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

% Judgment delivered on: 12th September, 2023

+ W.P.(C) 7248/2015

P K BOHRA

..... Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sumant Bhardwaj, Advocate.

For the Respondents: Ms. Arunima Dwivedi, CGSC for UOI with Ms. Pinky Pawar and Mr. Aakash Pathak, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to treat the period of suspension from 01.07.2014 and onwards, till he is taken on duty, as invalid suspension and the same be treated as spent on duty for all purposes.

2. Learned counsel for the petitioner submits that petitioner was placed under suspension by the order of the Director General on 02.04.2014 and the period of suspension could have been extended before the expiry of the initial period, i.e., on or before 30.06.2014. He submits that though the proposal was considered by the Committee



headed by the Director General and recommended to the Competent Authority, i.e., the Central Government on 13.06.2014, the extension was approved by the Competent Authority on 07.07.2014 after the expiry of the period of 90 days and as such, the extension was invalid.

3. Learned counsel for the respondents disputes the same. She submits that the Competent Authority for placing on suspension an officer up to the rank of Deputy Commandant, is the Director General and the Director General had placed the petitioner under suspension and also reviewed the extension and recommended the extension within the period of 90 days, i.e., on 13.06.2014. She submits that the matter was forwarded to the Central Government only for its concurrence and once approved, the order of suspension and extension, as the case may be, relates back to the actual date of recommendation of suspension or extension, as the case may be.

4. For resolving the controversy, we may refer to the relevant provision, i.e., Rule 40A of the Border Security Force, 1969 (hereinafter referred to as 'the Rules'), which reads as under:-

“40A. (1) Notwithstanding anything contained in these rules, the appointing authority may, at its discretion, place a person serving under him, under suspension:-

(i) where a disciplinary action under the Act against him is contemplated or is pending; or

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



(iii) *where a case against him in respect of any civil offence is under investigation, inquiry or trial.*

Provided that the Director-General may exercise the powers of suspension in respect of officers of the Force up to the rank of Deputy Commandant.

Provided further that the Director-General shall report the facts of each case immediately to the Central Government and all such orders of suspension shall become ab-initio void unless confirmed by the Central Government within a period of one month from the date of the said orders, irrespective of the fact that the suspension is revoked by the said authority within that period.

(2) *A member of the Force shall be deemed to have been placed under suspension by an order of the appointing authority:-*

(i) *with effect from the date of his detention by civil police on a criminal charge or otherwise for a period exceeding 48 hours; or*

(ii) *with effect from the date of his conviction by a civil court on a criminal charge, if the sentence awarded is imprisonment for a term exceeding 48 hours.*

(3) *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.*

(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 ninety days 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) 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 the order or by any authority to which that authority is subordinate.

(5) When a person remains under suspension for more than 90 days, a report giving reasons for delay in the finalisation of his case shall be submitted to the Director General by the Commandant of the accused and thereafter, subsequent reports shall be submitted every month till the case is finalised or the order of suspension is revoked whichever is earlier."

5. Rule 40A of the Rules stipulates that the appointing authority may, at its discretion, place a person under suspension in a case where disciplinary action under the Act is contemplated or pending against that individual or person or that person has engaged himself in activities prejudicial to the interest or the security of the State or where a case against him in respect of any civil offence is under investigation, inquiry or trial.

6. We may note that the power had been given to the Appointing Authority. However, in cases of officers of the Force up to the rank of Deputy Commandant, power has also been delegated to the Director General to exercise the powers of suspension. However, in case of power being exercised by the Director General, the Director General



has to report the facts of each case immediately to the Central Government and unless the order of the Director General is confirmed by the Central Government within a period of one month, the suspension becomes void ab-initio. However, on confirmation, the order relates back to the date of initial passing.

7. Sub-Rule 3 of the said Rule stipulates that the order of suspension made or deemed to have been made would continue to remain in force unless it is modified or revoked by the authority competent to do so.

8. Sub Rule 3A of the said Rule mandates the review of the order of suspension by the authority competent to modify or revoke such order before the expiry of 90 days from the effective date of suspension and also directs that the authority competent to modify or revoke such order has to pass an order either extending or revoking the suspension and any subsequent review before the expiry of such extended period.

9. Proviso to sub Rule 3A of the said Rule provides that no extension of suspension shall be made for a period exceeding 180 days at a time.

10. Reading of sub-Rule 3A of the said Rule clearly shows that the authority competent to modify or revoke the order has to review the suspension before the expiry of the initial period of suspension. In case such review is not conducted within the stipulated period, the order of suspension is deemed to have lapsed.



11. In the instant case, petitioner was placed under suspension on 02.04.2014. 90 days period was to expire on 30.06.2014. Record reveals that the Committee constituted and headed by the Director General reviewed the case of the petitioner and recommended on 13.06.2014 for extension of the period of suspension for a period of 180 days. Said recommendation was forwarded to the Central Government and was approved by the Central Government on 07.07.2014. Once approved, the extension related back to the date on which it was recommended by the Director General, i.e., on 13.06.2014.

12. Reference may also be had to sub Rule 4 of Rule 40A of the said Rule which stipulates that the order of suspension made or deemed to have been made, may at any time, be modified or revoked by the authority which made the order or by any authority to which that authority is subordinate.

13. In the instant case, the order of suspension was made by the Director General on 02.04.2014. Consequently, the Authority which is competent to grant an extension is the authority which has the power to modify or revoke the order of suspension. In the instant case, in terms of sub Rule 4, the Director General is the authority, which made the order and as such, he also had the power to modify or revoke the suspension. In terms of sub Rule 4 read with sub Rule 3A, the authority which has the power to revoke or modify the suspension order, i.e, the Director General has to review the suspension before the expiry of the period.



14. Consequently, the date 13.06.2014, when the Director General made the recommendations for extension will be deemed to be the crucial date for considering the date of extension. Since, in the case of the petitioner, the Director General had initially made the order, he was competent under sub Rule 4 to revoke and modify the order and under sub Rule 3A to review the order of suspension. The Director General had reviewed the order of suspension and recommended its extension on 13.06.2014. In our view, the review has been carried out within the period of 90 days and an order of extension has also been passed within the stipulated period. The mere fact that the matter is placed before the Central Government for its approval in terms of second proviso to sub Rule 1 would not defer the date of extension, i.e, 30.06.2014. The approval granted on 07.07.2014 would relate back to the date of recommendation, i.e., 13.06.2014.

15. In view of the above, we find no merit in the petition. The same is, consequently, dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 12, 2023
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