

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00044/2017

DATED THIS THE 02ND DAY OF JANUARY, 2018

HON'BLE DR. K.B. SURESH, MEMBER (J)
HON'BLE SHRI K. N. SHRIVASTAVA, MEMBER (A)

Iranna Y. Bisanalli,
S/o Yamanappa Bisanalli,
Aged 48 years,
Working as Postmaster Grade III,
Belagavi Head Post Office,
(Now under suspension),
Residing at No. MIG 1 – 280,
Hudco Colony,
Gadag – 582 103

.....Applicant

(By Advocate Shri A.R. Holla)

Vs.

1. Union of India,
By Secretary,
Department of Posts,
Dak Bhavan,
New Delhi – 110 001.

2. The Chief Post Master General,
Karnataka Circle,
Bangalore – 560 001.

3. The Director of Postal Services,
O/o the Postmaster General,
N.K. Region,
Dharwad – 580 001.

4. The Superintendent of Post Offices,
Belagavi Division,
Belagavi – 590 001

....Respondents

(By Shri M. Rajakumar, Senior Central Government Counsel)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. The applicant alleges that the rules have not been followed. The rules have been extracted in the decision of the Hon'ble Apex Court in Union of India & Others Vs. Dipak Mali reported in All India Services Law Journal 2010 (2) Page 288. In order to clarify the issue further, we are quoting from the entirety of the order from paragraph 1 to paragraph 13:

"1. This Special Leave Petition has been filed by the Union of India and its officers in the Ministry of Defence against the judgment and order dated 1st September, 2005, passed by the Madhya Pradesh High Court at Jabalpur in Writ Petition (S) No.2569 of 2005, dismissing the same. The respondent, who was working as a Civilian Motor Driver-II in the establishment of the Senior Quality Assurance Officer, Senior Quality Assurance Establishment (Armaments) in the Gun Carriage Factory at Jabalpur, was suspended pending inquiry on 10th August, 2002. Under Rule 10 of the Central Civil Services (CCA) Rules, 1965 amended by Notification dated 23rd December, 2003, Sub-Rules (6) and (7) were inserted. As the same are relevant to the facts of this case, the same are extracted herein below:

- "(6) An order of suspension made or deemed to have been made under this rules shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purposes 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 dates at a time.*
- (7) Notwithstanding anything contained in sub-rules 5, 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 ninety days unless it is extended after review, for a further period before the expiry of ninety days."*

2. The aforesaid amendment came into effect from 2nd June, 2004, but as a Review Committee was not constituted, the respondent's suspension was not reviewed as required by the amended Rules. The respondent, therefore, claimed that the suspension order must be deemed to have lapsed and accordingly, he approached the Central Administrative Tribunal by filing O.A. No.540/2004 for a declaration that

the suspension order dated 10th August, 2002, became invalid on the expiry of 90 days from the date on which Sub-Rules (6) and (7) of Rule 10 came into force, since the same had not been extended by the Review Committee.

3. There is no dispute that the suspension of the respondent was not extended. The Tribunal, accordingly, allowed the application filed by the respondent and by its order dated 29th March, 2005, quashed the suspension order dated 10th August, 2002. The said order of the Tribunal was questioned before the High Court on the ground that while Sub-Rules (6) and (7) of Rule 10 came into force only on 2nd June, 2004, the application had been made prematurely in July, 2004 even before the expiry of three months. It was contended that since the matter was subjudice on account of the pendency of the Original Application filed by the respondent before the expiry of 90 days from 2nd June, 2004, the petitioners were unable to review the respondent's case.

4. Dealing with the said contention the High Court held that since there was no interim stay in O.A.No.540/2004 filed by the respondent, there was nothing to prevent the petitioners from reviewing the suspension within 90 days from 2nd June, 2004. On such ground the High Court dismissed the writ petition.

5. It is against the said order of the High Court that the present Special Leave Petition has been filed.

6. On behalf of the Union of India, it was not denied that the amended provisions of Rule 10 came into effect from 2nd June, 2004, and that the case of the Respondent was reviewed on 20th October, 2004, beyond the period envisaged under Sub-rule (6) thereof. It was, however, contended that the delay in conducting the review was not on account of any laches on the part of the petitioners, but having regard to the fact that the Respondent filed OA No.540 of 2004, before the Central Administrative Tribunal in July, 2004, and the same was disposed of by the Tribunal on 18th August, 2004, during which period the petitioner was unable to take any action under Rule 10 in view of the provisions of [Section 19\(4\)](#) of the Administrative Tribunals Act, 1985, which provides that where an application has been admitted by a Tribunal under Sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission, shall abate, and save as otherwise provided by the Tribunal, no appeal or revision in relation to such matter shall thereafter be entertained under such rules.

7. It was submitted that since the proceedings were pending before the Tribunal, the Petitioner had no option but to stay its hands in regard to the proceedings against the respondent. It was also submitted that on 20th October, 2004, when the Reviewing Committee took up the Petitioners' case, it extended the period of suspension, which was again

extended thereafter by order dated 8th April, 2005. Learned counsel for the petitioner submitted that having regard to the above, the order passed by the High Court upholding the order of the Central Administrative Tribunal was liable to be set aside along with the order passed by the learned Tribunal.

8. On behalf of the Respondents, it was urged that [Section 19\(4\)](#) of the Administrative Tribunals Act, 1985, did not contemplate stay but abatement of proceedings before other authorities once an application was admitted by the Central Administrative Tribunal. By virtue of Sub-section (4) of [Section 19](#), on admission of such application proceedings pending before other Courts and Forums would abate unless otherwise directed by the Tribunal.

9. Learned counsel contended that in the absence of any stay, nothing prevented the petitioners from reviewing the petitioner's case and the explanation forthcoming for not taking steps under Sub-section (6) of [Section 7](#) must inure to the benefit of the respondent.

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 Petitioner's case came up for review on 20th October, 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.

11. The case sought to be made out on behalf of the petitioner, Union of India as to the cause of delay in reviewing the Respondent's case, is not very convincing. [Section 19\(4\)](#) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of Sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.

12. For the said reasons, we are not inclined to interfere with the impugned order of the High Court and the Special Leave Petition is, accordingly, dismissed.

13. There will, however, be no order as to costs."

2. With the help of both the counsels we had examined the documents and found that there is a probability that there is a period within which the committee recommendation was not there. Therefore technically it may appear that a reinstatement is to be ordered.

3. But then this is not a technical court at all. The greater public interest must also weigh with it when a court acts under Article 226 of the Constitution of India. Therefore we had queried the learned counsel as to the basis of the action against him. Apparently this relate to defalcation of Rs.17 lakhs from the post office which is a very serious infraction given the low amount of deposit made by the large number of depositors. If at any point of time loss can be made available for infractions and that too large scale ones it will send wrong signal to the employees at large.

4. We have noted that apparently the concerned authority have corrected their mistake and given an extension to the suspension and we also find that the disciplinary enquiry is in force at that point of time. When a disciplinary enquiry on the charges of defalcation is in progress against an employee, it will not be proper for an adjudicator to reinstate back in service as it will cloud the already present issue of fraud. It will send a wrong signal to the entire body of employees and will thus denigrate the greater public interest. It is also the duty of the adjudicator to protect the substratum of the integrity in the government service. Therefore even though we agree with the view of the learned counsel for the applicant that there remains a period within which committee's recommendation was not present before it was extended by the Postmaster

General, at this point of time Shri M. Rajakumar, learned counsel for the respondents, seeks to correct us by saying that committee's recommendation was also present during this interregnum, however that may be, we are not inclined to go into the nitty-gritty. We note that the applicant had been suspended on 13.08.2015. His suspension has been extended by the Postmaster General on 09.11.2015. The contention of the applicant is that this extension of the Postmaster General, who is the competent authority, was made without the juncture of the committee. Shri M. Rajakumar, learned counsel for the respondents, would say that the committee's juncture was also made available but then it is not clear from the records.

5. But assuming that the committee recommendations were not made available we have to hold that the Postmaster General is the repository of trust on behalf of people of India. It may be that, going by the contention of the applicant, there might have been a technical infraction but in larger conspectus of the things it may not result in any prejudice to the applicant because in any case it is the Postmaster General who has to pass an order and the committee recommendation is only a recommendation, it is not binding on the Postmaster General. We will not say that the Postmaster General can act against committee recommendations *per se* but then if he does so he will have to give reasons. In this case quite obviously he has not given any reasons but the reason is obvious when such a serious defalcation is the issue. There is no way for a Postmaster General being a public servant under the law of land to ignore it and pass an order of reinstatement without jeopardizing the integrity in the government department. Therefore even though we are also aware that

there must be some lacunae in the order passed by the Postmaster General we are not inclined to abide by the order in the larger conspectus. Therefore we hold that there is no merit in the OA.

6. The OA is dismissed. No order as to costs.

(K. N. SHRIVASTAVA)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00044/2017

Annexure A-1: True copy of the Postmaster General, Dharwad order No. NKR/STA-2/298/2015 dated 22.06.2015

Annexure A-2: True copy of Memo no. F-2/VII/iii/1/2015-16 dated 13.08.2015 issued by the Supdt. of Post Offices, Belagavi Division

Annexure A-3: True copy of the Postmaster General, Dharwad Memo No. NKR/VIG/17/2015 dated 05.11.2015

Annexure A-4: True copy of Memo no. F-2/VII/iii/1/2015-16 dated 09.11.2015 issued by the Supdt. of Post Offices, Belagavi Division

Annexure A-5: True copy of the applicant's representation dated nil addressed to the DPS, Dharwad.

Annexure A-6: True copy of Memo no. F-2/VII/iii/1/2015-16 dated 05.02.2016 issued by the Supdt. of Post Offices, Belagavi Division

Annexure A-7: True copy of the applicant's representation dated nil addressed to the DPS, Dharwad.

Annexure A-8: True copy of the Postmaster General, Dharwad Memo No. NKR/VIG/17/15-16 dated 16.04.2016

Annexure A-9: True copy of Memo no. F-2/VII/iii/1/2015-16 dated 06.05.2016 issued by the Supdt. of Post Offices, Belagavi Division

Annexure A-10: True copy of the applicant's representation addressed to the Chief PMG, Bangalore.

Annexure A-11: True copy of the applicant's representation addressed to the Chief PMG, Bangalore.

Annexures with reply statement:

Annexure R-1: Copy of representation of the applicant addressed to the Chief Postmaster General regarding delay in disposal of Revision Petition

Annexure R-2: Copy of extract of Swamy's CCS (CCA) Rules, Part VIII, Revision and Review, Rule 29

Annexure R-3: Copy of Memo no. F-2/VII/iii/1/2015-16 dated 09.11.2015 issued by the Supdt. of Post Offices, Belagavi Division.

Annexure R-4: Copy of Memo no. F-2/VII/iii/1/2015-16 dated 05.02.2016 issued by the Supdt. of Post Offices, Belagavi Division.

Annexure R-5: Copy of Memo no. F-2/VII/iii/1/2015-16 dated 06.05.2016 issued by the Supdt. of Post Offices, Belagavi Division.

Annexure R-6: Copy of Memo no. F-2/VII/iii/1/2015-16 dated 02.08.2016 issued by the Supdt. of Post Offices, Belagavi Division.

Annexure R-7: Copy of Memo no. F-2/VII/iii/1/2015-16 dated 03.11.2016 issued by the Supdt. of Post Offices, Belagavi Division.

Annexure R-8: Copy of Memo no. F-2/VII/iii/1/2015-16 dated 01.02.2017 issued by the Supdt. of Post Offices, Belagavi Division.

Annexure R-9: Copy of Proceedings Memo No. NKR/STA-4/990/2016 dated 12.04.2017

Annexure R-10: Copy of Memo no. NKR/VIG/7/2015 dated 09.11.2015 issued by the Postmaster General, Dharwad.

Annexure R-11: Copy of Memo no. NKR/VIG/17/2015 dated 05.02.2016 issued by the Postmaster General, Dharwad.

Annexure R-12: Copy of Memo no. NKR/VIG/17/2015 dated 06.05.2016 issued by the Postmaster General, Dharwad.

Annexure R-13: Copy of Memo no. NKR/VIG/17/2015 dated 22.07.2016 issued by the Postmaster General, Dharwad.

Annexure R-14: Copy of Memo no. NKR/VIG/17/2015 dated 30.01.2017 issued by the Postmaster General, Dharwad.

Annexure R-15: Copy of Memo no. NKR/VIG/17/2015 dated 03.11.2016 issued by the Postmaster General, Dharwad.
