

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(3)

ORDERS OF THE BENCH

Date of Order: 04.07.2013

OA No. 420/2013

Mr. P.N. Jatti, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Learned counsel for the applicant submits that he has filed rejoinder. Registry is directed to place the copy of the rejoinder with the file. Put up the matter on 05.07.2013.


(S.K. KAUSHIK)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

05-07-2013 (05.07.2013)

OA No. 420/2013

Mr. P. N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard.

D.A. is disposed of by a
separate order on the separate
Sheets for the reasons recorded
therein.


[S.K. KAUSHIK]
Judicial Member


[Anil Kumar]
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 420/2013
T.A. No.

199

DATE OF DECISION 05-07-2013

Hari Singh Kekaria Petitioner

Mr. P. N. Jatli Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Mukesh Agarwal Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Anil Kumar, Administrative Member.

The Hon'ble Mr. S. K. Kaushik, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(S.K. Kaushik)
Member (J)

Anil Kumar
[Anil Kumar]
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 420/2013

DATE OF ORDER: 05.07.2013

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER**

Hari Singh Kekaria S/o Shri K.R. Kekaria, aged about 51 years, R/o Village & Post Harsora, Tehsil Bandur, District Alwar, Rajasthan, Postal Assistant, Behror at present under suspension.

...Applicant
Mr. P.N. Jatti, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur-7.
3. Senior Superintendent Post Offices, Alwar Dn., Alwar.

...Respondents
Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

By means of the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks quashing of order dated 21st of February, 2013 by which the suspension period of the applicant has been extended.

2. Uncontroverted facts in the pleadings as well as during the course of arguments are as under: -

The applicant who was working with the respondents was placed under suspension vide order dated 21st of February, 2013 in contemplation of the departmental enquiry. It is the case of the applicant that the suspension of the applicant has been

extended vide order dated 24th of May, 2013 i.e. after the expiry of 90 days, therefore, the said order extending the period of suspension is against Rule 10 of Central Civil Services (Classification, Control and Appeal), Rules, 1965, (for brevity, the Rules), and liable to be set aside. In furtherance of the said plea, Shri P.N. Jatti, learned counsel for the applicant, vehemently argued that the order dated 24th of May, 2013 extending the period of suspension of the applicant with effect from 23rd of May, 2013 is totally illegal and against the Rule 10 of the Rules and, thus, the said order is liable to be set aside and the respondents be directed to reinstate the applicant from the date when the period of 90 days expired and he be also given all consequential benefits arising thereof.

3. Pursuant to the notice, respondents resisted the claim of the applicant by filing detailed written statement. Para 2 and 3 of the written statement are relevant, which reads as under: -

"2. That as per the rule 10 (6) of the CCS (CCA) rules 1965, the Review committee on 21.05.2013 (before 90 days from the effective date of suspension i.e. 22.02.2013) reviewed the suspension of the applicant and observed that departmental investigation in the case has not been completed. Moreover, disciplinary action against the applicant is yet to be initiated. Therefore, the Review committee found no justification to revoke the suspension order and recommended to continue the suspension of applicant, Shri H.S. Kekaria for a further period of 180 days from 23.05.2013. Copy of minutes of review committee is enclosed as Annexure R/2.

Accordingly on the recommendation of the review committee, the suspension of the applicant has been

ordered to be continued for a further period of 180 days w.e.f. 23.05.2013 vide SSPOs Alwar memo no. L2/Behror /SBCO/2012-13 dated 24.05.2013. Photocopy of the order dated 24.05.2013 is submitted herewith and marked as Annexure R/3.

3. That as per rule 10 (6) of the CCS (CCA) Rules 1965, 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 90 days from the effective date of suspension) on the recommendation of review committee constitute for this purpose. As per facts submitted above, it is clear that, the suspension of the applicant was already reviewed by the committee constituted for this purpose on 21.05.2013, before expiry of 90 days. This fact is also clear by perusal of order dated 24.05.2013. Thus, the action of the respondents is consonance with the relevant rules and the applicant has no ground to file the aforesaid O.A. and trying to mislead this Hon'ble Tribunal that his suspension has not been reviewed before expiry of 90 days. Accordingly the OA of the applicant has no merit and liable to be dismissed."

In support of the above contention, Shri Mukesh Agarwal, Senior Central Government Standing Counsel, appearing on behalf of the respondents argued that since the Review Committee has already reviewed the case of the applicant on 21st of May, 2013 i.e. before the expiry of 90 days, therefore, the arguments of the applicant that his case has not been reviewed within 90 days cannot be accepted and the order dated 24th of May, 2013 is legal and liable to be upheld.

4. We have given our thoughtful consideration to the entire matter and gone through the pleadings available on the record with the able assistance of the learned counsel for the respective

parties. The solitary question which arises for our consideration is whether the recommendation of the Review Committee accepted by the competent authority after 90 days, whether such order is valid and according to Rule 10 (7) of the Rules or whether merely considering the case by the Review Committee within 90 days and his recommendations were accepted by the competent authority after 90 days, whether such order is honest in the eye of law in terms of Rule 10 (7) of the Rules? For better appreciation, sub rule (5) (a), (6) and (7) of Rule 10 of the Rules, reads as under: -

"(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

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

5. The rules make it absolutely clear that an order of suspension made or deemed to have been made under sub rule 1 or 2 of Rule 10 will not be valid after a period of 90 days unless it is extended after a review for a further period before the expiry of 90 days. The review of the order of suspension is to be carried out on the recommendation of the Review Committee constituted for the purpose. The review and the extension of the suspension order should be before the expiry of 90 days from the date of order of suspension. Otherwise, the order of suspension will become invalid after a period of 90 days. Subsequent review shall also have to be made before the expiry of the extended period of suspension. The function of the Review Committee is to make recommendation. The date of making recommendation cannot be taken as the date of the order of extension of suspension by the competent authority, nor a recommendation of the Review Committee be construed as an order of extension passed by the competent authority. An order to be held valid, should be passed by the competent authority, in the prescribed manner and should be communicated, as held by the Apex Court in **Bachhaittar Singh vs State of Punjab** 1962 Supp.(3) SCR 713:-

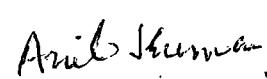
"8. What we have now to consider is the effect of the note recorded by the Revenue Minister of PEPSU upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary.... What we must first ascertain is whether the order of the Revenue Minister is an order of the State Govt. i.e. of the Governor.

9. The question, therefor, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be

communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file."

6. In the instant case, admittedly, the applicant was placed under suspension on 21st of February, 2013. The case of the applicant was considered by the Review Committee under Rule 10 (6) of the Rules on 21st of May, 2013 but the ultimate order by the competent authority extending the suspension of the applicant was passed on 24th of May, 2013 with effect from 23rd of May, 2013. From the above fact, it is clear that though the Review Committee has recommended the case of the applicant on 21st of May, 2013 but their recommendation has been accepted by the competent authority by passing the order on 24th of May, 2013 i.e. beyond the period of 90 days, therefore, we are of the considered view that the order dated 24th of May, 2013 extending the period of suspension of the applicant is without jurisdiction and contrary to the Rule 10 (6) of the Rules and as such is invalid and nonest in eye of law. Accordingly, the same is quashed and set aside. Resultantly, the Original Application is allowed. Needless to say that the applicant become entitled for all consequential benefits arising thereof. No order as to costs.


(S.K. KAUSHIK)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER