

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 02.04.2013

OA No. 345/2012

Mr. Virendra Lodha, Senior Advocate, assisted by
Mr. Ankit Jain, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondent no. 1.
Mr. V.D. Sharma, counsel for respondent nos. 2 & 3.

Heard learned counsels appearing for the respective parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 02nd day of April, 2013

CORAM :

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

1. **ORIGINAL APPLICATION No. 345/2012**

Krishna Kunal, IAS, aged about 38 years son of Shri K.N. Sinha, resident of 1/7, Gandhi Nagar, Jaipur.

... Applicant

(By Advocate: Mr. Virendra Lodha, Sr. Advocate along with
Mr. Ankit Jain)

Versus

1. Union of India through Secretary, Department of Personnel Public Grievances and Training, North Block, New Delhi.
2. State of Rajasthan through Chief Secretary, Secretariat, Jaipur.
3. Principal Secretary, Department of Personnel, Secretariat, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal – Respondent no. 1.
Mr. V.D. Sharma – Respondents nos. 2 & 3)

2. **ORIGINAL APPLICATION No. 376/2012**

Hinglajdan, aged about 34 years son of Shri Sambhudan, resident of House No. 149, Pratap Nagar, Khatipura Road, Jaipur (Rajasthan)

... Applicant

(By Advocate: Mr. B.N. Sandu)

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. State of Rajasthan through Chief Secretary, Government of Rajasthan, Government Secretariat, Jaipur (Rajasthan).

3. Principal Secretary, Department of Personnel,
Government of Rajasthan, Government Secretariat,
Jaipur (Rajasthan).

... Respondents

(By Advocate: Mr. Mukesh Agarwal – Respondent no. 1.
Mr. V.D. Sharma – Respondents nos. 2 & 3)

ORDER (ORAL)

The facts & law points are same in both the OAs and, therefore, they are being disposed of by a common order. For the sake of convenience, the facts of OA No. 345/2012 (Krishna Kunal vs. Union of India & Others) are taken as a lead case.

2. The applicant filed the present OA praying for the following reliefs:-

- “- Hon’ble Tribunal may kindly call for the entire records pertaining to the issuance of order of suspension dated 28.09.2011 read with extension order dated 22.12.2011 and after examining the same be pleased to declare the impugned orders of suspension dated 28.09.2011 read with order dated 22.12.2011 null and void and quash and set aside the same.
- By further appropriate order or directions, the applicant be directed to be reinstated back in service with all consequential benefits thereto.
- By further appropriate order or directions, the applicant be directed to be reinstated back in service with all consequential benefits thereto.
- Hon’ble Tribunal may pass any other just & able order in favour of the applicant as deemed fit.”

3. Subsequently, the applicant filed an Amended OA. In the Amended OA, he has claimed the following reliefs:-

- “- That by an appropriate order the Standing Order dated 30.03.2010 issued by the Chief Minister in capacity of Minister in Charge of D.O.P., Government

Anil Kumar

of Rajasthan, may kindly be quashed and set aside to the extent of exercising the powers of the State Government with regard to the All India Services under Rule 2(c) and 3 of the All India Service Rules, 1969.

- Hon'ble Tribunal may kindly call for the entire records pertaining to the issuance of order of suspension dated 28.09.2011 read with extension order dated 22.12.2011 and after examining the same, be pleased to declare the impugned orders of suspension dated 28.09.2011 read with order dated 22.12.2011 null and void and quash and set aside the same.
- By further appropriate order or directions, the applicant be directed to be reinstated back in service with all consequential benefits thereto.
- Hon'ble Tribunal may pass any other just & able order in favour of the applicant as deemed fit."

4. Heard learned counsel for the parties and perused the relevant documents on record.

5. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was working as Collector Bharatpur from 05th September, 2010 to 16th September, 2011. After that, the applicant was transferred out of Bharatpur and posted at Jaipur under awaiting posting order.

6. The applicant (Hinglajdan) in OA No. 376/2012 was posted as Superintendent of Police, Bharatpur on 22nd May, 2011 and continued there upto 16th September, 2011, thereupon he was kept under awaiting posting order.

7. The learned counsel for the applicant submitted that there was a land dispute and quarrel between members of the two community and violent situation erupted on the morning of

Anil Kumar

14.09.2011 when police had to resort firing in order to prevent disruption of law & order and protection of larger public order. In this incident, in all 10 persons were killed and 46 persons (including 8 Policemen) were injured. Both the applicants were transferred out of the district on 16.09.2011 itself and, therefore, they were not in a position to temper with the evidence or temper with any kind of inquiry and influence any person/persons.

8 However, the State Government due to extraneous consideration and without following the procedure as laid down in Rule 3 of The All India Services (Discipline & Appeal) Rules, 1969 placed the applicants under suspension, vide order dated 28.09.2011 (Annexure A/1).

9. The learned counsel for the applicant during the course of arguments stated at Bar that he is restricting his prayer only to the order of suspension dated 28.09.2011 (Annexure A/1) and extension of the suspension order dated 22.12.2011 (Annexure A/2). He is relying only on the provisions of Rule 3 (1) of The All India Services (Discipline & Appeal) Rules, 1969, to claim his relief.

10. He referred to Rule 3(1) of The All India Services (Discipline & Appeal) Rules, 1969, which reads as under:-

"3. Suspension

- (1) if, having regard to the circumstances in any case and, where articles of charge have been drawn up,

Anil Kumar

the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may-

- (a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or
- (b)"

11. He argued that a bare reading of this provision provides that if, having regard to the circumstances in any case and, where articles of charges have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension the Member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government pass the order placing him under suspension.

12. He drew our attention to Annexure A/4, which is a note-sheet written by the Principal Secretary (Personnel) to the Government of Rajasthan dated 28.09.2011 vide which it was proposed to place the applicants under suspension. It states that as per instructions, it is proposed to place the following officers under suspension with immediate effect, due to an incident in Gopalgarh in District Bharatpur. This proposal was submitted by the Principal Secretary to the Chief Secretary and to the Chief Minister.

Anil Kumar

13. The learned counsel for the applicant argued that this proposal does not indicate that whether any articles of charges have been drawn up or whether any disciplinary proceedings are contemplated or are pending at the time of proposing the suspension of the applicants as required under Rule 3(1) of the All India Services (Discipline & Appeal) Rules, 1969. Thus the suspension order dated 28.09.2011 is contrary to the provisions of Rules, therefore, it is illegal and arbitrary, and hence it should be quashed & set aside.

14. Moreover, this suspension order was approved by the Chief Secretary and he has stated that ex-post facto approval of the Chief Minister be obtained. On the basis of the approval given by the Chief Secretary, suspension order dated 28.09.2011 (Annexure A/1) was issued. Learned counsel for the applicant argued that in The All India Services (Discipline & Appeal) Rules, 1969, there is no provision of obtaining ex-post facto approval of the Chief Minister/ Competent Authority. Thus suspension order has been issued after the approval of the incompetent authority that is Chief Secretary on 28.09.2011. Therefore, suspension order dated 28.09.2011 is illegal and void ab-initio and hence the suspension order dated 28.09.2011 be quashed and set aside.

15. On the other hand, the learned counsel for the respondents argued that the suspension order dated 28.09.2011 and the order of extension of suspension dated 22.12.2011 has been issued strictly in accordance with the provisions of The All

Anil Kumar

India Services (Discipline & Appeal) Rules, 1969, which is perfectly valid and legal order in contemplation of disciplinary proceedings against the applicant under Rule 3 of AIS Rules, 1969. To support his averments, he referred to the suspension order dated 28.09.2011 (Annexure A/1) wherein it has been clearly stated that disciplinary proceeding is contemplated against the applicant. Therefore, the order of suspension is in accordance with the provisions of Rule 3 of The All India Services (Discipline & Appeal) Rules, 1969. However, he did not dispute the correctness of Note sheet dated 28.09.2011 (Annexure A/4) vide which the proposal for suspension of the applicant was placed before the Chief Secretary/ Chief Minister.

16. The learned counsel for the respondents further submitted that applicants have failed to discharge their duties for maintaining law & order in Bharatpur District as Collector/ Superintendent of Police respectively. In the incident, 10 persons died and several persons were injured. He further argued that the applicant has been issued Memorandum of Articles of charges dated 11.11.2011 under Rule 8 of The All India Services (Discipline & Appeal) Rules, 1969.

17. He further denied that the suspension order has been issued due to extraneous consideration and without following the procedure as laid down in The All India Services (Discipline & Appeal) Rules, 1969. He argued that the action of the respondents in placing the applicants under suspension and further extending it vide order dated 22.12.2011 is according to

Anil Kumar

the provision of rules, therefore, there is no merit in the OAs and these should be dismissed with costs.

18. We have carefully perused Rule 3(1) of All India Services (Discipline & Appeal) Rules, 1969, which provides for the circumstances in which a Member of All India Service can be placed under suspension. Rule 3(1) of All India Services (Discipline & Appeal) Rules, 1969, provides that a Member of Service can be placed under suspension by the State Government (i) where articles of charge have been drawn up against the Member of the Service (ii) the nature of the charges (iii) against whom disciplinary proceedings are contemplated (iv) or disciplinary proceedings are pending. The Note sheet dated 28.09.2011 (Annexure A/4) does not mention any of these conditions while proposing to place the applicants under suspension. Therefore, in our view the proposal of suspension which was approved by the Chief Secretary on 28.09.2011 was not according to the provisions of All India Service (Discipline & Appeal) Rules, 1969.

19. The suspension order dated 28.09.2011 (Annexure A/1) has been issued in pursuance of approval given by the Chief Secretary on 28.09.2011. When the proposal does not mention that any disciplinary proceedings are contemplated or are pending against the applicants then merely mentioning of disciplinary proceedings being contemplated in the suspension order would not make any difference. The order of suspension dated 28.09.2011 is a consequence of the approval given by the

Anil Kumar

Chief Secretary to the proposal of Principal Secretary (Personnel) on 28.09.2011 and the proposal for suspension of the applicants does not mention as to whether any disciplinary proceedings against the applicants are contemplated or are pending. Thus any suspension order issued on the basis of such a proposal cannot be said to be an order according to the provisions of Rules.

20. Rule 3(1) of The All India Services (Discipline & Appeal) Rules, 1969 provides that where articles of charges have been drawn up and looking to the nature of charges, the Government of a State is satisfied that it is necessary or desirable to place under suspension the Member of the Service, against whom disciplinary proceedings are contemplated or are pending may pass the order, placing him under suspension. In this case, admittedly no articles of charges have been drawn up. Thus, the State Government had no occasion to look into the nature of the charges. The Note sheet dated 28.09.2011 (Annexure A/4) does not mention about any articles of charges having been drawn up against the applicants. Therefore, on this ground also, the order of suspension cannot be said to have been issued according to the All India Services (Discipline & Appeal) Rules 1969.

21. It is also not disputed by the respondents that the Chief Minister did not approve the proposal of suspension on 28.09.2011. It is also admitted that Chief Secretary is not the competent authority to place any All India Service Officer under suspension. The order of suspension of the applicants have been

Anil Kumar

issued on 28.09.2011 (Annexure A/1) without the approval of the Chief Minister on that date. Thus the order of suspension dated 28.09.2011 have been issued on the approval of the incompetent authority.

22. It is admitted between the parties that the applicants were transferred from Bharatpur District on 16.09.2011 and the order of suspension was issued on 28.09.2011 that is after 12 days of their transfer from Bharatpur and that too without the approval of the Chief Minister. The note dated 28.09.2011 (Annexure A/4) does not even mention the urgency for issuance of the suspension order on the same date without waiting for the approval of the Chief Minister.

23. Hence we are of the opinion that while issuing the order of suspension of the applicants, the provisions of Rule 3(1) of The All India Services (Discipline & Appeal) Rules, 1969 have not been followed and, therefore, the suspension order is liable to be quashed & set aside. Hence the order of suspension dated 28.09.2011 (Annexure A/1) in OA No. 345/2012 [Krishna Kunal vs. Union of India & Others] and order of suspension dated 28.09.2011 (Annexure A/1) in OA No. 376/2012 [Hinglajdan vs. Union of India & Others] are quashed & set aside. Consequently the order of extension of suspension dated 22.12.2011 (Annexure A/2) in OA No. 345/2012 with regard to Krishna Kunal, IAS and order of extension of suspension dated 22.12.2011 (Annexure A/2) in OA No. 376/2012 with regard to Hinglajdan, IPS are also quashed & set aside. The respondents

Anil Kumar

are directed to reinstate the applicants, Krishna Kunal, IAS and Hinglajdan, IPS back in service with all consequential benefits.

24. A copy of this order be placed in the file OA No. 376/2012 (Hinglajdan vs. Union of India & Others).

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

AHQ