

STATE OF M.P.

v.

SH. L.P. TIWARI

MAY 5, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Service Law : Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 : Rule 9—Suspension—Initiation of disciplinary proceedings within a period of 90 days from the date of suspension order—Non-service of charge-sheet within the period—Delinquent Official making himself scarce and evading service of charge sheet on him—Effect of—Held; It does not per se render the disciplinary proceedings illegal.*

*Practice & Procedure : Interference with illegal orders—Any action taken in compliance of such orders or to avoid contempt proceedings—Not a justification to refuse to interfere.*

The appellant contemplated disciplinary proceedings against the respondent, an Executive Engineer, and placed him under suspension by its orders dated 24.4.1990 which was served on him on 25.9.1990. Charge-sheet was framed on 5.7.90 and was sought to be served on the respondent through the officers but he refused to accept the same on some pretext or the other. However, the charge-sheet was served on him only after the expiry of 90 days, which was the time-limit stipulated by Rule 9 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.

Respondent challenged the order of suspension, before the Administrative Tribunal on the ground that the disciplinary proceedings were initiated after the expiry of 90 days and therefore the suspension order was void. The Tribunal accepted the plea of the Respondent and set aside the order of suspension. Hence this appeal.

The appellant-State contended that the Respondent made himself scarce and successfully evaded the receipt of the charge-sheet till the expiry of 90 days.

A Allowing the appeal, this Court

B HELD :1.1. What is emphasised in rule 9 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 is initiation of the proceedings within the period of 90 days, and not effecting the service of the articles of charge issued or caused to be issued when the government servant makes himself scarce. Non-service, therefore, *per se* does not render the initiation of the disciplinary proceedings against the delinquent officer illegal, after the expiry of 90 days. [928-D]

C 1.2. The delinquent employee successfully evaded the receipt of charge sheet within the period prescribed under the rule and then claimed that initiation of the proceedings or the order of suspension becomes illegal or *non est* since the proceedings were not taken against him within the period prescribed under the Rules. Allowing the delinquent to put a premium on successful avoidance of receipt of charge sheet and plead to his advantage, the making of service ineffectual, should never be countenanced. Hence, there is no need to give satisfactory explanation for every day's delay in service of charge-sheet on the delinquent. The Tribunal has committed manifest gravous error of law in allowing the petition of the Respondent. [928-E-F]

E *D.D.A. v. P.C. Khurana*, [1993] 3 SCC 196, relied on.

F 2. A premium cannot be allowed to be put on avoidance, and the directions of the Tribunal, which are found to be illegal, cannot be made the basis to allow the respondent to remain in service when the disciplinary authority had found that it was expedient to keep the respondent under suspension. The mere fact that the respondent was reinstated to avoid contempt proceedings or due compliance of the impugned order, cannot be the reason nor a justification to refuse to interfere with the illegal order passed by the Tribunal. [928-H, 929-A]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4421 of 1994.

From the Judgment and Order dated 27.8.92 of the Madhya Pradesh Administrative Tribunal, Jabalpur in O.A. No.1056 of 1992.

H A.K. Singhvi and S.K. Agnihotri for the Appellant.

Raju Ramachandran Amitabh Verma and Ashok Mathur for the Respondent. A

The following Order of the Court was delivered :

Delay condoned. Leave granted. B

The appellant had contemplated disciplinary proceedings against the respondent and considered it expedient to keep the respondent under suspension pending the said proceedings. By proceeding dated April 24, 1990, the respondent was suspended and it was served on him on 25.9.1990. A charge-sheet was framed against the respondent on July 5, 1990 and was sent to the Engineer-in-Chief, at Bhopal for effecting its service who in his letter dated November 8, 1990 requested the Chief Engineer (Central) at Jabalpur to serve the charge-sheet on the respondent. The latter in turn endorsed it to the Suptdg. Engineer, Panna who debuted his head clerk to serve the charge-sheet on the respondent. The endorsement made by the head clerk on December 21, 1990, reads thus: C  
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"The Head Clerk had gone to Panadukodi and met Shri Tiwari, Executive Engineer, and gave him the letters. But as informed by the Head Clerk in writing that he refused to accept the said letters on some pretext, the same are being sent to you in original". E

Thereafter, the service was effected after the expiry of 90 days. The respondent challenged the order of suspension in the Administrative Tribunal on the ground that the disciplinary proceedings were initiated after the expiry of 90 days and that therefore, suspension was without jurisdiction and void. That plea was found favour with the Tribunal in O.A. No. 1056/92, which by its order dated August 27, 1992 set aside the order of suspension. Thus, this appeal by special leave. F

The appellant's contention is that the respondent having had knowledge of the order of suspension and initiation of the proceedings, made himself scarce and evaded the receipt of the charge sheet and all attempts made by the appellants, within the period of limitation to serve the charge sheet proved futile. Having successfully evaded the receipt of the charge sheet till the expiry of 90 days, the respondent approached the Tribunal in 1992 and claimed that his suspension after the expiry of 90 days G  
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A prescribed under rule 9 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, for short the rules had become illegal and void, and had stood revoked. We find force in the contention. It is seen from the letter addressed by the Chief Engineer, Jabalpur to the Govt. that the respondent, the Executive Engineer had not given the address nor reported to the office of the Superintending Engineer as per the directions issued by the Government and that his whereabouts were not known. It would thus be clear that after having had knowledge of the suspension order the respondent thwarted the attempt to serve the charge sheet against him and thereby refused to receive it. He thus evaded to receive the charge sheet. Rule 9 of the Rules provides thus :

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"9(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 Governor by general or special order, may place a government servant under suspension -

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(a) where a disciplinary proceeding against him is contemplated or is pending or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

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Provided that 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.

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(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;

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(b) with effect from the date of his conviction, if in the event of conviction for an offence, he is sanctioned to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

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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.

(2-a) Where a Govt. servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it proposed to hold an enquiry against such Govt. servant under rule 14, a copy of articles of charges, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained *shall be issued or caused to be issued by the disciplinary authority to such Govt. servant* as required by sub-rule (4) of rule 16 within a period of 45 days from the date of order of suspension.

Provided that where the disciplinary authority is the State Govt., the copy of charges and other documents mentioned above *shall be issued or caused to be issued to such Govt. servant within a period of 90 days from the date of order of suspension.*

(2-b) Where the disciplinary authority fails to issue to the Govt. servant, a copy of the charges and other document referred to in sub-rule (2-a) within the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Govt. for extension of the said period of suspension.

Provided that the period of suspension shall in no case be enhanced beyond as period of 90 days from the date of the order of suspension.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. servant under suspension, is set aside in appeal or review under these rules and the same 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,

A removal or compulsory retirement and shall remain in force until further orders.

B (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. 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 Govt. 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.

D 5(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.

E Provided that the order of suspension shall stand revoked on expiry of the period of forty five days from the date or order of suspension in case of copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Govt. servant by the disciplinary authority (if it is not the State Govt.) without obtaining the orders of the State Govt. for extension of the period for issue of the said documents, as required under sub-rule (2-b).

F Provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension. In case the copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Govt. Servant."

G Rule 9 thus contemplates that the disciplinary authority or any authority empowered by the Governor by a general or special order is authorised to place the Govt. servant under suspension where disciplinary proceedings against him is contemplated or is pending or where a case against him in respect of any criminal offence is under investigation inquiry or trial. The order of suspension shall contain the reasons for making such

order and where it proposes to hold an enquiry against him under Rule 14, a copy of articles of the charges, statement of imputation of misconduct or misbehaviour and a list of documents and witnesses by which charges are proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Govt. servant within a period of 45 days from the date of order of suspension. By operation of the proviso to sub-rule (2-a) where the disciplinary authority is the State Govt., the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Govt. servant within a period of 90 days from the date of order of suspension. The object appears to be that the competent authority having placed delinquent officer under suspension, cannot sit over the case without prompt follow up action of conducting an inquiry into the alleged misconduct. The dereliction thereof entails the authority with denuding the power to continue the officer under suspension, though the power of enquiry subsists. It would be clear from proviso to rule 9(2-b) which says that "the period of suspension shall in no case be continued beyond the period of 90 days from the date of the order of suspension". It would thus be clear that where disciplinary proceedings are pending or contemplated, it is open to the appointing authority, disciplinary authority or authorised officer to keep Govt. servant under suspension and have the articles of charges together with the particulars mentioned hereinbefore "shall be issued or caused to be issued" by the authority to such Govt. servant within the period mentioned hereinbefore. On its so issuing the order of suspension remains in force until revoked on reconsideration in terms of the rules based on facts scenario or proceedings terminated by an order on merits. It is thereby clear that service of the article of charge is not a condition precedent. Putting it in transmission within the period is sufficient compliance. No doubt every endeavour has to be made to have the charge sheet served on the delinquent but the delinquent who evades receipt of it, cannot be allowed to take advantage of such evasion.

The Court in a recent judgment in *D.D.A. v. P.C. Khurana*, [1993] 3 SCC 196, considered the effect of a similar provision and held thus :

"The meaning of the word 'issued' has to be gathered from the context in which it is used. The decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the

A decision to initiate disciplinary proceedings. The service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision."

Thus, it could be seen that what is emphasised in the rule is initiation of the proceedings within the period of 90 days, and not effecting the service of the articles of charge issued or caused to be issued when the government servant makes himself scarce. Non-service, therefore, *per se* does not render the initiation of the disciplinary proceedings against the delinquent officer illegal, after the expiry of 90 days. As pointed out by this Court and as found on the facts on hand that the delinquent employee successfully evaded the receipt of charge sheet within the period prescribed under the rule and then claimed that initiation of the proceedings or the order of suspension becomes illegal or *non est* since the proceedings were not taken against him within the period prescribed under Rule 9 or the similar rule. In other words, allowing the delinquent to put a premium on successful avoidance of receipt of charge sheet and plead to his advantage, the making of service ineffectual, should never be countenanced. Hence, there is no need to give satisfactory explanation for every day's delay in service of charge-sheet on the delinquent, as opined by the Tribunal. Under these circumstances, we are clearly of the opinion that the Tribunal has committed manifest gravous error of law allowing the petition.

It is contended by Mr. Raju Ramachandran, the learned counsel for the respondent, that pursuant to the order passed by the Tribunal, when the respondent had been reinstated, such order does not call for interference. We find no justification to accede to his contention. A premium cannot be allowed to be put on avoidance and the directions of the

Tribunal which are found to be illegal, cannot be made the basis to allow the respondent to remain in service when the disciplinary authority had found that it was expedient to keep the respondent under suspension. The mere fact that the respondent was reinstated to avoid contempt proceedings or due compliance of the impugned order cannot be the reason, nor a justification for us to refuse to interfere with illegal order passed by the Tribunal. Accordingly, the appeal is allowed. The order of the Tribunal is set aside and the order of the Government is restored. But in the circumstances we order no costs.

G.N.

Appeal allowed.