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

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Judgment delivered on: 31.08.2022

+ W.P.(C) 11928/2022 & CM APPL. 35619/2022

UNION OF INDIA AND ANR.

..... Petitioners

versus

YOGESHWAR SHARMA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Dev P. Bhardwaj, Central Government Standing Counsel for UOI with Ms. Anubha Bhardwaj, Ms. Ankita Gautam and Mr. Sarthak Anand, Advocates.

For the Respondent : Mr. S. Sunil, Amicus Curiae along with Respondent-In-Person.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioners impugn judgment dated 22.03.2022 whereby, the Original Application filed by the respondent has been allowed and suspension orders dated 16.07.2020 and 06.01.2021 have been quashed and set aside.

2. Respondent was appointed on the post of Manager, Grade-I vide letter dated 02.02.2018. On 05.10.2019, while working as an Area Manager, Agra Depot, respondent was arrested and a case registered



against him under Section 7 of Prevention of Corruption Act, 1988. On 06.01.2020, respondent was released on bail.

3. By an order dated 18.10.2019, respondent was placed under deemed suspension with effect from 05.10.2019.

4. The case of the respondent is covered under Rule 10 of the CCS (CCA) Rules, 1965, which read as under :

10. SUSPENSION:

(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor - General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority -



- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;*
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.*

EXPLANATION - The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

- (3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.*
- (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:*

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.



[(5)(a) Subject to the provisions contained in sub-rule (7), an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.]

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

[(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 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-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 from detention is intimated to his appointing authority, whichever is later.]”

5. Sub rule 6 of Rule 10 mandates that an order of suspension shall be reviewed by the Authority which is competent to modify or revoke the suspension before expiry of 90 days from the effective date of suspension. It also mandates that the Authority shall pass orders either extending or revoking the suspension and subsequent reviews before the expiry of extended period of suspension. It further stipulates that extension of suspension shall not be for a period exceeding 180 days at a time.

6. In the case of the respondent, as noticed hereinabove, the first order of suspension was passed on 18.10.2019 with the effective date as 05.10.2019. The 90 day period stipulated under 10 (6) of the rules in terms of CCS (CCA) Rules, 1965, would have expired on 05.01.2020. In accordance with the said rule, the first review was conducted on 02.01.2020 whereby, the period was extended with effect from 03.01.2020 for a further period of 90 days. The validity period of the extension expired on 03.04.2020.

7. No review was conducted within the extended period of 90 days i.e., prior to 03.04.2020. The review was conducted on 16.07.2020 and it was directed that the suspension is extended by a further period of six months and was to be effective from 03.04.2020. Thereafter,



another review was conducted on 06.01.2021 and that also stipulates that the period is extended by six months with effect from 03.10.2020.

8. Since both these reviews were beyond time, respondent filed the subject Original Application challenging the extensions of suspension.

9. It is noticed that first of all the period stipulated under Rule 10 of extension is a maximum period of 180 days at a time. By both the reviews, the period was extended by six months. Six months would certainly be beyond 180 days.

10. Further, it may be noticed that the second review, which was conducted on 16.07.2020 was supposed to have been conducted prior to the expiry of the period extended by the first review i.e., extended till 03.04.2020. This review was conducted after a delay of 110 days i.e., 110 days beyond 180 days.

11. Even though the period was extended on 03.10.2020, if 180 days were calculated from 03.04.2020, the period would have expired on 29.09.2020.

12. The third review, which was conducted on 06.01.2021 was again delayed by 101 days beyond the expiry of 180 days. This review also extended the period by six months which again contravened Rule 10. The review conducted on 06.01.2021 extended the period by six months with effect from 03.10.2020, because it was conducted belatedly.



13. Though the review extended the period till 03.04.2021, since the period of 180 days would have expired on 29.09.2020, 180 days would have expired on 29.03.2021. On this ground also, the extension was in contravention of the said rule.

14. Though, these two reviews were the only reviews under challenge, it may be noticed that after the respondent approached the Tribunal, three more reviews have been conducted.

15. After 06.01.2021, the fourth review was conducted on 13.07.2021 as the period had already expired on 29.03.2021, this review was delayed by 119 days. Once again, the period was extended by six months, which is in contravention of sub Rule 6 of Rule 10. On 13.07.2021, the period was extended from 03.04.2021 till 03.10.2021.

16. Even though, the review stipulated that the period would expire on 03.10.2021 calculated from 29.03.2021, which was the 180 days period as per the earlier review, this suspension period would have expired on 25.09.2021.

17. The fifth review was conducted on 20.10.2021 extending the period from 03.10.2021 till 03.04.2022 again by six months.

18. As noticed hereinabove, the extended period would have expired on 25.09.2021 and the extension effective from 03.10.2021 was also in contravention of the rule. Once again, it extended the period by six months. This review was also conducted after a delay of



42 days calculated from the extended period of 24.03.2022. Thereafter, another review has been conducted on 14.03.2022 which is within time. Again, the said extension is by a period of six months.

19. As noticed hereinabove, all reviews, the second to fifth review are all held beyond the period as stipulated by sub Rule 6 of Rule 10. All the five reviews extend the period in contravention of the maximum permitted period of 180 days by stipulating that the extension is by six months.

20. Reliance is placed by learned counsel for the petitioner on the order dated 23.03.2020 of the Supreme Court in “Court on its own Motion” in *Suo Moto Writ Petition (Civil) No.3/2020*, to contend that in view of the pandemic, the Supreme Court had directed that the period of limitation in all proceedings shall stand suspended.

21. We are unable to agree with the contentions of learned counsel for the petitioner for the reason that the Supreme Court in “Court on its own Motion” in *Suo Moto Writ Petition (Civil) No.3/2020* on 23.03.2020 had passed the order, keeping in view the fact that litigants across the country would be facing difficulties in filing their petitions, application, suits, appeals and all other proceedings within the period of limitation prescribed under general law of limitation and under special laws (both Central and/ or State). To obviate the difficulties faced by the litigants and to ensure that lawyers and litigants do not have to come physically to file such proceedings in respective courts/ tribunals across the country, the Supreme Court directed that period of



limitation in all such proceedings shall stand extended with effect from 15.03.2020 till further orders.

22. Learned counsel for the petitioner submits that the said order would come to the rescue of the petitioners for the reason that the Supreme Court in its order had directed that they were exercising the said power under Article 142 and declared that the said order would be binding upon all courts, tribunals and authorities.

23. We are, once again, unable to accept this contention of learned counsel for the petitioners for the reason that the direction of the Supreme Court was passed keeping in view the difficulties faced by litigants and lawyers in approaching the Court. So, authorities referred to in the said order would be quasi judicial authorities, where such proceedings have to be filed by litigants and lawyers. It would not mean that the Supreme Court suspended the functioning of any authority in matters other than matters where appeals, proceedings and applications etc. were to be filed by litigants or lawyers.

24. This is further clarified from the order of the Supreme Court passed in the said proceedings on 10.01.2022 whereby, the Supreme Court notices that the order dated 23.03.2020, had directed extension of period of limitation in all proceedings before court/ tribunals including the Supreme Court.

25. Clearly, the order of the Supreme Court did not apply to any administrative functioning of the authorities.



26. Mr. S. Sunil, learned counsel for the respondent, who was appointed as an amicus curiae by this Court on 18.08.2022 has referred to the office order dated 24.03.2020 issued by the Government of India, Ministry of Home Affairs, whereby guidelines were issued to ministries/ departments of the Government of India State/ Union Territory Government, *inter alia*, to MoD to take effective matters. As per the annexure to the said order, it was directed that offices of Government of India, its Autonomous, Subordinate Offices and Public Corporations shall remain closed, however, an exception was made in respect of offices of Defence.

27. A similar order was issued on 15.04.2020, whereby once again an exception was carved out, *inter alia*, for Defence offices. The subject order of suspension has been passed by office, which is covered under the said exception.

28. The contention of learned counsel for the petitioners that during the period of lockdown, ministries were engaged only in running critical functionalities of the Ministry, which included medical services, logistic support to Civic Authorities and operational matters of Armed Forces. Routine administrative functioning of ministries were badly affected, during the said lockdown, merits rejection for the reason that the stand of the petitioners is not that the office of the petitioners was not functional or that the concerned officers could not meet for consideration of the extension of suspension.



29. In fact, said officers did meet not once but on five occasions between 16.07.2020 and 14.03.2022 to consider the suspension order. The fact that they met, contradicts the submissions of learned counsel for the petitioner that the office was not functioning in its full strength or to its full capacity.

30. The error committed in the extension orders is that the officers did not meet in time or pass appropriate order of extension, keeping in view the mandatory provisions of sub rule 6 of Rule 10 of the Rules, which stipulate that the suspension has to be extended prior to its expiry and for a period not exceeding 180 days.

31. The other contention of learned counsel for the petitioners that the issue before the Tribunal was only the first two extensions, merits rejection for the reason as noticed hereinabove, that the two orders of extensions, which were the subject matter of the proceedings before the Tribunal were also in contravention of sub Rule 6 of Rule 10 i.e., passed beyond the extended period of suspension and stipulating an extension beyond 180 days.

32. The record further reveals that thereafter also three reviews have taken place, two of them beyond the extended period and once again extending the period by six months i.e., beyond 180 days, which is once again in contravention of the said rules.

33. Learned counsel for the petitioners submits that the order of suspension is not liable to be interfered with, for the reason that the allegations against the respondent are of a serious nature and he is



alleged to have been caught red handed and a case under Prevention of Corruption Act, has been registered against him, and as such he is not liable to be given any responsibility and further that the respondent is a probationer.

34. This contention of learned counsel for the petitioners is of no consequence, for the reason that the said allegations are not subject matter of these proceedings and furthermore, the Cardinal Rule of Criminal Jurisprudence, is that a person is innocent till proven guilty. No such exception has been carved in the said rules with regard to suspension of an officer. Rule 6 of Rule 10 has a strict applicability irrespective of the allegations or the nature of offence for which the officer is charged.

35. Furthermore, it is noticed that despite the fact that the respondent was suspended on 18.10.2019 with effect from 05.10.2019, no disciplinary proceedings have, till date, been initiated against the respondent nor any charge-sheet has been issued against him for initiating disciplinary proceedings.

36. Be that as it may, the said contentions are not the subject matter of these proceedings.

37. Further, it may be noticed that in the appeal paper book, reliance has been placed by the petitioners on the judgment of the High Court of Bombay in "*The State of Maharashtra vs. Shri A.K. Jain*" 2012 SCC OnLine Bombay (19). It is noticed that in the said case, the rules in issue were All India Civil Services Rules (Discipline



and Appeal) Rules, 1969, which have a different rule, which stipulates that the suspension shall remain in force until the termination of all proceedings relating to the charge connected with the position held by the official. There is no such similar rule in the present case and Rule 10 of the CCS (CCA) Rules will be applicable irrespective of the nature of allegations or pendency of criminal proceedings against the concerned officer.

38. Learned counsel for the petitioners further submits that respondent was a Group 'A' officer, appointed through UPSC as a direct recruit and the suspension was passed by the Ministry of Defence. The review also had to be carried out periodically at the Ministry level. He submits that due to spreading of COVID-19 pandemic during the period February, 2020 till January, 2021, and the resultant lockdown affected the functioning of Government offices adversely, as the suspension was required to be reviewed by a Committee comprising three Joint Secretary, Labour Officers, it could not be done due to various other assignments given to all senior level officers with the focus on handling of COVID related assignments by Ministry of Defence set up. Further, in view of the above circumstances, the Hon'ble Minister had given his approval for continuance of suspension with retrospective effect.

39. We are once again unable to accept the contentions of learned counsel for the petitioners keeping in view the mandatory nature of Rule 10. As noticed hereinabove, even after January, 2021, the suspension order was reviewed thrice and on two instances beyond the



stipulated period and the delay was of 119 days and 42 days beyond the suspension period. Even though, the subsequent periods of review were not subject matter of the proceedings before the Tribunal, however, the undisputed material placed before us shows that six reviews have been conducted after the initial order of suspension and five of them have been beyond the stipulated period and the orders passed in contravention of Rule 10.

40. In view of the above, we find no merit in the petition. The petition along with pending application is dismissed.

41. The petitioners shall forthwith implement the order of the Tribunal, in respect of payments to be made to the respondent and his reinstatement.

42. It is clarified that this would be without prejudice to the right of the petitioners to take such action as may be permissible in law for the alleged conduct/ mis-conduct of the officer.

43. This Court appreciates the assistance rendered by Mr. S. Sunil, Advocate, amicus curiae for the respondent, in this matter.

44. Order *dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

AUGUST 31, 2022/nd