
(2012) 01 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6007 of 2011

Union of India and Others

APPELLANT

Vs

Pancha Ram Bishnoi

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 3 RLW 2087

Hon'ble Judges : C.M. Totla, J;A.M. Sapre, J

Bench : Division Bench

Advocate : V.K. Mathur, for the Appellant; S.P. Singh, for the Respondent

Judgement

Hon"ble A.M. Sapre, J.—The decision rendered in this writ petition would also govern the disposal of other connected writ petition being C.W. 6037 of 2011 because both involve identical points. This is a writ petition filed by the Union of India (Department of Communication/Postal) under Article 227 of the constitution of India against an order dated 4.4.2011 passed by the Central Administrative Tribunal (for short called the Tribunal) in O.A. No. 60/2011.

2. By impugned order, the Tribunal allowed the original application of the respondents herein and quashed the suspension order impugned in the application.

3. So the short question that arises for consideration in this writ petition is whether Tribunal was justified in allowing the Original Application of the respondent and thereby justified in quashing the suspension order impugned in application?

4. Facts of the case are these :

The respondents a Central Government employee working on the post of Sub-Post Master was suspended from his service by orders dated 8.6.2009 by taking recourse to the provisions of Rule 10(1) of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965 (hereinafter referred as "CCS (CCA) Rules, 1965". Since no orders for its extension was passed by the writ petitioner as required under Rule 10(6) and (7) of the Rules and hence according to the respondent, the suspension order became invalid and inoperative on the expiry of 90 days period as prescribed under sub-rule (6) and (7) *ibid*. It was for claiming this declaration and to question its legality, the respondent filed the original application out of which this writ petition arises.

5. The Tribunal by impugned order allowed the original application and granted the aforementioned declaration to the respondent that has now given rise to filing of the writ petition by the Union of India.

6. At the outset, it was brought to our notice that impugned order was passed by the Tribunal by placing reliance on their earlier decision rendered in OA No. 225 of 2010 decided on 25.1.2011, in which identical issue was involved and the same came to be decided by the Tribunal in favour of employee concern. It was further brought to our notice that the Union of India then had filed a writ petition being C.W. No. 3777/2011 against the said order and this Court by order dated 13.9.2011 dismissed the writ petition and upheld the order of the Tribunal.

7. Learned counsel for the writ petitioner however contended that one clarification may be needed in the main order dated 13.9.2011 while disposing of these two writ petitions and that is in regard to validity of the original suspension order, which was passed by taking recourse to the provisions of Rule 10(1) of CCS (CCA) Rules impugned in the case. According to him, if the life of original suspension order is not extended after 90 days from the date of its passing then it becomes bad in law on and after 91st day and not from the date of its very inception. This clarification learned counsel says is required in the original order dated 13.9.2011.

8. We have perused our order dated 13.9.2011 and found therein that this Court has already held what has been urged by the learned counsel for the writ petitioners in para 15, 17 and 21 (emphasized supplied) of the said order.

15. Sub-rule 7 provides a life for both the suspension orders i.e. the one passed under sub-rule (1) and other in sub-rule (2). It is for 90 days to both. In other words, once a suspension order is passed whether under Rule (1) or (2), both survive only for 90 days from the date they come into operation. However, in case, if the reviewing authority for some reasons consider the suspension order to be further extended beyond the period of 90 days, then as observed *supra* the matter regarding its extension or revocation is required to be placed before the Review Committee as provided in rule 6 to enable it to pass appropriate orders. So far as deemed suspension is concerned, it has to be further considered by committee keeping in view the requirement of proviso to Rule 6.

17. Coming to the facts of the case, it is not in dispute that the reviewing authority failed to pass any order of extension as provided in sub-rule (6) within 90 days, inasmuch as, no order extending the period of suspension order was

sent to the respondent within 90 days from the date of its issuance i.e. 1.10.2009. As a result of this lapse on the part of reviewing authority, the suspension order came to an end on the expiry of 90 days as provided in sub-rule 7.

21. Learned counsel for the writ petitioner then next contended that if the Union of India has a power to suspend the delinquent employee then any order passed even after expiry of 90 days would also be legal and proper. There is lies a fallacy in this submission. In a case of extension, if passed within 90 days the original suspension order continues to remain in operation even after expiry of 90 days without there being any break whereas in a case where the order of extension is passed after 90 days, then such order cannot be construed as an order extending the period of original suspension order but becomes a fresh order of suspension falling in sub-rule (1) of Rule 10. Both eventualities thus provides for different consequences so far as parties are concerned. In other words, in the case of former eventuality, the position of original suspension order remains the same as what is was prior to expiry of 90 days and subsequent thereto also whereas in the case of later, the suspension order comes to an end on 91st day and. the status of order becomes that of a fresh order of suspension which comes into operation from the date of its issuance. This is how we answer the submission of learned counsel for the writ petitioners.

9. In any event we now reiterate our view taken in order dt. 13.9.2011 in more explicit words while disposing of these writ petitions by observing that if the life of original order of suspension is not extended beyond the period of 90 days as provided in sub-rule (6) and (7) of Rule 10 OF CCS (CCA) rules, then the original suspension order would become invalid, and inoperative on the expiry of 90 days i.e. on and after 91st day of its passing. In other words, such suspension order will only remain effective and legal for 90 days from the date of its passing but not beyond 90 days from the date of its passing.

10. We may hasten to add that our view is supported by recent decision of the Supreme Court rendered in the case of Union of India vs. Dipak Mali 2010(2) SCC 224, which was rendered subsequent to our main decision. This is what their lordship held in para 10 of its decision:

10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioners' case came up for review on 20.10.2004. We are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

In view of foregoing discussion, and further subject to what we have held supra, these two writ petitions are accordingly finally disposed off in the light of our reasoning contained in the main order dated 13.9.2011 passed in C.W. No. 3777 of 2011 be kept in the file of this case and it be treated as part of this order.