

\$~10 (2021)

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

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Date of decision: 02.08.2021

+ **LPA 109/2021 & CM APPL. 10285/2021**

UNION OF INDIA

..... Appellant

Through: Ms. Arti Bansal, Advocate.

versus

DR S.K. SAXSENA

..... Respondent

Through: Mr. Siddharth Dias & Raushal
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Court hearing convened via video-conferencing on account of COVID-19]

1. This appeal is directed against the judgement of the learned Single Judge, dated 04.02.2021. The appellant is, essentially, aggrieved by the directions given in paragraph 7 of the impugned judgment. For the sake of convenience, the same is extracted hereafter:

“7. If the first review has not been carried out before the expiry of 90 days, the order of suspension dated April 05, 2019 shall become invalid and as such the subsequent orders of continuance of suspension of the petitioner shall also become invalid. Accordingly, the suspension order dated April 05, 2019 being invalid it is quashed, the petitioner is entitled to claim continuity in service and salary for the period from the date of suspension till reinstatement subject to adjustment of suspension allowance paid to the petitioner during this period. The petition is allowed and disposed of.”

2. The backdrop, in which the impugned judgement came to be passed,

is briefly set forth hereunder.

2.1. The respondent, who was the Director, Export Inspection Council, New Delhi was placed under suspension, vide office order dated 05.04.2019.

2.2. The record reveals that the Review Committee constituted by the appellant at its meeting held on 15.07.2019 recommended that the respondent's suspension be extended. This decision though was taken after 90 days had expired from the date when the respondent was first placed under suspension. To be noted, it is not in dispute that, the 90 days period expired on 03.07.2019.

2.3. It is also not in dispute that, the respondent received intimation concerning extension of the suspension order dated 05.04.2019, via communication dated 29.07.2019; that is, after 116 days had expired from the date of the suspension order. It is on this basis that, the respondent instituted a petition under Article 226 of the Constitution.

3. The learned Single Judge, as noticed hereinabove, allowed the writ petition and quashed the suspension order dated 05.04.2019 on the ground that, it had not been reviewed for the purpose of extension before the expiry of the 90 days period, as provided in Rules 10(6) and 10(7)¹ of the Central

¹ "10. SUSPENSION

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(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 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:

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

Civil Services (Classification, Control and Appeal) Rules, 1965 [in short ‘CCS (CCA) Rules, 1965’].

3.1. Furthermore, the learned Single Judge in reaching this conclusion also relied upon the judgement of the Supreme Court rendered in the case of ***Union of India v. Deepak Mali*** (2010) 2 SCC 222.

4. Ms. Arti Bansal, who appears on behalf of the appellant, says that the direction issued by the learned Single Judge [after quashing the suspension order dated 05.04.2019], to the effect, that the respondent would be entitled to continuity in service, and salary for the period commencing from the date of the suspension till reinstatement, subject to adjustment of suspension allowance paid during the period of suspension, was both problematic and erroneous in law.

4.1. Ms. Bansal says that, a careful perusal of the relevant rule would show that the respondent was not entitled to any salary [save and except subsistence allowance] till the suspension order was valid, i.e., for the first 90 days.

4.2. It is also Ms. Bansal’s contention that, the reinstatement of the respondent would hamper the enquiry, which is, being initiated against him.

4.3. Ms. Bansal says that, the respondent was holding a post [i.e. that of a Director] to which if he is reinstated, as directed by the learned Single judge, it could result in the outcome of the enquiry being influenced by the respondent.

5. Mr. Siddharth Dias, who appears on behalf of the respondent, says that, if a direction is issued by this Court, to the effect, that the enquiry will be concluded at the earliest, it would lay at rest the apprehensions of the

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 from detention is intimated to his appointing authority, whichever is later.”

appellant.

5.1. Mr. Dias also says, to allay the fears of the appellant, that with the reinstatement of the respondent, the enquiry could get compromised - the respondent would voluntarily undertake not to take the charge of his office till such time till the enquiry is concluded, provided a reasonable timeframe is fixed by the Court for its conclusion.

6. We have enquired from the counsel for the parties as to what would be the reasonable timeframe required to conclude the enquiry. Both Ms. Bansal and Mr. Dias say that 8 weeks is a reasonable time frame.

6.1. Ms. Bansal, however, adds that enquiry can be concluded in 8 weeks, provided the respondent participates fully and lends his support to the joint cause of bringing about an early conclusion of the enquiry proceedings.

7. We have heard the learned counsel for the parties and perused the record.

7.1. For the purposes of adjudication, a perusal of the relevant rules i.e., Rules 10(6) & 10(7) would be necessary. A plain reading of the said rule would show that if the suspension order is to be extended, it requires to be reviewed and an order to that effect is required to be passed before the expiry of 90 days from the effective date of the suspension.

7.2. In the facts of this case, as noticed above, the suspension order was passed on 05.04.2019. Since the period of 90 days ended on 03.07.2019, the review of the suspension order [if the same had to be extended] was to be undertaken and an order passed to that effect before 03.07.2019.

7.3. Essentially, the committee formed by the appellant for reviewing the suspension order passed against the respondent, recommended the extension of the same, only on 15.07.2019; a fact which was communicated to the appellant only on 29.07.2019.

7.4. Therefore, on a bare reading of the aforementioned provisions, the

suspension order dated 05.04.2019 stood dissolved on 03.07.2021. Once such an event occurred, the logical sequitur would be that respondent would have to be put back in the saddle. In other words, he would have to be given charge of the post held by him prior to his suspension.

7.5. That being said, we are in agreement with Ms. Bansal that the respondent could not have been paid full salary for the period commencing from the date of the suspension order till 03.07.2019. The suspension order, in our view, would remain valid for this period. The suspension order's validity, as noted above, would dissolve thereafter. Therefore, that part of the direction of the learned Single Judge, in our opinion needs to be interfered with.

8. Therefore, the other question which arises is: should the respondent be allowed to take charge, in view of the apprehension expressed by the appellant that the respondent could influence the enquiry proceedings, given the post that he holds?

8.1. Insofar as this aspect of the matter is concerned, Mr. Dias, as noted above, has made a reasonable offer, which is that, during the period the enquiry proceedings are on, the respondent will not take charge of his post.

8.2 To our minds, this offer, can only be meaningful if the enquiry officer conducts the proceedings with expedition.

8.3. It is ordered accordingly. The enquiry officer will conclude the proceedings, within 8 weeks from the date of the first appearance of the respondent before him. To hasten the proceedings, the respondent is directed to appear before the enquiry officer on 09.08.2021 at 11:00 A.M. at the designated venue.

8.4. The enquiry officer will be at liberty to conduct the proceedings on day-to-day basis. The respondent will render cooperation to the enquiry officer so that the proceedings are concluded at the earliest.

8.5. The enquiry officer will furnish to the respondent all the documents relied upon by him

8.6. In case the respondent demands the copies of the relied upon documents, the same will be furnished to him.

9. Needless to add, the enquiry officer will submit his report at the end of the 8 weeks period, as indicated above. Thereafter, the disciplinary authority will take the next steps in the matter at the earliest.

10. Given the foregoing, the respondent will be entitled to full salary from 04.07.2021. As to whether any further emoluments are to be paid to the respondent for the period falling between the date of the suspension order i.e. 05.04.2021 and 03.07.2021 and whether he should be accorded relief of continuity of service are aspects qua which the appellant would be required to take a decision only after disciplinary proceedings stand concluded. The learned Single, in our view, could not have granted relief at this juncture.

11. The appeal and the pending application are disposed of in the aforesaid terms. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 2, 2021/pa

[Click here to check corrigendum, if any](#)