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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9558/2007 & CM Appl.17969/2007**

UOI

..... Petitioner

Through: Mr.Rakesh Kumar, CGSC
versus

VIJAY KUMAR SHARMA

..... Respondent

Through: Mr.S.K.Gupta & Mr.Vikram Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

05.12.2018

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CM APPL. 6809/2018 (*early hearing*)

Issue notice. Mr. S. K. Gupta, learned counsel appearing on behalf of respondent accepts notice.

For the reasons mentioned in the application, the application is allowed.

W.P.(C) 9558/2007 & CM Appl.17969/2007

1. Aggrieved by the extension of an order of suspension dated 06.07.2004 [served on 13.07.2004], the respondent [hereafter referred to as the 'applicant'] approached the Central Administrative Tribunal [hereafter referred to as 'CAT'] for suitable directions. After considering the Union's counter affidavit and contentions resisting the relief [primarily on the ground that the date of extension is effective from the date of service of the notice

and that the period of limitation stipulated in Rule 10 (6) of the concerned Rules is to be reckoned accordingly], the CAT held against the establishment and quashed the order extending the period of suspension.

2. The facts of the case are that the petitioner was working as Assistant Labour Commissioner. On the allegation that he was caught red-handed along with another employee, by the Anti Corruption Bureau, allegedly accepting a bribe, an order of suspension was issued on 06.07.2004. The Union's case is that the suspension order had to be served upon the applicant, who had then proceeded to Delhi and was in fact deemed to have been served on 13.07.2004. In accordance with Rule 10 (6), the decision whether to continue with the suspension or otherwise had to be taken within ninety days. The Union issued an extension order on 08.10.2004 which was continued thereafter by subsequent review orders till 03.10.2006. In the meanwhile, the appellant approached the CAT contending that the first review [by an order dated 08.10.2004] was contrary to the Rule. The CAT accepted his contention and quashed the first extension order made on 08.10.2004 and all subsequent extension orders.

3. The Union contends, based upon the record, that once it is understood that the service of any order likely to affect an employee's terms and conditions of service is made with effect from a particular date, that is the date reckonable for the purposes of Rule 10(6). On the other hand, learned counsel for the applicant relied upon the ruling of the Supreme Court in *Union of India and Others vs Deepak Mali* (2010) 2 SSC 222. He also highlighted that alongwith criminal proceedings initiated, pursuant to the allegations, the applicant was also served with a show cause notice initiating disciplinary proceedings. The suspension orders which had then continued,

were in fact revoked in 10.02.2004. It is also urged that on 23.01.2013, the President withdrew/discharged disciplinary proceedings thus placing a quietus to the entire matter, and in these circumstances, the Court should decline to interfere with the impugned order on Union's petition.

4. Rule 10(6) and (7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are extracted below:

“10. (6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before the expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purposes and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before the 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) Notwithstanding anything contained in sub-rule (5), 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.”

5. In *Deepak Mali's* case (supra), the Supreme Court preferred a literal interpretation of Rule 10(6), and enunciated the principles in the following terms:-

“10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioner's case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the

order of suspension was required to be done before the expiry

of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.”

6. Having heard learned counsels for the parties, this court is of the opinion that the judgment in *Deepak Mali* (supra), concludes the issue insofar as the present case is concerned since the suspension order was issued on 06.07.2004 and the extension or review took place by an order dated 08.10.2004. Furthermore, it appears that the applicant was not given salary for the period from 06.07.2004 to 13.07.2004, but paid only subsistence allowance, which fortifies the conclusions of the CAT.

7. In view of foregoing discussion, the writ petition has no merit. It is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 05, 2018

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