

(6)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

CP No.190/2004  
in  
OA No.729/2001

New Delhi this the 3<sup>rd</sup> day of September, 2004.

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)  
HON'BLE MR. SHANKER RAJU, MEMBER (J)**

Yateendra Singh Jafa,  
S/o late Sh. H.C.S. Jafa,  
R/o 148, SFS Apartments,  
Hauz Khas, Aurbindo Marg,  
New Delhi-110016.

-Applicant

(By Advocate Shri S.K. Gupta)

-Versus-

1. Sh. Anil Baijal,  
Secretary, Ministry of Home Affairs,  
North Block, New Delhi.
2. Sh. Arun Mago,  
Chief Secretary,  
Govt. of Maharashtra,  
Mumbai.
3. Sh. Ajay Raj Sharma,  
Director General,  
Border Security Force,  
10, C.G.O. Complex,  
Lodhi Road,  
New Delhi-110 003.

-Respondents

(By Advocates Shri A.K. Bhardwaj & Sh. R.K. ADSURE.)

**ORDER**

**Mr. Shanker Raju, Member (J):**

Non-compliance of the following directions passed by the Tribunal on  
29.7.2003 in OA-729/2001 is assailed:

“57. In the above view of the matter the OA  
succeeds and is accordingly allowed. The impugned  
order dated 23/24.1.2001 is quashed and set aside.

Applicant is ordered to be reinstated immediately. This does not come in the way of applicant being proceeded against in a duly constituted inquiry in terms of AIS (D&A) Rules, 1969. If the respondents deem it necessary to do so, they may initiate the proceedings accordingly. We also direct that the period between the date of his dismissal and his reinstatement be regularised by the competent authority in accordance with law and the outcome of the disciplinary proceedings, if the same are to be initiated. In view of the above directions, the interim relief granted against respondent No.3, on the aspect of eviction of applicant from the official quarter, is made absolute and the applicant is permitted to continue in the quarter in the usual terms and conditions."

2. As a compliance thereof, by an order dated 24.11.2003 respondents have decided to implement the above order and to initiate disciplinary proceedings under Rule 8 of the All India Service (Discipline & Appeal) Rules, 1969 (for short, the Rules) and reinstated the applicant by placing him under deemed suspension from the date of dismissal i.e. 23.1.2001.

3. By an order dated 3.6.2004 a disciplinary proceeding was contemplated and on reinstatement applicant is ordered to be paid subsistence allowance in terms of Rule 4 of the Rules and provision pension as per Rule 6 (2) of the All India Service (DCRB) Rules. In compliance thereof applicant has to draw 50% of the subsistence allowance of the pay last drawn by him for first six months and for the remaining period he has been made entitled to 70% of the allowance as well as provisional pension.

4. Learned counsel for applicant contends that the order has not been complied with, as when there is no enquiry, while dismissing applicant under Article 311(2)(c) of the Constitution of India and in absence of a proceeding drawn up against him the entire period from 23.1.2001 till date of superannuation should be treated in accordance with law and as spent on duty with all benefits. Alternatively, it is also contended that if the subsistence allowance so calculated in terms of order dated 3.6.2004 is yet to be paid by respondents to applicant.

5. Learned counsel Shri S.K. Gupta place reliance on the decision of the Apex Court in *Mahender Singh vs. Union of India & Anr.*, 1991 Supp(2) SCC 131 to contend that once there is no enquiry earlier held to dismiss applicant under provisions of Constitution of India deemed suspension of applicant on a further enquiry is not in accordance with rules.

6. On the other hand learned counsel for the respondents Shri A.K. Bhardwaj vehemently opposed the contentions. According to him, rule 3(6) of the Rules provides that when a penalty of dismissal is set aside and the disciplinary authority decides to hold a further enquiry, as in the present case, the person is to be placed under deemed suspension. It is also stated that the intervening period was to be decided in accordance with law and was subject to the outcome of the disciplinary proceedings. In this view of the matter, it is stated that the decision in *Mahender Singh's* case (supra), which pertained to termination under Rule 5(1) of the Rules has no application.

7. In nutshell what has been contended before us is that directions of the Tribunal have been meticulously in true letter and spirit have been complied with and the payment of subsistence allowance and provision pension would be disbursed to the applicant by respondent no. 3 i.e. State of Maharashtra.

8. We have carefully considered the rival contentions of the parties and perused the material on record as well written submissions of Resp No. 3.

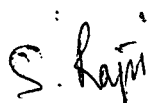
9. It is trite law that in a contempt petition a contentious matter cannot be gone into. Any order passed in contempt which has an effect of creating substantive right or grant of substantive relief is not permissible in the light of the decision of the Apex Court in *Jareswar Prashad Paul vs. Tarak Nath Ganguly*, 2002 (5) SCC 352.

10. In the light of the above, although we find that Rule 3(6) of the Rules permits deemed suspension when it is decided to hold further enquiry and in the

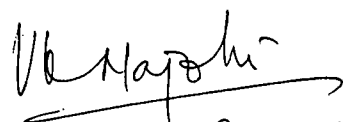
light of the decision of the Apex Court in **Mahender Singh's** case (supra) the ratio decidendi of which clearly rules that when there is no earlier enquiry, on a further enquiry no deemed suspension can be resorted to. We are of the view that the matter is contentious and any direction would amount to creation of a substantive right in favour of the applicant. As such, reserving liberty to applicant we do not want to comment any further on this issue.

11. As we find that the directions were to regularize the period in accordance with law and subject to the final outcome, having decided to hold a disciplinary proceedings under the rules, applicant is entitled to subsistence allowance @ 50% for three months and thereafter 75% w.e.f. 23.1.2001 as also the provisional pension. As the respondents have ordered payment of the same, we hope that the aforesaid payment shall be released to applicant by respondent no. 3 i.e. State of Maharashtra within a period of four weeks from the date of receipt of a copy of this order.

12. With the above observation and giving liberty to applicant to assail his grievance, if any, in accordance with law, Contempt Petition stands disposed of, and the notices are discharged.

  
(Shanker Raju)  
Member (J)

/San./

  
(V.K.Majotra) 3.9.04  
Vice Chairman (A)