

10.8.17



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

No. R.A. 11/2017  
O.A. 76/2017

Present : Hon'ble Mr.AK.Patnaik, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

AMIRUDDIN MALLICK

VS

UNION OF INDIA & ORS. (POSTS)

For the Applicant : Mr.P.C.Das, counsel

For the Respondents : None

ORDER

Ms. Jaya Das Gupta, AM

This Review Application has been made regarding final orders of OA 76/2017 where order was passed on 23.2.2017. The operative part of the order is as follows :

“8. Under Rule 27(1) of the CCS (CCA) Rules the appellate authority should consider whether in the light of provision of Rule 10 of CCS (CCA) Rule and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly. Such revoking is also covered under Rule 10(5)(c).

9. Accordingly, the portion of the appellate order :

“However, the suspension case was placed before the suspension review committee and the said committee in their meeting dated 18.11.2016 observed that as the departmental investigation into the case has not yet been concluded the suspension order may be continued for another period of 90 days.

The appeal of Shri Amiruddin Mallick is accordingly disposed of.”  
is quashed and set aside.

The Appellate Authority is granted 4 weeks' time from the date of receipt of a copy of this order **to dispose of the Appeal as per law.”**

2. The RA is filed on 21.3.2017. The order dated 23.2.2017 was received by the applicant on 8.3.2017.

3. The main contention in the RA is that the Tribunal had not indicated in their order dated 23.2.2017 regarding what will happen of other orders which the applicant had challenged in the OA 76/2017 in respect of the main prayers 8(iii) and 8(iv) of the OA along with all consequential benefits. Also that the Hon'ble Tribunal did not indicate any word in respect of allowing the applicant in resumption of the duty as well as getting other consequential benefits. The relief sought for in the OA in paras 8(iii) & 8(iv) are as follows :

"8(iii) To issue appropriate necessary direction upon the respondents to cancel, set aside the order of Review Committee communicated by the Sr. Supdt. Of Post, Midnapore Dn. Through his letter No. B/A-2016 dated 21.11.2016 as there is no mention the justified ground for extension of suspension for another 90 days;

(iv) to issue further direction upon the respondent Nos. 1 to 3 to conduct an inquiry against Sri A. Prasad the then Sr. Supdt. Of Post, Midnapore Dn. (Respondent No.4 herein) for using filthy and unparliamentary words against a Muslim employee on the basis statement recorded by the Inspector of Post Offices, Garhbeta Sub Dn. in presence of two witnesses."

4. From the OA it appears that the suspension order was issued on 24.8.2016. The first review of suspension of Shri Amiruddin Mallick has been carried out by the suspension review committee formed for the purpose on 18.11.2016 and the committee had recommended continuance of his suspension for another 90 days. The proceeding of suspension review committee is not on records. So it is not possible to know whether reasons were recorded for extension of suspension period. Based on such recommendation vide order dated 21.11.2016 the suspension was continued for further 90 days. So the first review was done well within three months of 24.8.2016 when the suspension order was passed. It also appears that the applicant was allowed to continue to draw the existing subsistence allowance as per usual condition. Such order dated 21.1.2016 is set out below :



"Memo No.B/A-206 dated at Midnapore the 21.11.2016

This is in continuation of this office Memo No.SSP/Con/Amlagora dated 24.8.2016 regarding suspension of Amiruddin Mallick, SPM, Amlagora SO w.e.f. 24.8.2016.

The 1<sup>st</sup> Review of suspension of Amiruddin Mallick has been carried out by the Suspension Review Committee formed for the purpose at Regional level on 18.11.2016 and the committee has recommended continuance of his suspension for another 90 (ninety) days

Now, therefore, the undersigned in exercise of the powers conferred by clause (a) of Sub Rule 5 of Rule 10 of the CCS (CCA) Rules, 1965, do hereby order for continuation of further 90 days of the said order of the suspension.

He will continue to draw the existing subsistence allowance as per usual conditions.

Sr. Superintendent of Post Offices.

Midnapore Division, Midnapore – 721101."

Also the power conferred by clause (a) of sub rule (5) of Rule 10 of CCS (CCA) Rules, 1965 is as follows :

"5(a) Subject to the provisions contained in sub-rule (7) any order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

Sub Rule (7) is as follows :

"An order of suspension made or deemed to have been made under 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 the 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

i.e. the Authority has acted as per Rule 10(5)(a). Therefore no separate order was necessary regarding relief 8(iii).

5. Regarding relief in 8(iv) the applicant had submitted that action should be taken against the Sr. Supdt. of Post Offices, Midnapore Division for insulting the applicant on the ground of religion. This is not an arena where the Tribunal can interfere at this stage as it is entirely on the superior authorities to take a decision in this matter. Hence no order was passed on Relief 8(iv).

6. As per the grievance of the applicant that the Tribunal did not indicate any word in respect of allowing the applicant in resumption of duty as well as getting other consequential benefits, obviously this will be ordered in the order of the respondent authorities who have been directed to dispose of the appeal as per law.

7. Thus a careful perusal of the pleadings of the OA as well as RA shows that the applicant had tried to re-argue the case all over again in the guise of seeking review of the order dated 23.2.2017. The scope of review under Order 47 Rule 1 CPC is very limited.

8. We find that the Apex Court in the **State of West Bengal & Ors. Vs. Kamal Sengupta and another**, 2008 (3) AISLJ 209, vide para 28 of its judgment has held that the ingredients to be met in case of a review order has to be the following :

- (i) Power of Tribunal to review is akin to Order 47 Rule 1 CPC read with Section 114,
- (ii) Grounds enumerated in Order 47 Rule 1 to be followed and not otherwise,
- (iii) Any other sufficient reason appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) Order cannot be reviewed on the basis of subsequent decision/judgment of co-ordinate larger Bench or superior Court,
- (v) Adjudication with reference to material which was available at the time of initial decision. Subsequent event/development is not error apparent.
- (vi) Mere discovery of new/important matter or evidence not sufficient ground for review. The party has to show that such matter or evidence was not within its knowledge and even after exercise of due diligence, the same could not be produced earlier before the Tribunal.

The Apex Court in **Gopal Singh vs. State Cadre Forest Officers' Association & Ors.**, (2007) 2 SCC (L&S) 819, has held that "a Tribunal cannot sit over its own judgment as an appellate authority."

9. In such view of the matter and orders of Hon'ble Apex Court (supra), the application fails.
10. R.A is accordingly dismissed.

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(Jaya Das Gupta)  
Member (A)

(A.K.Patnaik)  
Member (J)

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