

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.917/2014

Reserved On:26.02.2016
Pronounced On:02.03.2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

Bhullan Singh
House No.430,
Indirapuram,
Sabun Godam,
Meerut, UP.

...Applicant

By Advocate: Shri H.D. Sharma.

Versus

Central Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
EPF Organization, Ministry of Labour,
14, Bhikaji Cama Place,
New Delhi-110066.

...Respondent

By Advocate: Shri Sat Pal Singh.

ORDER

Justice M. S. Sullar, Member (J)

Applicant, Bhullan Singh, has challenged the impugned order dated 04.04.2013 (Annexure A-1/Colly) by virtue of which his period of suspension was further extended for 180 days by the respondent retrospectively with effect from 17.03.2013, purportedly in exercise of his powers under Section 10(6) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 [CCS (CCA) Rules, 1965].

2. The epitome of the facts and material, which needs a necessary mention for a limited purpose for deciding the core controversy involved in the instant Original Application (OA) and emanating from the records, is that, applicant was posted as Enforcement Officer in the Sub Regional Office, Noida of the respondent. He was stated to have

committed grave misconduct, which necessitated the initiation of a regular departmental enquiry against him. Consequently, in contemplation of disciplinary proceeding, he was suspended with immediate effect vide order dated 21.06.2012 (Annexure A-3) by Additional Central Provident Fund Commissioner (UP&BR). Subsequently, the period of suspension was extended vide order dated 19.09.2012 (Annexure A-1/Colly.) for a period of 180 days. The period of suspension was again extended by means of impugned order dated 04.04.2013 (Annexure A-1/Colly) by the competent authority.

3. Now the Applicant has assailed the impugned order dated 04.04.2013, inter alia, on the ground that the extension was granted after the expiry of the statutory period of 180 days as contemplated under Rule 10 of the CCS(CCA) Rules, 1965 as amended by Notification dated 23.12.2003; which are fully applicable to his case. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claimed that the impugned second extension order dated 04.04.2013 passed after the expiry of the statutory period cannot legally be sustained and is liable to be quashed and he is entitled to all consequential benefits in this connection.

4. In the wake of notice of the main OA, Shri Sat Pal Singh, Advocate appeared on 17.02.2015, sought time to file the reply on behalf of respondents and the following order was passed by this Bench on the said date:-

"Shri Sat Pal Singh, learned counsel for the respondents submits that copy of the OA has not been supplied to him and he will seek instructions from the respondents once the copy is supplied. The applicant is directed to make available a copy of the OA to Shri Sat Pal Singh, who is directed to file reply, if any, before the next date. Since this matter relates to the

year 2014, no further time for filing reply will be granted to the respondents. List on 24.04.2015”.

5. Instead of reproducing each and every interim order and in order to avoid the repetition, suffice it to say that the respondents have not yet filed reply to the OA despite sufficient time given to them including the last opportunity, for the reason best known to them. Ultimately, this Bench passed the following order on 07.07.2015:-

“Learned proxy counsel for respondents submitted that the arguing counsel is not well and prayed for a short adjournment. It is seen that despite sufficient opportunities reply has not been filed on behalf of respondents. As a last opportunity respondents are directed to file reply within four weeks failing which we will be constrained to decide the matter on the basis of documents available on record.

List the matter under the head 'Ready for hearing Matter' on 03.09.2015. In the meantime, as directed earlier, respondents shall also pay cost to the applicant”.

6. Be that as it may, the fact remains that the respondent has not filed the reply till today. Therefore, we have no option, but, to decide the matter without reply. That is how we are seized of the matter.

7. Having heard the learned counsel for the parties and having gone through the material available on record with their valuable help and considering the matter deeply, we are of the considered opinion that the present OA deserves to be allowed for the reasons mentioned hereinbelow.

8. As is evident from the record that the applicant was initially suspended with immediate effect vide order dated 21.06.2012 (Annexure-A/3) by the competent authority. The period of his

suspension was initially extended through an order dated 19.09.2012 for a period of 180 days with effect from 19.09.2012 in terms of Rule 10 (6) of the CCS (CCA) Rules, 1965. The period of his suspension was again extended by virtue of the impugned order dated 04.04.2013 (Annexure A-1/Colly.) for another 180 days, i.e., after about 197 days from the date of the first extension.

9. As is apparent that Rule 10(6) of the CCS (CCA) Rules, 1965, postulates that an order of suspension made or deemed to have been made under this rule shall be reviewed by the authority 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 and extension of suspension shall not be for a period exceeding one hundred and eighty days at a time. Sequelly, according to sub-rule (7), an order of suspension made or deemed to have been made under sub-rules (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.

10. Therefore, a conjoint and meaningful reading of these provisions would reveal that the period of suspension can only be extended before the expiry of 90 days or 180 days as the case may be and not otherwise. Thus any such order passed after the expiry of the statutory period would be invalid and inoperative. It is not a matter of dispute that in the instant case, the period of suspension was extended second time much after the expiry of the statutory period of

180 days by means of the impugned order dated 04.04.2013. Hence, the impugned order becomes invalid and inoperative for all intents and purposes. This matter is no more *res integra*.

11. An identical question came to be decided by Hon'ble Supreme Court in the case of ***Union of India and Others Vs. Dipak Mali*** 2010 (2) SCC 222. After considering the scope of newly inserted sub-rule (6) and (7) to Rule 10 of the relevant rules, it was ruled by Hon'ble Apex Court that under these circumstances, the order of suspension would not survive, if it is not extended within the statutory period and suspension got automatically lapsed. It was also held that subsequent review and extension would not revive the order.

12. The same view was taken by the Hon'ble Delhi High Court in the case titled **N.K. Sethi Vs. India Trade Promotion Organisation** W.P. (C) No.14848/2004 decided on 22.02.2005, a Full Bench of this Tribunal in the case of **D.R. Rohilla Vs. U.O.I. and Another** (OA No.2105/2004) decided on 31.10.2005, a co-ordinate Bench of this Tribunal in the case of ***Om Prakash Vs. National Council of Educational Research and Training through its Director - OA No. 1779/2005*** – decided on 25.11.2005 and in the case of **Dharam Pal Vs. U.O.I.** - OA No.3011/2004 decided on 18.01.2005. In all these judgments, it has been held that any suspension period beyond the statutory period is illegal and is inoperative.

13. Therefore, the crux of law laid down in the indicated judgments *mutatis mutandis* is applicable to this case and is a complete answer to the problem in hand.

14. In view of the foregoing, the impugned order dated 04.04.2013 (Annexure A-1/Colly.) pertaining to the second extension of period of suspension of the applicant is illegal, inoperative and deserves to be set aside. Concededly, the suspension period of the applicant was revoked by the Head Office vide Office Order No.HRM-III/16(1)/10-EO-AO/IRT/10516 dated 11/09.2013 which is clear from the letter dated 17.09.2013 (Annexure A-6) issued by the competent authority. Therefore, applicant would be entitled to the amount of difference of subsistence allowance and actual pay between the intervening period with effect from 04.04.2013, i.e., order of second extension to 11.09.2013 when his suspension was revoked by the respondent.

15. In the light of the aforesaid reasons, the Original Application is allowed and impugned order dated 04.04.2013 (Annexure A-1/Colly.) is set aside. Needless to mention that the applicant would be entitled to all consequential benefits. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh