

(2017) 11 MAN CK 0004
In the Manipur High Court
Case No : 634 of 2017

Shri Dr. Okram Ibomcha Singh

APPELLANT

Vs

The State of Manipur represented by the Principal Secretary
(DP), Government of Manipur, & Ors.

RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

[Central Civil Services \(Classification, Control and Appeal\) Rules, 1965](#), [Rule 14](#), [Rule 10](#), [Rule 10\(6\)](#), [Rule 10\(1\)\(a\)](#)

Citation : (2017) 11 MAN CK 0004

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : B.P. Sahu, N. Kumarjit

Final Decision : Allowed

Judgement

1. Heard Shri B.P. Sahu, the learned Sr. Advocate appearing for the petitioner and Shri N. Kumarjit, the learned Advocate General, appearing for the respondents.

2. The order of suspension dated 13-04-2017 issued by the Deputy Secretary (DP), Government of Manipur is under challenge in this writ petition.

3. According to the petitioner, he joined the Manipur Health Services (MHS) as a Medical Officer in the year 1983 and after having served in different capacities as the Junior Specialist, the Specialist, the Joint Director and the Addl. Director in the Directorate of Health Services, he was appointed as the Director of Health Service, Manipur vide order dated 06-10-2015 issued by the Department of Personnel & Administrative Reforms, Government of Manipur. All of a sudden, on 13-04-2017 the Department of Personnel & Administrative Reforms (Personnel Division), Govt. of Manipur issued an order of suspension in exercise of the power conferred under Rule 10(1)(a) of the CCS(CCA) Rules, 1965 (hereinafter

referred to as "the Rules, 1965"). However, as required under the Rules, 1965, the order of suspension was not reviewed before the expiry of 90 (ninety) days and therefore, the order of suspension is unsustainable to remain in operation after the expiry of ninety days nor was the petitioner given the subsistence allowance under FR 53 despite an application being filed by the petitioner on 18-08-2017. Being aggrieved by the inaction on the part of the respondents to revoke the order of suspension even after the expiry of ninety days, the petitioner is compelled to approach this court by way of this writ petition praying for quashing and setting aside the order of suspension on the inter-alia grounds that under Rule 10(6) of the CCS(CCA) Rules, 1965, the order of suspension ought to have been reviewed by the State Government to modify or revoke the same before the expiry of ninety days, failing which the order of suspension had been rendered invalid after the expiry of ninety days; that in a catena of decisions, prolonged suspension orders have been set aside and quashed by the Hon'ble Supreme Court and the Hon'ble High Courts in the country; that the period of suspension shall not be mechanically extended unless there exist reasonable cause necessary for the purpose of maintaining fair procedure of departmental enquiry and that the government employee shall not be harassed in prosecution of a malicious, bias and prejudicial frame of mind of the authority as it would amount to violation of his fundamental and legal rights.

4. An affidavit-in-opposition has been filed on behalf of the respondent Nos. 1 and 3 wherein it is stated that the petitioner while serving as the Director of Medical and Health Services, Manipur; State Mission Director; State Health Society; National Health Mission etc., misused his official status, power and acted in a manner unbecoming of a Government servant. In terms of a proposal submitted by the Department of Health, Government of Manipur vide its letter dated 30-03-2017, the petitioner was placed under suspension, in exercise of the power conferred under Rule 10(1)(a) of the CCS(CCA) Rules, 1965, in contemplation of a disciplinary proceeding against him. To commence holding of an enquiry against him under Rule 14 of the CCS(CCA) Rules, 1965, a Memorandum dated 17-06-2017 was issued enclosing therewith the imputation of misconduct, article of charges, list of documents and list of witness and the petitioner was given an opportunity to submit his written statement of defence thereto. An enquiry officer was appointed to enquire into the charges levelled against him. In reply to the said charges, the petitioner submitted his written reply dated 04-07-2017 which was received by the Office of the Department of Personnel on 14-07-2017 and thus, the Departmental Enquiry is under process. On 28-08-2017 the Department of Personnel, Government of Manipur issued an order directing that the petitioner shall continue to be under suspension until the termination of all disciplinary proceedings and in the said order, it has also been stated that the petitioner is entitled to subsistence allowance subject to the condition that as per FR 53(2) no payment of subsistence allowance shall be made unless the Government employee furnishes a certificate that he is not engaged in any other employment, business or vocation. It has also been stated

that the article of charges framed against the petitioner are of serious nature and if the suspension order is revoked or set aside, there will be immense possibility of tempering evidence and disturbance in the ongoing Departmental Enquiry.

5. During the course of hearing, Shri B.P. Sahu, the learned Sr. Advocate appearing for the petitioner, relying upon the decisions rendered by the Hon"ble Supreme Court in Union of India & ors. Vs. Dipak Mali, (2010) 2 SCC 222 and Ajay Kumar Choudhary Vs. Union of India & ors. (2015) 7 SCC 292, has vehemently submitted that since the order of suspension has not been reviewed before the expiry of 90 (ninety) days from the date of suspension, the order of suspension shall not be valid after the expiry of ninety days unless it is extended after review for further period before the expiry of ninety days. Combating the contention of the learned Sr. Advocate appearing for the petitioner, Shri N. Kumarjit, the learned Advocate General has submitted that the State Government has issued the order dated 28-08-2017 in exercise of the power conferred under Rule 10(5)(b) to the effect that the Government servant shall continue to be under suspension until the termination of all or any of the proceedings. In view of the rival contentions, the subject matter in issue relates to the interpretation of the provisions of Rule 10 of the Rules, 1965 and in particular, of sub-rule (6) read with sub-rule (7) on the one hand and sub-rule (5) (b) on the other. In order to appreciate their contentions, Rule 10 is reproduced hereinbelow:-

"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 in regard to as 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 place 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), any 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."

6. It is not in dispute that Rule 10(1) confers power upon the appointing authority or any other competent authority mentioned therein to issue order of suspension against a Government servant but it may be noted that the order of suspension can be issued only in respect of three circumstances - one, where a disciplinary proceeding against him is contemplated or is pending; two, where he has engaged himself in activities prejudicial to the interest of the security of the State and three, where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Sub-rule (6) provides that an order of suspension shall be reviewed by the competent authority either to modify or revoke the same before the expiry of ninety days from the effective date of the order of suspension. Such a review shall be done only on the recommendation of the Review Committee constituted for that purpose. Subsequent reviews shall be made before the expiry of extended period of suspension and extension of suspension shall not be for a period exceeding one hundred eighty days at a time. Sub-rule (7) provides that an order of suspension made under sub-rule (1) or (2) shall not be valid after the expiry of ninety days unless it is extended after review for a further period before the expiry of ninety days. Sub-rule (5)(b) confers power upon the competent authority to direct that the government servant shall continue to be under suspension until the termination of all or any of such proceedings. This power can be exercised by the competent authority after two conditions being fulfilled - one, where a Government servant is suspended or deemed to have been suspended in connection with a disciplinary

proceeding or otherwise and two, where any other proceeding is commenced against him during the continuance of that suspension. For exercising the power under the sub-rule (5)(b), reasons are to be recorded by the competent authority.

7. In view of the submission made by the learned Advocate General that the order dated 28-08-2017 has been issued in exercise of power under sub-rule (5) (b), the short issue relates to the harmonious construction of the provisions of sub-rule (5)(b) and sub-rule (7) of the Rules, 1965. Being conscious of sub-rule (5)(b), sub-rule (6) & (7) have been inserted by the Government of India in the statute vide its Notification dated 23-12-2003. It may be noted at this juncture that the learned counsels appearing for the parties, have not brought to the notice of this court any decision rendered by the Hon''ble Supreme Court or any High Court in the country on this issue. As seen hereinabove, an order of suspension made or deemed to have been made by the competent authority can either be extended under the sub-rule (6) or continued under sub-rule (5)(b). So far as the sub-rule (7) is concerned, its wordings are plain and simple and require no interpretation at all, in the sense that it simply provides that an order of suspension, if not reviewed and extended for further period before the expiry of ninety days, shall not be valid. In this regard, the law has been settled by the Hon''ble Supreme Court in *Union of India & ors. Vs. Dipak Mali*, (2010) 2 SCC 222 wherein the Hon''ble Supreme Court has held that since the review had not been conducted within 90 days from the date of suspension, it became invalid and could not be revived by the subsequent review. The Hon''ble Supreme Court held:

"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."

As regards the sub-rule (5)(b), an order of suspension can be continued by the competent authority only when two conditions as mentioned hereinabove have been fulfilled. The first condition is that the order of suspension shall be in connection with any disciplinary proceeding or otherwise. The expression "otherwise" is significant and refers to an order of suspension made not in connection with a disciplinary proceeding but made under Rule 10 (1)(aa) or (b). The second condition talks about any other disciplinary proceeding which is commenced against the government servant during the continuance of that

suspension. The expression "other" indicates that the proceeding mentioned therein is different from and shall be in addition to the disciplinary proceeding mentioned in first condition. In other words, the proceedings mentioned in both the conditions are not one and the same and the order of suspension can be continued only when any other disciplinary proceeding is commenced against the Government servant while he is already under suspension in respect of a disciplinary proceeding or otherwise. Moreover, the expression "continuance of that suspension" is also significant meaning thereby that while exercising power under sub-rule (5)(b) by the competent authority, the order of suspension, to be continued by it, ought to have been in continuance. Therefore, the order of suspension which has become invalid under sub-rule (7), cannot be continued under sub-rule (5)(b) and in other words, an order of suspension which is not valid, cannot be continued by the competent authority. The provisions of sub-rule (7) and (5)(b) are to be harmoniously construed in such a manner so that both the provisions can be given their effect and meaning. To sum up, the conjoint reading of these two provisions makes it very clear that an order of suspension which has become invalid under the sub-rule (7) for want of extension within time as prescribed therein, cannot be continued by the competent authority in exercise of its power under sub-rule (5)(b) of the Rules, 1965. An order of suspension which is already dead, cannot be revived by the competent authority.

8. In the present case, the petitioner was placed under suspension vide order dated 13-04-2017 issued by the Deputy Secretary (DP), Government of Manipur and admittedly, since the review had not been conducted within ninety days as required under the provisions of sub-rule (6), the same had become invalid. But the stand of the respondents as indicated in the affidavit, is that the Department of Personnel, Government of Manipur has issued an order dated 28-08-2017 under Rule 10(5)(b) of the Rules, 1965 directing that the petitioner shall continue to be under suspension. Although the said order dated 28-08-2017 appears to have not been questioned and challenged by the petitioner before any appropriate forum, the fact remains that the order of suspension dated 13-04-2017 has become invalid, since it has not been expended within 90 (ninety) days under the provisions of sub-rule (6). In terms of the law settled by the Hon'ble Supreme Court as aforesaid, such an order of suspension which has become invalid, cannot be revived by the subsequent review. Therefore, the order of suspension dated 13-04-2017 which has become invalid, cannot be allowed to be continued by the competent authority under the provisions of sub-rule (5)(b) of the Rules, 1965. To exercise power under sub-rule (5) (b), the second condition is not fulfilled, in the facts and circumstances of the present case, for the reason that any other disciplinary proceeding has not been commenced against the petitioner while he is under suspension in connection with the memorandum dated 17-06-2017. Thus, the order of suspension dated 13-04-2017 being rendered invalid, is liable to be quashed and set aside.

9. In view of the above, the instant writ petition is allowed with the direction that the order of suspension dated 13-04-2017, impugned herein, issued by the

Deputy Secretary (DP), Government of Manipur is quashed and set aside. There shall be no order as to costs.