

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Allahabad This the 04th day of April 2019

HON'BLE MS. AJANTA DAYALAN, MEMBER - A

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER - J

Original Application No.330/00295 of 2018

Smt. Sunrita Gupta, aged about 58 years, wife of Shri Kalyan Prakash, presently posted as Deputy Post Master, Muzaffar Nagar, H.O. R/o Mohalla-New Adarsh Colony Budaun, District Budaun.

..... Applicant

By Adv: Shri S.K. Kushwaha

V E R S U S

1. Union of India through the Secretary, Ministry of Communication and I.T. Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Bareilly Region, Bareilly.
3. Director Postal Services, in the office of Post Master General, Bareilly Region, Bareilly.
4. Superintendent of Post Offices, Budaun Division, Budaun.
5. Senior Superintendent of Post Offices, Muzaffar Nagar Division, Muzaffar Nagar.

..... Respondents

By Adv: Shri L.P. Tiwari

ORDER

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER - J

1. The present Original Application has been filed under Section 19 of the Central Administrative Tribunal Act, 1985 by Smt. Sunrita Gupta seeking the following relief:

"i) The Hon'ble Tribunal may graciously be pleased to quash the impugned orders dated 02.06.2017, 21.8.2017 and 21.2.2018 with all consequential benefits

viz. difference of pay and paid subsistence allowance along with 12% compound interest.

- 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 this case.
- iii) Award costs in favour of applicant".

2. Case of applicant Smt. Sunrita Gupta is that while officiating as Post Master, Budaun HO, applicant was suspended on contemplation of disciplinary proceedings vide order dated 17.09.2016. She was charge sheeted vide Memo dated 16.12.2016 wherein it was alleged that she unauthorizedly disclosed her user-Id and password to some postal workers for issuance of ATM cards which were used for embezzling Rs.7134000/- by transferring closed saving bank account of some post office to Head Post Office, Budaun and therefore failed to discharge supervisory duties and responsibility. SPP, Budaun vide letter dated 21.12.2016 communicated extension of suspension vide order dated 21.12.2016 for 180 days along with minutes of review committee dated 20.12.2016. Her suspension order was quashed by the Tribunal. Applicant was transferred vide order dated 24.4.2017 under orders of Post Master General, Bareilly and posted as Deputy Post Master, Muzaffar Nagar, H.O.

3. It is the further case of applicant that she was transferred to Muzaffar Nagar H.O. without permitting her to join Budaun HO by revoking her suspension. Her suspension was revoked on 29.04.2017 but transfer order was issued on 24.04.2017. It is averred in the O.A. that respondent No. 3 again suspended the applicant vide impugned order dated 02.06.2017 (Annexure- A1) on the ground of pending disciplinary proceedings and which order is illegal.

4. Applicant challenges the impugned order/letter dated 21.08.2017 whereby the Review Committee again recommended extension of suspension w.e.f. 03.09.2017 but no copy of recommendation has been given to the applicant and therefore the order dated 21.08.2017 deserves to be set aside.
5. We have heard and considered the arguments of the counsels for the parties and gone through the material on record. It would be pertinent to note that vide order dated 9.10.2018 on request of learned counsel for respondents, last opportunity of three weeks was given to file the counter affidavit. As per order dated 12.11.2018, since the counter affidavit was not filed in terms of order dated 9.10.2018, right to file counter affidavit was forfeited.
6. Learned counsel for applicant submitted that copy of the recommendation of suspension of review committee has not been served upon the applicant which again violates her right under Rule 30 of C.C.S Rules 1965. Learned counsel for the applicant further submitted that applicant had joined at the transferred place after revocation of first suspension order in pursuance of joining order dated 4.5.2017 (Annexure A-12) and wherein it clearly provides that the applicant should not be allowed to work on the post of Senior Post Master Muzaffar Nagar H.O. on office arrangement or leave arrangement till further order the post of Senior Post Master is a sensitive post. Thus there was no occasion to again suspend the applicant on the allegation of place where she was earlier posted.
7. It would be pertinent to note that applicant has challenged impugned orders dated 2.6.2017, 21.8.2017 and 21.2.2018. However, during course of final argument, learned counsel for the applicant confined his arguments to the challenge thrown to the legality of the order dated 21.2.2018.

8. Applicant has challenged the order dated 21.2.2018 on the facts mentioned in the O.A. which are reproduced as under:-

"4.18 That the Director Postal Services, Bareilly has again issued impugned order communicating extension of the suspension period for 180 days w.e.f. 01.03.2018 vide impugned order dated 21.2.2018. The authority has again stated that the review committee has convened and suspension has been extended for 180 days, but no date of convening the meeting has been mentioned in the said impugned order. Thus, it is false and misleading statement that review committee was constituted and further more no copy of recommendation of review committee is communicated. The disciplinary authority has taken extraneous fact of fresh chargesheet dated 20.2.2018 issued by the said authority himself which is not the subject matter the suspension order dated 02.06.2017.

4.19 That the fresh chargesheet dated 20.2.2018 has been issued by the respondent No. 3 and communication letter for extension has been issued on 21.2.2018, then this fact itself suffice that no review committee has been constituted which has reviewed the suspension of the applicant. If there was any committee constituted then consideration of issuance of fresh chargesheet is itself illegal and arbitrary, It is further submitted that the extension of suspension order has been served on the applicant only on 08.03.2018 at about 12.55 p.m. i.e. after expiry of 180 days from 03.09.2017, Thus, effect of suspension has been lapsed after expiry of 180 days i.e. w.e.f. 02.03.2018, as the extension of suspension order not been communicated or served on the applicant within 180 days".

9. Learned counsel for the applicant submitted that the review committee took up the matter of suspension of applicant and

extended the period of suspension for 180 days w.e.f. 01.03.2018 vide letter dated 21.2.2018. Elaborating his arguments, learned counsel for applicant submitted that the applicant should have been informed about the extension of period of suspension on or before 01.03.2018 but applicant was actually served with the order of extension of suspension period on 8.3.2018 which is apparent from Annexure A-3 which is the order of suspension and bears the seal of respondents dated 03.03.2018 which is beyond the date of 01.03.2018 on which date or before the said date, the order of suspension ought to have been served upon the applicant.

10. Learned counsel for applicant in support of his contention relying upon Akhil Kumar Gupta Vs. UOI and Ors. decided on 2.6.2017 in O.A No. 330/00603 of 2017 submitted that the Tribunal quashed the order of suspension in the said case on grounds which are similar to that of the present case.
11. Learned counsel for applicant has also referred to Kaushal Kishore Dubey Vs. UOI and Ors. decided in OA No. 1128/15 on 11.9.2015 which in turn had relied upon the judgment of Akhil Kumar Gupta (supra) and his further argument that Kaushal Kishore Dubey (supra) was further upheld by Hon'ble High Court in WRIT A-No. 69086/15 titled Union of India and others Vs. Kaushal Kishore and another decided on 18.1.2016.
12. On the other hand, learned counsel for the respondents submitted that the actions of respondents are in accordance with settled principle of law, the O.A. being meritless, deserves to be dismissed.
13. In Akhil Kumar Gupta (supra), the Tribunal has held that:-

"5. It is undoubtedly clear that a review committee was held for reviewing the suspension case of applicant on

04.10.2016, and the order dated 04.10.2016 (page No. 24 of the Paper Book) was communicated to the applicant on 10.10.2016. As per the Orders passed by this Tribunal in "Kaushal Kishore and other V. Union of India and others [In O.A. No. 1128/2015 decided on 11.09.2015) and 'Kush Prakash Vs. Union of India and others [In OA No. 1210/2015 decided on 20.05.2016], it is clear that if the review of suspension had not been done within 90 days from the date of suspension, it becomes invalid after expiry of 90 days. Both the Orders have been upheld by the Hon'ble High Court. In the judgment passed by the Hon'ble Apex Court in the case of 'Union of India Vs. Dipak Mali (2010) 1 SCC (L&S) 593' it is held that the review committee is required to take decision before expiry of 90 days and also communicate the same to the suspended employee within a period of 90 days. It is also mentioned in Rule 10 (6) and (7) of CCS (CCA) Rules, 1965 that the suspension order is deemed to be revoked within 90 days.

6. In this case, it is seen from the pleadings that the respondents constituted the committee within 90 days but communicated the decision taken by the review committee after 90 days i.e. on 10.10.2018. Hence, the order dated 04.10.2016, which was communicated to the applicant on 10.10.2016, extending the suspension order dated 04.10.2016 for further period of 180 days is liable to be quashed.

7. In view of the above facts and legal position, the O.A. is allowed. The order dated 04.10.2016, communicated to the applicant on 10.10.2016, is quashed and set aside. Consequently, the suspension order dated 06.07.2016 is also quashed and set aside. Further, the respondents are directed to reinstate the applicant forthwith. No costs".

14. In the instant case, the counter affidavit has not been filed and, therefore, there is no rebuttal to the averments made in the O.A.

In view of arguments of the learned counsels for the parties and the documents placed on record by the applicant as well as the aforementioned judgments relied upon by the applicant, it is clear that the impugned order of suspension dated 21.02.2018 is vitiated since the extension of suspension order had been served on the applicant only on 08.03.2018 at about 12.55 p.m. i.e. after expiry of 180 days from 03.09.2017. Thus, effect of suspension had been lapsed after expiry of 180 days i.e. w.e.f. 02.03.2018, as the extension of suspension order had not been communicated or served on the applicant within 180 days

15. In view of the facts and circumstances of the case as well as the principle of law, as discussed above the order dated 21.2.2018 extending the period of suspension for 180 days w.e.f. 01.03.2018 and communicated to the applicant on 08.03.2018 is quashed and set aside. The respondents are at liberty to proceed against the applicant as per law. Accordingly, O.A. is disposed of. No order as to costs.

(Rakesh Sagar Jain)

Member-J

(Ms. Ajanta Dayalan)

Member-A

Manish/-