

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.100/386/2015

Wednesday, this the 31st day of August 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

J K Sinha, age 58 years
Jt. General Manager
s/o late Mr. S N Sinha
1832, Sector 16
Faridabad - 121002

..Applicant

(Mr. Ujjawal Kumar and Mr. Pankaj Kumar, Advocates)

Versus

1. National Projects Construction Corporation Ltd.
Through the Chairman & Managing Director
NPCC Ltd.
30-31, Raja House (2nd Floor)
Nehru Place, New Delhi – 110 019

2. Ministry of Water Resources
Through Secretary
M/o Water Resources
626, Shram Shakti Bhawan, Rafi Marg
New Delhi – 110 001

..Respondents

(Mr. Naresh Kaushik and Mr. Animesh Dubey, Advocates)

O R D E R (ORAL)

Justice Permod Kohli:

The applicant joined the services with National Projects Construction Corporation Limited (NPCC), respondent No.1, as Assistant Executive Engineer on 21.01.1982. He earned promotion as Joint General Manager in NPCC on 30.09.2008. In the year 2010, an FIR No. RC 0072010A0011 came to be registered by the CBI at its Dehradun Office. The applicant was involved in the said FIR and came to be arrested on 09.11.2010. His

detention in CBI custody continued up to 10.01.2011. On account of his detention by the CBI, he was placed under suspension vide order dated 15.11.2010. In the meantime, a criminal charge sheet came to be filed against the applicant and others on 22.12.2012 in the CBI Court, Dehradun. The applicant is facing trial before the said Court.

2. Even while the criminal proceedings were pending against him, the respondents revoked the suspension of the applicant vide order dated 21.08.2014 pursuant to the representation filed by him. The revocation order reads as under:-

“Order

Whereas an order placing Shri J.K. Sinha, Joint General Manager (Civil) under suspension was made by the then Chairman & MD vide Office Order No.5841140 dated 15.11.2010 with effect from 09.11.2010.

Now, therefore, the undersigned in exercise of the Powers conferred by Rule 8 (5) NPCC (Classification, Control & Appeal) First Amendment) Rule, 2005 hereby, revokes the said order of suspension with immediate effect.”

3. The applicant has retired on attaining the age of superannuation on 27.02.2015. The present O.A. has been filed on 16.01.2015 seeking the following reliefs:-

“(i) To declare that the continuation of suspension order dated 15-11-2010 beyond 09-02-2011 is void.

(ii) To direct the respondent to pay the salary and other allowances after 09-02-2011

(iii) To direct the respondent to provide others consequential benefits such as seniority and promotion etc.

(iv) To release the salary and other perks and perquisites as applicable of the illegal suspended period.

(v) Any other relief which this Hon'ble Tribunal deems fit and proper in view of the prejudicial and vindictive attitude of respondent and its senior officers which is clearly evident from the submissions of the applicant and the oral evidence that the applicant would submit to the Hon'ble Tribunal, may also be awarded to the applicant."

5. The main contention of the applicant is that the respondents have kept him under suspension from 15.11.2010 to 21.08.2014 without there being any review by any authority and thus the continued suspension of the applicant without proper review was impermissible in law. The applicant has accordingly sought a direction for the salary and other emoluments attached to the post for the entire period of suspension.

6. It is not in dispute that the applicant is facing the criminal trial, which is yet to be concluded. The suspension of the applicant is governed and regulated by specific Rules framed by the respondent-Corporation, namely, NPCC (Classification, Control & Appeal) (First Amendment) Rules 2005. Rule 8 deals with the suspension, the same is reproduced hereunder:-

"8. SUSPENSION

The appointing Authority or any authority to which it is subordinate or any other authority empowered by the M.D. in that behalf may place a Corporation employee under suspension:-

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where a case against him in respect of any criminal offence is under investigation or trial.

2. A Corporation employee who is detained in custody, whether on a criminal charge of otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of Appointing Authority and shall remain under suspension until further orders.

3. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Corporation employee under suspension is set aside in appeal or on review under these rules and

the case remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

4. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Corporation employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations of which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Corporation employee shall be deemed to have been placed under suspension by the appointing Authority from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

5. An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.”

7. Learned counsel for applicant has relied upon the Judgment of the Hon’ble Supreme Court in **Ajay Kumar Choudhary v. Union of India through its Secretary & another** (Civil Appeal No.1912/2015 (Arising out of SLP No.31761/2013)) decided on 16.12.2015 wherein it has been ruled that continued suspension without serving the charge sheet within 90 days is impermissible in law. It has been further said that continued suspension is transitory or temporary in nature and must *per force* be of short duration. This judgment has been rendered in a different context and has no bearing on the question of validity of suspension in absence of review.

8. So far as the case in hand is concerned, specific Rules have been framed by the respondent No.1 - NPCC laying down the service conditions and other allied matters of its employees. Rule 8 of the Rules framed by the Corporation deals with the suspension, as referred to hereinabove. From

the perusal of the Rules, we find that there is no provision for review of the suspension, though under sub-rule (5) of Rule 8 the competent authority has been empowered to revoke the suspension or even deemed suspension at any time. It is in exercise of this power contained in the aforesaid Rules that the suspension of the applicant has been revoked vide order dated 21.08.2014.

9. In absence of any specific provision for review, we are not in agreement with the learned counsel for applicant insofar as the question of review is concerned, and merely on that basis the entire period of suspension cannot be said to be void. However, we are of the considered view that the authority revoking the suspension was definitely required to decide the period of suspension at the time of revocation. Even though there is no specific provision under the Rules framed by the respondent No.1 – NPCC, nonetheless the employee cannot be kept in lurch without deciding the period of suspension even when his suspension has been revoked by the competent authority. However, we find aid from F.R. 54-B, which, *inter alia*, requires the competent authority to decide the period of suspension at the time of its revocation. The relevant extract of F.R. 54-B is reproduced hereunder:-

“F.R. 54-B. (1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.”

10. In the present case, the authorities have failed to pass any order deciding the period of suspension at the time of passing of the revocation order, which the authority was obliged to do. Taking note of the fact that the suspension of the applicant has been revoked and that he has retired on superannuation, the present O.A. is disposed of with the direction to the respondents to decide the period of suspension of the applicant within a period of six weeks from the date of receipt of a copy of this Order. In the event the authorities decide to treat the period of suspension as on duty, the applicant shall be entitled to the salary, etc. within a period of six weeks thereafter. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

August 31, 2016
/sunil/