
(2008) 12 JH CK 0080
In the Jharkhand High Court

Vijay Kumar Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Citation : (2009) 120 FLR 832 : (2009) 1 JCR 1

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal , J.—In this application the petitioner has prayed fore quashing the order dated 22.7.2008 passed on O.A. No. 55/2008, whereby the Central Administrative Tribunal, Patna Bench dismissed the application filed by the petitioner and affirmed the order of suspension passed by the respondent authority.

2. The facts of the case lie in a narrow compass.

The petitioner is a member of Indian Forest Services and placed under Jharkhand. When he was serving as Deputy Director (Marketing), Jharkhand State Forest Development Corporation. Ranchi, two FIRs were registered against him i.e. Crime Nos. 50/98 and 66/98 of Latehar Police Station. The allegations were that he committed serious irregularities of fraudulent procurement and involved in conspiracy, misappropriation of funds and financial irregularities. Chargesheets were also filed against the petitioner in both the above cases, which are pending for disposal.

3. While the criminal case was instituted against the petitioner, he was arrested and remanded to judicial custody. The petitioner was, therefore, put under suspension, vide order dated 25.7.2005 according to the provisions contained in Rule 3(2) of the All India Services (Discipline and Appeal) Rules, 1969 (in short the Rules). Subsequently the petitioner was granted bail by the High Court on 3.8.2005. The respondent then issued another notification dated 29.6.2006

putting the petitioner and suspension with effect from 24.8.2005 under Rule 3(3) of the said Rules. The petitioner challenged the aforesaid notification before the Tribunal mainly on the ground that the impugned order is totally contrary to and in violation of the provisions of Rule 3(8) of the Rules.

4. Mr. Sahanl, learned Counsel for the petitioner, submitted that the first order of suspension dated 25.7.2005 putting the petitioner under suspension was Issued under Rule 3(2) of the said Rules without complying the provisions of Rule 3(8) (a) of the Rules by extending it for a period of 180 days after expiry of 90 days and also by not complying the Rule 3(8)(b) of the said Rules, which is against the provisions of the said Rules. Consequently the second order of suspension with retrospective effect cannot be sustained in law.

5. For better appreciation, the relevant portion of the Rules i.e. Rule 3(2), (3), (7) and (8) are quoted herein below:

(2) A member of the Service who is detained in official custody whether on a criminal charge or otherwise for a period longer then forty eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge Is pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a member of the Service or is likely to embarrass him in the discharge of his duties or Involves moral turpitude.

(7)(a) 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.

(b) Where a member of the Service 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 in writing, direct that the member of Service shall continue to be under suspension subject to Sub-rule (8).

(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 deemed to.have made the order;

(8)(a) An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time, unless revoked earlier.

(b) An order of suspension made or deemed to have been made or continued, shall be reviewed by the competent authority on the recommendations of the

concerned Review Committee.

(c) The composition and functions of the Review Committees and the procedure to be followed by them shall be as specified in the Schedule annexed to these rules.

(d) The period of suspension under Sub-rule (1) may, on the recommendations of the concerned Review Committee, be extended for a further period not exceeding one hundred and eighty days at a time.

Provided that where no order shall been passed under this clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed.

6. From reading of the aforesaid provisions together, it is manifestly clear that the Intention of the framer of the rule is to keep the employee under suspension till the termination of criminal proceeding. Admittedly two criminal cases are pending against the petitioner. We are unable to accept the submissions made by Mr. Sahani that the subsequent notification is not a fresh order of suspension rather it is an order of conversion of the earlier order. As a matter of fact in the order of suspension it was clearly mentioned that the petitioner was put under suspension earlier when he was taken into custody and after his release from the Judicial custody he is liable to be put under suspension because of the pendency of the criminal proceedings.

7. In our view, therefore, the Central Administrative Tribunal has rightly held that the impugned order of suspension does not suffer from any illegality or irregularity. We do not find any reason to interfere with the order passed by the Tribunal.

8. For the reason aforesaid, we find no merit in this writ application, which is, accordingly, dismissed.

Jaya Roy, J.

I agree.