

GAHC010261922023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/448/2023

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE DEFENCE SECRETARY, MINISTRY OF DEFENCE,
101-A, SOUTH BLOCK, NEW DELHI- 110001.

2: THE JOINT SECRETARY (BORDER ROADS)
MINISTRY OF DEFENCE

ROOM NO. 418

B WING 4TH FLOOR

SENA BHAWAN
NEW DELHI- 110010.

3: THE DIRECTOR GENERAL
BORDER ROADS ORGANISATION
SEEMA SADAK BHAWAN

RING ROAD
DELHI CANTT.

NEW DELHI- 110010.

4: THE ADDITIONAL DIRECTOR GENERAL (EAST)
BORDER ROADS ORGANISATION
HQ ADGBR (EAST)
JALUKBARI

LANKESWAR
GUWAHATI

ASSAM
PIN- 781014

VERSUS

GO 2148X SRI VINAY KUMAR SINGH AND 2 ORS.
S/O. LATE HARIHAR BAHDUR SINGH,
HQ ADGBR (EAST), JALUKBARI, LANKESWAR, GUWAHATI, ASSAM, PIN-
781014.

2:THE MANAGING DIRECTOR
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS

3RD FLOOR
PTI BUILDING

4-PARLIAMENT STREET

NEW DELHI- 110001.

3:THE CHIEF VIGILANCE OFFICER

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED

MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS

3RD FLOOR
PTI BUILDING

4-PARLIAMENT STREET

NEW DELHI- 110001

Advocate for the Petitioner : MR. S K MEDHI

Advocate for the Respondent : FOR CAVEATOR

BEFORE

HON'BLE THE CHIEF JUSTICE (ACTING) MR. LANUSUNGKUM JAMIR

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

O R D E R

18.12.2023

(L.S. Jamir, C.J(Acting))

Heard Mr. S. K. Medhi, learned CGC for the appellant. Also heard Mr. D. Bora, learned counsel appearing for the respondent No.1/writ petitioner and Mr. R. K. Talukdar, learned standing counsel, NHIDCL for the respondent No. 2 and 3.

2. There were some allegations in the discharge of the duties of the respondent No.1 while on deputation in the National Highways and Infrastructure Development Cooperation Ltd. (NHIDCL). Accordingly, by an order dated 01.11.2022, issued by the Under Secretary to the Govt. of India, Ministry of Defence, Border Roads Wing the respondent No.1/writ petitioner was placed under suspension with immediate effect, pending a Disciplinary Proceeding. Thereafter, by an order dated 3rd of February, 2023, issued by the Deputy Secretary to the Govt. of India, Ministry of Defence, the suspension order was further continued.

3. The respondent No.1 as writ petitioner approached the learned Single Judge by filing WP(C)/1074/2023, challenging the order dated 3rd of February,

2023 on the ground that the review was made after 90(ninety) days and therefore, the suspension order should be set aside.

4. The learned Single Judge after hearing the parties, disposed of WP(C)/1074/2023 by a judgment dated 18.10.2023 and the operative portion reads as under:

“20. It is the admitted position in the instant case that the review of the order of suspension was done only on 03.02.2023. It is clear that the said review was not done within the mandatory period of 90 days as required under the law. The Hon’ble Supreme Court in the case of Dipak Mali (supra) has clearly laid down that review done beyond a period of 90 days would not serve the purpose of law and would have no consequence. In the instant case, it is also admitted that no disciplinary proceeding has been initiated by issuance of any show cause notice prior to the expiry of the said period of 90 days.

21. Under the aforesaid facts and circumstances, this court has no other alternative but to hold that the impugned order of review dated 03.02.2023 is unsustainable in law and therefore, would not have the effect of continuation of the suspension order dated 01.11.2022. Consequently, the suspension order dated 01.11.2022 stands set aside and quashed.”

5. Being aggrieved with the order dated 18.10.2023, passed by the learned Single Judge, the appellants are before this Court by way of the present writ appeal.

6. It is an undisputed fact that the respondent No.1 was placed under

suspension by order dated 1st of November, 2022 with immediate effect. Thereafter, the order of review of suspension order was passed on 03.02.2023. The only question that arises before us is whether the review order was passed after the expiry of 90(ninety) days after the issuance of the initial suspension order dated 1st of November, 2022.

7. Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules 1965 was amended by way of an Office Memorandum dated 12.07.2007 by inserting the word "ninety days from the effective date of suspension".

8. In the case of *State of Punjab Vs. Khemi Ram Reported in AIR 1970 SC 214*, the Hon'ble Supreme Court has held as under:

"17. The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word communicate is to impart, confer or transmit information. (cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams dated July 31, and August 2, 1958 were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958, i.e... before August 4, 1958 when he would have retired ? It will be seen that in all the decisions cited before

*us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus may go away from the address given by him for service of such orders, or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word communication ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab v. Amar Singh (1)* contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."*

9. Coming to the case in hand, what we have noticed in the first suspension order dated 1st of November, 2021, is that the suspension would come with immediate effect i.e., 1st of November, 2022. Once a suspension order is issued and the same is communicated to the Government servant, we are of the view

that it is immaterial when the Government servant received the order particularly when the suspension order stipulates that it be with immediate effect. In the present case, the order of 1st of November, 2022, clearly states that it is with immediate effect. This is in consonance with the amended Rule 10 of the CCS (CCA) Rules 1965. We therefore hold that the 90(ninety) days for review of the suspension order dated 1st of November, 2022, would expire w.e.f 29th of January, 2023. The review of the suspension order was issued only on 03.02.2023.

10. In that view of the matter, we have no hesitation to hold that the review of the suspension order dated 1st of November, 2022, was done after the expiry of the 90(ninety) days as stipulated under the relevant rules. Accordingly, we see no merit in the present appeal and the same is dismissed.

No costs.

The appellants are directed to reinstate the respondent No.1/writ petitioner forthwith.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant