

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No.290/00096/2018

Jodhpur, this the 25th September, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Nadan Singh Meena S/o Shri Moola Ram, aged about 52 years, R/o Railway Quarter No.E-6, Railway Colony Sojat Road, at present employed on the post of SSE (P Way Sojat Road, NWR, District Pali.

.....Applicant

By Advocate : Mr. J.K. Mishra

Versus

- (1) Union of India through General Manager, North-Western Railway, Hqrs. Jaipur Zone, Chainpura, Jagatpura, Jaipur Rajasthan.
- (2) Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
- (3) Senior Divisional Engineer (Co-ordination), North Western Railway, Ajmer Division, Ajmer.

.....Respondents

By Advocate : Mr. Girish Sankhla

ORDER (ORAL)

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"That the respondents may be directed to treat the period from 12.09.2016 and onwards till he is taken on duty on 18.01.2018 as invalid suspension period and the same may be treated as spent on duty for all purposes and the applicant allowed the due salary and allowance including TA/DA less subsistence allowances already paid, along with interest at 9% pa."

2. It is the submission of the applicant that he was placed under suspension vide memo dated 15.06.2016 and his Headquarter was changed at the instance of ACB, Rajasthan, from Sojat Road to DRM Office Ajmer vide letter dated 14.06.2017. He had applied for anticipatory bail in the meantime, but he did not get the same. He only got a regular bail from Hon'ble Rajasthan High Court vide order dated 27.01.2017. The applicant further submitted that his subsistence allowance was enhanced from 50% to 75% vide letter dated 19/22.05.2017. The respondents vide order dated 18.01.2018 revoked the suspension of the applicant. It is the contention of the applicant that his suspension has neither been reviewed nor any specific order extending the suspension period passed within a period 90 days from the date of suspension. Therefore, as per Rules, the action of the respondents in keeping the applicant under suspension after the expiry of said period of 90 days i.e. on 12.09.2016 is invalid, unjust and violative of Rules in force.

3. The respondents have filed their reply on 05.07.2018 stating that the applicant was suspended due to lodging of a criminal case under Sections 7, 13 (1)(d), 13 (2) of the PC Act, 1988 and read with Section 120 B of the IPC for which he was arrested and as per the direction of the ACB proceedings he was suspended on 15.06.2016

due to remaining under the Judicial custody. The applicant was granted the benefit of bail by the Hon'ble Rajasthan High Court, Jodhpur vide order dated 27.02.2017 and the applicant submitted his presence by way of submitting the application before the competent authority on 27.02.2017. It is further stated that the directions were sought from the Anti Corruption Department, Jaipur and accordingly his suspension was revoked vide order dated 18.01.2018 and he was reinstated in service. It is further submitted that the applicant was already granted the increase in allowances from 50% to 75% vide letter dated 19/22.05.2017. It is further submitted that the respondent applicant has wrongly submitted that his suspension has neither been removed nor any specific order passed whereas the case of the present applicant is still pending regarding the offences before the competent Court. Now, the applicant has been reinstated on 18.01.2018 and his suspension has been revoked after submitting the charge sheet dated 14.11.2017 in the competent Court, hence all the proceedings have been performed in accurate and appropriate manner. It is further stated that the respondents has never received any representation dated 12.12.2017, therefore, the present OA is totally being false, liable to be rejected.

4. Heard Mr. J.K. Mishra, learned counsel for the applicant and Shri Girish Sankhla, learned counsel for the respondents and perused the material available on record.

5. Learned counsel for the applicant while reiterating the submissions made in the OA stated that the only question involved in the present matter is that whether the respondents have reviewed the suspension order of the applicant as per rules or not. It is

contention of the learned counsel for the applicant that the respondents have not reviewed the suspension order of the applicant after expiry of 90 days period from the date of passing of the suspension order. He further submitted that as per the clause (7) of the notification RBE No.94/2006 it is provided that "***the review of an order of suspension shall be done by the authority which is competent to modify or revoke the suspension, on the recommendation of the review committee constituted for the purpose, and such competent authority shall pass orders either extending or revoking the suspension before expiry of ninety days from the date of order of suspension. Subsequent review 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.***". He further relies on the clause 4 of the notification i.e. RBE No.95/2006 wherein it is very clearly provides that "***Onus will be on the Suspending Authority to take a view regarding the suspension and if it is not proposed to revoke the suspension, to forward the necessary papers to the competent authority well before the expiry of ninety days from the date of suspension, for further action in terms of provisions of sub-rule (6) and sub-rule (7) of Rule 5 of Railway Service (Disciplinary Authority) Rules, 1968.***"

6. The grievance of the applicant is that since the respondents have not reviewed his suspension as per the aforesaid rules within the period of 90 from date of suspension order and have not passed any specific order either extending or revoking the suspension of the

applicant by 12.09.2016, therefore, the suspension period of the applicant after 12.09.2016 till his reinstatement are unjust, illegal and violative of the aforesaid rules. He therefore submitted that the applicant is entitled for full pay and allowances for the said period by treating him as on duty for all purposes and non-treating the said period as spent on duty is arbitrary, violative of Articles 14 and 21 of the Constitution of India. In support of his argument, he relied upon the judgment of Hon'ble Apex Court Court passed in Union of India & Ors. V. Dipal Mali, reported in AIR 2010 SC 336 and the order of this Tribunal passed in Dharma Pal Dhanka vs. Union of India Ors (OA No.304/2012 decided on 07.05.2013). Learned counsel for the applicant submits that the aforesaid judgment squarely covered in the present case as the controversy involved in those cases are similar to the present case.

7. Learned counsel for the respondents, on the other hand, submitted that the seriousness of the charge to be seen, since the applicant was absconding and was beyond 48 hours in judicial custody, therefore, the action of the respondents are just and proper and calls for no interference from this Tribunal.

8. Considered the rival contentions of both the parties and perused the material available on record. It is clear that the applicant was placed under suspension vide memo dated 15.06.2016. It seems that the applicant absconded and was arrested and taken in judicial custody on 14.02.2017. He was released on bail by the Hon'ble High Court of Rajasthan in SB Criminal Misc. Bail No.1739/2017 (Annexure-A/4) vide order dated 27.02.2017. The respondents have reinstated the applicant after revocation of the suspension order of

the applicant vide order dated 18.01.2018. He was also granted subsistence allowances at 50% which was subsequently increased by 75% vide letter dated 19/22.05.2017 issued by the competent authority. In the present case, the applicant has challenged the legality of the order of suspension after lapse of 90 days without the same being extended by the review authority as required under sub-rule 6 of Rule 10 of CCS (CCA) Rule, 1965.

9. It was pointed out by the learned counsel for the respondents that the suspension of the applicant was reviewed and revoked by the reviewing committee, but he is unable to show any such order whereby the suspension of the applicant was reviewed by the Reviewing Committee within a period 90 days from the date of order of suspension. It is very clear that as per clause (7) of the notification RBE No.94/2006 that "***the review of an order of suspension shall be done by the authority which is competent to modify or revoke the suspension, on the recommendation of the review committee constituted for the purpose, and such competent authority shall pass orders either extending or revoking the suspension before expiry of ninety days from the date of order of suspension. Subsequent review 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.***". It is also clear from perusal of clause 4 of the notification i.e. RBE No.95/2006 that "***Onus will be on the Suspending Authority to take a view regarding the suspension and if it is not proposed to revoke the suspension, to forward the necessary papers to the competent authority well before***

the expiry of ninety days from the date of suspension, for further action in terms of provisions of sub-rule (6) and sub-rule (7) of Rule 5 of Railway Service (Disciplinary Authority) Rules, 1968.

“ Admittedly, in the present case, the same has not been done, therefore, the suspension of the applicant after 90 days from passing of the suspension order is unjust, invalid and against the rules in force.

10. I have also perused the judgment cited by the learned counsel for the applicant. The cases cited by the learned counsel for the applicant are squarely covered in the present case as the controversy involved in the present case is the same.

11. Admittedly, in the present case, the suspension of the applicant has not been extended/reviewed by the Reviewing authority before expiry of 90 days from the date of suspension as is evident from the pleadings made by the parties and the documents placed on record. Since the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, because the competent authority has neither reviewed nor extended the suspension of the applicant within the period of 90 days. Subsequent review and extension, in my view, could not survive the order which had been invalid after the expiry of 90 days from the date of suspension. Therefore, the suspension period of the applicant from 12.09.2016 onwards till his reinstatement on 18.01.2018 is invalid suspension as the competent authority has not extended the said period of suspension of the applicant as per rules in force. Therefore, looking to the facts and circumstances of the case, the respondents are directed to treat the period of the applicant from 12.09.2016 and

onwards till the applicant taken on duty i.e. on 18.01.2018 as the period spent on duty for all purposes. They are also directed to pay the due salary and allowances including TA/DA after deducting the subsistence allowances already paid to the applicant within a period of three months from the date of receipt of a copy of this order.

12. Accordingly, the OA is disposed of as stated above with no order as to costs.

**[Hina P. Shah]
Judicial Member**

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