

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 4th February, 2021

+ W.P.(C) 5285/2020, CM APPL. 19057/2020

DR S K SAXENA Petitioner
Through: Mr. Siddharth Dias, Adv.

versus

UNION OF INDIA Respondent
Through: Ms. Arti Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

“It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to:

i) issue an appropriate Writ, Order or Direction, thereby quashing the office order dated April 05, 2019 regarding suspension of the Petitioner and Office orders dated July 29, 2019; November 07, 2019; January 31, 2019 and June 02, 2020 regarding extension of suspension of the Petitioner;

ii) issue an Order or Direction, thereby directing the Respondent to revoke the suspension of the Petitioner vide order dated April 05, 2019, in the interest of justice, equity and fair play or in the alternative revoke the same after a completion of 90 days from the date of suspension and treat the suspension period as the Petitioner being on duty with full pay and allowances;

iii) issue an Order or Direction to the Respondent to expedite the disciplinary proceedings against the Petitioner and complete the same in a time bound manner;

iv) award costs;

(v) pass any such further or other Orders as it may deem fit and proper in the facts and circumstances hereof.

2. The only submission made by the learned counsel for the petitioner is that suspension of the petitioner vide office order dated April 05, 2019 is illegal as the same has not been reviewed by the respondent in accordance with Rule 10 (6) of the CCS (CCA) Rules and as such Rule 10 (7) of the CCS (CCA) Rules shall have the effect.

3. In support of his submission, learned counsel for the petitioner has stated that the suspension order though passed on April 05, 2019, the same was required to be reviewed before the expiry of 90 days by the competent authority. In the case in hand, the review, as per the counter-affidavit filed by the respondent, was done on July 15, 2019 whereas 90 days period had expired on July 03, 2019 and it was only on July 29, 2019, the order of extending the suspension was issued and in view of the Judgment of the Supreme Court in the case of ***Union of India v. Deepak Mali (2010) 2 SCC 222***, the suspension is bad. He also states, initial review of the suspension being not in accordance with Rule 10 (6), Rule 10 (7) will come into effect and even the subsequent orders of extending the suspension are also bad.

4. In the Counter-affidavit of the respondent in Para 8 & 9, the following has been stated:

“8. That in view of the above facts revealing prima facie a serious lack of integrity on the part of petitioner, major penalty proceedings are contemplated against the Petitioner and in the public interest the Department of Commerce placed the Petitioner under Suspension w.e.f 05.04.2019 and attached him with the office of Additional Directorate General of Foreign Trade, Central Licensing Area (CLA), New Delhi. A copy of suspension order dated 05.04.2019 is annexed as Annexure R/4. The second show cause notice was replied by Dr. S.K. Saxena on 10.04.2019 and same is annexed as Annexure R/5.

9. That the Review Committee held on 15.07.2019 considered the suspension case of the Petitioner and recommended that the suspension of the Petitioner should be extended till the conclusion of disciplinary proceedings against him or further orders, whichever is earlier, which was conveyed to him on 29.07.2019. A copy of letter dated 29.07.2019 is annexed as Annexure R/6.”

5. Before dealing with the submissions made by the learned counsel for the petitioner, it is necessary to reproduce Rule 10(6) and 10(7) of the CCS (CCA) Rules as under:

“10. SUSPENSION

XXXXX

XXXXX

(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 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.”

6. From perusal of the same it is clear that the suspension order has to be reviewed before the expiry of 90 days. In other words, the suspension order having been passed on April 05, 2019, the same was required to be reviewed on or before July 04, 2019. Concedingly, the suspension was reviewed by the Review Committee only on July 15, 2019 and the decision thereof was conveyed to the petitioner vide letter dated July 29, 2019. Surely, both the events have happened after July 04, 2019 and as such Rule 10 (7) of the CCS (CCA) Rules shall come into play and the Judgment of the Supreme Court of India in the case of ***Union of India v. Deepak Mali (supra)***, shall be applicable in the facts of this case. The relevant paragraph in the aforesaid Judgment being Paragraph 11, is reproduced as under:

“11. The case sought to be made out on behalf of the petitioner, Union of India as to the cause of delay in reviewing the Respondent's case, is not very convincing. Section 19(4) of the Administrative Tribunals Act, 1985 speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of Sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.”

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.

CM APPL. 19057/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

FEBRUARY 04, 2021/jg