(2014) 10 MP CK 0092

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5426/2014

Bharat Sanchar Nigam Ltd. APPELLANT

Vs

Ravi Kant Mishra RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2014) 10 MP CK 0092

Hon'ble Judges : S.K. Gangele, J;Rohit Arya, J

Bench : Division Bench

Advocate : Rajendra Bhargava, Advocate for the Appellant; A.K. Nirankari, Advocate for the Respondent

Judgement

1. This petition under Article 227 of the Constitution of India is directed against the order dated 30/7/2014 passed by the Central Administrative Tribunal, Jabalpur, Circuit Sitting at Gwalior in Original Application No. 165/2013. By the impugned order, the Tribunal has quashed the suspension order of the respondent dated 26/5/2011 and subsequent orders further continuing the suspension order.

2. Learned counsel for the petitioners has submitted that impugned order is based upon misreading of the provisions as contained in Rule 30 (5) (b) of Bharat Sanchar Nigam Limited (BSNL) Conduct, Discipline and Appeal Rules, 2006 (for short ?Rules of 2006?). For ready reference Rule 30 (5) (b) is quoted below:-

?Rule 30 .Suspension:-

(5) (a) xxxx (b) The authority which made or deemed to have made the order of suspension shall review periodically whether continuance of suspension of the employee is justified or not. The first review shall be done at the end of three months from the date of suspension. Then further review can be done on six monthly basis. These are only guidelines and the disciplinary authority is fully

competent to review the suspension whenever it is felt that continuance of suspension is not justified having regard to the circumstances of the case.?

3. By referring to the aforesaid Rule, learned counsel for the petitioners has submitted that the authority competent has been empowered to review the suspension order periodically for further continuance of suspension of the employee. The first review shall be done at the end of three months from the date of suspension and thereafter, the further review can be done on 6 monthly basis. It is further submitted that aforesaid period of limitation is only regulatory in nature and disciplinary authority is fully competent to review the suspension order whenever it felt further continuance of the suspension of employee is not justified. Learned counsel submitted that because of serious financial irregularities committed by respondent, a departmental enquiry was ordered and respondent was suspended w.e.f. 15/2/2011 as per the recommendations of the Additional General Manager (Vigilance) vide letter dated 10/2/2011. Aforesaid recommendation and the order of suspension are placed on record as Annexure P/2 and P/3. Thereafter, on 13/5/2011 review committee of three senior officers of the department was constituted which reviewed the suspension order and recommended for further continuance thereof. Thereafter, the suspension order was further continued by review committee periodically after every six months. It is submitted that respondent/ employee has delayed the enquiry proceedings as he has not handed over the relevant documents. Besides CBI investigation is also going on against the respondent. Therefore, under such circumstances, suspension was reviewed periodically and continued.. The last suspension order was dated 30/10/2013 for 6 months w.e.f. 31/10/2013.

4. Thereafter, vide order dated 21/2/2014, the suspension order of the respondent has been revoked and he has joined his duties on 22/2/2014.

5. It is submitted that the Tribunal as a matter of fact before addressing upon the impugned suspension order dated 26/5/2011, ought to have considered the fact that the challenge to impugned aforesaid suspension order dated 15/2/2011 was barred by time, as the O.A. was filed as late as in the year 2014, therefore, it was having no jurisdiction to decide the same in absence of any application seeking condonation of delay. It is further submitted that authority has exercised the power under Rule 30 (5) (b) of Rules of 2006 bona fidely. The Tribunal failed to appreciate that there are serious charges of financial irregularities under investigation. The CBI is also conducting the investigation. There was non-cooperation by respondent in the matter of enquiry. Under such circumstances, the suspension was successively recommended to be further continued. Learned counsel submits that Tribunal while interpreting Rule 30 (5) (b) of Rules of 2006 has committed grave error of law. On the aforesaid premise challenge has been made to the order dated 30/7/2014 where under the Tribunal has held that the first review of the suspension order was beyond the period of 90 days in terms of Rule 30 (5) (b) of Rules of 2006 and therefore, is illegal.. The Tribunal further held that consequently subsequent periodical reviews of suspension order are

also illegal and accordingly allowed the O.A. and set aside the suspension order dated 15/2/2011.

6. Learned counsel for the petitioner submitted that under Rule 30 (5) (b) of Rules of 2006, authority competent can review the suspension of an employee initially after 3 months and thereafter on every successive 6 months, the review can be done. In the instant case the order of suspension is dated 15/2/2011 and before expiry of 90 days, the review committee was constituted vide order dated 13/5/2011 which held its meeting on 19/5/2011 and authority passed the order dated 26/5/2011 continuing the suspension of respondent w.e.f. 16/5/2011 for a further period of six months. The object and intendment of the aforesaid provisions are to ensure that while the employees intended to be kept under suspension, there should be periodical review to assess circumstances at the relevant time for further continuance of the employee under suspension. This power is regulatory in nature and cannot be subjected to literal restrictive interpretation. To bolster his submissions, learned counsel for the petitioners has referred to aforesaid provision and submitted that these are only guidelines and the disciplinary authority is fully competent to review the suspension whenever it is felt that continuance of suspension is not justified having regard to the circumstances of the case. It is further submitted that the power of review conferred upon the authority, in fact and in effect is of the nature of check and balance which in a way also beneficial to the employee as an employee cannot be put under suspension with uncertainty as regards length of period. The power of review, in fact cast obligation on the authority to review and assess the situation and pass necessary orders. The aforesaid Rule connotes the said intendment. Moreover, in the instant case, the suspension order dated 15/2/2011 had come to an end on 16/5/2011. Review committee was constituted on 13/5/2011 and therefore, bona fide of petitioners/department cannot be doubted in the matter of exercise of review which was required to be done in terms of aforesaid rules. Merely because the committee met on 19/5/2011 and recommended for further continuance of respondent under suspension as the serious financial irregularities were under investigation and CBI enquiry was also in progress, no illegality can be said to have been committed by the department in the matter of reviewing the suspension order and passing the order for further continuance thereof vide order dated 26/5/2011 w.e.f. 16/5/2011.

7. Respondent has entered appearance through counsel and supported the order passed by the Tribunal.

8. Heard learned counsel for the parties.

9. Having perused the order impugned and the facts in hand, there is no doubt that during relevant period, investigation of serious financial irregularities was being conducted against the respondent. CBI enquiry was also going on. Respondent was put under suspension vide order dated 15/2/2011 which was further extended for a period of six months vide order dated 26/5/2011. Having perused Rule 30 (5) (b) of the Rules of 2006, this Court is of the view that the

purpose and object of the aforesaid provision is to regulate the power of suspension and cast an obligation upon the authority to review the suspension of an employee firstly after three months of initial order and thereafter after every six months periodically. The provision also contemplates that the disciplinary authority is fully competent to review the suspension order whenever it is felt that continuance of suspension is not justified having regard to the circumstances of the case. Therefore, the aforesaid provision, as a matter of fact has dual purpose namely the order of suspension as provided for under Rule 30 (5) (a) of Rules of 2006 cannot be allowed to remain in force sine die and concerned authority has to assess the circumstances by resorting to review for further continuance of the suspension order periodically and if circumstances warrant, the disciplinary authority may also pass the order for revocation of suspension order. Therefore, this Court finds sufficient force in the submissions advanced by learned counsel for the petitioners while he submits that the provision contained therein cannot be subjected to literal restrictive interpretation which would render the provision otiose. Instead, the aforesaid provision must receive purposive and contextual interpretation.

10. Accordingly in view of the aforesaid discussion this writ petition is allowed. Impugned order dated 30/7/2014 passed by CAT, is hereby quashed. However, the aforesaid view of this Court is in the context of facts of the instant case and should not be understood to have given leverage to petitioner department to take recourse of review under Rule 30 (5) (b) of Rules of 2006 at any point of time. The authority is required to be exercised bona fidely and with circumspection and due advertence to facts of the case.

