

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 366/2013
WITH
MISC. APPLICATION NO. 313/2013

DATE OF ORDER: 20/03/2013

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. V. AJAY KUMAR, JUDICIAL MEMBER**

Nand Ram Meena S/o Shri Srilal, aged about 43 years, working as Regional Provident Fund Commissioner, Grade-II under suspension, Resident of 250/42, Pratap Enclave, Pratap Nagar, Jaipur – 302017.

...Applicant

Mr. Nand Kishore, counsel for applicant.

VERSUS

1. Union of India through Secretary, Labour and Employment, Govt. of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Chairman, Central Board of Trustees Employees Provident Fund Organization, 14 Bhikaiji Cama Place, New Delhi – 110066.
3. Central Provident Fund Commissioner, Employees Provident Fund Organization, 14 Bhikaiji Cama Place, New Delhi – 110066.

...Respondents

Mr. Amit Mathur, proxy counsel for
Mr. R.B. Mathur, counsel for respondents.

ORDER

(Per Mr. V. Ajay Kumar, Judicial Member)

The short point involved in this Original Application is whether the impugned order dated 18.04.2011 (Annexure A/1) passed for continuation of suspension of the applicant for a further period of 90 days w.e.f. 06.04.2011 is valid.

2. Brief facts of the case are that, while the applicant was working as Regional Provident Fund Commissioner, Grade-II, he was placed under suspension by an order dated 13.07.2010

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(Annexure A/2), w.e.f. 10.07.2010 i.e. the date on which he was detained in custody for a period exceeding 48 hours, for the offences under Section 120-B of IPC and Section 7 of the Prevention of Corruption Act, 1988. Before the expiry of 90 days w.e.f. 10.07.2010, the competent authority has extended the period of suspension of the applicant for a further period of 180 days w.e.f. 08.10.2010 by order dated 06.10.2010 (Annexure A/3). The said period of 180 days expired on 05.04.2011, whereas the respondents have issued the impugned order on 18.04.2011 extending the period of suspension for a further period of 90 days w.e.f. 06.04.2011.

3. Thereafter, the respondents have extended the period of suspension of the applicant from time to time by issuing various orders.

4. The applicant filed the present Original Application questioning the order of extension of his suspension period for a further period of 90 days w.e.f. 06.04.2011 by passing an order on 18.04.2011. It is the specific case of the applicant that since the period of 180 days of suspension period as extended by order dated 06.10.2010 had been expired on 05.04.2011 and the impugned order dated 18.04.2011, passed after expiry of the said 180 days, is invalid and non-est and, accordingly, all the subsequent orders of extension of suspension period are also equally invalid and non-est and that the applicant is entitled for a direction to the respondents to treat him on duty w.e.f. 06.04.2011 and for all consequential benefits.

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5. Shri Nand Kishore, learned counsel for the applicant in support of the averments made in OA, places reliance on Rule 10 (6) and (7) of the CCS (CCA) Rules, 1965 and on various judgments of different Coordinate Benches of this Tribunal besides the judgment of the Hon'ble Apex Court in the case of Union of India & Ors. vs. Dipak Mali - (2010) 2 SCC 224.

6. The said sub-rule (6) and (7) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, reads as follows: -

“(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 effective date 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) 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 of ninety days unless it is extended after review, for a further period before the of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later]”

7. Learned counsel for the applicant further submits that a bare perusal of the aforesaid provisions clearly indicate imposition of a mandatory condition on the competent authority to pass an order to modify or revoke the suspension before expiry of 90 days and that too on the recommendation of the

Review Committee constituted for the purpose and to pass appropriate orders. It is further mandated that all the subsequent reviews should be made before expiry of the extended period of suspension. It is also made clear that any order of suspension shall not be valid unless it is extended after review, for a further period, before the expiry of the period for which it was extended.

8. Learned counsel for the applicant also submits that the earlier period of extension ordered by order dated 06.10.2010 for a period of 180 days was expired on 05.04.2011, thus, the impugned order passed on 18.04.2011 is invalid and non-est and consequently all the subsequent orders for extension of suspension period of the applicant are also invalid.

9. Per contra, Shri Amit Mathur, proxy counsel for Mr. R.B. Mathur, counsel for respondents, while not denying the purport of Rule 10 (6) and (7) of the CCS (CCA), Rules, 1965, submits that the respondents have extended the period of suspension for a period of 180 days w.e.f. 08.10.2010 by passing an order dated 06.10.2010. Before expiry of the said period of 180 days i.e. before 05.04.2011, i.e. on 29.03.2011, the Committee specifically constituted for the purpose of reviewing the suspension of the applicant, after examining the seriousness of the offence and that as the matter regarding sanction for prosecution of the applicant is under examination, extended the period of suspension of the applicant for a further period of 90 days (Annexure R/2). In pursuance to the said recommendation of the Review Committee held on 29.03.2011, the competent authority extended the period of suspension of the applicant for

a further period of 90 days w.e.f. 06.04.2011 by passing the impugned order dated 18.04.2011, and as the Review Committee has reviewed the suspension of the applicant within the time prescribed by Rule 10 (6) and (7) of CCS (CCA) Rules 1965, the same is sufficient compliance of the said Rules and, hence, the Original Application is liable to be dismissed.

10. Learned counsel for the respondents further submits that once the Review Committee has taken a decision for extension of the suspension period, the passing of the consequential order is only a formality and, hence, the same cannot be taken into consideration for deciding the period fixed under Rule 10 (6) of CCS (CCA) Rules, 1965.

11. Heard learned counsel for the parties, perused the documents available on record and the case law cited by the learned counsel for the applicant.

12. As rightly contended by the learned counsel for the applicant, the wording of Rule 10 (6) and (7) of CCS (CCA) Rules, 1965 is very clear and unambiguous. It mandates the competent authority to review the suspension either by modifying or revoking the same and to pass the order either extending or revoking the suspension, on the recommendation of the Review Committee, but this should be done initially within the period of 90 days and thereafter all the subsequent reviews shall be done before expiry of the extended periods of suspension. The extension of suspension shall not be for a period exceeding 180 days at a time in any event. In this view of the matter, the contention of the learned counsel for the

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respondents that what is required under the rules is to review the suspension by the Review Committee only within the prescribed period but not of passing of the order by the competent authority, cannot be accepted. The said interpretation would be against the mandate of the rules itself.

13. The Hon'ble Supreme Court in the case of Union of India & Ors. vs. Dipak Mali (supra) examined the sub-rule (6) and (7) of Rule 10 of CCS (CCA) Rules, 1965 and categorically held that the order of suspension would not survive after the period of 90 days or after the expiry of the extended period, as the case may be, unless it was extended after review. The relevant paragraphs 10 and 11, read as follows: -

"...10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the Respondent and when the Petitioner's case came up for review on 20th October, 2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of Sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under Sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

11. The case sought to be made out on behalf of the petitioner, Union of India as to the cause of delay in reviewing the Respondent's case, is not very convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of Sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become

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invalid after the expiry of 90 days from the date of suspension."

14. In view of the categorical declaration of the law by the Hon'ble Apex Court while interpreting the sub-rule (6) and (7) of Rule 10 of the CCS (CCA) Rules, 1965 and since admittedly the order dated 18.04.2011 (Annexure A/1) extending the period of suspension of the applicant for a further period of 90 days was passed after the expiry of the earlier period of 180 days fixed by the order dated 06.10.2010 (Annexure A/3), the same is invalid, non-est and liable to be set aside. Therefore, the order dated 18.04.2011 (Annexure A/1) is set aside. Consequently, in view of the settled position of law that, if initial action is not in consonance with law, subsequent proceedings would not sanctify the same, (see C.M.D. Coal India Ltd. vs. Ananta Saha – 2011 (4) SCALE 398; State of Kerala vs. Puthenkavu N.S.S. Karayogam – (2001) 10 SCC 191; and Kalabharati Advertising vs. Hemant Vimalnath Narichania – AIR 2010 SC 3745), all the subsequent orders extending the period of suspension of the applicant are also invalid and, accordingly, hereby set aside and, as such, the applicant is deemed to have been on duty w.e.f. 06.04.2011 with all consequential benefits.

15. In view of the above, we do not consider to discuss the other decisions in detail, which are also in line with the decision in Dipak Mali's case (supra).

16. In the circumstances and for the aforesaid reasons, the Original Application is allowed with no order as to costs. Accordingly, the respondents are directed to treat the applicant on duty w.e.f. 06.04.2011 and grant him all the consequential

benefits thereof. However, it is made clear that this order shall not preclude the respondents from passing a fresh order of suspension or any other appropriate order, if they so chooses and the circumstances so warranted, in accordance with law.

17. In view of the order passed in the O.A., no further order is required to be passed in the Misc. Application No. 313/2013 filed on behalf of the applicant praying for interim relief, as such, the same is disposed of.

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(V. AJAY KUMAR)

JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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