

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

ORDERS OF THE TRIBUNAL

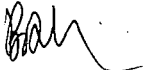
16.04.2009


OA No. 425/2007

Mr. S.P. Sharma, Counsel for applicant.
None present for respondents.

Heard learned counsel for the parties.

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


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH**

Jaipur, this the 16th day of April, 2009

ORIGINAL APPLICATION NO. 425/2007

CORAM:

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

Ambarish Chandra Chaubey son of Late Shri Panna Lal Chaubey, by Caste Brahmin, aged about 54 years, resident of D-6/74, Sector 6, Chitrakoot, Vaishali Nagar, Jaipur.

.....APPLICANT

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

VERSUS

1. Union of India through the Secretary, Ministry of Environment and Forest, Government of India, "Paryavaran Bhawan", CGO Complex, Lodhi Road, New Delhi.
2. State of Rajasthan through Secretary, Department of Personnel, Government of Rajasthan, Government Secretariat, Jaipur.
3. Secretary, Forest Department, Government of Rajasthan, Government Secretariat, Jaipur.

.....RESPONDENTS

By Advocates : Respondent No. 1 - None
Respondent nos. 2 & 3 - Mr. V.D. Sharma

ORDER (ORAL)

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

- "(i) quash and set aside the impugned suspension order dated 26.08.2006 (Annexure A/1) and communication dated 26.08.2006 (Annexure A/2) as well as the impugned extension order dated 20.11.2006 (Annexure A/3), dated 14.05.2007 (Annexure A/4) and dated 05.11.2007 (Annexure A/5) as also the receipt dated 26.11.2007 (Annexure A/6).
- (i)A quash and set aside the Impugned order dated 13.12.2007 (Anexure A/6-A), passed by the appellate authority by which the appeal of the applicant has been rejected.
- (ii) to direct the respondents to revoke the suspension of the applicant with all consequential benefits.
- (iii) Any other suitable direction, which the Hon'ble Tribunal deems fit and proper in the circumstances of the case mentioned herein above may be passed in favour of the humble applicant.
- (iv) The cost of this OA may also be granted to the applicant.

2. The grievance of the applicant is regarding his prolonged suspension w.e.f. 26.08.2006, which has been continued from time to time and order Annexure A/5-A whereby the appeal regarding suspension of the applicant was rejected. Matter came for consideration before the Bench on different occasions, when interim directions were given to file additional affidavit and further on 03.03.2009, on which date this Tribunal passed the detailed order, which thus reads as under:-

In this case, grievance of the applicant is regarding the order of his prolonged suspension by the authorities w.e.f. 26.8.2006, allegedly appears to have been issued on the basis of charge-sheet dated 18.10.2006, for alleged violation of certain acts. From various orders placed on record it is also clear that the period of suspension has been extended from time to time and lastly on 13.10.2008. The appeal filed against the original order of suspension has also been rejected by the Govt. of India vide order dated 13.12.2007 (Ann. A/5-A).

Validity of the appellate order was challenged by the applicant on the ground that the appellate order has been passed mechanically and on the basis of the wrong material submitted by the State Government before the appellate authority. It was further argued that applicant has been placed under suspension only for moral turpitude and he was not found guilty of disproportionate assets which may, in the given case, necessitated the authorities to continue the suspension period of the applicant for more than two years. Based on such contentions, this Tribunal, on 6.11.2008, passed the following order :

"The grievance of the applicant is regarding his prolonged suspension w.e.f. 26.08.2006, which has been continued from time to time. Even the appeal filed by the applicant against his suspension has been rejected by the Government of India vide order dated 13.12.2007 (Annexure A/5-A). From perusal of the order dated 13.12.2007, it is evident that appeal of the applicant was rejected on the ground that in the seized computer and seized floppy disc, some nude/semi nude/obscene photographs of females were stored in these devices in which the applicant was in compromising position. In para No. 9 of this order, it has been recorded that appeal of the applicant has been rejected after taking into consideration the ground taken by the applicant in his appeal, comments furnished by the Government of Rajasthan on the appeal and the records of the case. The applicant has been found guilty of moral turpitude.

From perusal of Annexure A/5-A, it is found that appeal of the applicant was rejected and suspension of the applicant was continued solely on the ground that he was found guilty of moral turpitude. From the perusal of this order, it is not clear that the fact regarding lodging of the FIR No. 214/06 whereby the applicant was found guilty of disproportionate assets has been taken into consideration while rejecting the appeal of the applicant and also while passing order whereby suspension of the applicant was continued from time to time.

Respondent no. 1 is directed to file Additional Affidavit thereby explaining the position which may be relevant for purpose of consideration of validity of the order passed by the Government of India in the appeal decided vide order at Annexure A/5-A.

Learned counsel for the applicant has also argued that although the charge sheet was issued against the applicant vide order dated 18.10.2006,

inquiry in the matter has not been proceeded till date except appointing the Inquiry Officer. In view of this, it is not warranted for the respondents to continue the suspension of the applicant indefinitely, more particularly, in department inquiry whereby allegation of the charges against the applicant are of moral turpitude, which has nothing to do with the duty, which the applicant has to perform.

In the additional affidavit to be filed, it may also be clarified whether the respondents have taken any decision regarding further extension of period of suspension of the applicant and, if so, then up to what date.

Let the additional affidavit be filed within a period of four weeks.

List the matter on 17.12.2008. CC to the learned counsel for the respondents."

Thereafter, the applicant moved an MA (No.373/2008) thereby placing certain documents on record, perusal of which shows that appeal of the applicant was not rejected on the ground of having any disproportionate assets and no action has been taken on the FIR No.214/2006. Since the matter was listed on 17.12.2008, the MA was adjourned to 12.11.2008. On 17.12.2008, it was brought to the notice of this Tribunal that suspension period of the applicant has been extended for further 90 days vide order dated 13.10.2008. This Tribunal, vide order dated 17.12.2008, directed the State Government to make available the original proceedings of the Review Committee on the next date of hearing i.e. 23.12.2008. Since Division Bench was not available on 23.12.2008, the matter was adjourned to 6.1.2009. On 6.1.2009, prayer was made on behalf of learned counsel for the State Government for adjournment of the case for the purpose of making the requisite record available. Such request was again made on 25.2.2009.

Today, pursuant to the aforesaid order passed by this Tribunal, the respondents have produced the original record pertaining to the review committee, whereby suspension period of the applicant has been extended for further 90 days vide order dated 13.10.2008.

We have perused the record produced. As per Note-350 of File No.F.1-205 Personnel/co-3/06, it is recorded that the review committee has extended the suspension period of the applicant for 90 days. This note was written by SO and the file was marked to Dy.Secy.(Adm.)/Principal Secy./Chief Secy./Hon'ble Chief Minister. The file was moved upto the level of Dy.Secy. and the same has again been marked to the SO to put up a proposal for ex-post facto approval of the competent authority. Thus, the matter appears to have been dealt with upto the level of Dy.Secy. (Adm). As can be seen from Note-359 dated 16.10.2008, recorded by the Dy.Secy. (Adm), the file was required to be submitted for approval of the Hon'ble Chief Minister. As per the entry made below Note-359, the file was never placed before the Hon'ble Chief Minister for approval and the matter was disposed of at the level of Chief Secy.

Learned counsel for the applicant submitted that since finding of the review committee for placing the applicant under suspension has not been approved by the competent authority, the order dated 13.10.2008 extending the suspension period of the applicant for 90 days is of no consequence and the applicant is entitled to the relief regarding reinstatement.

Learned counsel for the applicant further argued that based on the recommendation of the review committee the suspension period of the applicant was further extended for 90 days vide order dated 13.10.2008. It appears that such recommendation was made by the review committee after due application of mind and keeping in view the fact that the applicant is under prolonged suspension for the last more than two years and the departmental proceeding is at initial stage although it was permissible for the review committee to extend the period of suspension for 180 days as

was done by them in the past and which course was permissible for them in view of the statutory rules. But, surprisingly, the review committee again recommended further extension of the suspension period of the applicant for 180 days which committee was presided by the same person which has resulted into issuance of the order dated 9.1.2009. Thus, it shows complete lack of application of mind.

We have also seen the proceedings which have culminated into issuance of notification dated 9.1.2009. There is nothing on the record to suggest that once the review committee on earlier occasion has decided to extend the period of suspension limited upto 90 days instead of 180 days, as stipulated in the statutory rules, has again decided to extend the period of suspension of the applicant for further period of 180 days and the recommendations made by the review committee which resulted to the issuance of order dated 9.1.2009 appears to have been passed mechanically without taking into consideration its immediate earlier recommendation.

Be that as it may, we are of the view that the applicant is entitled to the relief of reinstatement solely on the ground that the order dated 13.10.2008, extending the period of suspension of the applicant for further 90 days, has not been approved by the competent authority although it has been recorded in the note that ex-post facto approval may be obtained. As such, the order dated 13.10.2008 is of no consequence. Prima-facie, we are of the view that the applicant is entitled to the relief of reinstatement on this ground alone. However, in order to give one more opportunity to the State Government, the State Government is directed to file an affidavit to explain whether the order dated 13.10.2008, extending the period of suspension of the applicant for 90 days, was approved by the competent authority.

We wish to make it clear that the applicant has been facing the suspension/charge-sheet for the last more than two years and the respondents have not proceeded with the matter further except appointing the inquiry officer and the matter is only at that stage. This is also one of the mitigating circumstances which justify the reinstatement of the applicant forthwith.

At this stage, we also wish to observe that the applicant is being paid from the State exchequer without extracting the work from him and the respondents have failed to complete the departmental inquiry within a reasonable period which, according to us, warrants reinstatement of the applicant specially when the charge against the applicant is not regarding disproportionate assets/financial omission and commission but the applicant has been charge-sheeted only for violation of so-called moral turpitude, which has no nexus with the performance of his official duty.

Accordingly, the respondents are directed to file an additional-affidavit keeping in view the observations made hereinabove within a period of fifteen days from today and if needed they can reconsider the matter in the light of the observations made hereinabove.

Let the matter be listed on 24.3.2009. CC to learned counsel for the parties (emphasis supplied to underlined)

3. Pursuant to the order passed by this Tribunal, the respondents have filed an Affidavit. When the matter was listed on 24.03.2009, this Tribunal had observed that State Government has filed a criptic affidavit. They have not specifically stated whether the order dated 13.10.2008, extending the prolonged suspension of the applicant for 90 days was approved by the competent authority. At this stage, it will be useful to quote order of this Tribunal dated 24.03.2009 in extenso-

Vide order dated 3.3.2009, by a detailed order, the respondents were directed by this Tribunal to file an additional-affidavit to the effect whether the order dated 13.10.2008, whereby suspension period of the applicant was further extended for 90 days, had been approved by the competent authority? It was further observed that prima-facie we are of the view that the applicant is entitled to the relief of reinstatement on this ground alone. Such observation was made after perusing the record which was made available by the State Government.

From the aforesaid order dated 3.3.2009 it is also clear that one more opportunity was given to the State Government to file additional-affidavit to explain whether the order dated 13.10.2009 was approved by the competent authority.

The State Government, in compliance of the aforesaid order, has filed a cryptic affidavit and they have not specifically stated that the order dated 13.10.2009, extending the period of suspension for 90 days, was approved by the competent authority.

At this stage, it will be relevant to quote Rule-3(8)(a)&(d) of All India Services (Discipline & Appeal) Rules, 1969, which thus read as under :

“(8)(a) An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time, unless revoked earlier.

(b) to (c)

(d) The period of suspension under sub rule (1) may, on the recommendations of the concerned Review Committee, be extended for a further period not exceeding one hundred and eighty days at a time.

Provided that where no order has been passed under this clause, the order of suspension shall stand revoked with effect the date of expiry of the order being reviewed.”

Thus, from perusal of the aforesaid rule, it is clear that the order of suspension under sub rule (8) made on recommendation of the concerned review committee could be extended for a further period not exceeding 180 days at a time. There is a proviso under sub rule (8)(d) which stipulates that where no order has been passed under this clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed.

In the instant case, the order which was required to be reviewed was to be expired on 15.10.2008. Unless a fresh order extending the period of suspension of the applicant in terms of sub rule (8)(d) is not passed by the competent authority, a person under suspension is entitled to automatic reinstatement in view of the provisions contained in the proviso to Rule-3(8)(d) without any further order.

Thus, from the facts as stated above, it is evident that the order of suspension which was reviewed and continued upto 15.10.2008 has not been validly extended beyond that period. As already stated above, the affidavit filed by the State Government is silent on this aspect.

However, as a matter of last indulgence, one week's time is granted to the State Government to apprise this Tribunal whether the order dated 13.10.2008 had been passed after approval of the competent authority. In case the required affidavit is not

filed within the period stipulated above, this Tribunal will pass an order in conformity with Rule-3(8)(d) of the aforesaid rules.

Let the matter be listed on 2.4.2009. CC to learned counsel for the parties.
(emphasis supplied to underline)

4. Thereafter the matter was listed on 02.04.2009 and the same was adjourned for today. Today, the learned counsel for State Government has filed a further Affidavit. In this Affidavit, the respondents have not specifically averred that the order dated 13.10.2008 was approved by the competent authority. However, what has been stated in this affidavit is that subsequently another order dated 09.01.2009 for continuing suspension of the applicant was passed thereby extending period of suspension of the applicant for 180 days on the recommendation of the Review Committee, which was duly approved by the competent authority. Thus what the State Government wants to submit is that no doubt the order dated 13.10.2008 has not been approved by the competent authority but subsequently the order dated 09.01.2009 thereby continuing the suspension period of the applicant for further period of 180 days was passed by the competent authority, as such earlier order of suspension shall be deemed to have been approved by the competent authority.

5. We have given due consideration to the submission made by the learned counsel for the respondents. We are of the view that such a submission cannot be accepted and deserves out-right rejection, in view of the provisions contained in the proviso to Rule 3 (8) (d) of All India Services (Discipline & Appeal) Rules, 1969, which has been extracted in earlier part of the judgement and specifically stipulates that the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed unless the same is not extended in terms of Sub Rule 8 (d) for further period not exceeding 180 days at a time. In this case, last extension of suspension of the applicant was for 180 days i.e. upto 15.10.2008 as can be seen from order dated 19.04.2008. Thereafter, the respondents have passed an order dated 13.10.2008 thereby further extending the period of suspension of the applicant for 90 days. Admittedly, as already stated above, this order thereby extending the suspension of the applicant has not been approved by the competent authority. Thus in view of the provisions contained in the proviso to Rule 3 (8) (d) of All India Services (Discipline & Appeal) Rules, 1969, the applicant

shall be entitled to automatic reinstatement in the absence of any valid order passed in terms of Rule 3.8(d). As already stated above, the respondents have not passed any valid order thereby extending the period of suspension and order dated 13.10.2008 thereby extending further period of suspension for 90 days being not in conformity with the provisions of the aforesaid rules, we are of the view that the applicant shall be deemed to have been reinstated w.e.f. 15.10.2008 in view of the provisions contained in proviso to Rule 3(8)(d) of All India Services (Discipline & Appeal) Rules, 1969.

6. The contention raised by the respondents that no doubt earlier order of suspension dated 13.10.2008 has not been approved by the competent authority but subsequently another order extending the suspension period of the applicant for ¹⁸⁰~~90~~ days vide order dated 09.01.2009 has been approved by the competent authority is of no consequence, as this subsequent order could not have been passed because on that date the applicant was not under suspension but by virtue of operation of aforesaid rules, the applicant was deemed to have been automatically reinstated in service after the expiry of the date of suspension on 15.10.2008. Thus any order passed by the respondents subsequent to 15.10.2008 is of no consequence and nonest in the eyes of law.

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


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ