

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.100/4447/2014

New Delhi this the 2nd day of November, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. P.K. Basu, Member (A)

Mukesh Tanwar

Age 28 years

S/o Shri Sukhbir Singh

Des-Warder in Tihar Jail,

R/o Quarter No.732, New Residence,

Tihar Jail,

New Delhi.

..Applicant

(Argued by: Shri R.K. Jain, Advocate)

Versus

1. The Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Sachivalaya,
I.P. Estate,
New Delhi-110002.

2. The DG (Prisons)
Prison Head Quarters,
Near Lajwanti Chowk,
New Delhi-110064.

..... Respondents

(By Advocate: Mr. Vijay Kumar Pandita)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The compendium of the facts and material, relevant for disposal of the instant Original Application (OA), and expounded from the record is that applicant, Mukesh Tanwar was working as Warder with the Respondents. A criminal case was registered against him along with his other co-accused, vide FIR No.357/2013 under Section 457/120-B

IPC by the police of Police Station, Hari Nagar. He was arrested on 26.08.2013 in the criminal case.

2. As a consequence thereof, applicant was placed under suspension vide impugned order dated 05.09.2013 (Annexure A-1) by the Director General (Prisons). The order reads as under:-

“WHEREAS, a case against Shri Mukesh Tanwar, Warder-1242, is under investigation in case FIR No.357/2013 dt. 25.08.2013 u/s 457, 120B IPC, P.S. Hari Nagar, Delhi.

AND WHEREAS, the said Shri Mukesh Tanwar, Warder-1242, was arrested and sent to the judicial custody in the above said cases on 26.08.2013 and his custody exceeds forty eight hours.

NOW, THEREFORE, the said Shri Mukesh Tanwar, Warder-1242, is deemed to have been suspended w.e.f. the date of detention i.e. 26.08.2013 in terms of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and shall remain under suspension until further orders.

Further, it is ordered that Shri Mukesh Tanwar, Warder-1242, be paid subsistence allowances as admissible under the rules”.

3. According to the applicant, since his period of suspension was not reviewed, within a period of 90 days, so he moved representation dated Nil (Annexure A-6) to revoke his suspension. The same was rejected by the Director General (Prisons), vide impugned order dated 03.06.2014 (Annexure A-2).

4. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned orders (Annexure A-1) and (Annexure A-2), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

5. The case set-up by the applicant, in brief, insofar relevant is that, he was arrested in a criminal case, in which

he was released on bail on 07.09.2013, but his suspension has not been reviewed within a period of 90 days from the date of his suspension, so his suspension is liable to be revoked. It was alleged that even the subsistence allowance @ 75% has not been revised, after the expiry of 90 days. The applicant has claimed that the impugned orders are arbitrary, illegal and violative of Articles 14, 16 & 21 of the Constitution of India. On the strength of the aforesaid grounds, the applicant seeks quashment of the impugned orders in the manner indicated hereinabove.

6. The respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded that the applicant along with newly released prisoner UTP Sikandar Nath S/o Shamsheer Singh used to supply the prohibited items to the prisoners in Jail No.I. After being caught, applicant as well as his co-accused were arrested in the above mentioned criminal case. Subsequently, the applicant was placed under deemed suspension w.e.f. 26.08.2013, vide order dated 05.09.2013 by the competent authority. It was alleged that he is being paid the subsistence allowance as admissible under the rules. The decision dated 23.02.2015 (Annexure R-1) not to enhance further subsistence allowance was rightly taken as per rules keeping in view the arrest of the applicant in a criminal case, by the DG (Prisons).

7. It was further pleaded, that as per Central Civil Services (Control Classification & Appeal) Rules, 1965 [hereafter to be referred as "CCS(CCA) Rules"], no review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under detention and in such case, period for review will be counted from the date the Government servant detained in custody is released from detention, or the date on which the fact of the release is intimated to the Appointing Authority, whichever is **later**. In the present case, the applicant was placed under deemed suspension w.e.f. 26.08.2013, released on bail on 07.09.2013 and he informed the department on 11.11.2013. Therefore, his case for review of suspension was placed before the Review Committee on 08.02.2014, i.e. within a period of 90 days period from the date, on which the fact of his release from detention is intimated.

8. The case of the respondents further proceed, that Suspension Review Committee, in its meeting held on 29.01.2014, has reviewed his case and extended suspension for a further period of 180 days w.e.f. 29.01.2014 and he was duly informed in this regard. A representation of the applicant was rightly rejected by the DG (Prisons), vide impugned order (Annexure A-1). Virtually acknowledging the factual matrix & reiterating the validity of the impugned orders, the respondents have stoutly denied all other

allegations and grounds contained in the OA and prayed for its dismissal.

9. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

10. After hearing the learned counsel for the parties, after going through the record with their valuable help and after considering the entire matter, we are of the firm view that there is no merit and the instant OA deserves to be dismissed for the reasons mentioned hereinbelow.

11. Ex-facie, the argument of learned counsel, that since the suspension of the applicant was not renewed within a period of 90 days from passing the initial order of suspension, so impugned orders are liable to be set aside, is not only devoid of merit but misplaced as well.

12. As is evident from the record, that the applicant was arrested on 26.08.2013 in indicated criminal case registered against him. He was placed under deemed suspension w.e.f. 26.08.2013 (date of his arrest), vide order dated 05.09.2013 by the competent authority. Rule 10 of CCS (CCA) Rules governs the period of suspension. Sub-rule (2) of Rule 10 postulates, that a Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority with effect from the date of his

detention, if he is detained in custody, whether on a criminal charge or otherwise. It is not a matter of dispute that the applicant was released on bail and he intimated his release on bail on 13.11.2013 to the department, so the period of 90 days would be counted from the date of intimation of his release (on bail) to the competent authority, as during the period of detention, he will be deemed to have been placed under deemed suspension by an order of the Appointing Authority.

13. Admittedly, the Suspension Review Committee has reviewed and extended the period of suspension of the applicant, in its meeting held on 29.01.2014, within a stipulated period. Therefore, applicant cannot be heard to say that the competent authority has committed any error in passing the impugned suspension order.

14. This is not the end of the matter. The representation dated Nil (Annexure A-6) filed by the applicant was duly considered and rejected by the Appellate Authority by passing impugned order dated 03.06.2014 (Annexure A-2), which, in substance, is as under:-

“In this regard I am directed to inform that Shri Mukesh Tanwar, Warder-1242 was placed under deemed suspension w.e.f. 26.08.2013 vide order dated 05.09.2013 in the above said case. Further as far as review of suspension is concerned, CCS (CCA) Rules provides that no review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the government servant continues to be under detention at the time of completion of ninety days of suspension and the ninety days period for review in such cases 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. In the present case Warder Mukesh Tanwar was placed under deemed

suspension w.e.f. 26.08.2013 and released on bail on 07.09.2013 and he informed the deptt. about his release only on 11.11.2013. Therefore, his case for review the suspension period was to be put up before the Suspension Review Committee on or before 08.02.2014 i.e. 90 days period from the date on which the fact of his release from detention is intimated to the deptt.

Suspension Review Committee in its meeting held on 29.01.2014 has reviewed his case and extended his suspension for a further period of 180 days w.e.f. 29.01.2014. Shri Mukesh Tanwar, Warder-1242 has been informed vide order dated 24.02.2014 that his suspension period has been extended for further period of 180 days w.e.f. 29.01.2014. The matter was placed before the DG(P) who after consideration the fact and circumstances of the case has rejected the request of Shri Mukesh Tanwar, Warder-1242 (under suspension)".

15. Meaning thereby, the competent authority has examined the matter in the right perspective and correctly negated the claim of the applicant by passing the impugned reasoned orders and subsequently since the Suspension Review Committee has reviewed and extended the period of suspension of the applicant, within a statutory period from the date of its intimation, so it cannot possibly be saith that impugned orders (Annexure A-1) and (Annexure A-2) are liable to be set aside in any manner.

16. No other point, worth consideration, has been urged or pressed by the learned counsel for the parties.

17. In the light of the aforesaid reasons, as there is no merit, the OA is hereby dismissed. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
02.11.2016

Rakesh