



2024:DHC:9064-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 16214/2024 and CM APPLs. 68108/2024 and 68109/2024

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES

.....Petitioner

Through: Mr. V.S.R. Krishna, Advocate

versus

SANJAY GUPTA & ANR.

.....Respondents

Through: Mr. Raj Kumar, CGSC for
R2/UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT (ORAL)

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22.11.2024

C.HARI SHANKAR, J.

1. The short issue that arises for consideration in this case is whether a mere approval, on the file, albeit by the Competent Authority, to extend the suspension of the respondent, before the expiry of 90 days from the date when the original suspension order was issued, would suffice to extend the suspension, where the actual order extending the suspension came to be issued after the said period of 90 days was over.

2. We may deal, even at this juncture, with the submission of Mr V.S.R. Krishna, who appears for the petitioner, that the order extending the suspension of the respondent was issued prior to the

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expiry of 90 days from the issuance of the original order of suspension, and that it was only its communication which took place after 90 days. We, on facts, are unable to agree with Mr. Krishna. All that had been done prior to the expiry of 90 days from the date of issuance of the original suspension order was grant of approval on the file, undoubtedly by the Authority competent to extend the suspension for extending the suspension beyond 90 days. No order extending suspension was signed, or even drafted, prior to the expiry of 90 days, much less communicated. The order extending suspension clearly bears the date of 1 March 2023, which is after the period of 90 days had expired on 25 February 2023.

3. Having thus dispensed with this submission of Mr. Krishna, we proceed to examine the controversy in the backdrop of the facts before us.

4. Respondent 1¹ was placed under suspension, by the petitioner All India Institute of Medical Sciences² by order dated 28 November 2022. We need not enter into the grounds on which the respondent was placed under suspension as they are not material for adjudicating the issue in controversy.

5. Rule 10(6) and (7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965³ which apply *mutatis mutandis* to the AIIMS, read thus:

¹ “the respondent”, hereinafter

² “AIIMS”, hereinafter

³ “CCS(CCA) Rules”, hereinafter



“(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. Extension of the suspension after review, in our considered opinion, can only be by an *order of extension*. It is the order of extension, which is ultimately communicated to the officer concerned, which extends the suspension. Rule 10(7), particularly, makes clear that it is the *order of suspension* which has to be extended, after review. The word “it”, in the sub-rule, obviously refers to the order of suspension, to which the sub-rule earlier alludes. An order of suspension, axiomatically, can be extended only by an order of extension. Approval, on the file, to extend the order of suspension, would not result, *ipso facto*, in extension of the order.

7. Thus, it is necessary, in order for suspension to be legitimately continued, that the order of extension of suspension is issued within a period of 90 days from the date when the original suspension order is



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issued.

8. It is also not in dispute that, though the suspension of the respondent was on the ground that disciplinary proceedings were contemplated against him, no chargesheet had, at least till the date when the impugned order came to be passed by the Tribunal, been issued by the respondent.

9. The Suspension Review Committee, constituted as per the rules for examining the aspect of continuance of the suspension of the respondent, met on 15 February 2023. Admittedly, the period of two months from the date of issuance of the initial suspension order of the respondent, expired on 25 February 2023. The proposal put up by the Suspension Review Committee, to extend the suspension of the respondent, met with the approval of the President of the AIIMS, as the Competent Authority to grant approval for extension of suspension on 25 February 2023. It is not in dispute, however, that no formal order extending the suspension of the petitioner beyond 25 February 2023 was issued on or before the said date and that the matter remained at the stage of the file noting of the President of the AIIMS, approving the extension of suspension.

10. Consequent to the approval granted by the President of the AIIMS on 25 February 2023, a formal order extending the respondent's suspension for a further period of two months with effect from 25 February 2023 came to be issued on 1 March 2023.

11. The issue before the Tribunal – which is the issue agitated by

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the petitioner before this Court as well – is whether in the circumstances the extension of suspension of the respondent for a further period beyond 25 February 2023 was or was not, in compliance with sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules.

12. The Tribunal has following the judgments of the Supreme Court in *Bachhittar Singh v State of Punjab*⁴, *State of Punjab v Amar Singh Harika*⁵ and *Nareshbhai Bhagubhai v UOI*⁶, held that the mere file noting containing the approval of the Competent Authority for extension of suspension would not constitute an order extending suspension within the meaning of sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules, inasmuch an order acquires substance and meaning only when it is made and communicated to the authority concerned.

13. This position, in law, is unexceptionable. In *Sethi Auto Service Station v DDA*⁷, the Supreme Court held:

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.”

⁴ AIR 1963 SC 395

⁵ AIR 1966 SC 1313

⁶ (2019) 15 SCC 1

⁷ (2009) 1 SCC 180



Sethi Auto Service Station, and ***Bachittar Singh***, were considered by the Supreme Court in ***Nareshbhai Bhagubhai***, in which the law was thus discussed and expounded:

“File notings and lack of communication

26. It is settled law that a valid order must be a reasoned order, which is duly communicated to the parties. *The file noting contained in an internal office file, or in the report submitted by the competent authority to the Central Government, would not constitute a valid order in the eye of the law. In the present case, there was no order whatsoever passed rejecting the objections, after the personal hearing was concluded on 30-7-2011. It is important to note that the competent authority did not communicate the contents of the file noting to the appellants at any stage of the proceedings.* The said file noting came to light when the matter was pending before the High Court, and the original files were summoned. The High Court, upon a perusal of the files, came across the file noting recording rejection of the objections only on the ground that the matter pertained to an infrastructure project for public utility.

27. In ***Bachhittar Singh v State of Punjab*** a Constitution Bench held that merely writing something on the file does not amount to an order. *For a file noting to amount to a decision of the Government, it must be communicated to the person so affected, before that person can be bound by that order. Until the order is communicated to the person affected by it, it cannot be regarded as anything more than being provisional in character.*

28. Similarly, in ***Shanti Sports Club v. Union of India***⁸ this Court held that notings recorded in the official files, by the officers of the Government at different levels, and even the Ministers, *do not become a decision of the Government, unless the same are sanctified and acted upon, by issuing an order in the name of the President or Governor, as the case may be, and are communicated to the affected persons.*

29. In ***Sethi Auto Service Station v DDA***, this Court held that:

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for



internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. *Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.*

16. *To the like effect are the observations of this Court in **Laxminarayan R. Bhattad v State of Maharashtra**⁹, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.”*

(Emphasis supplied)

14. Thus, an uncommunicated file noting is a file noting, and nothing more. It is not even a *decision* of the authority making the noting, much less an *order*. We are, therefore, entirely in agreement with the Tribunal in its view that the order extending suspension – or, for that matter, even the decision to extend suspension, as understood in law and as envisaged by sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules – came to be passed, or taken, only on 1 March 2023.

15. By then, however, the suspension of the respondent had, by operation of Section 10(6) and (7) of the CCS (CCA) Rules, come to an end on 25 February 2023. The order of 1 March 2023, therefore, was an attempt to breathe life into a dead body which, physiologically as well as legally, is not possible.



16. We may note, at this juncture, that the respondent, before the Tribunal, stated that he was not joining issue on the aspect of whether the order dated 1 March 2023 had been communicated to the respondent within time. The specific case of the respondent, before the Tribunal, was case was that no order extending his suspension, within the meaning of sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules, had even been made prior to 25 February 2023 when the period of 90 days from issuance of the original suspension order expired. His contention, which stands accepted by the Tribunal was, therefore, that the file noting of 25 February 2023 did not amount to making of an order extending suspension and it was only on 1 March 2023, beyond the period of 90 days permitted by sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules that an order extending jurisdiction beyond 90 days came to be passed.

17. The Tribunal has, as already noted, held that a mere file noting could not constitute an order and that as the order extending suspension was actually issued only on 1 March 2023, the suspension came to an end on 25 February 2023 by operation of Rule 10(7) of the CCS (CCA) Rules.

18. We may at this point reproduce the order dated 1 March 2023 whereby the respondent's suspension was extended:

“WHEREAS, Shri Sanjay Gupta while working as System Analyst in this institute has been placed under suspension with effect from 28.11.2022 in terms of Sub Rule (1) of Rule 10 of CCS (CCA) Rules, 1965. His suspension period is valid upto 25.02.2023.

AND WHEREAS, the Suspension Review Committee in its



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meeting held on 15.02.2023 has reviewed the suspension of Shri Sanjay Gupta, System Analyst, Computer Facility, AIIMS, New Delhi and recommended for extension of his suspension period for further 02 months upto 25.04.2023.

NOW THEREFORE, after considering the recommendation of the suspension review committee and all the facts and circumstances of the case, undersigned, Director & Disciplinary authority having reviewed the suspension of Shri Sanjay Gupta in exercise of the powers conferred by Rule 10 of the CCS(CCA) Rules, 1965, have come to the conclusion that the suspension period of Shri Sanjay Gupta, System Analyst, Computer Facility, AIIMS, New Delhi may further be extended for another 02 months upto 25.04.2023. Accordingly, the suspension period of Shri Sanjay Gupta, System Analyst, Computer Facility, AIIMS, New Delhi *is hereby extended* upto 25.04.2023 or till further orders, whichever is earlier. Subsistence allowance may continue to be paid to Shri Sanjay Gupta @ 50% during suspension period.”

(Emphasis supplied)

19. It is clear, from a bare reading of the aforesaid order, that it was issued on 1 March 2023, albeit in terms of the proposal conveyed on the file by President of the AIIMS on 25 February 2023. Besides, the words “Now, therefore”, and “is hereby extended” defeat all chances of the order of extension of the respondent’s suspension being regarded as having been issued or passed any time prior to 1 March 2023.

20. Inasmuch as the order extending suspension was issued on 1 March 2023, whereas the period of 90 days from the issuance of the original order of suspension came to an end on 25 February 2023, we find no error in the decision of the Tribunal that the petitioner was no longer be treated as continuing on suspension beyond 25 February 2023. The reliefs granted by the Tribunal to the petitioner are consequential to the said finding. We see no reason to interfere



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therewith. The writ petition is, therefore, dismissed *in limine*.

C.HARI SHANKAR, J.

AMIT SHARMA, J.

NOVEMBER 22, 2024/yg

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