

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

This the 02nd day of April 2019

ORIGINAL APPLICATION NO. 330/00258/2018

HON'BLE Mr. Rakesh Sagar Jain, MEMBER (J)

Akhil Kumar Gupta aged about 47 years son of Sri Hari Om Gupta Sub Post Master (Under Suspension) Sub Office Khri, Kheri Division, Kheri r/o Madhi Nath Durga Gali, Bareilly (U.P.)- 243001.

..... Applicant

By Advocate: Sri Ashutosh Diwakar

Versus

1. Union of India through the Secretary, Ministry of Communication and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Director Postal Services, Office of the Post Master General, Bareilly Region, Bareilly, District- Bareilly.
3. Superintendent of Post Offices, Kheri Division Kheri.
4. Superintendent of Post Office, Badaun Division, Budaun.

..... Respondents.

Advocate: Sri L.P. Tiwari

ORDER

1. The limited dispute in the present O.A. filed by applicant Akhil Kumar Gupta is confined to the following reliefs:-

"(i) The Hon'ble Tribunal may graciously be pleased to quash the impugned suspension order dated 22.11.2017 issued by respondent No. 3 on the whims, dictates and suggestion of the respondent No.4, which is also violative

to Rule 17 of Postal Manual Volume -III, with all consequential benefits.

- (ii) To issue any order, direction or further orders which this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case.
- (iii) Award costs in favour of applicant".

2. Perusal of the record reveals that vide order dated 01.06.2018, it was ordered that suspension of applicant shall automatically be deemed to have been revoked on 22.11.201 as it was not extended before expiry of 90 days from the date of initial order of suspension. Thus, the respondents are directed to reinstate the applicant with immediate effect. The text of the full order dated 01.06.2018 reads as under:-

"Heard Sri Ashutosh Diwakar learned counsel for applicant and Sri L.P. Tiwari learned counsel for respondents.

2. *The applicant has filed this O.A. for quashing the impugned order dated 22.11.2017 issued by respondent No. 3 by which the applicant was suspended with immediate effect.*
- 3 *It is stated that while working as Deputy Post Master, applicant was placed under suspension vide order dated 6.7.2016. Thereafter a review committee meeting was constituted to review the suspension order of the applicant and review committee in its meeting held on 4.10.2016 recommended that suspension of the applicant may be continued for further 180 days w.e.f. 4.10.2016. The order dated 4.10.2016 passed by the Superintendent Post Office, Budaun was served on the applicant on 10.10.2016 and not on 4.10.2016. It is submitted by the learned counsel for applicant that review order of the suspension and passing of the order and communication must be within 90 days from the date of passing of the suspension order dated 6.7.2016 but the same was served upon the applicant on 10.10.2016 and it would be deemed that the same has been passed beyond ninety days.*

4. Learned counsel for the respondents submitted that he has no instructions and requested for time to seek instructions.
5. I have gone through Rule 10 (6) and 10 (7) of CCS (CCA) Rules, which are being reproduced below –

"10 (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 the 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.

10 (7) 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 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".

6. I have also perused O.M dated 7.1.2004, which reads as under –

"No. 11012/4/2003-Estt.

Government of India, Ministry of Personnel, P.G. & Pensions (Department of Personnel & Training) New Delhi, dated the 7thJanuary, 2004 OFFICE MEMORANDUM.

Sub: Suspension of Government Servants- Review of instruction reg.

The undersigned is directed to say that Rule 10 (Suspension) of the CCS (CCA) Rules, 1965 is being amended to provide that an order of suspension made or deemed to have been made under this Rule, 1965 is being amended to provide that an order of suspension made or deemed to have been made under this Rule shall be reviewed by the competent authority on recommendation of the Review Committee constituted for the purpose. It is also being provided in the Rules that an order of suspension made or deemed to have been under Sub Rules (1) or (2) of Rule 10 shall not be valid after 90 days unless it is extended after review for a further period before the expiry of 90 days. It is further being provided that extension of suspension shall not be for a period exceeding 180 days at a time".

7. From the perusal of Rule 10 (6) and (7) and O.M dated 7.1.2004, it is evident that if no order is passed for extension of suspension before the expiry of 90 days from the date of order of suspension, the said suspension shall become invalid after the expiry of 90 days.
8. In the instant case, the applicant was suspended on 6.7.2016 with immediate effect and the period of 90 days ends on 4.10.2016. It is an admitted case that neither review committee recommended for extension of suspension period nor suspension order was extended till 4.10.2016. Thus under these circumstances, I am of the view that the suspension order dated 6.7.2016 becomes invalid on 4.10.2016 as it could not be extended before expiry of 90 days. The same view has been taken by this Tribunal in case of Kaushal Kumar Dubey Vs. Union of India in O.A. No. 1128/2015 (decided on 11.9.2015) which has been upheld by the Hon'ble High Court vide order dated 18.1.2016 passed in Writ Petition NO. 69086 of 2015. The same view is also taken by this Tribunal in O.A. No. 1276/2017 decided on 30th October, 2017.

9. Taking into the Rule position and also the judgments passed by the Coordinate Bench and Hon'ble High Court, I am of the view that suspension shall automatically be deemed to have been revoked on 22.11.2011 as it was not extended before expiry of 90 days from the date of initial order of suspension. Thus, the respondents are directed to reinstate the applicant with immediate effect. However, the respondents are at liberty to proceed with the disciplinary proceedings in accordance with law.
10. Issue notice to the respondents for filing reply within four weeks.
11. List on 9.7.2018"

3. Thereafter, respondents filed a report stating therein that "That in compliance to the order dated 01.06.2018 passed in the aforesaid original application, the competent authority passed an order dated 04.09.2018, by which the applicant has been reinstated in his service and the applicant joined his duties on 07.09.2018."
4. In these circumstances, it is clear that the grievance of the applicant regarding his suspension has been redressed. Respondents would be at liberty to pass appropriate order regarding the pay and emoluments for the said period. O.A. is accordingly disposed off. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

Manish/-