

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00393 OF 2017
Cuttack, this the 08th day of December, 2017

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER (J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

Jyotiraj Dash,
aged about 52 years,
S/o-Late Sital Kumar Dash,
Working as Postal Asst.,
Cuttack G.P.O. At- BuxiBazar,
Cuttack. (now under order of suspension)

...Applicant

(By the Advocate- M/s. S.K.Ojha, S.K.Nayak)

-VERSUS-

Union of India Represented through

1. Director General, Department of Posts, Govt. of India, Parliament Street, Dak Bhawan, New Delhi, Pin-110001.
2. Member (Personnel), Department of Posts, Govt. of India, Parliament Street, Dak Bhawan, New Delhi, Pin-110001.
3. Chief Postmaster General, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda, Pin- 751001.
4. Director, Postal Services, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda, Pin- 751001.
5. Sr. Superintendent of Post Offices, Cuttack City Division, 15-Cantonment Road, Cuttack-753001.

...Respondents

(By the Advocate- Mr. S. Behera)

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O R D E R

S. K. PATTNAIK, MEMBER (J):

The applicant has filed this O.A. praying for the following reliefs:

“(i) To quash the order of suspension issued against applicant vide office order issued under Memo No. F/7-5/2015-16, dated 11.07.2016 (Annex.A/2).

(ii) to quash the extension of suspension orders issued under Memo No. F/7-5/2015-16, dated 31.10.2016 (Annex.A/5) and Memo No. F/7-5/2015-16, dated 26.04.2017 (Annex.A/10) holding that the action is against the express provisions circulated under the DoP&T O.M., dated 23.08.2016.

(iii) To direct the Respondents to revoke the order of suspension and reinstate the applicant in him in his post forthwith.

(iii-A) To direct the Respondents to pay the salary and other allowances to the applicant w.e.f. 03.10.2016 as order of suspension deemed to have been cancelled due to non-adhering of appropriate review procedure in accordance with law.

(iv) To direct the Respondents to extend all consequential service benefits to the applicant.”

2. Before delving into the merit of this case, some admitted facts and data may be reflected below for proper appreciation of facts and law in controversy.

(a) Applicant was involved in a criminal case and was detained in judicial custody w.e.f. 05.07.2016 and was released on bail on 04.08.2016.

(b) In view of detention of the applicant in jail, the department passed a suspension order on 11.07.2016 (Annexure-A/2) in view of his retention in judicial custody under Rule 10 (2) of CCS (CCA) Rules, 1965. The effective date of suspension of the

applicant runs w.e.f. 05.07.2016, i.e. the date of his detention in judicial custody.

(c) Even though, the applicant was released on bail on 04.08.2016, he intimated the department about his release only on 22.08.2016. In the meantime, charge sheet in the criminal case was filed on 02.09.2016. Subsequently, the department issued charge memo on 30.01.2017 (Annexure-A/8).

(d) Even though, the suspension order was passed on 11.07.2016, review of the suspension order was made on 26.10.2016 and was communicated vide order dated 31.10.2016 (Annexure-A/5).

(e) Ld. Counsel for the applicant challenges the continuance of the suspension order, i.e. the order passed by the Review Committee dated 26.10.2016, mainly on the ground that it was not reviewed within 90 days.

3. Mr. S. Behera, Ld. Counsel for the Official Respondents, submitted that though the effective date of detention was 05.07.2016 and the department in ordinary course would have reviewed the suspension period before 04.10.2016 but as the applicant was in judicial custody and was released on bail on 04.08.2016 and the applicant informed the department only on 22.08.2016, the running of 90 days shall commence from 22.08.2016 in view of the amended provision of Sub-rule 7 of Rule 10 of CCS (CCA) Rules.

4. Ld. Counsel for the Official Respondents alternatively argued

that even if for the sake of argument the date of release on bail is treated as 04.08.2016, the department was legally obliged to make a review before 03.11.2016, i.e. before expiry of 90 days of the date of release on bail, and since in the instant case the review has been made on 26.10.2016, it was within time and there is no procedural lapses or infraction of any rule calling for judicial intervention.

5. The impugned order dated 31.10.2016 is extracted below for proper appreciation of the facts and law in controversy:

"WHEREAS, Shri Jyotiraj Dash, Ex-PA, Cuttack GPO and now SPM, Biribati SO (designate) was detained in judicial custody for a period exceeding forty eight hours with effect from 05.07.2016. Accordingly the said Shri Dash was placed under deemed suspension with effect from 05.07.2016 (date of arrest) vide this office memo no. F/7-5/2015-16, dated 11.07.2016.

WHEREAS, FINAL REPORT/Charge Sheet vide No. 247/16 arising out of Mangalabag PS case No. 121/2016 U/s 120(B)/409/420/34/411 of IPC Act (1860) against the said Shri Jyotiraj Dash has been submitted by the Police in the Hon'ble Court. The said Shri dash was released on bail from circle jail, Cuttack at Choudwar on 04.08.2016 at 6.20pm by the order of Hon'ble Orissa High court passed in BLAPL No. 4385/2016. The information regarding release on bail was submitted by the said Shri Dash on 22.08.2016.

AND WHEREAS, as per Rules, the suspension case of Shri Dash is to be reviewed within a period of 90 days from the date of his release from detention or the date on which the fact of release from detention is intimated to the appointing authority, whichever is later. Accordingly, Review Committee reviewed the suspension case of Shri Dash on 26.10.2016. The committee observed that the suspension of Shri Dash is desirable and disciplinary proceeding against Shri Dash, arising out of the irregular clearance of cheques fraud case committed at Cuttack GPO is contemplated and the committee recommended

for continuance of suspension of Shri Jyotiraj Dash for a further period of 180 days.

NOW, THEREFORE, the suspension of said Shri Jyotiraj Dash, Ex-PA, Cuttack GPO (under suspension) is hereby extended for a further period of 180 days from the date of expiry of 90 days from the date of release from detention.”

6. In order to appreciate the contention of the Ld. Counsel for the Official Respondents, Sub-rule (6) and (7) to the original Rule 10 which came into force with effect from 02.04.2004, are extracted below for ready reference:

“10 Suspension

xx xx xx

xx xx xx

(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 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-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.

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 then 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.”

7. On going through the amended Sub-rule 7, it is crystal clear that the 90 days deadline for review envisaged under Sub-rule 6 cannot be read in isolation ignoring Sub-rule 7, which deals with a situation where the Govt. servant is detained in custody and subsequently released from detention. The proviso under Sub-rule 7 categorically envisages that if the Govt. servant continues to be under suspension at the time of completion of 90 days, then 90 days period in such cases will count from the date the Govt. servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to the appointing authority, whichever is later. So, in the instant case, the applicant was released on bail on 04.08.2016 and he informed the department on 22.08.2016 but since the Review Committee decided the extension on 26.10.2016, it was always within time and there is no infraction of any rule. Had the review been done 90 days after the release of the Govt. employee from retention or intimation given to the department, the matter would have been different. Since the review order of continuance of suspension is as per the rule, no interference is called for. Hence, the O.A. being devoid of any merit is dismissed. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)