

CHAPTER VII

SUSPENSION*

Suspension is an action whereby a civil servant is temporarily kept out of discharging his duty pending final action being taken against him ie, 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 to place the concerned civil servant under suspension.¹ A civil servant may be placed under suspension under rule 10(1)² in any of the following grounds:

- i) when a disciplinary proceeding against him is contemplated or is pending;
- ii) when in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the state;
- iii) when a case against him in respect of any criminal offence is under investigation, inquiry or trial.

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 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.³ It is for the disciplinary 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.

Power to order suspension

A public servant may be suspended as a measure of protection or as a measure of punishment during the pendency of an enquiry against him. He may also be forbidden from discharging his duties during the pendency of an enquiry against him. But no enquiry before suspension is necessary.⁴ As per the General Clauses Act, 1897 the power to suspend a servant is vested in the

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1 C.C.S. (CCA) Rules 1965-rule 10; M.C.S.(CCA) Rules 1957-rule 10.

2 C.C.S. (CCA) Rules 1965-rule 10(1).

3 E.G. 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.

4 *Pratap Singh v. State of Panjab*, AIR 1964 SC 72.

authority who appoints the servant.⁵

The right to suspend a public servant as a measure of punishment as well as the right to suspend during the pendency of an 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 category of suspension 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 be governed by the rules framed for this. Where a master suspends his servant in the absence of any specific power under the contract of employment or the rule governing the conditions of service, the suspension falls into the third category and the master is liable to pay the full wages or salary to the servant.⁶

Suspension by an authority other than appointing authority- validity: The normal rule is that the authority entitled to appoint a servant would also be entitled to suspend him. 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.⁷ But when the rules authorised 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 any other authority is illegal.⁸ Under M.P. Civil Service Rules⁹ the competent authority is the appointing authority or any authority subordinate to it on whom the power of disciplinary authority has been conferred by the Governor by a general or special order. In such cases the authority is conferred with the power to suspend.¹⁰

5 S.16 of the General Clauses Act, 1897.

6 *V.P. Gindroniya v. State of Madhya Pradesh*, AIR 1970 SC 1494; *Management of Hotel Imperial v. Hotel Workers' Union* AIR 1959 SC 1342; 1960 1 SCR 476; *T.Cajee v. U.Jormanik Siem*, AIR 1961 SC 276; (1961) SCR 750; *R.P.Kapur v. Union of India*, AIR 1964 SC 787; (1964) 5 SCR 431; *Balwantray Ratilal Patel v. State of Maharashtra*, AIR 1968 SC 800; (1968) 2 SCR 577; *Dhamanakar v. Cantonment Board*, 1985(1) Kar LJ 289.

7 *Mohd Ghouse v. State of A.P.*, AIR 1957 SC 246; 1957 SCR 414.

8 *Aswathanarayana v. Deputy Commissioner*, 1974(1) Kar LJ SN 18.

9 Rules 2(d) and 9 M.P. Civil Service (Classification, Control and Appeal) Rules, 1966

10 *A.K. Jadhav v. State of M.P.*, AIR 1997 SC 2394.

Retrospective suspension on the commencement of de novo enquiry: An order of suspension lapses with the final order in the disciplinary proceedings and it 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. 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 begin afresh the departmental enquiry. A rule which provides that on the decision by the disciplinary authority 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.¹¹

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 him.¹²

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 it 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.¹³ It is a clear principle of natural justice that the civil servant when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised

11 *Khemchand v. Union of India*, AIR 1963 SC 687.

12 *Partap Singh v. State of Punjab*, AIR 1964 SC 72.

13 *Subba Rao v. Assistant Commissioner*, 1963(1) Mys LJ 434; ILR 1962 Mys 972; *State of Punjab v. Mewa Singh*, SLR 1982(2) P&H 611.

it would imply that the government is being vested with a totally arbitrary power of placing its officials under disability for an indefinite duration.¹⁴ Suspension for long period without finalising disciplinary proceedings may invite penalty.¹⁵ The apex court interfered with the withdrawal of suspension order by the administrative tribunal on the condition that the authorities will complete the enquiry procedure within three months.¹⁶

Suspension pending enquiry cannot be ordered before starting enquiry: The order of suspension could be ordered only after initiation of enquiry and not in contemplation.¹⁷ 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, an authority may not 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.¹⁸

Suspension on the basis of charges already dropped is invalid: It is not competent for the government to institute a departmental inquiry on all the charges including the charges which were earlier dropped and also to pass an order of suspension on the basis of all the charges. The order of suspension having been passed on the basis of all charges, out of which dropped charges were not available for the continuance of the departmental inquiry, becomes illegal.¹⁹

Suspension without contemplating or starting disciplinary proceedings: When the rules provide that a civil servant can be kept under suspension only when a departmental inquiry 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.²⁰ In case of contract of service the right to suspend as a measure of punishment is regulated by the contract of employment.²¹

Suspension of an officer on deputation: (a) The authority under which such officer is working on deputation is competent to place him under

14 *O.P. Gupta v. Union of India*, AIR 1987 SC 2257.

15 *Ibid.*

16 *State of Andhra Pradesh v. SMA Ghaffoor*, 1988(3) JT37.

17 *P.R. Nayak v. Union of India*, 1972 SC 554.

18 *P.R. Nayak v. Union of India*, 1972 SC 554; *B.S. Lakshminarasimhaiah v. Deputy Commissioner*, 1965 Mys LJ SN 195.

19 *S.V.G. Iyengar v. State of Mysore*, 1960 Mys LJ 828.

20 *Channamallappa v. S.M. Megur*, 1969(2) Mys LJ 540.

21 *V.P. Gindroniya v. State of Madhya Pradesh*, AIR 1970 SC 1494.

suspension so long as he is temporarily employed under that authority.²²

(b) However, the state which has lent the services of its employee to another state is also competent to suspend such employee on deputation. Notwithstanding his deputation to another government, the employee is amenable to the control of the government of the parent department.²³

Deemed suspension: For the application of rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, three requirements are to be satisfied. They are i) the government servant is dismissed, removed or compulsorily retired as a measure of penalty ii) the same is being set aside or declared or rendered void by a decision of a court of law; and iii) the disciplinary authority decides to hold a further inquiry against the employee on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the employee shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders.²⁴ When the rules provide for deemed suspension the effect is that even without passing the order of suspension, the employee would be treated as suspended.²⁵

Inordinate delay may result in reinstatement: Where an employee was suspended and charge sheet was served after a long time, causing inordinate delay in the conduct of enquiry, the apex court ordered reinstatement on that ground.²⁶

Suspension - power to pass orders: (a) When according to the special notification, an officer is empowered to suspend civil servants serving under officers having district or division as jurisdiction he cannot suspend officers serving in the district or division, who are under the control of officers having state-wide jurisdiction.²⁷

(b) When according to the rules, a designated officer is empowered to suspend specified categories of officers of specified departments, he has no power to suspend an officer belonging to any other department on deputation to one of those departments.²⁸

Suspension by incompetent authority: The appointing authority would be entitled to suspend an employee pending an enquiry into his conduct or criminal prosecution.²⁹ A subsequent approval of the order of suspension made by an

22 *V.R. Mundewadi v. State of Mysore*, 1968(2) Mys LJ 541.

23 *Khemi Ram v. State of Punjab*, SLR 1976(2) SC 239.

24 *Mahender Singh v. Union of India*, JT1991 (3) SC 462.

25 *Kiran Sharma v. State of Haryana*, 1996(5)SLR 670 (P&H) DB.

26 *Union of India v. Raj Kishore Parija*, 1995 Supp(4) SCC 235.

27 *Shivalinge Gowda B.S. v. Deputy Commissioner*, 1983(1) Kar LJ 465.

28 *Katti B.H. v. Divisional Commissioner*, 1983(2) Kar LJ 36.

29 *R.P. Kapur v. Union of India*, AIR 1964 SC 787 at 792.

incompetent authority does not make it valid.³⁰

Suspension during criminal trial not automatic: Suspension must be ordered when the rule provides that a civil servant should be suspended if a pending criminal charge or proceeding against him is likely to embarrass him in the discharge of his duties or it involves moral turpitude. But a suspension order has to be issued; the official cannot be deemed to be under suspension by virtue of such a pending proceeding or charge.³¹

Suspension after lodging of F.I.R.: When the rules provide that a civil servant can be suspended pending investigation, inquiry or trial in connection with a criminal offence alleged against him, an order of suspension can be passed on registration of a criminal case with the lodging of F.I.R. Such suspension does not come to an end after completion of investigation unless it is revoked.³²

No necessity to give opportunity: No requirement to comply with the rules of natural justice is attracted in ordering suspension. Having regard to the object and purpose and the necessity of placing a civil servant under suspension with immediate effect, the rules of natural justice are by necessary implication excluded. This view is taken by the Karnataka High Court in disagreement with the view of the Bombay High Court, which had held that before suspending a civil servant, an opportunity should be given.³³

Second order of suspension: The stay of suspension by the court does not preclude the passing of a fresh order of suspension on new grounds.³⁴

Suspension - no power to extend after expiry of the period: The power to extend the period of suspension has to be exercised before the expiry of the period of suspension ends; if no orders are passed before the expiry of the period, the civil servant should be deemed to be on duty.³⁵

Payment of subsistence allowance

A suspended civil servant is entitled to subsistence allowance at the rate prescribed in the rules.³⁶ The service rules governing payment of subsistence allowance provide for payment of an increased subsistence allowance to

30 *Inayathulla v. Dy. Conservator of Forest*, 1982(2) Kar LJ 432.

31 *K.N. Muni Reddy v. Deputy Director of Public Instruction*, ILR 1978(2) Kar. 1835; *Subhash Narayam v. K.E.B.*, SLR 1981(1) Kar 425.

32 *D.D. Suri v. A.K. Barren*, SLR 1976(1) SC 529; *Director General and Inspector General of Police, A.P. v. K. Ratnagiri*, JT 1990 (3) SC 379.

33 *Sundaresan v. Superintendent of Police*, 1983(2) Kar LJ 523; *Rajeswara Savanna v. State of Maharashtra*, (1983) 1 All India Service Law Journ 484.

34 *G.D. Naik v. State of Karnataka*, 1982(2) Kar LJ 196; ILR 1982(1) Kar 760; SLR 1982(2) Kar 438.

35 *Varadha Rao v. State of Karnataka*, 1977(1) Kar LJ 291.

36 *Ghanashyamdas v. State of MP*, AIR 1973 SC 1183.

government servants whose suspension pending enquiry is continued 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 may deny the increase in the subsistence allowance. Any order denying an increase of subsistence allowance on the formation of the opinion that the concerned civil servant was responsible for prolonging of the enquiry and suspension, without giving him an opportunity to offer an explanation is bad in law.³⁷

The amount of subsistence allowance should be reviewed from time to time where the proceedings are delayed for a long time even though there is no express rule insisting on such a review.³⁸ A suspended employee cannot be deprived of the benefit of the revised pay in the matter of computation of subsistence allowance.³⁹

Suspension order lapses with final order

An order of suspension against a civil servant is an interim order. When the final order of dismissal 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.⁴⁰

Right for full salary during period of suspension

Right for salary during suspension when penalty is set aside: When 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.⁴¹ 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.⁴² If a civil servant had been discharged by the criminal court and he is reinstated in the service consequently, he is entitled to full salary and allowance for the period during which he was kept under suspension.⁴³

37 *Laxmi Datt v. Union of India*, SLR 1971 Del 232.

38 *P.L. Shah v. Union of India*, AIR 1989 SC 985.

39 *Rohitashaw Kumar v. State of Rajasthan*, 1989 (5) SLR 401,407.

40 *Om Prakash Gupta v. State of UP*, AIR 1955 SC 600: 1955(2) SCR 391; *H.L. Mehra v. Union of India*, AIR 1974 SC 1281; *Provincial Govt. C.P. & Berar v. Shamsul Hussain*, AIR 1949 Nag 118; *Sharat Chandra v. State of U.P.*, SLR 1972 All 184.

41 *Om Prakash Gupta v. State of UP*, AIR 1955 SC 600: 1955(2) SCR 391.

42 *Devendra Pratap v. State of U.P.*, AIR 1962 SC 1334: 1962 Suppl.(1) SCR 315.

43 *State of Punjab v. Shambhu Nath Singla*, 1996 (1) SCC 296.

No adverse order can be passed without giving opportunity: 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 or to pass orders as to whether the suspension period should be treated as on duty for some purpose without payment of full remuneration, an order which adversely affects a civil servant should be passed only after giving him an opportunity to show cause. 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.⁴⁴ 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 may be imposed withdrawing the benefit already given without giving notice and opportunity to show cause.⁴⁵

Suspension pending criminal trial - effect of acquittal: Where a civil servant under suspension pending trial is acquitted, it is open to the authority to order 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.⁴⁶ Where the rules provide that a civil servant 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 to the civil servant suspended during the criminal trial, upon acquittal.⁴⁷ But if the rule regulating the period of suspension provides that where a civil servant is honourably acquitted he will be entitled to full salary and allowance, and if not, the civil servant will be entitled to get only such portion of salary or allowances as the authority may direct, the authority may 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.⁴⁸ The words honourably acquitted mean acquitted of blame or that the civil servant has been fully exonerated.⁴⁹

44 *M. Gopala Krishna Naidu v. State of Madhya Pradesh*, AIR 1968 SC 240; *B.D. Gupta v. State of Haryana*, SLR 1972 SC 845; *R.B. Padki v. State of Mysore*, WP No. 833/68 D 8-8-72 (Mys); *Ratan Singh v. State of Punjab*, SLR 1971 P&H 692; *Mohanlal v. Union of India*, SLR 1982(1) Del 573.

45 *Sayeedur Rahman v. State of Bihar*, SLR 1973(1) SC 761.

46 *Union of India v. Baij Nath*, SLR 1972 Del 382.

47 *P.K. Gavadi v. State of Mysore*, 1967 Mys LJ SN 201; *APSRTC v. Labour Court*, SLR 1980(2) AP 221; *Balappadas v. State of Mysore*, SLR 1975(1) Kar 809; *N. Venkoba Rao v. State of Mysore*, 1966(2) Mys LJ 78; *Dattastreya v. Director of Agriculture*, SLR 1984(2) Bom 222.

48 *Raghava Raja Gopalachari v. State of Assam*, SLR 1972 SC 915.

49 *State of Assam v. Raghava Rajagopalachari*, 1972 SLR 44 at 47.

Exoneration in departmental enquiry - full salary should be paid during suspension: On exoneration by the authority competent to impose any punishment, the period during which a civil servant was under suspension pending enquiry should be deemed to be a period on duty and he 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.⁵⁰ Similarly where the charges are dropped it amounts to exoneration and a civil servant is entitled to full salary during the period of suspension.⁵¹

Denial of salary for suspension period when no penalty is imposed: When at the conclusion of an enquiry instituted against a civil servant, the disciplinary authority did not record any finding but orders 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.⁵²

Suspension during criminal trial — continuance of departmental enquiry after acquittal: If the civil servant, suspended during the pendency of a criminal case but not during the pendency of departmental enquiry is acquitted and reinstated, it is not competent for the disciplinary authority to deny the civil servant the benefit of full salary for the period of suspension even when the subsequent disciplinary enquiry results in a penalty. In such a case, the suspension having been passed only during the pendency of criminal trial 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.⁵³

Effect of termination by giving notice

The termination of the service of a temporary civil servant 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 allowances for the suspension period. The refusal to pay full salary and allowances would mean that even though no

50 *Muttaiah v. Corporation of the City of Bangalore*, 1969 Mys LJ SN 155; *M.V.Narasimha Rao v. Collector, West Godavari Dt*, 1967 SLR AP 791.

51 *Brahma Chandra Gupta v. Union of India*, AIR 1984 SC 384 at 386.

52 *State of West Bengal v. B.K.Barman*, AIR 1971 SC 156.

53 *H.V. Seshagiri Rao v. State of Mysore*, 1972 Mys LJ SN 82-83.

enquiry was held and the civil servant was not found guilty, still he is punished by paying only a lesser pay in the manner of subsistence allowance.⁵⁴

Reinstatement order necessary

Until an order 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.⁵⁵

Increment during suspension

During the period of suspension the civil servant is entitled to all the benefits though he is not required to work. As under the rules, a civil servant is entitled to draw increments as a matter of course; increments can be withheld only as a measure of punishment. A suspended official is entitled to increments during suspension and is also entitled to a higher rate of subsistence allowance on that basis.⁵⁶

If the service rules specifically provide that the period of suspension shall count for increment only if the competent authority so directs, a civil servant is not entitled to count the period of suspension for increments unless it is so ordered.⁵⁷

Other matters relating to suspension

Suspension with retrospective effect: An order placing the civil servant under suspension with retrospective effect is invalid in the absence of a specific rule empowering the authority to suspend him after the earlier penalty of removal from service was set aside by the appellate authority and a *de novo* inquiry was ordered.⁵⁸

Dismissal with retrospective effect from date of suspension: An employee under suspension cannot be dismissed with retrospective effect from the date of suspension. In such a case even if dismissal is held to be valid, it can take effect only from the date on which it is made. Therefore, the employee would

54 *Union of India v. Gian Singh*, SLR 1970 Del 563.

55 *Balvant Rai Ratilal Patel v. State of Maharashtra*, AIR 1968 SC 800.

56 *Mritunjai Singh v. State of Uttar Pradesh*, SLR 1971 All 523.

57 E.g. 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.

58 *Lakmasey Lodha & Co. v. Assistant Commissioner*, 1983(2) Kar LJ 103; *Das S.L. v. State of Bihar*, SLR 1984(1) Pat 244.

be entitled to subsistence allowance till the date of the order of dismissal from service.⁵⁹

Duty to pass order regarding suspension period: It is obligatory on the part of the concerned authorities to make a considered order on the issue of how the period of suspension is to be treated. The types of order which can be made under the relevant rules regarding the period of suspension are:

First, when the suspension was wholly unjustified the period of suspension has to be treated, as duty and the concerned civil servant would be entitled to full pay and allowance.⁶⁰

Second, when the delinquent official was responsible for the delay in the finalisation of the inquiry, he would be entitled to such proportion of salary and allowances as determined by the competent authority. But such reduction could be made only after giving notice to the official, of such proposal and after considering reply if any furnished thereto.⁶¹

Third, (i) the competent authority has to determine the quantum of salary and allowances payable, which shall not be less than the subsistence allowance payable, after giving opportunity to the concerned civil servant.⁶² (ii) In cases falling under this category, the period cannot be treated as duty unless so directed by the authority and cannot be treated, as leave unless so desired by the official.⁶³

Fourth, in cases where suspension had been revoked before the finalisation of the departmental inquiry, the disciplinary authority could pass an order either of the first type⁶⁴ or of the third type.⁶⁵ Therefore, in a case which falls under this category the disciplinary authority is under a duty to pass an appropriate considered order.⁶⁶

Effect of revocation before final order: If the suspension is revoked and the civil servant concerned is retired from service, he is entitled to full salary.⁶⁷

Suspension cannot be treated as leave: How the period of suspension should be treated after the passing of final order in a criminal trial or departmental inquiry is regulated by rules. As leave can be granted only at the request of the

59 *Management of NYSS Sangha v. Victor Dianus*, SLR 1984(1) Kar 733.

60 See sub-rule(3) read with sub-rule (4).

61 See proviso to sub-rule (3).

62 Vide sub-rule(5) read with sub-rules (8) and (9).

63 Vide sub-rule (7).

64 Vide sub-rule (3).

65 Vide sub-rule (5).

66 *B.S. Nagesh Rao v. Joint Director of Public Instruction*, SLR 1982(1) Kar 513; 1982(1) Kar LJ 133; *Ramamurthy T.N. v. Union of India*, 1982(1) Kar LJ 86; *S. Natarajan v. Superintendent of Police*, SLR 1975(1) Mad 539.

67 *R.S. Nayak v. State of Karnataka*, 1982(1) Kar LJ 156; SLR 1982(1) Kar 815.

civil servant concerned, suspension cannot be ordered to be treated as leave without such request.⁶⁸

Daily attendance not necessary: To claim subsistence allowance, a civil servant has to remain in his quarters or any other place in which he is permitted to remain, by the disciplinary authority. But it is not necessary that he should sign register maintained in the office daily. Payment of subsistence allowance cannot be made subject to any such condition.⁶⁹

Subsistence allowance - no deduction of wages: Payment of subsistence allowance at the rate fixed in the rules cannot be regarded as deduction from wages. The employee receives less than the wages, because he is under suspension and the rules authorise only the payment of subsistence allowance.⁷⁰

Restricting salary during suspension to subsistence allowance: A condition imposed in the final order restricting the salary of the civil servant during suspension to subsistence allowance already paid is not penal in nature. The principles of natural justice in imposing such condition have to be observed only when no inquiry is held before reinstatement. In cases where the inquiry has been held, such a condition can be imposed in the final order without any further opportunity.⁷¹

Effect - revocation of suspension during the pendency of trial: Just as according to the rules a civil servant under suspension during the pendency of criminal trial, can claim salary for the period of suspension only after he is acquitted and rejoins duty, so can the civil servant who retires during the pendency of the criminal trial. No question of his rejoining duty after the termination of the criminal trial arises; he is entitled to full salary.⁷²

Suspension without ability to pay subsistence allowance: Where power is conferred on the employer either by an express term in the contract or by the rules governing the terms and conditions of service, to suspend an employee, the order of suspension has the effect of temporarily suspending the relationship of master and servant. The consequence is, the employee is not bound to render service and the employer is not bound to pay.⁷³ However, when the rules regulating conditions of service provide for payment of subsistence allowance to a civil servant, he is entitled to it.⁷⁴

68 *Nagesh Rao B.S. v. Joint Director of Public Instruction*, SLR 1982(1) Kar 457; SLR 1982(1) Del 573.

69 *Rudrappa v. Divisional Forest Officer*, 1975(1) Kar LJ SN 3 item 11; *Gangavati S.S. v. Karnataka Land Army*, 1985(1) Kar LJ 356; *Zonal Manager, FCI v. K.A. Siddique*, SLR 1985(2) AP 779.

70 *State of Maharashtra v. Devidas*, SLR 1975(2) Bom 183.

71 *Verma M.R. v. State of Punjab*, SLR 1975(2) P&H 167.

72 *State of Karnataka v. R.S.Nayak*, 1984(1) Kar LJ 435.

73 *Jammu University v. D.K.Rampal*, AIR 1977 SC 1146.

74 *State of M.P. v. State of Maharashtra*, AIR 1977 SC 1466.

Effect of reversion: When an employee suspended during the pendency of an inquiry is reverted to the lower post and in appeal the operation of the order of reversion is stayed, the employee continues to be under suspension. The order of suspension does not merge when the employee is reinstated into service though to a lower post. It is only in case of the dismissal of the suspended civil servant, the order of suspension merges in the order of dismissal. Therefore, the employee is entitled to subsistence allowance during the period when the order of reversion is stayed.⁷⁵

The position, however, would be different in a case where there is no stay of reversion during the pendency of the appeal. In such a case, the employee concerned would have to join the duty in the lower post. If he fails to do so, he can neither claim salary nor subsistence allowance.

Validity of rule authorising payment of nominal subsistence allowance during pendency of appeal against conviction

Any rule which provides that during the pendency of an appeal by a civil servant against an order of conviction, he shall be paid only a nominal subsistence allowance of Rs. 1/- is arbitrary and violative of articles 14, 16, 21 and 311(2) of the Constitution of India.⁷⁶

The ratio of the above decision would apply to a case in which the disciplinary authority does not choose to exercise its powers under clause (a) to the second proviso to Article 311(2) of the Constitution and imposes the penalty of dismissal or removal from service, on the basis of the conduct which led to the conviction. In the absence of such an order the civil servant continues to be in service (though under suspension) and the fact that such suspension was during the pendency of the criminal trial or during the pendency of criminal appeal against conviction, makes no difference.

If, however, the authority competent to impose the penalty of removal or dismissal from service, choose to remove the civil servant from service even before the appeal is preferred or during the pendency of criminal appeal, the question of payment of subsistence allowance does not arise and there is also no obligation in law for the State to frame any rule requiring payment of subsistence allowance to the appellant who is no longer in service.

But a civil servant placed under suspension during the pendency of criminal prosecution against him, and dismissed from service after he is convicted, if subsequently reinstated upon acquittal becomes entitled to the full salary during the suspension period.⁷⁷

⁷⁵ *Kurvilangad Service Co-operative Society v. State of Kerala*, SLR 1984(2) Ker 210.

⁷⁶ *State of Maharashtra v. Chandrabhan*, SLR (1983) (2) SC 493; AIR 1983 SC 803.

⁷⁷ *Brahma Chandra Gupta v. Union of India*, AIR 1984 SC 380.

A combined reading of these two decisions would indicate that rule 151 of the Bombay Civil Services Rules which was struck down in *Chandarbhan*, was intended for the benefit of civil servants placed in such a position because the rule gave an indication to the disciplinary authority that it may not exercise its power to remove a civil servant from service immediately after he is convicted on the basis of the conduct which led to his conviction and could wait till the disposal of the appeal. By this rule, the civil servant concerned would continue to have his lien, which would ensure his continuance in service so that at the moment of an order of reinstatement, he could rejoin service, for the reason that the civil servant would continue in service notwithstanding the fact that he was receiving only subsistence allowance of one rupee and he could claim the entire balance amount after his acquittal.

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 arises 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 the order of suspension becomes effective from the date of the actual receipt by him. It is necessary in cases of dismissal for the employee to actually receive the communication.⁷⁸ 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. Therefore, an order of suspension passed against a civil servant when he is on leave becomes effective from the date it was sent out.⁷⁹

Intervention by court: Normally, there should be no intervention by court in the case of internal management against employees especially when the employer is empowered to suspend an employee.⁸⁰ A writ is not maintainable in case of suspension order since there is an alternate remedy available to the employee in the form of statutory remedy.⁸¹

When servant acquitted in a criminal case, the post which he was occupied before suspension should have been given to him.⁸²

78 *State of Punjab v. Amar Singh*, AIR 1966 SC 1313

79 *Basme Vijaya v. State of Karnataka*, 1975(1) Kar LJ SN 3; *State of Panjab v. Khemiram*, AIR 1970 SC 214.

80 *Sham Lal v. Smt. Kusum Dhawan*, 1979 (1) SLR 127 at 129.

81 *S. A. Khan v. State of Harayana*, AIR 1993 SC 1152.

82 *G. Sanjeeva Reddy v. State of A.P.*, 1984 (1) SLJ 647, 648.