

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.3836/2014**

This the 23<sup>rd</sup> day of November, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman**  
**Hon'ble Mr. Shekhar Agarwal, Member (A)**

Syed Sajid Ali,  
Dy. SP, CBI Academy (under suspension),  
HQ CBI/Head Office, New Delhi,  
R/o 200, HIG Arunodaya Apartments,  
F-Block, Vikaspuri,  
New Delhi-110018.

... Applicant

( By Advocate: Mr. V. P. Singh )

Versus

1. Union of India through  
Secretary (P), Ministry of Personnel,  
Public Grievances & Pensions,  
Department of Personnel & Training,  
North Block, New Delhi-110001.
2. Director,  
Central Bureau of Investigation,  
5-B, CGO Complex, Lodhi Road,  
New Delhi-110003.

... Respondents

( By Advocates: Mr. Rajeev Kumar )

**O R D E R**

**Justice Permod Kohli, Chairman :**

While working as Dy. SP in CBI, the applicant was placed under suspension vide order dated 03/04.10.2012 by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel

and Training) on his conviction and sentence by the Court of Special Judge, CBI in a case registered against him u/s 13(2) r/w 13(1) of Prevention of Corruption Act, 1988 (Annexure A-1). The said suspension has been extended vide subsequent order dated 15.01.2013 (Annexure A-2) on the recommendations of review committee for a period of 180 days beyond 15.01.2013. His suspension was further extended vide order dated 12.07.2013 (Annexure A-4) for a further period of 180 days beyond 14.07.2013, and another extension was granted vide order dated 06.01.2014 (Annexure A-6) for a further period of 180 days beyond 10.01.2014, and thereafter again for 180 days beyond 09.07.2014 vide order dated 07/08.07.2014 (Annexure A-8). The applicant retired from service on 31.10.2014 on attaining the age of superannuation.

2. The applicant has called in question extension of his suspension beyond 90 days and all subsequent extensions vide the impugned orders referred to hereinabove, including the consequential orders whereby subsistence allowance was granted to him for his continued suspension. The grounds of challenge are two-fold – (i) that the order of suspension contained wrong particulars of the FIR as also dates of conviction and awarding of sentence; and (ii) that the suspension can only be extended if the review is held within ninety days of the initial suspension.

3. Insofar as the first ground is concerned, the impugned order refers to “case RC 1242012A0005”. It is stated that the actual case number is “RC 2(A)/2000-ACU-IV/CBI”. Similarly, in the impugned orders, the date of sentence has been mentioned as 18.08.2012, whereas, according to the applicant, the actual date of conviction is 27.08.2012 and that of sentence is 28.08.2012. The respondents in their counter-affidavit have referred to a corrigendum dated 26.06.2014 whereby the case number mentioned in the impugned order dated 03.10.2012 has been rectified. In any case, it is admitted case of the applicant that he was charge-sheeted in a criminal case registered against him by CBI u/s 13(2) read with 13(1)) of the Prevention of Corruption Act, and convicted by the Special Judge, CBI on 27.08.2012 and sentenced to undergo simple imprisonment for one year and to pay fine of Rs.1 lakh, and thus mere wrong description of the case number or the date of conviction/sentence may not be sufficient ground to quash the impugned orders.

4. Suspension of the applicant has been made under rule 10(2) of the CCS (CCA) Rules, 1965, which reads as under:

“(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;

- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction."

The applicant was placed under deemed suspension on his conviction in terms of rule 10(2)(b). The suspension is deemed on conviction of a government employee. Admittedly the applicant was convicted and sentenced in the criminal case, and thus his initial suspension vide order dated 03/04.10.2012 was legally valid.

5. The contention of the learned counsel appearing for the applicant is that unless the suspension is reviewed before ninety days of the initial suspension, any extension thereafter is illegal and *non est* in the eyes of law. According to the learned counsel, the period of ninety days lapsed on 01.01.2013, whereas the review committee was held on 14.01.2013 and approved the continuation of the suspension resulting in passing of the impugned order dated 15.01.2013 whereby the suspension of the applicant was extended for a period of 180 days beyond 15.01.2013. His further contention is that since the initial extension was illegal, all subsequent extensions till the retirement of the applicant are not sustainable in law. In the counter-affidavit filed by the respondents it is stated that the order of suspension dated 03.10.2012 was served upon the applicant on 18.10.2012 and thus mandatory 90 days period were to expire on 15.01.2013. Accordingly

he committee reviewed the case on 14.01.2013, i.e., before expiry of the mandatory 90 days of the period of suspension, and on 15.01.2013 itself, the suspension of the applicant was extended for a period of 180 days, which is permissible in law and in consonance with the provisions of sub-rules (6) and (7) of rule 10 of the CCS (CCA) Rules, 1965. Sub-rules (6) and (7) of rule 10 deal with extension of suspension. The said sub-rules read as under:

“(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is 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 review 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-rule (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.”

Sub-rules (6) and (7) prescribe that the authority competent to modify or revoke the suspension shall review the suspension before expiry of ninety days from the effective date of suspension on the recommendation of the review committee for the purpose, and pass orders either extending or revoking the suspension, and all subsequent reviews shall be made before expiry of extended period

of suspension. There is a further cap on the extension of suspension up to 180 days at a time.

6. The only question which has been urged and needs to be determined in the present OA is whether the date of communication of the order of suspension or the date of passing of the order of suspension would be the effective date for purposes of determining the mandatory period of ninety days within which the review is to be carried out. In *State of Punjab v Khemi Ram* [(1969) 3 SCC 28], an Hon'ble four-Judge Bench considered and examined the question whether an order of suspension passed against a government servant takes effect when it is made or when it is actually served on and received by him. The Hon'ble Supreme Court held as under:

“17. The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word “communicate” is to impart, confer or transmit information. (Cf. *Shorter Oxford English Dictionary*, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2,

1958 i.e. before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab v. Amar Singh* (AIR 1966 SC 1313) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."

It is accordingly argued by the learned counsel for the applicant that it is the date of issue and forwarding the order which will be the date

of suspension and not the actual date when it was received by the applicant. According to him, the order having been issued on 03.10.2012, thereafter the respondents had no authority to modify the order and thus it is deemed to be communicated to the applicant. The applicant has also relied upon another judgment of the Apex Court in *Union of India & others v Dipak Mali* [AIR 2010 SC 336 = (2010) 2 SCC 222]. In this case the question that came up for consideration before the Apex Court was whether review of the order after expiry of ninety days would validate the suspension. Considering the mandate contained in sub-rules (6) and (7) of rule 10 of the CCS (CCA) Rules, 1965, the Hon'ble Court held as under:

“10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioners' case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.”

7. In the present case, as noticed hereinabove, the suspension order was issued on 03/04.10.2012, and in the reply it is admitted that it was issued on 03.10.2012. Thus, in view of the ratio laid down in *State of Punjab v Khemi Ram* (supra), the said date is



deemed to be the date of communication of the order, and not the actual date of receipt of the order, as stated by the respondents in their counter-affidavit that the order was communicated to the applicant on 18.10.2012. Admittedly, the order was passed by the respondents on 03.10.2012. Notwithstanding the actual receipt of order, it was mandatory for the respondents to have reviewed the same within ninety days from the date of issuance of the order. However, the matter was placed before the review committee on 14.01.2013, as is evident from the notings placed on record by the applicant as Annexure A-16. It was approved by the review committee on 14.01.2013 only, and the extension order was actually issued on 15.01.2013, as admitted in the reply. Thus, admittedly no review was carried out within the mandatory ninety days w.e.f. 03.10.2012, and in terms of sub-rule (7) of rule 10 of CCS (CCA) Rules, 1965, an order of suspension shall not be valid after a period of ninety days unless extended after review within ninety days. Undoubtedly, the order of suspension was not reviewed within ninety days and thus it cease to operate by operation of law. Since the initial extension vide order dated 15.01.2013 is itself invalid and *non est*, all subsequent extensions fall on ground being not sustainable in law. This is the ratio of the Apex Court in case of *Union of India v Dipak Mali* (supra).

8. For the above reasons, all the impugned orders referred to hereinabove are hereby set aside, and thus the relief claimed at para 8 (a) is allowed to the applicant. At the time of filing of this Application, the applicant was still in service. He has, however, retired from service on 31.10.2014. The applicant has also prayed for consequential benefits arising from setting aside of the order. As a consequence of setting aside the suspension, the respondents were/are under statutory obligation to pass consequential order in terms of Fundamental Rule (FR) 54-B. Relevant extract of FR 54-B is reproduced hereunder:

**“F.R. 54-B.** (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order –

- (a) Regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.”

The respondents are accordingly directed to take a decision in terms of FR 54-B regarding treatment of the period of suspension and consequential payment of salary and other emoluments for the period of suspension, as also the retiral benefits etc., as a consequence of setting aside of the impugned orders, within a period of three

months and release the admissible benefits within one month thereafter, if not already paid.

**( Shekhar Agarwal )**  
**Member (A)**

**( Justice Permod Kohli )**  
**Chairman**

/as/