

**(2010) 07 CAL CK 0102**

**Calcutta High Court**

**Case No:** W.P.C.T. 43 of 2010

Sri Abanindra Mohanty

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision:** July 28, 2010

**Acts Referred:**

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 10, 10(1), 10(2), 10(5), 10(6)

**Citation:** (2010) 4 CALLT 205 : 114 CWN 885 : (2010) 127 FLR 628

**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Md. Abdul Ghani, J

**Bench:** Division Bench

**Advocate:** Ashok De and Subrata Bhattacharjee, for the Appellant; Anwar Ali, for the Respondent

### **Judgement**

Pranab Kumar Chattopadhyay, J.

The petitioner herein being aggrieved by and dissatisfied with the continuance of the order of suspension filed an application before the learned Central Administrative Tribunal, Calcutta Bench which was finally dismissed on merits by the Judgment and order dated 30th October, 2009.

2. The petitioner was initially appointed as Additional Divisional Engineer, Telecom in the year 1984 and thereafter, promoted to the post of Senior Administrative Grade and posted as General Manager with effect from 16th December, 2002. The said petitioner while working as General Manager, Kharagpur Telecom District was placed under deemed suspension by the order dated 29th December, 2008 under Rule 10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "CCS(CCA) Rules, 1965") with effect from 19th November, 2008.

3. The said suspension order was thereafter, reviewed and extended for a further period of 180 days which was mentioned in the order dated 26th March, 2009 issued

by the Under Secretary to the Government of India, Department of Telecommunications.

4. It has been urged on behalf of the petitioner that the suspension order initially issued to the said petitioner was not extended after review within a period of 90 days from the effective date of suspension and, therefore, the subsequent extension of the suspension order by the concerned authority cannot be sustained in the eye of law in view of violation of the specific provision of Rule 10(7) of the CCS(CCA) Rules, 1965.

5. For the purpose of effectively deciding the issues raised in this appeal, the provisions of Rule 10(2), (5), (6) and (7) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 are set out hereunder:

10. Suspension.- (1)...

(2) A Government Servant shall be deemed to have been placed 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) \* \* \* \*

(4) \* \* \* \*

(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 of 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. The learned Counsel representing the respondents, however, submitted that the competent authority upon reviewing the case of the petitioner herein decided not to revoke the order of suspension at this stage. Referring to Sub-rules (6) and (7) of Rule 10 of the CCS(CCA) Rules, 1965, learned Counsel of the respondents submitted that an order of suspension made under Sub-rule (2) of Rule 10 comes to an end unless the same is extended after review before the expiry of 90 days or the competent authority modifies or revokes the said suspension order on the recommendation of the Review Committee. It has been specifically submitted by the learned Counsel of the respondents before this Court that the case of the petitioner was reviewed within the prescribed time limit and was extended after such review although the learned Counsel of the petitioner specifically urged that the competent authority did not review the case of the said petitioner within the prescribed time limit of 90 days and illegally extended the order of suspension.

7. There is no dispute that the petitioner was placed under deemed suspension by the order dated 29th December, 2008 with effect from 19th November, 2008.

8. It is now to be decided whether the case of the petitioner was reviewed by the competent authority within the prescribed time limit of 90 days.

9. The learned Tribunal has specifically held that there was no delay in reviewing the case of the petitioner and the order of suspension was reviewed within the stipulated period of 90 days. It is not in dispute that the competent authority reviewed the suspension order of the petitioner on 26th March, 2009 and extended

the same for a further period of 180 days. The aforesaid order dated 26th March, 2009 extending the suspension order of the petitioner for a further period of 180 days is set out hereunder:

No. 9-24/2008-VIG-I

Government of India

Ministry of Communications and Information Technology

Department of Telecommunications

(Vigilance Wing)

1112 Sanchar Bhawan,

20, Ashoka Road,

New Delhi - 110001

Dated the 26th March, 2009.

**ORDER**

Whereas, Shri Abanindra Mohanty (St. No. 8040), General Manager, Kharagpur Telecom District, West Bengal was caught red-handed by CBI while accepting illegal gratification and he was detained in custody on 19.11.2008 for a period exceeding 48 hours;

And Whereas, Shri Abanindra Mohanty was placed under deemed suspension with effect from his date of detention vide this office order of even number dated 29.12.2008, in terms of Rule 10(2) of CCS(CCA) Rules, 1965, which is valid upto 28.03.2009;

Now, Therefore, the President, being the competent authority has carefully reviewed the suspension of Shri Abanindra Mohanty, GM in terms of Rule 10(6) ibid and keeping in view the facts and circumstances of the case, has decided to extend the suspension of Shri Abanindra Mohanty for a further period of 180 days beyond the validity of existing period of suspension.

By order and in the name of the President.

Sd/-

(R.S. Yadav)

Under Secretary to the Govt. of India.

10. The learned Tribunal undisputedly, calculated 90 days from the date of the initial order of suspension issued to the petitioner i.e. 29th December, 2008. The learned Tribunal observed that under the Rules, the suspension order can be reviewed and extended provided it is done before the expiry of the suspension period.

11. In our opinion, learned Tribunal unfortunately, failed to appreciate that the order of suspension was required to be reviewed by the competent authority before expiry of 90 days from the effective date of suspension in terms of Sub-rule (6) of Rule 10 of the CCS(CCA) Rules, 1965. The words "before expiry of ninety days from the effective date of suspension" have been substituted in Sub-rule (6) of Rule 10 of the CCS (CCA) Rules, 1965 by the Government of India, Dept. of Personnel and Training pursuant to the Notification No. 11012/4/2003-Estt.(A) dated 6th June, 2007 and published as GSR 105 in the Gazette of India, dated the 16th June, 2007.

12. In the instant case, 90 days from the effective date of suspension in respect of the petitioner herein should be calculated from 19th November, 2008. The petitioner was placed under suspension with effect from 19th November, 2008 in terms of Sub-rule (2) of Rule 10 of the CCS(CCA) Rules, 1965 which has also been specifically recorded in the order dated 29th December, 2008 issued by the Under Secretary to the Government of India. The aforesaid order dated 29th December, 2008 is set out hereunder:

No. 9-24/2008-VIG-I

Government of India

Ministry of Communications and Information Technology

Department of Telecommunications

(Vigilance Wing)

1112 Sanchar Bhawan,

20, Ashoka Road,

New Delhi - 110001

Dated the 29th December, 2008.

ORDER

Whereas, Shri Abanindra Mohanty (St. No. 8040), General Manager, Kharagpur Telecom District, West Bengal was caught red-handed by CBI while accepting illegal gratification and he was detained in custody for a period exceeding 48 hours;

Now, Therefore, the said Shri Abanindra Mohanty, GM is deemed to have been placed under suspension with effect from the date of detention i.e. 19.11.2008, in terms of Sub-rule (2) of Rule 10 of CCS (CCA) Rules, 1965 and shall remain under suspension until further orders.

By order and in the name of the President.

Sd/-

(R.S. Yadav)

Under Secretary to the Govt. of India.

13. The learned Tribunal unfortunately, did not take note of the aforesaid fact that the suspension order is to be reviewed before expiry of 90 days from the effective date of suspension and, therefore, the stipulated period of 90 days should be calculated in respect of the petitioner herein from 19th November, 2008 and not from 29th December, 2008. Therefore, the impugned Judgment and order passed by the learned Tribunal is liable to be set aside on the aforesaid ground alone.

14. However, it is also not in dispute that the petitioner was arrested by CBI on 19th November, 2008 and granted bail on 18th December, 2008. The suspension order was issued by the competent authority on 29th December, 2008 when the said petitioner was admittedly not detained in custody.

15. The respondent authorities should not have placed the petitioner under suspension when he was actually not detained in custody.

16. An employee could not be placed under suspension in terms of the aforesaid Rule 10(2) of the CCS (CCA) Rules, 1965 when he was actually not detained in custody and was enlarged on bail by a competent criminal court. The impugned order of suspension in the present case was admittedly, issued long after the release of the petitioner from detention and, therefore, the said suspension order cannot be sustained in the eye of law.

17. Furthermore, in the instant case, the respondent authorities unfortunately decided to keep quiet and did not take any step for initiating disciplinary proceedings against the petitioner herein by issuing charge-sheet. In the aforesaid circumstances, the petitioner also cannot be kept under suspension for an indefinite period.

18. The learned Counsel representing the respondents submitted that the order of suspension should continue till the criminal case initiated by the CBI is finally disposed of. The Supreme Court has strongly deprecated continuance of the suspension of an employee for an indefinite period. In the case of K. Sukhendar Reddy Vs. State of Andhra Pradesh and Another, Supreme Court was pleased to observe:

7 ...We do not know how long it will take to complete the investigation. That being so, the officer of the rank of the appellant, against whom it has now come out that the disciplinary proceedings are not contemplated, cannot be kept under suspension for an indefinite period....

19. In the present case, however, the initial order of suspension issued to the petitioner was undisputedly, not reviewed before expiry of 90 days from the effective date of suspension and, therefore, by operation of the statute in terms of Sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules, 1965, the order of suspension had lapsed after expiry of the period of 90 days. The aforesaid lapsed order of

suspension thereafter, sought to be extended by the respondent authorities by the order dated 26th March, 2009 for a further period of 180 days, which cannot be permitted as the lapsed order of suspension cannot be validly extended for a further period of 180 days in terms of Rule 10(6) of the CCS(CCA) Rules, 1965 since the same would amount to survival after death.

20. The decision cited by the learned Counsel of the respondents in the case of Union of India (UOI) Vs. Rajiv Kumar, has no manner of application in the facts of the present case in view of the fact that by operation of law, the order of suspension issued to the petitioner had lapsed after expiry of the period of 90 days as the said suspension order was not extended in compliance with Rule 10(6) of CCS(CCA) Rules, 1965 before expiry of 90 days from the effective date of suspension.

21. For the aforementioned reasons, the order dated 26th March, 2009 and all other subsequent orders passed by the Under Secretary to the Government of India extending the period of suspension cannot be sustained in the eye of law and the same are, therefore, quashed.

22. The learned Tribunal also committed serious error by holding that the authorities had reviewed the order of suspension before expiry of 90 days ignoring the fact that such review was required to be made in terms of Sub-rule (6) of Rule 10 before expiry of 90 days from the effective date of suspension. The learned Tribunal presumably did not notice the subsequent amendment in Sub-rule (6) of Rule 10 of CCS (CCA) Rules, 1965 wherein the words "before expiry of ninety days from the effective date of suspension" have been inserted. In the case of the petitioner herein, such effective date should be calculated from 19th November, 2008 when the said petitioner was arrested by CBI and not from the date of the order of suspension which was issued subsequently on 29th December, 2008.

23. In the aforesaid circumstances, the impugned Judgment and order passed by the learned Tribunal on 30th October, 2009 in O.A. No. 443 of 2009 and subsequent order dated 25th January, 2010 passed in R.A. 28 of 2009 cannot be sustained and the same are accordingly set aside.

24. The respondent authorities are, therefore, directed to allow the petitioner to join the duty forthwith and pay salary and allowances regularly. The petitioner will also be entitled to the arrear salary and allowances from the very next day after the expiry of 90 days from the effective date of suspension in terms of the order of suspension dated 29th December, 2008 till the date of joining the duties. Accordingly, the respondent authorities are further directed to pay the aforesaid arrear dues to the petitioner after adjusting the subsistence allowance already paid to the said petitioner at an early date but positively within a period of four weeks from the date of communication of this order.

25. In the facts of the present case, there will be, however, no order as to costs.

26. Let urgent Xerox certified copy of this Judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Md. Abdul Ghani, J.

27. I agree