

(Reserved on 23.03.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **05th** day of **April, 2018.**

PRESENT:

**HON'BLE MR JUSTICE DINESH GUPTA, MEMBER-J
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A**

ORIGINAL APPLICATION NO. 330/231/2018

Suresh Pal Gupta, S/o Sri B.R. Gupta, at present posted as Director, Khadi and Village Industries Commission, Meerut Region, Meerut.

..... **Applicant**

By Advocate : Shri M.L. Rai

Versus

1. Union of India through Ministry of MICRO, Small and Medium Enterprises, Govt. of India through its Secretary.
2. Khadi and Village Industries Commission, Mumbai through its Chief Executive Officer .
3. Deputy Chief Executive Officer (Administration & H.R) / Link Officer, Khadi and Village Industries Commission, Mumbai .
4. Deputy Chief Executive Officer (Central Zone) Khadi and Village Industries Commission, Bhopal.
5. Chairman, Khadi and Village Industries Commission, Ministry of MICRO, Small and Medium Enterprises, Government of India, 3 Irla Road, Vile Parle (West), Mumbai – 400056..

..... **Respondents**

By Advocate : Shri D.C. Mishra

ORDER**Delivered by :****Hon'ble Mr. Gokul Chandra Pati, Member (A):**

By way of the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for following main reliefs:-

- “i. quash suspension order dated 24.08.2017 (which is already lapsed in pursuance of DOPT / office memorandum dated 23.08.2016), order dated 02/05.02.20188 passed without making pursuance of DOPT / office memorandum order dated 23.08.2016 passed by the respondent no. 3 (Annexure No. 1 and 2 to this original application in compilation no. 1).
- ii. to issue and order and direction to respondents / respondent nos. 2 and 3 to pay the more than 50% subsistence allowance to applicant under the law and not to make any coercive action against the applicant.”

2. The brief facts emerging from the O.A. are that the applicant being Project Manager, while working as Director, Divisional Office, Khadi and Village Industries Commission (in short KVIC) was placed under suspension vide order dated 24.08.2017 on the ground that his conduct was found to be violative of the KVIC Employees (Conduct) Regulations, 2003 as he refused to provide certain records relating to the Divisional Office, Meerut. By the suspension order dated 24.08.2017, the subsistence allowance was ordered to be paid as per

extant guidelines but the same was not increased beyond 50% of salary as subsistence allowance. It is stated that as per the circular dated 24.05.2017/09.06.2017 (Annexure A-4 to the O.A), the payment of wages to artisan, spinner and weavers are to be made through Aadhar Seeded Bank Account and only thereafter the institutions were directed to send their claims of Modified Marketing Development and Assistance (in short MMDA) to Divisional Officer. On 23.06.2017 the Senior Executive was sent by the respondent No. 4 for verification of details of MMDA schemes as claimed by the institutions to the Divisional Office. Since no institution had forwarded MMDA claims to the applicant by that time, no record in respect of same was available and it could not be furnished to the representative of respondent No. 4. A letter dated 23.06.2017 was sent by the applicant to the respondent No. 4 informing about non-availability of record with remark that the moment of record is available, it will be sent to him. Due to non-production of record, an explanation was called from the applicant vide letter dated 26.07.2017 (Annexure A-7 to the O.A). The applicant submitted his explanation to the respondent No. 4 vide letter dated 27.07.2017 (Annexure A-8 to the O.A). The respondent No. 4 on being satisfied with the explanation of the applicant sent a letter dated

04.08.2017 (Annexure A-9 to the O.A) to the respondent No. 3 for closing the matter. Despite this fact, the Commission in its meeting held on 21.08.2017 decided to place the applicant under suspension. Thereafter, the suspension order dated 24.08.2017 was withdrawn by the respondent No. 3 with remark that speaking order will be issued shortly as it was passed without approval of competent authority and again fresh suspension order dated 24.08.2017 (Annexure A-1 to the O.A) was issued by the respondent No. 3 on different ground. It is also stated that the suspension order dated 24.08.2017 is not being reviewed as per the Govt. of India OM dated 23.08.2016 (Annexure A-10 to the O.A). A show cause notice dated 02/05.02.2018 was also issued by the respondent No. 3 to the applicant to which the applicant submitted his reply dated 10.02.2018 (Annexure A-13 to the O.A). The applicant has also submitted an application dated 14.02.2018 (Annexure A-14 to the O.A) to the respondent No. 1 for revocation of suspension order dated 24.08.2017. But the suspension order has not been revoked.

3. Being aggrieved the applicant has filed the instant O.A on the ground that the respondent No. 3 did not consider the letter dated 04.08.2017 of respondent No. 4 by which he expressed his satisfaction with the reply of

the applicant for non-production of records. It is contended that neither any chargesheet has been issued nor any disciplinary proceeding is contemplated or pending against him at the time of his suspension. It is further contended that as per the Regulation 8(1) of KVIC Employees (CCA) Regulation 2003, an employee can be placed under suspension only when the disciplinary proceeding against him is contemplated or is pending.

4. Learned counsel for the applicant was heard on interim relief to stay the operation of the impugned suspension order dated 24.08.2017. He submitted that the said suspension order lapsed as per the DOPT Letter dated 23.08.2016 (Annexure A-10 to the O.A) which states that the suspension order on a government servant should not extend beyond three months, if the chargesheet is not served during this period. It is submitted that since no chargesheet was issued against the applicant before expiry of three months from the suspension order dated 24.08.2017, the suspension order will lapse in view of the DOPT letter dated 23.08.2016. It was further submitted that the impugned suspension order did not mention the fact that the disciplinary proceeding was contemplated against the applicant as required under the regulation 8. Hence, it was argued

that the impugned suspension order violates the KVIC Employees (CCA) Regulation, 2003.

5. Learned counsel for the respondents submitted that based on the instructions he received from the respondents, the applicant was placed under suspension pending initiation of disciplinary proceedings. He submitted that under the KVIC Employees (Classification, Control & Appeal) Regulations, 2003 applicable for the KVIC employees, the suspension order once issued can be ordered to remain valid until further order and there is no provision for review under the said Regulations. Learned counsel submitted copy of the orders, letters and a copy of the regulation 8 under which the applicant was suspended, which were received by him from the respondents and these were taken on record.

6. Since the matter pertaining to interim relief in the OA to stay the operation of the impugned suspension order dated 24.08.2017 is as good as final disposal of the OA, it was decided with the consent of both the parties, that the OA will be disposed of finally at this stage, based on the copy of the instructions/letters/papers received from the respondents and filed by the learned counsel for the respondents.

7. It is seen from the copy of the documents filed by the learned counsel for the respondents that a chargesheet has

been issued to the applicant by the respondents vide Memorandum dated 12.03.2018, after about six months from the date of issue of the impugned suspension order dated 24.08.2017 (Annexure A-1). Vide letter dated 2/5.02.2018 (Annexure A-2), the respondents have informed the applicant that under the KVIC Employees CCA regulations, the order of suspension can continue to remain in force till it is modified or revoked by the competent authority and hence, the applicant's claim for revocation of suspension order was not held to be valid. Both the letters at Annexure A-1 and A-2 have been challenged by the applicant in this OA.

8. The regulation 8(1) of the KVIC Employees CCA Regulations, 2003 regarding suspension of the employees, states as under:-

“8. 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 Commission, by a general or special order, may place an employee under suspension –*
 - (a) *where a disciplinary proceeding against him is contemplated or is pending; or*
 - (b) *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*
 - (c) *where a case against him in respect of any criminal offence is under investigation, inquiry or trial;*

Provided that, except in case of an order of suspension made by an authority lower than the appointing authority, such authority shall forthwith

report to the appointing authority the circumstances in which the order was made."

From above, it is clear that an employee can be placed under suspension only when a disciplinary proceeding against him is being contemplated or is pending, unless the conditions at sub-clause (b) and (c) of the regulation 8(1) are attracted. The impugned order dated 24.08.2017 does not mention about any disciplinary proceeding, which is being contemplated or is pending against the applicant as per the opinion of the disciplinary authority, although certain lapses on the part of the applicant like non-production of documents as per the instructions of superior authority has been mentioned. One of the grounds taken by the applicant in the OA is that since there is no mention of any disciplinary proceeding, which is being contemplated or pending against the applicant, the impugned suspension order violates the KVIC Employees CCA Regulations, 2003. But subsequently, vide Memorandum dated 12.03.2018, chargesheet has been issued to the applicant for the lapses mentioned in the suspension order. Hence, although the fact of contemplation of disciplinary proceeding has not been mentioned, the lapses mentioned in the order and subsequent chargesheet imply the fact that the disciplinary proceeding was being contemplated at the time of issuing the suspension order.

9. Other ground in the OA is that the chargesheet was not issued within three months of suspension as per the guidelines of DOPT vide letter dated 23.08.2016 (Annexure A-10). But since the chargesheet has already been issued against the applicant, we are not going to examine whether this ground taken by the applicant is valid or not.

10. As noted earlier, the chargesheet has been issued in this case after more than six months from the date of issue of the suspension order. It is also seen that the applicant has not filed any appeal under regulation 19 of the KVIC Employees (Classification, Control & Appeal) Regulations, 2003 before approaching this Tribunal.

11. In view of above, we are not inclined to interfere in the matter at this stage and dispose of this OA with a direction to the respondents to complete the disciplinary proceedings expeditiously preferably within three months since the matter has already been delayed. Further, in case the applicant files an appeal against the impugned order of suspension dated 24.08.2017 within fifteen days from the date of receipt of a copy of this order before the appellate authority under the regulation 19 of the KVIC Employees (Classification, Control & Appeal) Regulations, 2003, then the appellate authority shall consider the said appeal as per provisions of law and dispose of the appeal by passing a

speaking and reasoned order to be communicated to the applicant within one month from the date of receipt of the appeal filed by the applicant treating the appeal to have been filed within the time stipulated under the regulation 21 of the KVIC Employees (Classification, Control & Appeal) Regulations, 2003 .

10. The OA is disposed of with directions as above. No cost.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Member (J)

Anand...