

## CHAPTER VII

### Suspension

#### 1. Power to Order Suspension

(1) Whenever a departmental enquiry is contemplated or pending against a civil servant or where a case against a civil servant in respect of any criminal offence is under investigation, enquiry or trial, the rules authorise the disciplinary authority or higher authorities to place the concerned civil servant under suspension.<sup>1</sup> The object of placing a civil servant under suspension is to keep him away from a position where he can *interfere with the conduct* of the enquiry or tamper with the documentary or oral evidence in any manner or where, having regard to the nature of the charges against him, it is felt that it would be unsafe to continue to vest in him the powers of his post.<sup>2</sup> It is for the disciplinary authority or the competent authority to consider all the facts and circumstances of the case and in its discretion, to place a civil servant under suspension against whom a departmental enquiry is contemplated or pending or a criminal case is under investigation, enquiry or trial.

There are three kinds of suspensions known to law, namely:—

- (1) a public servant may be suspended as a measure of punishment;
- (2) similarly, a public servant may be suspended during the pendency of an enquiry against him; and
- (3) a public servant may be forbidden from discharging his duties during the pendency of an enquiry against him.

The right to suspend a public servant as a measure of punishment as well as the right to suspend during the pendency of a departmental enquiry subject to payment of subsistence allowance can be exercised only if there is a provision for exercising such power either under the contract of employment or the provisions regulating the conditions of service. But the third or the last

1 (a) C.C.S. (CCA) Rules, 1965—Rule 10.

(b) M.C.S. (CCA) Rules, 1957—Rule 10.

2 O.M. No. GAD (OM) 3 CAR 57 dated 14-12-1957 para 19 issued by Government of Mysore giving administrative instructions in the matter of suspension of Government servants.

category of suspension referred to above is the right inherent in every master. He can forbid his servant from doing work which he had to do under the terms of the contract of service or the provisions governing the conditions of service, at the same time keeping in force the master's obligations towards the servant. In the case of suspension as a measure of penalty or during the pendency of a departmental enquiry the salary or allowances which a public servant is entitled to will be governed by the rules. Where a master suspends his servant in the absence of any specific power under the contract of employment or the rules governing the conditions of service, the suspension falls into the third category and the master is liable to pay the full wages or salary which the servant is entitled to.<sup>3-4</sup>

(2) *Suspension by authority other than appointing authority—validity* : An order of suspension against a civil servant does not amount to removal or dismissal from service. Even during the period of suspension, a civil servant continues to be a civil servant. Therefore, an authority other than the appointing authority authorised by the rules can place a civil servant under suspension.<sup>5</sup> But when the rules authorise the appointing authority or any authority to which it is subordinate or an authority specially empowered by the Government in this behalf alone to suspend a civil servant, an order passed by an authority other than the one authorised by the rules is illegal.<sup>6</sup>

(3) *Retrospective suspension on the commencement of de novo enquiry* : An order of suspension lapses with the final order in the disciplinary proceedings and the said order of suspension does not revive on the quashing of the final order by the court. But when the final order in a departmental enquiry is quashed by the court on account of procedural defects, it is competent for the authority to hold a *de novo* enquiry in respect of the same charges. Therefore, rules may provide that on the commencement of a *de novo* enquiry a civil servant will stand suspended from the date of the original order of dismissal or removal, as the case may be. Such an order or rule of retrospective suspension cannot be construed as contravening the order of the court. The order of the court has the effect of setting aside the order of dismissal. The resultant position is that a civil servant stands reinstated to service with effect from the date of order of dismissal. It is competent for the disciplinary authority to again suspend him and to continue the departmental enquiry. Therefore, a rule which provides that on the decision by the disciplinary authority

- 3 (a) *V. P. Gindroniya V. State of Madhya Pradesh*—AIR 1970 SC 1494.  
 (b) *Management of Hotel Imperial V. Hotel Workers' Union*—AIR 1959 SC 1342—(1960) 1 SCR 476.  
 (c) *T. Cajee V. U. Jormanik Siem*—AIR 1961 SC 276—(1961) 1 SCR 750.
- 4 (a) *R. P. Kapur V. Union of India*—AIR 1964 SC 787—(1964) 5 SCR 431.  
 (b) *Balwantray Ratilal Patel V. State of Maharashtra*—AIR 1968 SC 800—(1968) 2 SCR 577.
- 5 *Mohd. Gouse V. State of A.P.*—AIR 1957 SC 246—1957 SCR 414.
- 6 *Aswathanarayana V. Deputy Commissioner*—1974(1) Kar. L. J. SN. P. 18 M.C.S. (CCA) Rules, 1957—Rule 10 interpreted.

to hold a *de novo* enquiry, a civil servant shall be deemed to have been suspended from the date of the original order of dismissal is valid.<sup>7</sup>

(4) *Suspension of a Government servant on leave preparatory to retirement* : A Government servant on leave preparatory to retirement still continues to be a Government servant. Therefore, it is competent for the Government to suspend a Government servant who is on leave preparatory to retirement.<sup>8</sup>

(5) *No time limit for suspension* : There is no time limit for the period during which a civil servant can be kept under suspension. Even where the rules provide that where an authority other than the Government has kept a civil servant under suspension the authority should report the matter to the Government, if the departmental enquiry is not completed within a period of six months, it does not mean that an order of suspension beyond six months is not valid. The only duty enjoined by such a rule is that the officer who made the order of suspension must make a report to the Government in all cases in which disciplinary proceedings are not concluded within a period of six months, so that the Government may by the application of its mind to the facts and circumstances of the case make a proper order. It is open to the Government to make an order vacating the order of suspension or to make an order directing the expeditious disposal of the disciplinary proceedings. The order of suspension however continues until it is vacated.<sup>9</sup>

(6) *Suspension pending enquiry cannot be ordered before starting enquiry* : Where the rules regulating disciplinary proceedings specifically provide that an order of suspension can be passed only after the charges are framed and after the disciplinary proceedings are instituted against a civil servant, it is not competent for an authority to pass an order of suspension even before starting of the disciplinary proceedings or framing charges. Unless the rules provide that a civil servant can be suspended even when the disciplinary proceeding is contemplated against him, no order of suspension can be passed until and unless actually the disciplinary proceedings are commenced.<sup>10</sup>

(7) *Suspension on the basis of charges already dropped is invalid* : Where in a departmental enquiry, four charges were levelled against a civil servant and after enquiry three charges were dropped and the official concerned was retired compulsorily on the basis of only one charge and the order of com-

7 Khemchand V. Union of India—AIR 1963 SC 687. CCS (CCA) Rules 1957—Rule 12(4), held valid.

8 Partap Singh V. State of Punjab—AIR 1964 SC 72.

9 Subba Rao V. Assistant Commissioner—1963(1) Mys. L. J. 434—ILR 1962 Mys. 972—Rule 10(b) of M.C.S. (CCA) Rules, 1957, interpreted.

10 (a) P. R. Nayak V. Union of India—AIR 1972 SC 554—All India Services (Discipline and Appeal) Rules—Rule 3, interpreted.

(b) B. S. Lakshminarasimbalah V. Deputy Commissioner—1965 Mys. L. J. SN. P. 195. Mysore Village Officers Act, 1908—Section 7, interpreted.

pulsory retirement was quashed by the court, it was not competent for the Government to institute a departmental enquiry on all the four charges including those three charges which were earlier dropped and also to pass an order of suspension on the basis of all the four charges. In such a case, the order of suspension having been passed on the basis of four charges out of which three charges were not available for the continuance of the departmental enquiry, the entire order of suspension becomes illegal.<sup>11</sup>

(8) *Suspension without contemplating or starting disciplinary proceedings* : When the rules provide that a civil servant can be kept under suspension only when a departmental enquiry is contemplated or pending, an order of suspension made against a civil servant without stating that it was a prelude to the institution of disciplinary proceedings amounts to a suspension as a measure of punishment. Such a suspension cannot be ordered unless authorised by the rules.<sup>12</sup>

(9) *Suspension of an officer on deputation* : Where a servant of one public authority is on deputation, the authority under whom such officer is working on deputation is competent to place him under suspension so long he is temporarily employed under that authority.<sup>13</sup>

## 2. Payment of Subsistence Allowance

When a civil servant is suspended pending the departmental enquiry he is entitled to the subsistence allowance at the rate prescribed in the rules.<sup>14</sup> The service rules governing payment of subsistence allowance provide for payment of an increased subsistence allowance to Government servants under suspension pending enquiry if continued under suspension beyond the period specified in the rules. The rules also provide that if the civil servant himself is responsible for the prolongation of the enquiry the authorities can deny the increase in the subsistence allowance. Any order passed by an authority denying increase of subsistence allowance on the formation of the opinion that the civil servant concerned was responsible for prolonging of the enquiry and suspension, without giving an opportunity to the civil servant to offer an explanation is bad in law.<sup>15</sup>

## 3. Suspension Order Lapses with the Final Order

An order of suspension against a civil servant is an interim order pending final orders in a departmental enquiry. When the final order of dismissal

11 S. V. G. Iyengar *V.* State of Mysore—1960 *Mys. L. J.* 828.

12 Channamallappa *V.* S.M. Megur—1969(2) *Mys. L. J.* 540.

13 V. R. Mundewadi *V.* State of Mysore—1968(2) *Mys. L. J.* 541—M.C.S. (CCA) Rules, 1957—Rule 10, interpreted.

14 Ghanashyamdas *V.* State of M.P.—AIR 1973 SC 1183.

15 Laxmi Datt *V.* Union of India—SLR 1971 Delhi 232.

is passed against a civil servant, the order of suspension lapses with the passing of the said final order. The order of suspension so lapsed does not revive after the dismissal order is set aside by a court.<sup>16</sup>

#### 4. Right for Full Salary During the Period of Suspension

(1) *Right for salary during suspension when penalty is set aside* : When a civil servant kept under suspension pending a departmental enquiry and who is thereafter dismissed challenges the order of dismissal before a court and the order of dismissal is set aside by the court, the civil servant is entitled to his salary as if he was on duty during the period of suspension and he is entitled to claim arrears of salary minus the subsistence allowance already drawn.<sup>17</sup> It may be open to the authorities to deny him full salary during the period of suspension when the order imposing the penalty is set aside by the higher departmental authorities after setting aside an order of dismissal, removal or suspension, but the said rules do not apply when an order in the disciplinary proceedings is quashed by the court.<sup>18</sup>

(2) *No adverse order can be passed without giving opportunity* : When a civil servant is suspended pending a departmental enquiry, after final orders are passed in the departmental enquiry, the question as to how the period of suspension should be treated is an independent matter. Where the rules authorise the authorities to treat the period of suspension either as on duty or as under suspension as such or to pass orders as to whether the suspension period should be treated as on duty for some purposes without payment of full remuneration, an order which is adverse to the interest of a civil servant should be passed only after giving him an opportunity to show cause against such an order. An order passed denying salary during the period of suspension without giving an opportunity to a civil servant is opposed to the principles of natural justice and therefore invalid.<sup>19</sup> Similarly, when an authority empowered to pass final orders relating to the period of suspension has passed an order for payment of full salary during the period of suspension no order can be passed reviewing the said order and withdrawing the benefit already given without giving notice and opportunity to show cause against passing of such an adverse order.<sup>20</sup>

(3) *Suspension pending criminal trial—effect of acquittal* : Where a civil servant is kept under suspension pending trial and he is acquitted, it is open

- 16 (a) Om Prakash Gupta *V.* State of U.P.—AIR 1955 SC 600—1955(2) SCR 391.  
 (b) Provincial Government, C.P. & Berar *V.* Shamshul Hussain—AIR 1949 Nag. 118.  
 (c) Sharat Chandra *V.* State of U.P.—SLR 1972 All. 184.  
 (d) H. L. Mehra *V.* Union of India—AIR 1974 SC 1281.
- 17 Om Prakash Gupta *V.* State of U.P.—AIR 1955 SC 600—1955(2) SCR 391.
- 18 Devendra Pratap *V.* State of U.P.—AIR 1962 SC 1334—1962 Suppl. (1) SCR 315.
- 19 (a) M. Gopala Krishna Naidu *V.* State of Madhya Pradesh—AIR 1968 SC 240.  
 (b) B. D. Gupta *V.* State of Haryana —SLR 1972 SC 845.  
 (c) R. B. Padki *V.* State of Mysore—W.P. No. 833/68 DD 8-8-72 (Mysore).  
 (d) Ratan Singh *V.* State of Punjab—SLR 1971 P & H 692.
- 20 Sayeedur Rahman *V.* State of Bihar—SLR 1973 (1) SC 761.

to the authority to pass appropriate orders granting or denying full salary for the period subject to the conditions imposed in the relevant rules. But an order adverse to the interest of a civil servant cannot be made without giving him an opportunity as it would be opposed to the principles of natural justice.<sup>1</sup> Where the rules provide that a civil servant kept under suspension pending criminal trial is entitled to full salary on acquittal it is not open to the authority to deny full salary for the suspension period after the civil servant who is suspended during the criminal trial is acquitted.<sup>22</sup> But if the rule regulating the period of suspension provides that in cases where a civil servant is honourably acquitted he will be entitled to full salary and allowances, and if not, the civil servant will be entitled to get only such portion of salary or allowances as the authority may direct, it is competent for the authority to decide under which clause the case of the civil servant is to be regulated. When the record reveals that the competent authority came to the conclusion that there has been no honourable acquittal and allowed only a portion of the salary, the court cannot direct payment of full salary.<sup>23</sup>

(4) *Exoneration in departmental enquiry—full salary should be paid during suspension*: Where on the conclusion of a departmental enquiry against a Government servant placed under suspension, the authority competent to impose any punishment makes an order fully exonerating or acquitting him, the period during which he was under suspension pending enquiry should be deemed to be a period on duty and the Government servant should be entitled to full pay and allowances as if he had not been placed under suspension. There is no authority for treating the suspension period as leave on half pay or leave without allowance.<sup>24</sup> Similarly where the charges are dropped it amounts to exoneration and a civil servant is entitled to full salary during the period of suspension.<sup>24-b</sup>

(5) *Denial of salary for suspension period when no penalty is imposed*: When after the conclusion of an enquiry instituted against a civil servant, the disciplinary authority did not record any finding on the charges levelled against the civil servant but the order only provided that the period of suspension shall be treated as on duty and he should be paid for that period a subsistence allowance at the rate admissible under the rules as a disciplinary measure and only authorised payment of a portion of his basic pay, such an order denying full salary is illegal and cannot be sustained.<sup>25</sup>

(6) *Suspension during criminal trial—continuance of departmental enquiry after acquittal*: Where a departmental enquiry was instituted against a civil

21 Union of India *V.* Baij Nath—SLR 1972 Delhi 382.

22 (a) P. K. Gavadi *V.* State of Mysore—1967 *Mys. L. J.* SN. P. 201.  
(b) N. Venkoba Rao *V.* State of Mysore—1966(2) *Mys. L. J.* 78.

23 Raghava Raja Gopalachari *V.* State of Assam—SLR 1972 SC 915.

24 (a) Muttaiah *V.* Corporation of the City of Bangalore—1969 *Mys. L. J.* SN. P. 155.  
(b) M. V. Narasimha Rao *V.* Collector, West Godavari Dist.—1967 SLR 791.

25 State of West Bengal *V.* B. K. Barman—AIR 1971 SC 156.

servant and he was not kept under suspension, but he was kept under suspension after a criminal case was instituted against him in which he was acquitted and the official was reinstated after such acquittal and the departmental enquiry was continued in which a punishment was imposed, it is not competent for the disciplinary authority to deny the civil servant the benefit of full salary for the period of suspension. In such a case, the suspension having been passed only during the pendency of criminal trial and has no relation to the starting or continuance of the departmental enquiry the order of acquittal passed by the criminal court entitles the civil servant to claim the benefit of full salary during the period of suspension.<sup>26</sup>

### 5. Effect of Termination by Giving Notice

The termination of the service of a temporary civil servant who is kept under suspension pending a departmental enquiry or pending a criminal trial by giving one month's notice under the temporary service rules has the effect of revoking the suspension. The payment of one month's full salary and allowances for the notice period leads to the inference that the suspension order is revoked, as otherwise there could be no payment of full salary. The civil servant concerned is therefore entitled to full pay and allowance for the suspension period. The refusal to pay full salary and allowances would mean that even though no enquiry was held and the civil servant was not found guilty still he is punished by paying only a lesser pay in the shape of subsistence allowance.<sup>27</sup>

### 6. Reinstatement Order Necessary

Where a civil servant is kept under suspension pending criminal trial and until further orders, the order of suspension continues to be in force notwithstanding the order of the criminal court acquitting the civil servant in the trial. Until a further order of the competent authority terminating the suspension is made a civil servant has no right to be reinstated in service. Therefore, when after the acquittal of the civil servant a departmental enquiry was continued against him and he was dismissed from service, it is not open to the civil servant to contend that the order of acquittal in a criminal trial during the pendency of which he was suspended has the effect of reinstatement and that he would be entitled to salary until he was dismissed.<sup>28</sup>

### 7. Increment During Suspension

During the period when a civil servant is under suspension pending a departmental enquiry or criminal trial the contract of service subsists and the civil servant is entitled to all the benefits though he is not expected to work.

26 *H. V. Seshagiri Rao V. State of Mysore*—1972 *Mys. L. J.* SN, P. 82-83.

27 *Union of India V. Gian Singh*—SLR 1970 Delhi 563.

28 *Balvant Rai Ratilal Patel V. State of Maharashtra*—AIR 1968 SC 800.

As under the rules a civil servant is entitled to draw increments as a matter of course and it can be withheld only as a measure of punishment, he is entitled to get increments which fall due during the period of suspension and is also entitled to a higher rate of subsistence allowance on that basis.<sup>29</sup>

In the above decision there is no reference to any rule which disentitles the civil servant to get increments during the period of suspension unless and until final orders are passed treating the period of suspension as on duty. If under the service rules it is specifically provided that the period of suspension shall count for increment if only the competent authority directs that the said period should be treated as on duty, a civil servant is not entitled to count the period of suspension for increments unless it is ordered to be treated as on duty.<sup>30</sup>

### 8. Communication of Order of Suspension

*Suspension order against a Government servant on leave takes effect from the date of communication* : An order of suspension passed against a civil servant on leave takes effect from the date of communication. But the question is whether a communication means its actual receipt by the concerned Government servant. The ordinary meaning of the word 'communicate' is 'to impart' or 'transmit' information. Therefore, when an order of suspension is despatched, it cannot be said that the information of suspension was not imparted or transmitted to him. Once an order is issued and it is sent to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. It is not possible to hold that it is only from the date of the actual receipt by the Government servant concerned, the order of suspension becomes effective. It may be in the case of an order of dismissal, the actual knowledge of the order of dismissal by the concerned Government servant is necessary for the reason stated in the case of *State of Punjab V. Amarsingh*—AIR 1966 SC 1313. But such a consequence would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed. In his case there is no question of doing any act or passing any order and such an act or order being challenged as valid. Therefore, an order of suspension passed against a civil servant when he is on leave becomes effective from the date it was sent out.<sup>31</sup>

29 *Mritunjai Singh V. State of Uttar Pradesh*—SLR 1971 All. 523.

30 Rule 55 of the Mysore Civil Services Rules disallows increments for the period of suspension unless it is ordered to be treated as on duty.

31 *State of Punjab V. Khemiram*—AIR 1970 SC 214.