

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7279 of 2015

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1. Union of India through the Central Provident Fund Commissioner, Employees' Provident Organization, Bhavishya Nidhi Bhawan, New Delhi.
 2. The Additional Central Provident Fund Commissioner (U.P. & Bihar), Employees' Provident Organization, Nidhi Bhawan, Sarvoday Nagar, Kanpur.
 3. The Regional Provident Fund Commissioner, Employees' Provident Organization, Bhavishya Nidhi Bhawan, Road No. 6, R. Block, Patna - 1.
 4. Mr. Rajesh Kumar Singh, The Regional Provident Fund Commissioner-II, Employees' Provident Organization, Sub-Regional Office, Laxmi Chowk, Muzaffarpur.

.... Petitioner/s

Versus

Pankaj Kumar, Son of Late Vijay Kumar Gupta, Resident of Village - Rikabganj, Durga Asthan, P.O. - Tikari, P.S. - Tikari, District - Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Verma, Sr. Advocate.
Mr. Prashant Sinha, Advocate.
For the Respondent/s : Mr. Bishnukant Dubey, Advocate.
Mr. Sanjeev Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-08-2016

Heard learned counsel for the parties.

2. The order dated 20th of November, 2014 passed by



the learned Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) in O.A. No. 050/00127/2014 is subject matter of challenge in the present writ application, whereby the suspension of the respondent (hereinafter referred to as “the applicant”) was found to be invalid having not extended the same within the validity period of suspension.

3. The applicant was suspended on 30th of September, 2013 in terms of Sub Rule (1) (a) of Rule 6 of the Employees’ Provident Fund Staff (Classification, Control & Appeal) Rules, 1971 (for short “the 1971 Rules”) with immediate effect. Thereafter, the applicant was charge-sheeted on 26th of December, 2013.

4. The stand of the applicant before the Tribunal was that there was a Suspension Review Committee which held its meeting on 6th of January, 2014 to review the suspension of the applicant and it was decided to extend the suspension for a period of 180 days with effect from 30th of December, 2013. The argument of the applicant is that since such extension has not been made within 90 days, therefore, the suspension is ineffective.

5. The Tribunal relied upon Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as “1965 Rules”) to hold that the competent

authority can extend, modify or revoke the suspension before the expiry of 90 days. Therefore, the action of the petitioners to extend the suspension beyond 90 days is illegal.

6. The argument of learned counsel for the petitioners is that the suspension of the applicant is under the 1971 Rules and such Rule does not provide for a periodical review, as is the case under 1965 Rules. The reference is made to Rule 6 (1) and 6(5)(a) of the 1971 Rules, which reads as under:-

“6.(1). The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Central Govt./Central Board may place an employee under suspension:-

- (a) Where a disciplinary proceedings against him contemplated or is pending; or
- (aa) Where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the state; or
- (b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.” (Emphasis supplied)

7. The above provisions are in contradiction to the

provisions of Rule 10 Sub Rules (6) and (7) of the 1965 Rules,
which reads as under:-

“(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 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.

(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.”
(Emphasis supplied)

8. A comparison of the two set of Rules clearly shows that there is no mandate under the 1971 Rules to review the suspension period periodically, as is the case of the employees of the Central Government governed by 1965 Rules. Therefore, the entire basis of the reasoning given by the learned Tribunal is on wrong premise and, thus, cannot be sustained.

9. However, learned counsel for the petitioners argued that Rule 2 (k) of the 1971 Rules provide that in case any word or expression is not used in the Rules, then the words and expressions used in the relevant rules applicable to Central Government

employees would be applicable whereas, Rule 30 provides that if there is any doubt with regard to interpretation of any of the provisions of these Rules, Central Government may clarify such doubts.

10. We find such argument to be wholly misplaced. Rule 6 of the 1971 Rules specifically deals with suspension including the period thereof. Therefore, it cannot be said that the words and expressions used in the Rules have not been defined, therefore, the corresponding clauses and the relevant Rules applicable to employees of Central Government Service would be applicable. It is wholly untenable argument. Similarly, Rule 30 is not again applicable as the matter is required to be referred to the Central Government if there is any doubt as to the interpretation of any provisions of the Rules. Since the Rules are specific and categorical which contemplate that suspension will continue unless it is modified or revoked, therefore, the time limit for suspension cannot be read into the Rules. It is only in the event the Rules are silent, the other Rules applicable to the employees of the Central Government may be relevant but such is not the position in the present case.

11. Another argument of the learned counsel for the applicant before the Tribunal is that the proceedings of the Review Board show that the matter was considered for extension of the

suspension as if the applicant is governed by the 1965 Rules.

12. We do not find any merit in the said argument as well. The Review Committee considered the continuation of suspension of the applicant to find out as to whether the suspension is required to be modified or revoked. Such consideration is in terms of Rule 6 (5)(a) of the 1971 Rules and therefore, it cannot be said that since the Suspension Review Committee has considered the periodical continuation of suspension, therefore, 1965 Rules cannot be said to be inapplicable to the applicant.

13. Consequently, the writ application is allowed, the order passed by the Tribunal is set aside and the Original Application is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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