

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 22⁹ of 1994
T.A. No.

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DATE OF DECISION 02-06-1994

Shri M.R. Dewan Applicant(s)

Versus

U.O.I. & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? 95
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(S.K. DHAON)
VICE CHAIRMAN

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(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 229/94

NEW DELHI THIS THE 2nd DAY OF JUNE, 1994.

MR. JUSTICE S.K.DHAON, VICE-CHAIRMAN (J)
MR. B.N.DHOUNDIYAL, MEMBER (A)

Shri M.R.Dewan, IFS
S/o Sh.D.R.Dewan
R/o D-315, Nirman Vihar
DELHI-110 092. ... APPLICANT
BY ADVOCATES SHRI G.D.GUPTA AND SH.B.B.RAVAL.

vs.

1. Union of India
through Secretary,
Ministry of Environment & Forest
Government of India
CGO Complex
NEW DELHI-110 003.
2. The Administrator of Andaman
& Nicobar Islands
through Principal Chief
Conservator of Forests
Andaman,
PORT BLAIR.
3. Joint Cadre Authority for
the Joint IAS, IPS and IFS
Cadre of Arunachal Pradesh-
Goa-Mizoram-Union Territory
(AGMU)
through Additional Secretary,
In-charge, UTS Division
Ministry of Home Affairs
Government of India
North Block
NEW DELHI. ... RESPONDENTS

BY ADVOCATE SHRI M.L.VERMA.

ORDER

JUSTICE S.K.DHAON:

The short but interesting question to be decided in this OA is whether the Central Government has jurisdiction to suspend the applicant, an officer belonging to the Indian Forest Service of the AGMU(Arunachal Pradesh-Goa-Mizoram-Union Territory) Cadre under Rule 3 of the All India Service(Discipline & Appeal) Rules, 1969(the Disciplinary Rules).

2. The All India Services Act, 1951(the Act) was enacted to regulate the recruitment, and the conditions of service of persons appointed, to the
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All India Services common to the Union and the States. Section 2 of the Act defines "an All India Service" to mean the service known as the Indian Administrative Service or the service known as the Indian Police Service or any other service specified in Section 2-A. It may be noted that the aforesaid two services were constituted before the Act saw the light of the day. However, the Act recognised them as All India Services. By the All India Services (Amendment) Act, 1963 which was brought into force on 6.9.1963, Section 2-A was added providing for the constitution of three other All India Services of which the Indian Forest Service was one. Section 3 of the Act deals with regulation of recruitment and conditions of service. Sub section(1) thereof provides:

" the Central Government may, after consultation with the Governments of the States concerned including the State of Jammu and Kashmir, make rules for the regulation of recruitment, and the condition of service of persons appointed, to an All-India Service."

3. A notification dated 1.7.1966 was issued by the Central Government under Section 2-A of the Act thereby bringing into existence the All India Forest Service. Immediately thereafter, in exercise of powers conferred by sub-section(1) of Section 3 of the Act, the Central Government made the Indian Forest Service (Cadre) Rules, 1966 (the Cadre Rules) and the Indian Forest Service (Recruitment) Rules, 1966 (the Recruitment Rules). By Rule 3 of the Cadre Rules, the Indian Forest Service was constituted for each State or group of States and the cadre so constituted was to

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be referred to as a "State Cadre" or, as the case may be, "Joint Cadre".

4. Rule 6 of the Recruitment Rules, inter-alia, provides that all appointments to the Service shall be made by the Central Government. In the purported exercise of said power, the President, on 4.6.1974 appointed a number of officers to the Indian Forest Service on probation with effect from 1.3.1974. The applicant was one of the said officers. Thus there can be and there is no dispute that the applicant was appointed by the President.

5. In the purported exercise of powers conferred by sub-section(1) of Section 3 of the Act, the Central Government made and notified in the Official Gazette of India, the All India Services/^{(Joint Cadre) Rules, 1974} (the Joint Cadre Rules). In Rule 2 of the said Rules, "Joint Cadre Authority" is defined to mean the Committee of Representatives referred to in Rule 4 and "Constituent States" is defined to mean the States in respect of which a Joint Cadre is formed.

6. Sub-rule(1) of Rule 4 of the Joint Cadre Rules provides that there shall be a Committee consisting of a representative of each of the Governments of the Constituent States to be called the Joint Cadre Authority.

7. Rule 5 of the Joint Cadre Rules talks of duties and functions of the Joint Cadre Authority. Sub-rule(1) of that Rule states that the Joint Cadre Authority shall determine the names of the members of the All-India Services, who may be required to serve from time to time in connection with the affairs of each of the Constituent States and the period or periods for which their services shall be available to that Government. Sub-rule(2)

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is not material for our purpose.

8. Rule 6 of the Joint Cadre Rules inter-alia provides for amendment of rules shown in Schedule I to the Joint Cadre Rules. In Schedule I, a number of Rules are mentioned. The Disciplinary Rules are amongst the list of the rules subjected to amendment. A proviso is introduced in sub-rule(3) of Rule 7 of the Disciplinary Rules. Rule 7 has the marginal note:

"Authority to institute proceedings and to impose penalty".

The proviso added to sub-rule(3) of Rule 7 by the Joint Cadre Rules runs as follows:

" Provided that in relation to the members of the Service borne on a Joint Cadre, the punishing Government shall consult the Joint Cadre Authority."

9. It will be seen that the Joint Cadre Rules do not affect any change in Rule 3 of the Disciplinary Rules.

10. By notification dated 10.3.1989, the Central Government in exercise of the powers conferred by sub-section(1) of Section 3 of the Act, read with sub-rule(1) of Rule 3 of the Cadre Rules constituted for the States of Arunachal Pradesh-Goa-Mizoram and Union Territories, an Indian Forest Service Cadre and abolished the Indian Forest Service Cadre of Union Territories.

11. By notification dated 3.4.1989, the Central Government in exercise of the powers conferred by sub-section(1) of Section 3 of the Act, read with sub-rule(1) of Rule 4 of the Joint Cadre Rules constituted the Joint Cadre Authority for the Joint I.A.S., I.P.S. and I.F.S. Cadres of Arunachal Pradesh-

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Goa-Mizoram-Union Territories.

12. By notification dated 11.12.1992, the Central Government in supersession of the aforesaid notification dated 3.4.1989 reconstituted the Joint Cadre Authority for the Joint I.A.S and I.P.S. Cadres of Arunachal Pradesh-Goa-Mizoram- Union Territories.

13. On the strength of the notification dated 3.4.1989, it is contended on behalf of the applicant that with effect from the said date, the applicant became a member of the AGMU Cadre. The argument is that upon coming into existence of the Joint Cadre Authority by notification dated 3.4.1989, the power to suspend a member of the AGMU Cadre from service came to be vested in the Joint Cadre Authority. We shall deal with this argument a little later.

14. We find no force in the contention advanced by the learned counsel for the respondents that on account of the notification dated 11.12.1992 superseding the notification dated 3.4.1989, the Joint Cadre Authority even with respect to Indian Forest Cadre of AGMU stood abolished. It is true that the expression "supersession" has been used in the notification dated 11.12.1992. But that expression has to be read in the context and setting of the notification dated 11.12.1992 and in the light of the notification dated 3.4.1989. while construing the notification dated 11.12.1992 in the manner sought to be construed by the learned counsel for the respondents, the two notifications should be read together and not in isolation of each other. The intention of the notification dated 3.4.1989 was to create a Joint Cadre Authority for the Joint I.A.S., I.P.S. and

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I.F.S. Cadres of AGMU. Therefore, in the eye of law, separate Joint Cadre Authorities were created for Joint I.A.S, Joint I.P.S and Joint I.F.S. Cadres of AGMU. The notification dated 11.12.1992 merely reconstituted the Joint Cadre Authority for the Joint I.A.S. and I.P.S. Cadres of AGMU. A comparison of the personnel of the Joint Cadre Authorities created by the two notifications will indicate that by the subsequent notification of 11.12.1992, the personnel of the Joint Cadre Authority for Joint I.A.S and Joint I.P.S. Cadres of AGMU had been changed. We, therefore, come to the conclusion that the Joint Cadre Authority for the Joint I.F.S. Cadre of AGMU as constituted by the notification dated 3.4.1989 continued to exist and that position obtains even now.

15. In the impugned order of suspension dated 10.2.1993 passed by the President in exercise of the powers conferred by sub-rule(1) of Rule 3 of the Disciplinary Rules, it is inter-alia recited that disciplinary proceeding against the applicant is contemplated under Rule 8 of the Disciplinary Rules. A charge-sheet dated 15.11.1993 has been issued to the applicant.

16. The general principle, as material, is that an employer can suspend an employee pending an inquiry into his conduct. This principle applies with equal force in a case where the Government is the employer and a public servant is the employee, with the modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles, therefore, the authority entitled to appoint a public servant would be

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entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provisions^{in Section} 16 of the General Clauses Act No.X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the case of a Government servant where the power of suspension is regulated by statutory rules, it is in consonance with the general law of master and servant. (See **R.P.Kapur vs. Union of India & another-AIR 1964 SC 737 para 11**).

17. We may now read Rule 3 of the Disciplinary Rules with a view to finding out as to whether the aforementioned general principle has been diluted in any manner and also as to whether the Central Government/the President has denuded itself or himself of the power to suspend a member of the All India Service.

18. Rule 3, as material, may be extracted:

"Suspension-(1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may-

3(1)(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

3(1)(b) If the member of the Service is serving under another Government/ to place him under suspension,

/request that
Government

Pending the conclusion of the disciplinary proceedings and the passing of the final order in the case.

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Provided that, in cases, where there is a difference of opinion,-

- (i) between two State Governments, the matter shall be referred to the Central Government for its decision;
- (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail.

Provided further that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government."

19. In R.P.Kapur's case (supra) a question arose whether a member of the Secretary of State's Services could be suspended as an interim measure pending a departmental enquiry or pending a criminal proceeding by an authority other than the Secretary of State or Secretary of State for India in Council (the appointing authority). Section 247(2) of the Government of India Act, 1935 as in force upto August 13, 1947 provided:

" any order suspending any such person (meaning thereby a member of the former Secretary of State's Services) from office shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgement and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgement."

Their Lordships observed:

" This sub-section therefore made a specific provision for suspension by authorities other than the appointing authority; this was in addition to the general right of the employer (namely, the Secretary of State who was the appointing authority) to suspend an employee (namely, a member of one of the former Secretary of State's Services)."

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This declaration of law by the Hon'ble Supreme Court will apply squarely for the purpose of interpreting Rule 3 of the Disciplinary Rules. The Central Government while framing the said Rule and while retaining its power of suspension under the general law conferred upon the State Government/ Governments concerned additional powers to suspend from service a member of the All India Service.

20. A close reading of the aforequoted Rule 3 bring out three features. The first is that in the event of a disagreement between a State Government and the Central Government on the question of suspension of a member of All India Service, the opinion of the Central Government shall prevail. The second is that in the event of difference of opinion between the State Governments, the matter shall be referred to the Central Government for its decision. The last, but not the least, is that an order of suspension passed by the State Government shall lose its efficacy if the same is not confirmed by the Central Government within a period of 45 days, or such further period not exceeding 45 days for reasons to be recorded by the Central Government in writing.

21. These features demonstrate that the ultimate power of suspension vests in the Central Government thereby keeping intact the inherent power of the employer to exercise the power of suspension as conferred by the general law.

22. The three features in Rule 3, as highlighted above, destroy the argument that the Central Government/the President while framing Rule 3 of the Disciplinary Rules surrendered a part of the general power of suspending a member of the All India Service in favour of the State Governmnt/

Governments. At best, it can be said that the Central Government/the President delegated a part of its/his powers in favour of the State Government/Governments.

23. In **Godavari S.Parulekar, etc. Vs. The State of Maharashtra** (AIR 1966 SC 1404), a question arose whether the State Government after delegating its power under rule 30 of the Defence of India Rules, 1962 to pass an order of detention to District Magistrates denuded itself of that power. In para 6, their Lordships quoted Wills, J in **Ruth V. Clarke** (1890) 25 QBD 391:

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

Immediately thereafter, their Lordships observed:

"In our opinion, by issuing the aforesaid notification the State Government has not denuded itself of the power to act under Rule 30."

24. We, therefore, conclude that in spite of the powers conferred upon the State Government/Governments under Rule 3 to suspend a member of the All India Service, and in spite of the coming into existence of a Joint Cadre Authority, the Central Government/the President retains the power and jurisdiction to suspend the applicant from service.

25. We have already indicated that the Joint Cadre Rules have not introduced any change in Rule 3 of the Disciplinary Rules. In Section 3 of the Act, the Central Government is empowered to frame rules for regulating the recruitment and the conditions of service of persons appointed to the All India Services. Separate rules may be framed covering separate aspects of the conditions of

service. Each rule, therefore, should normally be allowed to apply its own rule in its own sphere. In the event of any conflict between the rules, the principle of harmonious construction should be invoked. We are satisfied that no conflict ^{exists} between the Joint Cadre Rules and Rule 3 of the Disciplinary Rules in so far as the present controversy is concerned.

26. This OA has no merit and it is dismissed but without any order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER(A)

S.K. Dhaon
(S.K. DHAON)
VICE-CHAIRMAN(J)

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