as under:-

"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
 - (aa) Where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
 - (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:"

12. After referring the aforesaid provisions, learned counsel for the applicant submitted that Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) issued a notification dated 23.12.2003 (Annexure A/14) and it added sub rule (6) and sub rule (5) and it was made mandatory that suspension order was to be reviewed by the competent authority before expiry of 90 days from the date of order of suspension.

13. The Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) issued an office Memorandum dated 07.01.2004 (Annexure A/15) wherein the Review committees were constituted to review the suspension cases and composition of review committee was prescribed.



14. The applicant submits that the notification dated 23.12.2003 came into force on expiry of 90 days from the date of publication in the official Gazette. He further submits that the notification dated 23.12.2003 was published in the official gazette on 03.01.2004 and it came into force w.e.f. 02.04.2004. The applicant was placed under suspension vide order dated 28.04.2005 and as per the notification dated 23.12.2003, his case was required to be reviewed by the competent authority within 90 days and 90 days period expired on 27.07.2005. The first review of the suspension order was made by the respondents on 08.08.2005. This initial review suspension is under challenge as no review took place by the competent authority within the period of 90 days.

15. The applicant represented against the illegal suspension before the respondents and same was rejected. The applicant preferred an appeal dated 02.08.2006 (Annexure A/21) under rule 23(i) of the CCS (CCA) Rules against continuation of his suspension vide order dated 19.06.2006 before respondent no. 2. The applicant alleged that he was informed verbally that no appeal lies against the same as the suspension order has been passed by the President of India. The applicant further submitted that he filed representations dated 09.10.2006 and 05.04.2007 for revocation of his suspension order.

16. In support of his submission, learned counsel for the applicant placed reliance on the judgment of the Principal Bench of the Tribunal in the case of **S.R. Goyal vs. Govt. of National Capital Territory of Delhi & Others** [OA No. 1564/2009 decided on 24.02.2010] wherein Principal Bench in Para No. 10 has held as under:-



"As regards the suspension in the light of Full Bench decision and keeping in light Rules 10 (6) and 10 (7) of CCS (CCA) Rules, 1965, which were amended vide notification dated 23.12.2003, the suspension deemed to have been made or otherwise the suspension on a recommendation of the reviewing authority, an order is to be passed extending the suspension within a period of 90 days. The words extended after review under Rules 10(6) and 10(7) of the rules ibid clearly signify that mere holding of review committee would not suffice within 90 days. An order following the review shall be passed to extend the suspension, as in the instant case the review committee meeting was held on 7.8.2006, i.e. on 90th day and an order extending the review has since been passed on 91st day i.e. on 08.08.2006 an order earlier resorted to has become invalid. The decision in S.K. Srivastava, 2009(3) SLJ (CAT-FB) 387, in all fours, covers the present issue."

17. Having applied the ratio by the Principal Bench, as in that case also an order extending the review which has been passed on 91st day was declared invalid. In the present case also, the period of 90 days expired on 27.07.2005 whereas order had been passed on 08.08.2005, which is admittedly beyond the period of 90 days and this ratio decided by the Principal Bench squarely covered the controversy involved in this case. It is also submitted by the learned counsel for the respondents that they are considering the case of the applicant for revocation of suspension.

18. Having considered the rival submissions of the respective parties and upon perusal of material placed on record as well as relevant provisions referred to by the respective parties and the judgment relied upon by the learned counsel for the applicant in OA No. 1564/2009 decided on 24.02.2010, admittedly the order of suspension was passed after the expiry of 90 days. Accordingly, the OA is allowed and all the impugned orders of suspensions are quashed and set aside.



19. With these observations, the OA is disposed of with no order as to costs.

20 In view of the order passed in the OA, no order is required to be passed in MA No. 321/2010, which is also disposed of accordingly.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)
AHQ

J C. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)