

Dr. Sudhakar Sharma Vs. U.Oi. and Others

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Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : May-28-2014

Judge : G. George Paracken, Member (J) & V.N. Gaur, Member (a)

Appeal No. : OA No.2023 of 2013, MA No.1666 of 2013, MA No.3148 of 2013

Appellant : Dr. Sudhakar Sharma

Respondent : U.Oi. and Others

Judgement :

V.N. Gaur, Member (A).

1. The applicant was appointed as Secretary, Lalit Kala Akademi (LKA) on 03.04.2001. He was suspended through an order dated 14.02.2013 issued by Assistant Secretary (Admn.) of LKA with the approval of the Chairman, LKA, Sh. K.K.Chakravarty, who took over the charge of the post on 13.02.2013 as per respondents version. That suspension order was revoked by another order of same date, i.e., 14.02.2013 signed by Shri K.R.Subbanna, Acting Chairman, LKA who according to the applicant was legally authorized to exercise the powers of Chairman, LKA since the new Chairman Sh. K.K.Chakravarty joined his office on 15.02.2013. Otherwise also, the suspension order dated 14.02.2013 had not been reviewed within 90 days of the date of issue of that order, and therefore, it automatically lapsed after the expiry of 90 days. The respondents, however, by an order dated 14.06.2013 revoked the suspension order and issued a fresh

suspension order on the same date after the matter had been reviewed by a Review Committee constituted as per Rule 10 (6) and (7) of CCS (CCA) Rules, 1965. Subsequently, the respondents further extended the suspension of the applicant vide order dated 05.12.2013. The applicant has filed this OA with the following prayer:

(i). To declare the entire action of the respondents in not reviewing the suspension of the applicant before expiry of 90 days as illegal and arbitrary and reinstate the applicant in service with all consequential benefits including arrears of pay.

(ii). To quash and set aside the impugned order dated 14.02.2013 and reinstate the applicant in service with all consequential benefits including arrears of pay with interest.

(iii). To direct the respondents to treat the applicant in service for want of review of suspension within 90 days.

To allow the OA with cost.

(v). To pass such other and further orders which their lordships of this Honble Tribunal deem fit and proper in the existing facts and circumstances of the case.

(vi). To quash and set aside the order No. LK/CHAIR-2/2013/41 dated 14.06.2013 and No. LK/CHAIR-2/2013/40 dated 14.06.2013 to the extent the applicant has not been reinstated in service from February 2013 with all benefits.

(vii) To reinstate the applicant in service with all consequential benefits including arrears of pay.

Through MA no.3355/2013 the applicant has amended the prayer clause to include the following:

(viii). To quash and set aside the order dated 05.12.2013 and reinstate the applicant in service with all consequential benefits including arrears of pay.

2. The applicant has challenged the suspension order on the following grounds:

(1). The impugned suspension order was issued without any justification as suspension can be resorted to only when a disciplinary proceeding is contemplated.

(2). It was issued with the approval of the new Chairman, LKA even before he assumed the charge.

(3). His representation was rejected through a non-speaking order on 04.06.2013.

(4). The impugned orders dated 14.06.2013 is in violation of Rule 10 (6) and 10 (7) of CCS (CCA) Rules, 1965, as no review committee was constituted as per the aforesaid rules.

(5). Chairman, LKA is an honorary post, and therefore, in terms of OM no.25/2/50-Estt.(A) dated 20.06.1951, he could not exercise either executive or administrative or quasi judicial powers.

(6). The suspension order was issued with mala fide intention as Sh. K.K.Chakravarty was a member of the Enquiry Committee which had earlier enquired into certain allegations against the applicant.

3. Sh. M.K.Bhardwaj, learned counsel appearing on behalf of applicant stated that issuance of suspension order even before assuming the charge of the honorary post of Chairman, LKA by Sh. K.K.Chakravarty was invalid and illegal and sufficient to prove mala fide. Referring to the Supreme Court judgment in State of Punjab vs. K.Khanna, JT 2000 (Suppl. 3) SC 349, learned counsel stated that the bias admittedly negates fairness and reasonableness by reason of which arbitrariness and mala fide move creep in. Even for the sake of argument, if it was accepted that the respondent no.5 (Sh. K.K.Chakravarty) had assumed the charge of the post on 13.02.2013 still his action of suspending applicant on 14.02.2013 could not be justified as there was no material available before him to take extreme decision of placing him under suspension on the very first day. Referring to the Supreme Court judgment in State of Orissa vs. Bimal Kumar Mohanty, 1994 SCC (4) 126, learned counsel stated that a suspension order passed by the competent authority without any material to support that extreme step was illegal.

4. The learned counsel further alleged that respondent no.5 was so biased against the applicant that by all means he wanted to remove him from the post of Secretary. It was contended that the respondent no. 5 was a member of Disciplinary Committee in the year 2010 to inquire into allegations that form part of a charge sheet served on the applicant after the suspension order was issued. The respondent no.5 had, therefore, developed a bias against the applicant.

5. The learned counsel further submitted that the argument of the respondents that the cancellation of the suspension order by Sh. K.R.Subbanna, Acting chairman was without authority as Sh. Subbanna has ceased to be the Acting Chairman of LKA, was a wrong and misleading statement as Ministry of Culture continued recognizing him as the Acting Chairman. This was sought to be established by the learned counsel by referring to Ministry of Culture letter dated 14.02.2013 addressed to the Acting Chairman and a DO letter signed by Joint Secretary, Ministry of Culture dated 05.02.2013 by name to Sh. K.R.Subbanna as an Acting Chairman. He also drew attention to the fact that order dated 14.02.2013 mentioned that it was issued with the approval of competent authority but without disclosing who was the competent authority. The then Acting Chairman himself had written in the order dated 14.02.2013 (cancelling the suspension of the applicant) that till 14.02.2013 Sh. Chakravarty had not assumed charge of the office of the Chairman, LKA, and therefore, he continued to be Acting Chairman of the Akademi vide Clause 6 (ii) of the Constitution of LKA. This clause 6 (ii) provides that the Vice Chairman shall act as the Chairman in the absence of the Chairman or in case of vacancy in the office of Chairman, till the Chairman resumes office or till an acting chairman is appointed by the Government of India. The e-mail dated 15.02.2013 sent by Acting Chairman, LKA to the respondent no.1 to 3 clearly showed that Sh.Chakravarty took over the charge of Chairman, LKA in the afternoon of 15.02.2013. The opening sentence of LKAs minutes dated 15.02.2013 signed by inter alia Sh. K.K.Chakravarty on the same date would show that his joining on 15.02.2013 was admitted by the Chairman himself Chairman broadly reviewed the work of every section on his first visit to Ravindra Bhawan on 15.02.2013. It was also pointed out that the letter dated 13.02.2013 signed by Sh. K.K.Chakravarty addressed to Joint Secretary, Ministry of Culture was not on the letter head of his office nor it carried any file number proving that he had not

assumed the charge on 13.02.2013 (page 396 of the paper book) and he had wrongly and fraudulently claimed the date of assumption of charge as 13.02.2013. The LKA office order Part II No.49 dated 15.02.2013 mentions that Sh. Chakravarty had been appointed as Chairman with effect from 11.02.2013, which was a deliberate attempt to mislead. Learned counsel submitted that the Acting Chairman Sh. Subbanna was not a trespasser, as alleged by the respondents, beyond 31.12.2012. He pointed out that membership of General Council which expired on 31.12.2012 and the post of Vice Chairman were two separate positions and one should not be confused with the other.

6. It was also submitted by the learned counsel for the applicant that Sh. Chakravarty with whose approval the suspension order dated 14.02.2013 was stated to have been issued was an honorary functionary not vested with administrative or quasi judicial powers in terms of Government of India Decision no.(1) below Rule 1 of the CCS (Conduct) Rules, 1964 which reads as follows:

(i). XXXXXX

(ii).XXXXXX

(iii).Services of an honorary worker should be utilized only in an advisory capacity. The work to be entrusted to him should not be such as would involve exercise of executive, administrative or judicial powers as the holder of a civil post or exercise of authority in the name, or on behalf, of Government.

7. The honorary status of the post of Chairman, LKA has been confirmed by the Department of Cultures letter dated 29.12.1998, stating that Chairman, LKA did not get any remuneration except TA/DA and local conveyance and was not provided with any Government accommodation. This post was, therefore, covered under the above mentioned instructions. Even if the DOPT Rules had been replaced by the service bye laws as framed by the then Administrator, LKA giving the LKA a character of a registered society, that would not change the honorary character of the post of Chairman.

8. The suspension order dated 14.06.2013 was also illegal because the power to order vests in the appointing/disciplinary authority and not the review committee. The composition of the review committee was also not informed to the applicant which was violation of the Government orders, below Rule 10 of the CCS (CCA) Rules, 1965. For the same reasons, the further suspension order dated 05.12.2013 was also violative of the rules and was illegal. All actions of Chairman were to be ratified by the Executive Board and Government Council, according to the Memorandum of Association of LKA. The same has not been done. Concluding his submissions, the learned counsel stated that the illegal order of suspension issued by the Chairman, LKA even before assuming the charge of that post has done irreparable harm to the applicant who was honest and diligent officer having more than 33 years of service and accordingly, he prayed for quashing of the suspension orders.

9. Per contra, in a separate affidavit respondent no.5 has denied the allegations of mala fide against him. Learned counsel for respondent no.5 submitted that the allegation of mala fide against a person has to be proved before the court. The applicant has not specifically stated the reasons for respondent no.5 to bear grudge against the applicant as merely being a member of an enquiry committee cannot be a reason to allege mala fide against a person. The respondent no.5 had been appointed Chairman of LKA vide order dated 11.02.2013 and for the post of Chairman, there was no formal handing over or taking over of the charge. Respondent no.5 assumed the charge of that office on 13.02.2013 and after that he discovered that the Secretary (applicant) was functioning in collusion with Sh. K.R.Subbanna for taking illegal decisions in violation of the Constitution as Sh. Subbanna was not a member of General Council what to speak of Vice Chairman or acting Chairman after 31.12.2012. The new Chairman, accordingly, took a decision to suspend the applicant pending initiation of departmental enquiry under Rule 10 (1) of CCS (CCA) Rules, 1965. The competent authority has since issued a detailed charge sheet to the applicant containing various articles of charges. This shows that suspension was ordered not arbitrary but issued on the basis of available material indicating misconduct on the part of the applicant.

10. Learned ASG appearing on behalf of respondents no.2 and 3 referred to the appointment order of Sh. K.K.Chakravarty dated 11.02.2013 and pointed out that the appointment was with immediate effect and it was notified in the Gazette on the same day. He assumed charge on 13.02.2013 vide his letter of the same date. Therefore, there should be no controversy that Sh. Chakaravarty, respondent no.5 was not the Chairman of LKA on 14.02.2013. A charge report would not become invalid because of the type of stationery that was used by the Chairman. Referring to the peculiar circumstances wherein Sh. Subbanna was legally continuing as Acting Chairman with the connivance of the applicant and that he had not vacated the office, it was not feasible for the new incumbent, respondent no.5 to start functioning from his office in the LKA. He was, therefore, forced to operate from another building by calling the concerned officers from the LKA. This cannot be interpreted to show that respondent no.5 had not assumed the charge of the office of Chairman, LKA.

11. Learned ASG further submitted that the tenure of Sh. Subbanna as Member of the General Council expired on 31.12.2013. According to clause 6 (1) of the Constitution of LKA, the Vice Chairman was to be elected in a meeting of the General Council from amongst the members of the General Council implying thereby that the Vice Chairman had to be a member of the General Council. Thus, Sh. Subbanna, who worked as Acting Chairman under the provision of clause 6 (ii) that Vice Chairman would act as Acting Chairman in the absence of the Chairman, could not have held the office of Acting Chairman once he ceased to be a member of the General Council. In fact, it was a serious failure on the part of the applicant, who being the Secretary of LKA did not even inform the Ministry of Culture about the expiry of the tenure of Sh. Subbanna and the need to take measures for making alternative arrangement. Sh. Subbanna also knew that his term will be over on 31.12.2012 as was evident from his own letter dated 05.02.2008. But he continued to function as Acting Chairman in collusion with the applicant. Hence, it was a case of reverse mala fide. Countering the argument that all decisions of the Chairman required to be ratified by the General Council or Executive Board as the case may be, he stated that this provision pertained to the decisions taken by the Chairman on behalf of the General Council or Executive Board where such powers vest with those bodies. With regard to the disciplinary control, the Chairman was

specifically vested with powers under Clause 5 (iv) (c) of the Constitution of the LKA. Since in this case the Chairman, LKA used his powers under Rule 5 (iv) (c), there was no need for the ratification by any other body. Learned ASG also questioned the argument that the persons holding honorary post cannot exercise executive, administrative or judicial powers as submitted by the learned counsel for the respondents on the strength of CCS (Conduct) Rules, 1964. He pointed out that this rule applied to the honorary workers in civil posts and not to LKA which was a Society. In the present case, the Chairman even if held honorary post, was vested with administrative powers under the Constitution of LKA. The clarification given by the Ministry of Human Resource Development in letter dated 29.12.1998 (page 62 of the paper book) and quoted by the learned counsel for the applicant only mentioned the service conditions of the status of the Chairman of LKA and did not refer to his administrative or executive powers. Chairman being the appointing authority of the Secretary and other Group A and B employees will automatically be the disciplinary authority.

12. It was further submitted that the representations of the applicant dated 18.02.2013 and 26.03.2013 were considered by the competent authority, i.e., the Honble Culture Minister, Ministry of Culture, but the same have been rejected vide letter dated 04.06.2013 on merits. He also refuted the argument that there was any illegality in the act of respondents in revoking the suspension order and issuing a fresh suspension order on the same date, i.e., 04.06.2013. The respondents had realized the fact that they had failed to review the suspension order dated 14.02.2013 within the statutory time period of 90 days and as a result they revoked the suspension order after expiry of 90 days and also paid the salary for the interim period to the applicant. In this connection, he relied on Supreme Court judgment in *U.P.Rajya Krishi Utpadan Mandi Parishad and others vs. Sanjiv Rajan*, 1993 Supp. (3) SCC 483 and *Govt. of N.C.T. of Delhi vs. Beena Mehra*, 155 (2008) Delhi Law Times 583 and *Govt. of NCT of Delhi vs. Beena Mehra*, 155 (2008) Delhi Law Times 583.

13. Referring to the allegations of mala fide against the respondent no.5, the learned ASG submitted that mere past membership of disciplinary committee would not be a sufficient ground to establish mala fide. Being the Chairman

nobody else could have taken the disciplinary action against the applicant under the Constitution of LKA. He justified the action of the Chairman, LKA by invoking the doctrine of necessity.

14. We have heard the learned counsels of both the sides and carefully gone through the pleadings on record including the written arguments. The applicant has challenged the suspension order dated 14.02.2013 mainly on three grounds, namely,

(1). The authority with whose approval the suspension order was passed did not have the legal authority to do so for reasons:

(a). he had not taken over the charge.

(b). there was no material before him to make up his mind for suspension of the applicant.

(c). respondent no.5 occupying an honorary post cannot exercise administrative, executive and quasi judicial powers.

(2). The respondent no.5 acted with mala fide having been a member of a Disciplinary Committee.

(3). The second suspension order issued on 14.06.2013 suffered from illegality

(a). as it was on the recommendation of the review committee and not the disciplinary authority

(b). he was not reinstated in between and

(c). on the same day on which the first suspension order was revoked, the second suspension order was issued without there being any necessity to do so.

15. Before examining whether respondent no.5 held the post of Chairman, LKA on 14.02.2013 or not, we may first settle the issue whether Sh. Subbanna was Acting Chairman on that date or not. It is an admitted fact that Sh. Subbanna was a member of General Council and his term expired on 31.12.2012. The Constitution

of LKA has provision in clause 6 that Vice Chairman shall be elected in the meeting of General Council from amongst the members of the General Council present. For the sake of easy reference, clause 6 is reproduced below:

6. VICE CHAIRMAN

i. The Vice Chairman shall be elected in a meeting of the General Council from amongst the members of the General Council present and for a term of five years or up to the end of his term as member if it falls earlier. The person elected as Vice Chairman must have managerial ability and integrity. No person shall be eligible to hold office of Vice Chairman for more than two successive terms.

The Vice Chairman shall assist the Chairman in such matters as are entrusted to him by the Chairman. No statutory power of the chairman shall be so entrusted. The Vice Chairman shall act as the Chairman in the absence of the Chairman or in case of vacancy in the office of Chairman, till the Chairman resumes office or till an acting Chairman is appointed by the Government of India. When the absence of Chairman or said vacancy is likely to extend beyond one month, Government of India may appoint an acting Chairman till the Chairman resumes office, but, no person shall hold office of acting Chairman for a period exceeding six months. The Vice Chairman shall be entitled to facility of telephone, transport to office and back and appropriate travel and camping facilities on tour, if he resides away from headquarters of Akademi, as may be approved by the General council.

lii The Vice Chairman may demit his office by resigning and on his resignation being accepted by the Chairman. Acting Chairman may demit his office by resigning and on his resignation being accepted by the Government of India.

16. This clause further provides that Vice Chairman shall act as Chairman in the absence of Chairman or in case of vacancy in the office till the Chairman resumes office or till the Acting Chairman is appointed by the Government of India. From the pleadings it is not clear whether Sh. Subbanna was officiating as Vice Chairman in the absence of Chairman who, as mentioned by learned ASG during his submission, demitted office in July 2012 or Sh. Subbanna was appointed as Acting Chairman by the Government. According to the rule no person shall hold

office of Acting Chairrman for a period exceeding 6 months. Thus, we agree with the submission made on behalf of the respondents that once Sh. Subbanna ceased to be a member of the General Council, he also ceased to be the Vice Chairman and thereafter he could not hold the post of Acting Chairman which he held by virtue of being Vice Chairman. Even if there was some doubt about that, the second provision in clause 6 (ii) that no one can hold office of Acting Chairman for a period exceeding 6 months, would mean that Sh. Subbanna could not have worked as Acting Chairman in any case beyond January 2013. There is nothing on record to justify continuance of Sh. Subbanna as Acting Chairman beyond December 2012, and hence, no legal authority as Acting Chairman or locus standi to pass any order leave aside cancellation of suspension order passed by competent authority even if the same was disputed.

17. The applicant has also contended that the fact of Sh. Subbanna being the Acting Chairman even after 31.12.2013 was recognized by the Ministry of Culture as reflected in the letters dated 05.02.2013 and 14.02.2013. We do not find this to be a valid argument since these letters were not related to the extension of term or re-appointment or any such matter relating to Acting Chairman. Mention of a designation in a routine correspondence cannot change the legal status of Sh. Subbanna who ceased to be a member of General Council on expiry of his term, and thereby Vice Chairman, LKA and Acting Chairman, LKA.

18. The second question that arises is whether respondent no.5 had the authority to pass suspension order on 14.02.2013. Learned counsel for applicant has contended that the assumption of charge letter written by respondent no.5 was not on official stationery and carried no file number. He visited the LKA building only on 15.02.2013, as reflected in the minutes of the meeting he held with the officers on 15.02.2013. He called Assistant Director to some other place on 14.02.2013 and gave instructions following which the suspension order was passed etc. Sh. Subbanna had intimated Ministry of Culture on 15.02.2013 that Sh. Chakravorty had assumed charge of the post of Chairman on 15.02.2013. We do not find any legal lacuna in any of these actions that would invalidate the order passed by respondent no.5 or that would determine the date of his assumption of charge. Since on that day Sh. Subbanna was not a functionary of the LKA, an intimation

sent by him to the Ministry cannot be relied upon. The circumstances that have been placed before us show that it would be quite natural for a new incumbent to function from another building as he would not be able to occupy office which was not vacated by his predecessor. When the action proposed is against the Secretary of that Organisation it is but logical that the new Chairman would call junior officers to give instructions.

19. The appointment order issued by the Government of India is reproduced below for easy reference:

(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART I SECTION II)

F.No.3-17/2011-Akademies

Government of India

Ministry of Culture

New Delhi, the 11th February, 2013

RESOLUTION

In accordance with Rule 5(i) of the Rules and Regulations of the Lalit Kala Akademi, the President of India hereby appoints Shri Kalyan Kumar Chakravarty as Chairman of the Lalit Kala Akademi, New Delhi with immediate effect. Shri Chakravarty will hold office till the end of the calendar year in which he completes 70 years of age i.e. upto 31.12.2017.

Sd-

(PRAMOD JAIN)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

ORDER

Ordered that a copy of this Resolution be sent to (a) Secretary, Lalit Kala Akademi, Rabindra Bhawan, 35, Ferozeshah Road, new Delhi-110001 and (b)

Shri Kalyan Kumar Chakravarty, B-15 (8th Floor), Delhi Administration Officers Flats, Sector-D-2, Near DDA Sports Complex, Vasant Kunj, New Delhi-110070; and that the Resolution be published in the Gazette of India for general information.

Sd-

(PRAMOD JAIN)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

The Manager

Government of India Press

Near Hardware Chowk

Faridabad-121001 (Haryana)

The order mentions the word with immediate effect. It has also been pleaded on behalf of the respondents that no handing over taking over was required for the assumption of charge by the new incumbent. This submission has not been contested by the applicant. That being so, the respondent no.5 only had to assume charge of the post which he did on 13.02.2013 by issuing a letter to the Ministry of Culture. It is thus established that on 14.02.2013 Sh. Subbanna would not have been Acting Chairman and respondent no.5 was Chairman having taken over on 13.02.2013.

20. With regard to the submission on behalf of the applicant that being an honorary post, the Chairman could not have exercised as administrative, executive and quasi judicial powers, we are in agreement with the learned ASG that the GOI decision below rule 1 of CCS (Conduct) Rules, 1964 quoted by the learned counsel for the applicant applies to a civil post and would not apply to LKA which is a registered Society. The Constitution of LKA confers the power to appoint Secretary or Group A and B employees of the Akademi explicitly despite the post of Chairman not being a regular employee of the Akademi. The relevant rule 5 (iv)(c) is reproduced below:

(c). To appoint the Secretary and Group A and Group B employees of the Akademi, corresponding to similar classification of Government employees, in accordance with the Service Bye Laws and Recruitment Rules prescribed by the General Council;

21. Every Society has to structure itself in accordance with specific needs of that organization and no iron cast structure and rules can be made applicable to them especially in the matter of personnel management and service rules. Since the Memorandum of Association does give the power of appointment of Secretary to the Chairman, he obviously will have the power of disciplinary authority as well in respect of that post.

22. With regard to the allegations of mala fide, it is trite that it will require strict proof to establish the allegation mere averments of mala fide is not enough. In State of Bihar vs. P.P.Sharma, AIR 1991 SC 1260, Honbe Supreme Court has defined mala fide as:

Mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose.

Thus, the term mala fide includes a wrongful act intentionally performed but without just cause and yet an ulterior motive to cause injury to some one.

23. The main ground for raising this allegation is the fact that respondent no.5 was part of the enquiry committee which went into various allegations against the applicant on a previous occasion. The applicant has not specifically stated as to what would have been the reason for respondent no.5 to be biased or harbouring mala fide against him. Having been a member of the enquiry committee against the applicant, the respondent no.5 may have had knowledge of certain allegations against the applicant but such knowledge cannot be the sole ground for mala fide. The applicant has not been able to establish either a wrongful act without just cause or any ulterior motive on the part of the respondent no.5. The official respondent has found respondent no.5 as suitable for the post of Chairman, LKA, but his appointment could not have been abandoned for the reason that he was a member of the Disciplinary Committee against the Secretary, LKA. Once he had

taken over as the Chairman, the respondent no.5 had to act in accordance with the law even if that meant suspension of the applicant. It does not require reiteration that suspension of an employee is not a punishment but an interlude before starting a formal disciplinary action. Some time gap between placing an employee under suspension and starting a formal disciplinary proceeding is imperative. The facts that charge sheet has already been issued to the applicant and the enquiry started, which we are given to understand is a subject matter of another OA filed by the applicant, negate the submission of the applicant that there was no material for placing him under suspension. Considering the aforesaid reasons, we do not find any legal flaw in the suspension order dated 14.02.2013.

24. We have considered the judgment cited by the learned counsel for the applicant. In Bimal Kumar Mohanty (supra) the Apex Court has held as follows:

13. It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.

25. We have already seen in the preceding discussion that the action on the part of respondent no.5 to suspend the applicant does not appear to be without any ground and this fact gets validated by the charge sheet issued to the applicant shortly thereafter.

26. Having failed to extend the first suspension order within the mandatory period of 90 days, the respondents themselves revoked that order after completion of 90

days. It has been submitted by the respondents that salary for the intervening period till the second suspension order has already been paid to the applicant. Learned counsel for the respondents have referred to the case of Sanjiv Rajan (supra), wherein Honble Supreme Court has held that there is no restriction on competent authority to pass second suspension order after the first suspension order was quashed by Court. Delhi High Court has also held in the case of Beena Mehra (supra) that second suspension order on same day is permissible, to quote:

14. Even otherwise, we are of the opinion that no hard and fast rule can be laid down for deciding when an employee, whose suspension is revoked, can be placed under suspension for a second time. There is no doubt that such a decision should be taken with circumspection, but the justification for the second suspension would depend on the facts of each case. Rules 10 (6) and 10 (7) of the CCS (CCA) Rules do not create any procedural or substantive bar for a second suspension, as suggested by the Tribunal.

27. If the review committee chaired by the Disciplinary Authority after taking into account all the facts and circumstances of the case came to a conclusion that continuation of the suspension was required, passing of second suspension order on 14.06.2013 cannot be faulted with. Since the ground for issuing the fresh suspension order is the same that is for continuation of the suspension but for the gap due to non-review of suspension within the mandatory period of 90 days, a fresh application of mind separately by the Disciplinary authority would not be required. As a consequence, the continuation of suspension vide order dated 5.12.2013 would also be valid. 28. After considering the entire conspectus of the case and for the aforesaid reasons, we do not find any merit in the OA and the same is dismissed. No order as to costs.

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