

**Central Administrative Tribunal
Ernakulam Bench**

OA /181/00098/2015

Thursday, this the 17th day of January, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

Nasila T.T., aged 28 years
Field Assistant
Department of Fisheries,
District Panchayath, Kavaratti,
Union Territory of Lakshadweep-682 555.

Applicant

[Advocate: Mr.N.Haridas]

versus

1. Administrator
Union Territory of Lakshadweep
Kavaratti-682 555.
2. Secretary (Fisheries),
Department of Fisheries
Union Territory of Lakshadweep
Kavaratti-682 555.
3. Director of Fisheries,
Department of Fisheries, Kavaratti
Union Territory of Lakshadweep-682 555.
4. Sri Ramachandra M Singrea (Danic)
Chief Executive Officer, District Panchayat
Department of Fisheries, Kavaratti,
Union Territory of Lakshadweep-682 555.
5. Dr. C.N.Hanefea Koya
District Fisheries Officer
Department of Fisheries,
District Panchayat, Kavaratti,
Union Territory of Lakshadweep-682 555.

Respondents

(Advocate: Mr.S.Manu rep by Mr.Sreeraj)

The OA having been heard on 15th January, 2019, this Tribunal delivered the following order on 17.01.2019:

ORDER

By Ashish Kalia, Judicial Member

In this OA, the applicant challenges the suspension order dated 27.11.2014 issued by the Secretary (Fisheries), Department of Fisheries, Kavaratti, and seeks disbursement of the subsistence allowance from the date of suspension till the date the applicant resumes duty.

2. The facts of the case, in brief, are that the applicant who is a graduate in B.Sc (Mathematics) from Mahatma Gandhi University, Kottayam, joined the Government service under the Lakshadweep Administration as Field Assistant, District Panchayath, Directorate of Fisheries with effect from 6.12.2008. As per Annexure A1, the applicant was sanctioned Child Care Leave for 25 days with effect from 20.10.2014 based on her leave application dated 18.10.2014. On 5.11.2014 i.e., prior to the expiry of the sanctioned CCL, the applicant applied for extension of the CCL since some more time was required for the treatment and care of her son. During the pendency of the said application, on 27.11.2014, the 2nd respondent vide Annexure A2 placed the applicant under suspension. It is submitted that the suspension order was passed by the respondents without observing the guiding principles on the matter and in violation of the natural justice and the fundamental rights guaranteed by the Constitution of India.

3. As per Annexure A2 order, the headquarters of the applicant during the suspension period was stated to be Kavaratti while the suspension order was served on the applicant through her mother who was working at Field Pay Unit, Minicoy, on 28.11.2014. It is further submitted that her leave application dated 5.11.2014 seeking extension of leave was rejected as per office memorandum dated 5.12.2014 (Annexure A3) stating that since the applicant is under

suspension, her request for extension of leave could not be allowed. The applicant has questioned the authority of 4th & 5th respondents. Despite submission of the required certificate under Rule 53(2) of F.R., the mandatory subsistence allowance was not paid to the applicant. It is submitted that due to non-payment of the subsistence allowance, the applicant finds it very difficult to make both ends meet. Her husband is unemployed and her employment is the only source of income for the family. It is also submitted that the suspension of the applicant was extended for a further period of 180 days with effect from 25.2.2015. As per the directions of the respondents, though the applicant reported for duty, the subsistence allowance was not being paid.

4. Notices were issued. Reply statement has been filed by the respondents.

It is stated in the reply that the applicant was suspended by order dated 27.11.2014 for misappropriation and shortfall of government money, not on account of her availing of CCL. The applicant's suspension was extended for a further period of 180 days based on the Suspension Review Committee's report. Annexure R1(d) order dated 14.8.2015 extending the suspension period for 180 days was issued by the Secretary (Fisheries) and the Director had only signed the order for the purpose of communication.

5. Heard learned counsel for the parties.

The question posed by the applicant herein is that her suspension should be revoked and she may be allowed to join duty with payment of subsistence allowance from the date of suspension till the date of joining duty. Since the Department has suspended her on account of short remittance of money, this cannot be said to have been on account of extension of Child Care Leave. Since the applicant has already joined duty by submitting joining report, she must have

been receiving subsistence allowance by now. Even otherwise, this Tribunal is of the view that the suspension for such a long period of more than four years, even after filing of charge sheet, is not sustainable in the eyes of law. In ***Ajay Kumar Choudhary vs. Union of India and another, (2015) 7 SCC 291***, the Hon'ble Supreme Court held that:

“21. We, therefore,, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence.”

6. In view of the settled legal position, we are of the view that the suspension is liable to be quashed. Accordingly, we do so. The respondents are directed to allow her to join duty within 30 days from the date of receipt of this order. It is needless to say that the department is free to assign her duty of some other post. This order shall be complied with within a period of 60 days. The department is free to hold an inquiry which shall be concluded within a period of four months thereafter. The OA is disposed of with the above directions. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicant:

- Annexure A1: Copy of the office order dated 26.11.2014 issued by the 5th respondent.
- Annexure A2: Copy of the suspension order dated 27.11.2014 issued by the 2nd respondent.
- Annexure A3: Copy of the office memorandum bearing No.F.No.6/2/2012-FY (DP)/748 dated 5.12.2014 issued by the 5th respondent.
- Annexure A4: Copy of the letter dated 5.12.2014 issued by the applicant to the 2nd respondent.
- Annexure A5: Copy of the order bearing No.F.07/02/2014-FY/310 dated 16.1.2015 issued by the 3rd respondent.
- Annexure A6: Copy of the covering letter issued by applicant for having submitted the certificate under Rule 53 (2) of F.R.
- Annexure A7: Copy of the certificate under Rule 53 of F.R. submitted by the applicant.
- Annexure A8: Copy of the representation dated 10.3.2015 submitted by the applicant to the 2nd respondent.
- Annexure A9: Copy of the order bearing No.F.07/03/2014-FY/357 dated 18.2.2015 issued by the 2nd respondent.
- Annexure A10: Copy of the notice bearing F.No.6/2/2012-FY (DP)/540 dated 27.3.2015 issued by the 5th respondent.
- Annexure A11: Copy of the joining report dated 24.4.2015 submitted by the applicant.
- Annexure A12: Copy of the office memorandum bearing F.No.6/02/2012-FY(DP)/637 dated 24.4.2015 issued by the 5th respondent.
- Annexure A13: Copy of the letter bearing F.No.6/2/2012-FY (DP)/868 dated 3.7.2015 issued by the 5th respondent.
- Annexure A14: Copy of the joining report dated 30.9.2015 submitted by the applicant to the 3rd respondent.
- Annexure A15: Copy of the office note file of the 5th respondent obtained under Right to Information Act.
- Annexure A16: Copy of the Minutes of the Suspension Review Committee held on 5.8.2015.
- Annexure A17: Copy of the covering letter dated 28.11.2014 served to the applicant along with Annexure A2.
- Annexure A18: Copy of the reply dated 17.4.2015 issued by the applicant to the 2nd respondent.
- Annexure A19: Copy of the office memorandum bearing F.No.6/2/2012-FY (DP) (Part)/1021 dated 25.8.2015 issued by the 5th respondent to the applicant.
- Annexure A20: Copy of the envelop containing Annexure A19 which the applicant received on 31.8.2015.
- Annexure A21: Copy of the letter dated 10.9.2015 issued by the 3rd respondent along with the copy of the letter dated 1.9.2015 of the inquiring authority to the applicant.
- Annexure A22: Copy of the daily order bearing F.No.36/1/2015-Agri dated 30.9.2015 of the inquiry authority.
- Annexure A23 series: Copies of the page Nos.1 and 2 of the Part File bearing No.F.No.7/3/14-Fy (Part).
- Annexure A24 series: Copies of the page Nos.3 and 4 of the Original File bearing No.F.No.7/3/2014-Fy.
- Annexure A25: Copy of the page No.11 of the Note file of the 3rd respondent.

Annexure A26 series: Copy of the Inspection Report of the Assistant Director of Fisheries, Kavarathi.

Annexure A27: Copy of the Office Memorandum bearing No.44/1/2009-Fy/105.

Annexures filed by the respondents:

Annexure R1(a): Copy of the order F.No.7/3/2014-FY (Part)/611 dated 14.8.2015.

Annexure R1(b): Copy of the order F.No.63/1/2012-FY (DP)211 dated 27.11.2014.

Annexure R1(c): Copy of the Minutes of the Suspension Review Committee dated 13.2.2015.

Annexure R1(d): Copy of the order F.No.7/3/2014-FY (Part)/611 dated 14.8.2015.

Annexure R1(e): Copy of the Minutes of the suspension review committee held on 3.2.2016.

Annexure R1(f): Copy of the order F.No.7/3/2014-FY dated 15.2.2016.

Annexure R1(g): Copy of the Minutes of the meeting held on 29.7.2016.

Annexure R1(h): Copy of the order F.No.7/3/2014-FY/248 dated 8.8.2016.