

**CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi**

**OA No.2127/2016
MA No.2924/2016**

Order reserved on :06.10.2016
Order pronounced on:16th November, 2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N.Srivastava, Member (A)

Shri Girish Chander
Age 52 years
S/o Late Shri Mohan Lal
Dark Room Assistant
Ram Monohar Lohia Hospital
New Delhi – 110 001.

- Applicant

(By Advocate: Shri Krishna Kumar)

VERSUS

1. Union of India
Through Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi – 110 011.
2. Directorate General of Health Services
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi – 110 011.
3. Medical Superintendent
Dr. Ram Manohar Lohia Hospital
New Delhi – 110 001.

-Respondents

(By Advocates: Shri Rajeev Kumar)

O R D E R

Mr. V. Ajay Kumar, Member (J):

Heard both sides.

2. MA No.2924/2016, filed for advancement of hearing of the OA, is allowed. With consent of the both sides, O.A. taken up for hearing.

3. The applicant, a Dark Room Assistant of the 3rd respondent-Dr. Ram Manohar Lohia Hospital, New Delhi has filed the OA questioning the impugned Annexure A-1 order dated 16.06.2016 where under he was placed under suspension as per Sub Rule (1) of Rule 10 of the CCS(CCA) Rules, 1965.

4. The brief facts, necessary for the purpose of the present OA are that the applicant was issued with Annexure A-2 Memorandum dated 13.01.2016 and the relevant part of the same reads, as under :-

"A complaint has been received from the security guard of the Department that on 02/01/2016 in your off duty time you visited the Department with outsider and photographed of x-ray equipments in the main x-ray department without permission of the competent authority. The security guard also alleged that you had made derogative language for resisting you for doing this.

Hence you are directed to explain reason for the same and reply should be reach to the undersigned within 3 days from the date of issue of the memorandum, failing which it will be presumed that you have nothing to say in this regard and necessary disciplinary action as deemed fit and proper will be initiated against you.

This Memorandum is issued with the approval of the HOD."

5. The applicant vide Annexure A-3 submitted his reply to the said memorandum. The respondents vide Annexure A-4 Memorandum dated 27.01.2016, though stated that they were not satisfied with the reply given by the applicant and that there is no other alternative except to recommend disciplinary action against him, however, vide Annexure A-5, proceedings dated 07.03.2016, issued a Warning that he shall not repeat the same again, otherwise action deemed fit will be taken against him, and the relevant part of the said Warning reads, as under :-

"As per the complaint of Ms. Usha, security guard posted in Radiology deptt. It has been proved beyond doubt that on 2.1.2016 at 11.30 am while you were off duty, you unauthorizedly brought two people (one of them foreigner) in the main x ray deptt. and tried to help them take photographs of x ray machines in E room.

When challenged by Ms. Usha security guard for the act, you misbehaved with her, passed derogatory comments on her and prevented her for doing her duties.

You were told by HOD to delete the photographs taken when you went to his room regarding this. Further explanation given by you dated 14.1.2016 against memorandum dated 13.1.2016 is mischievous, full of lies, unsatisfactory and thus your behavior is unbecoming of a govt. servant. Therefore, you are hereby warned not to repeat the same again otherwise action deemed fit will be taken against you.

This warning is issued with the approval of the Medical Superintendent."

6. The respondents though warned the applicant vide Annexure A-5 proceedings dated 07.03.2016, however, by quoting the same allegations again placed him under suspension vide Order dated 16.06.2016 (Annexure A1).

7. Heard Shri Krishna Kumar, learned counsel for the applicant and Shri Rajeev Kumar, learned counsel for the respondents and perused the pleadings on record.

8. The learned counsel appearing for the applicant, in support of his OA averments, *inter alia*, mainly raised the following grounds :-

- (i) A public servant can be placed under suspension under Rule 10 (1) of the CCS (CCA) Rules, 1965 only in contemplation or pending any disciplinary proceedings but not otherwise, and the impugned suspension order does not indicate whether disciplinary proceedings are being contemplated or pending against the applicant. Further, the reasons mentioned for placing the applicant under suspension were already dealt with by the respondents and hence further disciplinary proceedings for the same charge, amounts to double jeopardy.

(ii) As per Rule 10 (6) and (7) of the CCS (CCA) Rules, 1965 once a public servant is placed under suspension or deemed to have been placed under suspension, the competent authority shall review the suspension on the recommendations of the Review Committee before expiry of 90 days from the effective date of suspension and in the absence of the same, the suspension order shall not be valid after the said period of 90 days. Since the applicant was placed under suspension on 16.06.2016 and the period of 90 days expired without any review by the competent authority, the applicant is entitled to reinstate from the expiry of 90 days w.e.f.16.06.2016.

9. Since the order under question is only a suspension order and that the respondents failed to deny the contention of the applicant that the suspension order, which was issued on 16.06.2016, was not reviewed within the period of 90 days in terms of Rule 10 (6) and (7) of the CCS (CCA) Rules, 1965, in our considered view, the other grounds of the applicant need not be considered in this OA.

10. It is the settled law that suspension made under Rule 10 (1) of CCS (CCA) Rules, 1965 has to be reviewed in terms of Rule 10 (6) and (7) and any failure in this respect shall make the suspension order invalid w.e.f. the expiry of 90 days from the period of suspension. Since, the said Rule is applicable to the applicant's case and that the respondents failed to comply with the same, the OA deserves to be allowed on this sole ground.

11. In the circumstances, the OA is allowed and the impugned order is quashed and set aside and the applicant is entitled to be reinstated

w.e.f. the expiry of 90 days from 16.06.2016 with all consequential benefits. The respondents shall comply with the said order forthwith. However, it is made clear that we have not expressed any view on the other grounds raised by either side. No costs.

(K.N.Srivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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