

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00525/2016

Jabalpur, this Friday, the 03rd day of August, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Anil Kumar Yadav Aged about 46 years
S/o Shri C.P. Yadav R/o Care of Manish Dubey
Kanch ka Makan Ghantaghar, Katni (M.P.) - **Applicant**
(By Advocate –**Shri Jagdamba Bux Singh**)

Versus

1. Union of India, Through Secretary
Ministry of Communications & IT
Department of Posts Dak Bhawan
1, Sansad Marg, New Delhi 110001

2. Postmaster General
Indore Region Indore (M.P.) 492001

3. Senior Superintendent of Post Offices
Jabalpur Division Jabalpur (M.P.) 482001 - **Respondents**
(By Advocate –**Shri P.K. Chourasia**)

O R D E R

By Navin Tandon, AM:-

By filing this Original Application the applicant is mainly aggrieved by non enhancement of subsistence allowance in terms of the provisions of FR 53 after expiry of first three months of suspension. The applicant has also aggrieved by continuation of his suspension order for indefinite period without review as per rules.

2. The briefs facts of the case are that the applicant was appointed on 01.08.1991 on the post of Postal Assistant. Since

22.07.2010 he was working as System Manager in Katni Head Post Office. He was placed under suspension vide order dated 12.12.2014 (Annexure A-1). He made representation on 30.03.2015 (Annexure A-3) for review and revocation of suspension and enhancement of subsistence allowance. A charge sheet was issued to him vide memo dated 05.10.2015 (Annexure A-4) and an enquiry officer has been appointed vide memo dated 21.01.2016 (Annexure A-5). The applicant states that vide memo dated 07.09.2015 (Annexure A-6) the first review order was issued for continuation of suspension from 12.03.2015 to 07.09.2015 which shows that the suspension order issued on 12.12.2014 was not reviewed upto 07.09.2015 i.e. about 9 months. The applicant submitted his representation 19.02.2016 (Annexure A-9) requesting for revocation of suspension but the same has not been considered. He submits that as per FR 53 subsistence allowance must be reviewed after three months but in his case the subsistence allowance paid in the first three months is still continuing without any review which is illegal and unjustified.

3. The applicant has, therefore, sought for the following reliefs:-

“8.Relief Sought:

It is, therefore, prayed that this Hon'ble Tribunal may kindly be pleased to:-

8(i) *Set aside the order for suspension dated 12.12.2014 (annexure A-1) & dated 17.02.2016 (Annexure A-8) passed by the Respondent No.3 and order for revocation of suspension of the applicant being unjustified and illegal;*

8(ii) *Set aside the decision dated 12.04.2016 (Annexure A-10) and allow the subsistence allowance at the enhanced rate as per provisions of FR-53 after first three months.*

8(iii) *any other order/orders which Hon'ble Court deems fit and proper.*

8(iv) *Cost of the petition may also kindly be awarded."*

4. The respondents in their reply have submitted that the applicant was placed under suspension vide memo dated 12.12.2014. He has been issued a charge sheet of major penalty vide memo dated 05.10.2015 as the applicant has violated the instructions prescribed and misused the user ID and committed the heinous crime of tampering with the computer based data. The suspension of the applicant was first reviewed by the suspension review committee on 04.03.2015 and extended for 180 days from 12.03.2015 to 07.09.2015 which is clearly mentioned in letter dated 05.12.2015 (Annexure A-7), but the applicant was wrongly pleaded in Para 4.6 of O.A. having not reviewed the suspension upto 07.09.2015 which is vehemently opposed by answering respondents. The respondents further stated that the applicant is misconstruing the provision under FR 53(1)(ii)(a). As per this provision, it is not mandatory on the part of authority who passed the order of suspension, to review and increase the subsistence allowance after first three months in the manner provided under FR

53(1)(ii)(a)(i) and(ii). The proviso of FR 53(1)(ii)(a) provides that where the period of suspension exceeds three months, the authority which made or deemed to have made the order of suspension shall be competent to vary the amount of subsistence for any period of subsequent to the period of the first three months in the manner provided under FR 53(1)(ii)(a)(i) and (ii). The said rule vests authority and jurisdiction on the authority to vary the subsistence allowance after three months either to increase 50 per cent of the subsistence allowance or to reduce it not exceeding 50 per cent admissible during the period of first three months of suspension as the case may be. The applicant cannot claim increase of subsistence allowance as a matter of right after three months. In the present case considering the totality of circumstances and nature of allegation against the applicant the competent authority decided not to vary the subsistence allowance while continuing his suspension. There is no illegality in the action of the respondents. The plea taken by the applicant is misconceived.

4.1 The respondents have further stated that the applicant was placed under suspension on 12.12.2014 and charge sheet was issued on 05.10.2015 and, therefore, the continuation of suspension of the applicant is justified. The review committee neither reduced nor enhanced the subsistence allowance and accordingly the

applicant is given the subsistence allowance. The applicant is accused of serious crime and departmental enquiry is underway. Looking to the seriousness of the crime of the applicant the Review Committee has continued the suspension of the applicant in the public interest which is justified.

5. We have heard the learned counsel for both the parties and carefully perused the pleadings and documents annexed therewith.

6. Vide an interim order dated 13.02.2017, this Tribunal has already directed the respondents to enhance the subsistence allowance of the applicant by a suitable amount as provided in FR 53(1)(i)(a)(i) from the date of expiry of first three months of his suspension period and effect payment to the applicant within a period of four weeks from the date of receipt of a copy of said order. Against the said interim order, the respondent-department has preferred Writ Petition before the Hon'ble High Court of Madhya Pradesh, bearing No.5543/2017 which was dismissed by the Hon'ble High Court vide order dated 04.10.2017. Hence, the relief sought for by the applicant in relief clause 8.2 has already been considered and allowed to the extent mentioned in the interim order dated 13.02.2017.

7. As regards the relief sought for by the applicant to set aside the suspension order dated 12.12.2014 (Annexure A-1) and order

dated 17.02.2016 (Annexure A-8) passed by the respondent No.3 and order for revocation of suspension of applicant is concerned, the respondents have stated that suspension of the applicant was first reviewed by the suspension review committee on 04.03.2015, which had recommended extension of suspension of the applicant for a further period of 180 days w.e.f. 12.03.2015. However, no such order extending the period of suspension of the applicant has been filed by the respondents. The respondents have also not stated in clear terms that the order of extension of suspension of the applicant was duly passed within the prescribed period of 90 days and was also communicated to the applicant within said stipulated period.

8. A similar matter was decided by this Tribunal vide order dated 03.01.2018 in Original Application No.200/00786/2015 (**Surat Kumar Vs. Union of India and others**). Relevant paragraphs of the said order read thus:

“(7). On perusal of the documents filed by the respondents we find that though the respondents in Para 4 of their reply have stated that the suspension of the applicant has been reviewed as per rules within prescribed intervals i.e. within 90 days from the date of suspension by the suspension review committee on 04.03.2015, and they have also annexed minutes of the suspension review committee held on 04.03.2015 which had recommended extension of suspension of the applicant for a further period of 180 days, but we find that no order of extending the period of

suspension of the applicant has been filed by the respondents along with their reply. Neither have they stated that the order of extension of suspension of the applicant was duly communicated to him within the prescribed period of 90 days.

(8). *The relevant paragraphs of the order in the case of **Dharam Pal Dhanka** (Original Application No.304 of 2012 decided on 07.05.2013 by CAT/Jodhpur Bench) are reproduced hereunder:*

“(5). Heard both the counsels. Counsel for the applicant contended that mere holding of meeting for reviews of suspension vide Annex. A/2 is not sufficient to extend the period of suspension because recommendation of the review committee by way of any order has not been communicated to the applicant within 90 days and it is not the holding of meeting of suspension review committee but communication of order is necessary as held in judgment of Hon’ble Rajasthan High Court passed in DBCWP No.3777/2011, UOI vs Ram Singh dated 13.09.2011. The Division Bench of Hon’ble Rajasthan High Court in para No.17 and 19 of the order held that :

“17. coming to the facts of this case, it is not in dispute that the review authority failed to pass any order of extension as provided in sub Rule (6) within 90 days, inasmuch as, no order extending the period of suspension order was sent to the respondent within 90 days from the date of its issuance i.e. 01.10.2009. As a result of this lapse on the part of reviewing authority, the suspension order came to an end on the expiry of 90 days as provided in sub-rule 7.

19. In our view compliance of Rule is complete only when first decision is taken within 90 days and in consequence thereof its outcome be that of extending its period or revocation is communicated to delinquent employee.”

Further in para No. 20 of this judgment, it was held that communication of the outcome of the meeting of the reviewing committee should be communicated to the delinquent employee within 90 days. It is further held that order of extension or revocation once passed under sub Rule (6) and (7) is also required to be

communicated to the delinquent employee before expiry of 90 days. It is only then the life of original suspension order gets validity extended by further period. Communication of extension or its revocation to the delinquent employee is not an empty formality but is a mandatory requirement of the sub-rule 6 and 7 which is an inbuilt requirement provided in sub-rule 6 and 7. If the delinquent employee is not informed of the extension of his suspension order then a right accrues in his favour on the expiry of 90 days to get benefit of the consequence provided in sub-Rule 7.

(6). Per contra counsel for the respondents contended that communication of order of reviewing authority is merely a formality and reviewing committee convened its meeting on 11.03.2011 i.e. well before the expiry of suspension period of 90 days and recommend for extension of the suspension period. Therefore, suspension of the applicant cannot be said to be in contravention of Rule 10(6) & (7) of the CCS(CCA) Rules, 1965.

(6)(sic). Pondered over the arguments advanced by both the parties. Argument of the counsel for the applicant finds support from the judgment of the Division Bench of Hon'ble Rajasthan High Court passed in DBCWP No. 3777/2011, UOI vs Ram Singh dated 13.09.2011 wherein it has been clearly held that communication of such order is also mandatory requirement and it is not empty formality but is a mandatory requirement of the sub-rule 6 and 7 which is an inbuilt requirement provided in sub-rule 6 and 7. As in this case no order has been passed by the competent authority or communicated to the applicant regarding extension of suspension period within 90 days from the date of the suspension as is evident from pleadings of both the parties and documents annexed, suspension period beyond 90 days cannot be said to be legal or as per rules. Therefore, the order of extension of suspension period after expiry of 90 days cannot be said to be legal or as per rules.

(7). Accordingly, Annex. A/2, A/3 and A/4 are quashed and respondent-department is directed to reinstate the applicant after the expiry of suspension period of 90 days from the date of his initial suspension order i.e. from the 91st day. Further,

respondent-department is directed to consider the case of the applicant to treat him on duty if permissible under relevant rules after the expiry of initial 90 days of suspension period”.

(9). *Having gone through the facts of the present case and those of in the case of **Dharma Pal Dhanka** (supra) we are of the considered view that the facts of both the cases are identical and, therefore, the present case is fully covered by the decision of Jodhpur Bench of the Tribunal in the case of **Dharam Pal Dhanka** (supra) and, therefore, is liable to be allowed in the same terms.*

(10).....

(11). In the result, the Original Application is partly allowed with a direction to the respondent-department to reinstate the applicant after the expiry of suspension period of 90 days from the date of his initial suspension order i.e. from the 91st day. Further, respondent-department is directed to consider the case of the applicant to treat him on duty if permissible under relevant rules after the expiry of initial 90 days of suspension period. No costs”.

9. Having considered the facts of the present case and those of in the case of **Surat Kumar** (supra) we are of the considered view that the facts of both the cases are identical and, therefore, the present case is fully covered by the said decision of this Tribunal as well as the decision of Jodhpur Bench of the Tribunal in the case of **Dharam Pal Dhanka** (supra), relied on by this Tribunal in the case of **Surat Kumar** (supra). Therefore, the present Original Application is also liable to be allowed in the same terms.

10. In the result, the Original Application is allowed with a direction to the respondent-department to reinstate the applicant after the expiry of suspension period of 90 days from the date of

his initial suspension order i.e. from the 91st day. Further, respondent-department is directed to consider the case of the applicant to treat him on duty if permissible under relevant rules after the expiry of initial 90 days of suspension period. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

rkv