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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9594/2015**

Date of decision: 6th April, 2016

UNION OF INDIA & ORS Petitioners
Through Mr. R.V. Sinha and Mr. R.N. Singh,
Advocates

versus

DEEPAINDRA KUMAR Respondent
Through Mr. M.K. Bhardwaj, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

This writ petition by the Union of India and three others assails order dated 2nd January, 2014, passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short) allowing OA No.4415/2012, filed by Deepaindra Kumar, the respondent before us. The operative portion of the impugned order directs that the respondent would be reinstated in service with effect from 20th October, 2012 with all consequential benefits.

2. The respondent was arrested in FIR No.3/2012 dated 31st January, 2012, registered under Section 7 of the Prevention of Corruption Act, 1988. As the detention had exceeded 48 hours, a deemed suspension order dated 3rd February, 2012 with effect from 31st January, 2012 was passed under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (Rules for short). The order stipulated that the respondent would remain suspended till further orders.

3. The respondent was granted bail in the criminal case vide order dated 2nd April, 2012 and subsequently released.
4. The respondent by office order dated 24th April, 2012 was informed that the Committee had reviewed the suspension of the respondent on 23rd April, 2012 and decided to continue with the suspension till further orders.
5. By another order dated 30-31st October, 2012, the respondent was informed that the competent authority, on 30th October, 2012, had reviewed the respondent's suspension under sub-rule 6 of Rule 10 of the aforesaid Rules and payment of subsistence allowance under Fundamental Rule 53(1)(ii)(a). The competent authority had decided to extend the suspension for a further period of 180 days and that there shall not be any decrease or increase in the subsistence allowance.
6. The Suspension Orders dated 3.2.2012, 24.4.2012 and 30-31.10.2012 were challenged before the Tribunal in the aforesaid OA with the following prayers:

*“i) To quash and set aside the impugned suspension order dated 3.2.2012, 24.4.2012 and 30/31.10.2012 being illegal.
ii) To declare the action of the respondents in continuing the applicant under suspension even after the suspension lapsed w.e.f. 1st May 2012 and again 20.10.2012, as illegal, arbitrary and unconstitutional.
iii) To declare that the applicant is deemed in service as ITO w.e.f. 21.10.2012 and accordingly issue directions to pay all pay and allowances along with arrears and 12% interest.
iv) To direct the respondents to re-instate the applicant with all consequential benefits including arrears from due date.”*

7. The facts narrated above would show that the respondent was arrested on 31.1.2012. Thereafter, suspension order dated 3.2.2012 was issued, but effective from 31.1.2012. This suspension order was till further orders. It did

not specify the end date or a time period. Sub-rule (7) to Rule 10 of Rules postulates:

“(7) An order of suspension made or deemed to have been made under sub rule (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.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub rule 2, if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release is intimated to his appointing authority, whichever is later."

As per sub-rule (7), the initial order of suspension would be valid and operative for a period of 90 days, unless it is extended for a further period before the expiry of 90 days. The proviso stipulates that no review shall be necessary in case of deemed suspension under sub-rule (2), if the government servant continues to be under detention at the time of completion of 90 days of suspension and the period of 90 days will begin and counted from the date the government servant is released from detention or the date on which the fact of his release is intimated to the appointing authority, whichever is later. There is a typographical error in the proviso. The word 'suspension' should be read as 'detention'.

8. The implication and the mandate of the proviso to sub-rule (7) of the Rule is that, if the government servant, on deemed suspension, continues to remain under detention for a period of 90 days or more, no review is required within a period of 90 days. Secondly, in such cases, the date of release from detention, or the date of release from detention when intimated

to the appointing authority, whichever is later, is the starting point for counting the period of 90 days in sub-Rule (7) to Rule 10. In the present case, as noticed above, the respondent was released from detention, pursuant to the Bail Order dated 2.4.2012. This factum was communicated to the authorities by the petitioner vide letter 4.4.2012. It is, therefore, obvious and clear that the decision to extend the deemed suspension, after the order dated 3.2.2012, was passed on 23.4.2012, before the expiry of period of 90 days. Possibly, the authorities had taken the date of release of the respondent as relevant. Thus, the first extended deemed suspension was passed before the expiry of the period of 90 days. This period of 90 days was from 3.2.2010 till 2.5.2010.

9. Rule 10(6) reads:-

“(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 the 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.”

The first and subsequent extension of deemed suspension would be in terms of Rule 10(6) for a period of 180 days. The period of 180 days, if counted from 3.5.2012, would have come to an end on 29.10.2012. In the present case, the Suspension Review Committee had met on 30.10.2012 to review the suspension of the respondent, and after detailed discussion, the following Minutes were drawn:

“As per the DOPT's O.M. No.11012/4/2003-Estt./(A) dated 7th January,

2004, a meeting was held on 30.10.2012 at 12:30 PM in the room of Chief Commissioner of Income Tax, Delhi-XII, New Delhi to review the suspension of Sh. Deependra Kumar, ITO against whom a case no.03/12 dated 31.01.2002 u/s 7/13 POC Act has been registered wherein allegation of bribery/corrupt practices have been levelled. Following members constituted the committee:

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|----------------------------|-----------------|
| 1. Sh. Raminder Kaushal | CCIT, Delhi-XII |
| 2. Smt. Anjali Tewari | CIT, Delhi-XII |
| 3. Smt. Geetmala Mohananey | CIT, Delhi-XIII |

As per 'ARREST REPORT' dated 01/02/12 from ACP, Anti Corruption Branch, GNCT of Delhi, "Sh. Joginder Singh Rathore lodged a complaint in A.C. Branch stating that Sh. Deepinder Singh, ITO, ward 34(2) was demanding a sum of Rs.6.00 lac as illegal gratification (which was later on settled for Rs.2.00 lakhs) for settling a complaint against him. On this a trap was organized by the officials and Anti Corruption Branch alongwith panch witness and accused Sh. Deepainder Kumar was caught red handed while demanding, accepting and obtaining illegal gratification of Rs.2.00 lakhs from complainant."

This undoubtedly is a sensitive matter. Investigations are pending at present before the Anti Corruption Branch, Govt. of NCT of Delhi, so the matter is yet not out of the ambit of investigation.

Therefore, it is recommended to extend the suspension of Sh. Deependra Kumar, ITO (under suspension) beyond 30th October, 2012 for a period of 180 days. The committee also recommended that there shall be no increase of decrease in the subsistence allowance being drawn at present by the suspender officer.

(Raminder Kaushal)	(Geetmala Mohananey)	(Anjali Tewari)
CCIT, Delhi-XII	CIT, Delhi-XIII	CIT, Delhi-XII"

[We have taken the aforesaid Minutes from the original file produced by the petitioner before us.]

10. After the aforesaid Minutes had been signed, another order dated 30.10.2012 was passed by the Commissioner of Income Tax-XII recording that it had been decided to extend the suspension of the respondent for a period of 180 days beyond 30.10.2012.

11. The lapse and the error made by the Tribunal in the impugned order is that they did not take into consideration the factum that the original order of suspension was valid for a period of 90 days and, therefore, would come to an end on 2.5.2012. On the erroneous and wrong assumption that the first deemed suspension period came to end on 23-24.4.2012, that the impugned order was passed. First period of 90 days and period of 180 days thereafter begin and end on the stipulated dates. Extension orders passed within or before 90/180 days would be effective on expiry of the earlier period of suspension and not from the date the extension order was passed.

12. The first extension order dated 24.4.2012, therefore, would not be effective from the date the order was passed; it would be effective after the period of 90 days has come to an end. The requirement of the sub-Rule(7) is that the extension order must be passed within 90 days. The extension order obviously would be effective only after the first period of 90 days is over. Read in this light, we do not think that the extension order dated 30.10.2012 can be faulted or it can be said that it was passed after a gap. The first extension came to an end on 29.10.2012 and on 30.10.2012 itself the suspension was extended for another 180 days.

13. There is another serious flaw and error in the reasoning given by the Tribunal. Even if, for the sake of arguments, we accept that the period of suspension had come to an end on 20.10.2012, the authorities could have passed a suspension order on a subsequent date. We have quoted above the Minutes of the Meeting held on 30.10.2012. A reading of the said Minutes would indicate that the Suspension Review Committee had examined threadbare the entire issue of suspension and confirmation thereof. They formed the opinion that the respondent should be and remain under

suspension. No doubt, in the last paragraph, they have used the expression “it is recommended to extend the suspension”, but the use of the said words would not negate the earlier discussion. The discussion and reasoning would show that there was a fresh application of mind on the facts and allegations against the respondent and on the basis of the material, the Suspension Review Committee had opined that the respondent should be under suspension and it would be wrong to permit him to join duties.

14. The view we have taken finds support from the decision of this Court in ***Government of National Capital Territory of Delhi v. Beena Mehra, 2008(155) DLT 583***. The issue which arose for consideration in the said case was whether the authorities could pass a second suspension order after the earlier suspension period had come to an end or had been revoked. In the said case, the government employee had suffered an order of deemed suspension which had come to an end after the expiry of 90 days, without an order of extension of suspension being passed. In these circumstances, a fresh suspension order dated 2.5.2006 was passed. On the same date, the authorities had also revoked the earlier suspension. Revocation of suspension order was unsustainable because it had already come to an end after the expiry of 90 days. Rejecting the contention of the government employee that the suspension order dated 2.5.2006 was invalid, the Division Bench held as under:

“8. In so far as the first principal reason given by the Tribunal is concerned, namely, that there was no additional or fresh material before the Review Committee to warrant the Respondent’s suspension, it must be noted that her first suspension lapsed or became invalid by operation of law. This was through the application of Rule 10(7) of the CCS (CCA) Rules inasmuch as the necessary review for extension of the suspension did not take place

within 90 days of the deemed suspension. It is not as if the suspension was invalid on merits.

9. On the contrary, the basis on which the Respondent was initially suspended continued and the original reason for placing her under suspension remained. The revocation of her suspension was nothing but the completion of a mere formality, the review postulated by law not having taken place within the specified time limit. Consequently, there was no necessity of any additional or fresh material coming into existence for placing the Respondent under suspension for the second time. The material available with the Petitioners, when they placed the Respondent under suspension for the first time, was relevant and live for her suspension.

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12. Learned counsel for the Respondent submitted that two contradictory orders were passed on 2nd May, 2006: one revoking the suspension of the Respondent and the second again placing her under suspension. We do not find any contradiction in this. The revocation of the Respondent's suspension was a mere formality and a foregone conclusion because of the existence of Rule 10(7) of the CCS (CCA) Rules. All that the Petitioners did was to merely perform a ministerial act of putting its seal on the lapsing of the suspension order or the invalidity of the continuance of the Respondent's suspension. The second order no doubt required due application of mind by the Petitioners. But, we have indicated above, there was full application of mind to all relevant facts and it is only thereafter that the Respondent was placed under suspension. We do not see any error in the Review Committee taking both the decisions on the same day, one after the other.

13. The second principal reason given by the Tribunal for its conclusion is that the provisions of Rule 10(6) and 10(7) of the CCS (CCA) Rules were not complied with. We do not find any procedural or substantive requirement in the Rules for passing a second suspension order. The Tribunal appears to have proceeded on the assumption that the second suspension order was an extension of the first suspension. Factually this was not so. The matter was considered afresh by the Review Committee, which concluded that the Respondent's suspension was warranted. It is then that the second suspension order was passed. No procedural

fault was pointed out with the decision taken to once again place the Respondent under suspension.

14. Even otherwise, we are of the opinion that no hard and fast rule can be laid down for deciding when an employee, whose suspension is revoked, can be placed under suspension for a second time. There is no doubt that such a decision should be taken with circumspection, but the justification for the second suspension would depend on the facts of each case. Rule 10(6) and 10(7) of the CCS (CCA) Rules do not create any procedural or substantive bar for a second suspension, as suggested by the Tribunal.”

The Division Bench has referred to the decision of the Supreme Court in ***U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan, 1993 Supp. (3) SCC 483*** and the decision of the Full Bench of this Court in ***Delhi Public School v. Director of Education, 100(2002) DLT 530*** in support of their ratio and reasoning.

15. Another Division Bench of this Court in ***S.K. Srivastava v. Union of India & Ors. in WP(C) No.482/2008***, decided on 26.3.2009, has held as under:

“6. It would be necessary to point out that calling the aforesaid direction of the Tribunal the Review Committee Meeting was held which decided, after taking into consideration certain facts, to continue the petitioner to remain under suspension and accordingly orders dated 7-8.11.2007 were issued which are annexed along with the writ petition. If this decision is taken in the meeting of Review Committee that is purely because of the reason that Tribunal had directed the holding of Review Committee for such a purpose. In any case, this order can be treated as order of fresh suspension to be given effect to with effect from the date of passing of the order. Effect of this would be that the petitioner would be entitled to the salary with effect from 27.6.2007 till 8.11.2007 when the fresh order is passed. However, if the petitioner is aggrieved with this order on any ground whatsoever the petitioner would be at liberty to challenge that order on all grounds available to him.”

A reading of the aforesaid paragraph would show that the Court had observed that passing of the order by the Suspension Review Committee can be treated as a fresh order of suspension which would be given effect to from the date on which the order was passed.

16. Learned counsel for the respondent has relied upon the decision of the Supreme Court in *Union of India & Ors. v. Dipak Mali (2010) 2 SCC 222*. The Supreme Court in the said case had dealt with the controversy where the suspension order had lapsed as no extension order was passed within the period of 90 days. In the said case, the review had not been conducted within 90 days from the date of first suspension. The order of deemed suspension had ceased to have effect after a period of 90 days. The Supreme Court observed that subsequent review or extension could not have revived, an order which had already become invalid. The two decisions of the Delhi High Court, referred to above, treat the order of suspension as effective from the date when they were passed.

17. Learned counsel for the petitioners has also referred to the decision in *Ajay Kumar Choudhary v. Union of India & Anr., (2015) 7 SCC 291*. The said decision has no application to the facts of the present case. In the said case, the government employee was placed under suspension which was extended from time to time without departmental proceedings being initiated against him by serving a charge-sheet. The suspension order had been passed in contemplation of the departmental proceedings. In the said context and factual background, the Supreme Court had made adverse observations and quashed the suspension order. In the present case, the respondent has been suspended pursuant to his arrest in a case relating to the Prevention of

Corruption Act.

18. In the facts of the present case, we have noted and recorded that the order dated 23.4.2012 extending the suspension was passed within time. This order would be effective from 3.5.2012. The second order of extension suspension was effective for the next 180 days, i.e., upto 29.10.2012. On 30.10.2012, it was on review it was decided to extend the suspension. Even otherwise, the order of suspension dated 30.10.2012 would be effective and operative from the date it was passed.

19. For the aforesaid reasoning, we allow the present writ petition and set aside the order dated 2.1.2014 passed by the Tribunal allowing OA No.4415/2012. OA No.4415/2012 filed by the respondent would be treated as dismissed. No order as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

APRIL 06, 2016
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