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

+ **W.P.(C) 13496/2018**

PRADEEP KUMAR MISHRA Petitioner

Through: Mr. Navin Kumar, Advocate.

versus

UNION OF INDIA AND ANRS. Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with
Mr. Abhishek Yadav and Mr. Jatin
Teotia, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **03.02.2020**

1. The Petitioner has filed this petition seeking issuance of appropriate writ to quash and set aside order of the Respondents dated 10th April, 2018 and 25th September, 2018 and has prayed for direction to revoke his suspension. The case of the Petitioner is that he joined Border Security Force (BSF) as sub-Inspector in June, 1997. The Petitioner was on deputation and working as Assistant Director in Intelligence Bureau, VS Branch, New Delhi from 22nd December, 2016. The allegation against the Petitioner is that he used his personal influence in obtaining steel work

sub-Contract from M/s Shapoorji Pallonji Qatar W.L.L (JV) to a private company, namely M/s Capacite Structures Ltd. However, the same sub-Contract work was not finally awarded to M/s Capacite Structures Ltd. The further allegation against him is that an illegal gratification was taken by Petitioner for exercising personal influence. The Petitioner was arrested by CBI on 22nd December, 2017 and an FIR No. RC AC-1 2017 A0008 was registered under Section 120 - B IPC and Section 9 and 10 of the PC Act, 1998. The Petitioner was placed under deemed suspension with effect from 22nd December, 2017 in terms of Sub Rule (2) of Rule 10 of CCS (Classification, control & Appeal) Rules 1965 by order of the Central Government dated 24th December, 2017. On 9th February, 2018 the Petitioner was repatriated back to BSF and he was initially posted to 16th Battalion BSF and thereafter to 11th Battalion BSF on 9th May, 2018.

2. A Committee was formed to review suspension period of the Petitioner beyond 90 days, i.e. beyond 21st March, 2018. The Committee submitted its recommendation to MHA for extension of suspension period of 180 days from 22nd March, 2018 as disciplinary proceedings were under progress. MHA granted its approval on 28th March, 2018 for extending suspension period of the Petitioner by another 180 days with effect from 22nd March, 2018 to 17th September, 2018. Order in this regard was issued on 10th April, 2018 and it was served upon the Petitioner on 11th May, 2018. As per the Petitioner, the order dated 10th April, 2018, passed for continuing the suspension is bad in law and the suspension order cannot be reviewed or extended after expiry of 90 days period from the initial suspension order. The Petitioner has relied upon sub Rules (6) and

sub Rules (7) of Rule 10 of CCS (Classification, control & Appeal) Rules 1965. The said Rules are quoted as under:

“(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 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 suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for the period exceeding one hundred and eighty days at time.

(7) Notwithstanding anything contained in sub-rule (5) (a), 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.”

3. The case of the Petitioner is that due procedure of law was not followed and there was no justification given for continuing his suspension and a totally non-speaking order was passed. The Petitioner has further relied upon sub Rule 3A of Rule 40A of Border Security Force Rules, 1969 in this regard, which is reproduced here under:

“(3A) 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 such order before expiry of 90days from the effective date of suspension and pass an order either extending or revoking the suspension and any subsequent review shall be made before the expiry of such extended period of suspension:

Provided that no extension of suspension shall be made for a period exceeding one hundred and eighty days a time.”

4. It has been further submitted that the Petitioner had filed an appeal dated 13th August, 2018 but without considering the said appeal, Respondent No.2 had further reviewed the suspension of the present Petitioner and submitted recommendation to MHA for extension of suspension period of the Petitioner beyond 18th September, 2018 as disciplinary proceedings were under process. The said recommendation was sent to MHA for approval and DG BSF had issued a letter dated 25th September, 2018 in this regard extending the suspension of the present Petitioner for another 180 days with effect from 18th September, 2018 to 16th March, 2019. Feeling aggrieved from these two orders dated 10th April, 2018 and 25th September, 2019 the Petitioner filed the present writ petition on the grounds that these orders are illegal and deserves to be set aside; the same are arbitrary, unfair and unreasonable; from the perusal of order dated 25th September, 2018 it is clear that Respondents have not considered the appeal filed by the Petitioner on 13th August, 2018; as per law effective date of communication of the order is the date of issue which is much beyond the period of 90 days/180 days from the respective dates of the suspension orders or extensions thereof, and subsequent extension cannot revive the order of initial suspension which had become invalid after the expiry of 90 days from the date of initial order. On these grounds, it has been prayed that the orders dated 10th April, 2018 and 25th September, 2018 passed by Director General, BSF extending the period of suspension of Petitioner be quashed.

5. Notice was issued on 19th December, 2018 to the Respondents.

Counter affidavit was filed by the Respondents in which the facts as detailed above have been reiterated. It has been submitted that the Petitioner was initially arrested on 22th December, 2017 and sent in police custody on 23rd December, 2017 and he was under deemed suspension with effect from 22nd December, 2017. To review suspension of the Petitioner, a Suspension Review Committee had assembled before completion of 90 days, i.e. on 16th March, 2018 under the chairmanship of the Director General BSF which recommended for extension of suspension for another 180 days. The case was forwarded to MHA for approval which was accorded on 28th March, 2018 and the same was conveyed to BSF on 3rd April, 2018. An order was issued dated 10th April, 2018 and copy of the same was sent to 11th Battalion BSF on 12th May, 2018. The process of review of suspension was initiated well before the expiry of stipulated period of 90 days. The appeal submitted by Petitioner dated 13th August, 2018 was examined in detail at FHQ BSF and DG BSF. The said appeal was rejected by DG BSF by issuing a speaking order dated 8th January, 2019. Delay pertaining to the extension of suspension is attributable to administrative reasons, i.e. time taken for processing of file in the department/MHA, so the same cannot be treated as violative of sub Rules (6) and (7) of Rule 10 of CCS (Classification, control & Appeal) Rules. The Respondent has followed the procedure.

6. The second Suspension Review Committee was held on 7th September, 2018 which deliberated upon the gravity of offence committed by the Petitioner and decided to extend the suspension of Petitioner for another 180 days. However, his subsistence allowance was enhanced to 75%. The

recommendation of the Committee was submitted to MHA for obtaining approval vide letter dated 7th September, 2018. MHA granted its approval on 20th September, 2018 and it was conveyed to BSF on 24th September, 2018 and order regarding extension of suspension for another 180 days with effect from 18th September, 2018 was issued vide order dated 25th September, 2018. The same facts have been repeated in reply to the grounds on merit and it has been prayed that the writ petition be dismissed.

7. We have heard arguments. It is an admitted case that the Petitioner was put under suspension with effect from 22nd December, 2017, initially for a period of 90 days and the said period expired on 21st March, 2018. The Suspension Review Committee met during the initial period of suspension of 90 days, i.e. on 16th March, 2018 and its recommendation to extend the suspension of the Petitioner was sent to MHA and the approval of MHA was granted on 28th March, 2018, which was conveyed to BSF on 3rd April, 2018 and ultimately the order was issued on 10th April, 2018, i.e., much beyond the last date of the 90 days period of initial suspension which expired on 21st March, 2018.

8. By the order dated 10th April, 2018 the suspension period was extended for 180 days and the said period was to expire on 7th September, 2018. The second Suspension Review Committee held its meeting on 7th September, 2018 and again recommended extension of suspension for further period of 180 days. The file was submitted to MHA on 7th September, 2018 itself; MHA approved the suspension on 20th

September, 2018 but conveyed the same to BSF on 24th September, 2018 and DG BSF issued the order of extension of suspension for another 180 days with effect from 18th September, 2018 on 25th September, 2018. Apart from relying upon Sub Rules 6 and 7 of CCS (CCA) Rules 1965 and Sub Rule 3A of Rule 40A of BSF Rule, learned counsel for the Petitioner has relied upon the judgments in the matter of *Union of India & Others v. Dipak Mali* (2010) 2 SCC 222, *Prabhanjan Kumar v. Union of India* 2010 Law Suit (Pat) 2203, *Ajay Kumar Choudhary v. Union of India & Ors.* Manu/Supreme Court/0161/2015, (2015) 7 Supreme Court 291, *State of Punjab v. Khemi Ram* 1970 AIR (Supreme Court) 214 and *State of M.P v. L.P. Tiwari* (1994) 4 SCC 468.

9. In *Union of India & Others v. Dipak Mali* (supra) It was held that the suspension would not survive after the period of 90 days unless it was extended after review. In *Prabhanjan Kumar v. Union of India* (supra) it was held as under:

“The effective date of communication of an order is the date of issue. In the instant case, the order extending the suspension of the petitioner was made and issued on 23rd March, 2010 i.e. much beyond the period of 90 days from 27.11.2009 and thereby the continued suspension of the petitioner after 25.2.2010 is violative of sub-rules (6) and (7) of Rule 10 of the Rules. In appreciation of such submission the order suspending the petitioner dated 27th November, 2009. Annexure-6 is quashed.”

10. In *Ajay Kumar Choudhary v. Union of India & Ors.* (supra) it was held that the suspension as well as each extension was done for the reasons elaborately recorded and within the currency of then prevailing

period of suspension, which is not the case in the present facts. In *State of M.P v. L.P. Tiwari* (supra) it was held that a charge sheet was issued in time but delinquent officer deliberately evaded the receipt of the same then no service of charge sheet during suspension can be set up. It is not applicable to the facts in the present case.

11. Sub Rules (6) and (7) of Rule 10 of CCS (CCA) Rules 1965 and newly introduced Sub Rule 3A of Rule 40A of BSF Rules, 1969 do not provide for passing of an order of extension of suspension period beyond the date till which the earlier suspension period was in effect even on the administrative grounds that the file was pending with the MHA or for any other reason. Mere consideration by the Suspension Review Committee for extending the suspension within the currency of the earlier suspension period but final decision been taken and communicated to the delinquent employee beyond the expiry of earlier suspension period renders the said orders extending the suspension as illegal and as such same are liable to be quashed.

12. On the basis of the admitted facts as mentioned herein above, both the orders i.e., first order dated 10th April, 2018 extending the suspension of the Petitioner beyond the initial suspension of 90 days which expired on 21st March, 2018 and the second order dated 25th September, 2018 which extended the suspension beyond 17th September, 2018 are liable to be quashed and they are hereby quashed. The suspension of the Petitioner stands revoked accordingly.

13. The writ petition is allowed in these terms. No order as to costs.

S. MURALIDHAR, J

TALWANT SINGH, J

FEBRUARY 03, 2020
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