

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

O.A.No.2844/2017

this the 10th day of October 2017

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

Rajeev Kumar Gupta S/o Komal Prakash Gupta,
Senior Accounts Officer, PAO (PPM),
Under deemed suspension since 22.05.2016,
R/o 1175, Sector-19, Faridabad (Haryana). ... Applicant

(Mr. Anil Singal, Advocate)

Versus

1. Union of India through its Secretary
Ministry of Agriculture & Farmers Welfare,
Krishi Bhawan, New Delhi.
2. Chief Controller of Accounts,
Ministry of Agriculture & Farmers Welfare,
Principal Accounts Office,
16-A, Akbar Road, New Delhi-11. ... Respondents

(Mr. Manish Kumar, Advocate)

O R D E R

Justice Permod Kohli:

This OA has been filed seeking following reliefs:

- “1. To quash and set aside the impugned Orders dated 25.5.2016, 19.8.2016, 26.8.2016, 8.2.2017 and 10.8.2017 with all consequential benefits including arrears of pay and allowances w.e.f. 20.8.2016.
2. To award costs in favour of the applicant and
3. To pass any order or orders, which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case.”

2. The orders impugned include the initial order of suspension dated 25.05.2016 whereby the applicant was suspended in contemplation of disciplinary proceedings invoking sub-rule (1) of rule 10 of the CCS (CCA) Rules, 1965, whereas vide order dated 19.08.2016 the suspension of the applicant was ordered as deemed suspension on account of his detention in custody on 22.05.2016 for a period exceeding 48 hours in criminal investigation for alleged commission of an offence. His deemed suspension was by invoking sub-rule (2) of rule 10 of the CCS (CCA) Rules, 1965. All subsequent orders are extension of suspension pursuant to recommendations of the review committees.

3. Brief facts as emerge from the record are that an FIR No.RCCHG206A00011 u/s 7/13(1)(d) Prevention of Corruption Act was registered against the applicant on 21.05.2016. He was later arrested on 22.05.2016 but granted bail. The applicant was placed under suspension vide order dated 25.05.2016 under sub-rule (1) of rule 10 of CCS (CCA) Rules, 1965 on ground of contemplated disciplinary proceedings, and thereafter vide order dated 19.08.2016 he was placed under deemed suspension on account of his detention in police custody for a period exceeding 48 hours w.e.f. 22.05.2016, the date of his arrest. His suspension has been continued vide subsequent orders dated 26.08.2016, 08.02.2017 and 10.08.2017.

4. The continued suspension of the applicant has been challenged on the grounds – (i) that the suspension was extended after expiry of 90 days; and (ii) that the applicant was not served with any charge-sheet within a period of 90 days. A criminal charge-sheet was filed in the competent court on 30.08.2016 and served upon the applicant on 26.09.2016.

5. Vide order dated 23.08.2017, while issuing notice, the respondents were directed to seek instructions and also to file affidavit within two weeks, in view of the grounds challenging the suspension. However, neither instructions have been reported nor affidavit has been filed.

6. Heard the learned counsel for parties.

7. Suspension of Government servants is regulated by rule 10 of the CCS (CCA) Rules, 1965. Relevant extract of the said rule is reproduced hereunder:

“10. 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 President, by general or special order, may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority -

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;”

8. The first suspension of the applicant was ordered vide impugned order dated 25.05.2016 in contemplation of disciplinary proceedings. Till date, no charge-sheet for initiating disciplinary proceedings has been served upon the applicant. Even while the aforesaid suspension was in operation, the respondents passed second impugned order dated 19.08.2016 for deemed suspension on account of arrest of the applicant on 22.05.2016 and detention in police custody for a period exceeding 48 hours. This suspension was effective from the date of detention, i.e., 22.05.2016. Thus, there is absolutely over-lapping of the suspension of the applicant under the aforesaid two orders. The fact remains that the suspension became operative w.e.f. 22.05.2016. Sub-rules (6) and (7) of rule 10 provide safeguards for continued suspension. Both the sub-rules are extracted hereunder:

“(6) 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. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(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 :

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later."

Sub-rule (6) imposes an obligation upon the competent authority to seek review of the suspension before the expiry of 90 days from the effective date of suspension and to either revoke or extend the suspension, depending upon the recommendations of the review committee for a period not exceeding 180 days at a time. In the present case, the review was not held within 90 days from the effective date of suspension, i.e., 22.05.2016 (including 22.05.2016). The review was held on 26.08.2016 whereupon the suspension was extended for 180 days retrospectively w.e.f. 20.08.2016. This is impermissible in law and is in gross violation of sub-rules (6) and (7)

of rule 10. Sub-rule (7) clearly provides that a suspension or even deemed suspension shall not be valid after 90 days unless it is extended for a further period before expiry of 90 days. However, under the proviso to sub-rule (7), in case of deemed suspension the period of 90 days would commence from the date the Government servant is released from detention. In para 4.2 of the OA it is stated that the applicant was arrested on 22.05.2016 but granted bail. Under these circumstances, the suspension of the applicant beyond 90 days is illegal and violative of sub-rules (6) and (7) of rule 10, and is liable to be set aside.

9. The OA is accordingly allowed. Orders impugned are hereby quashed. The respondents are directed to re-instate the applicant within one month from the date of receipt of copy of this order. The applicant shall be entitled to salary for the period of suspension, which may be paid to him within a period of three months from the date of receipt of copy of this order.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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