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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.264 of 1994.

New Delhi, this the 24th day of August, 1994.

Hon'ble Mr Justice S.K.Dhaon, Acting Chairman.

Hon'ble Mr B.N.Dhoundiyal, Member(A)

Shri M.K.Gupta,
B-285, Saraswati Vihar,
Delhi-110034.

..... Applicant.

(through H.K.Sharma, Advocate).

vs.

1. Union of India
through
Secretary, Ministry of Planning,
Department of Statistics,
Sardar Patel Bhavan, Sansad Marg,
New Delhi.

2. The Director General,
Central Statistical Organisation
& Ex. Officio Addl. Secretary,
Department of Statistics,
Sardar Patel Bhavan, Sansad Marg,
New Delhi-110 001.

3. Shri D.S.Sethi,
Under Secretary,
Government of India,
Ministry of Planning
Department of Statistics,
Sardar Patel Bhavan, Sansad Marg,
New Delhi.

.... Respondents.

(through Mr J.C.Madan, proxy counsel for
Mr P.H.Ramchandani, Sr. Advocate).

ORDER(oral)

JUSTICE S.K.DHAON, ACTING CHAIRMAN.

In disciplinary proceedings, an order of compulsory retirement from service was passed against the petitioner. He came to this Tribunal by means of O.A.No.953/88, which was disposed of finally on 1.6.1993. This Tribunal took the view that the order of the disciplinary authority stood vitiated as the same had been passed without affording an opportunity of hearing to the petitioner, particularly when the disciplinary authority disagreed

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With the findings of the Inquiry Officer. This Tribunal left it open to the disciplinary authority to decide whether it proposes to proceed further in the inquiry. This Tribunal also observed that the disciplinary authority should inform the petitioner of its decision within a period of three months from the date of receipt of the judgment of the Tribunal. It appears that the Tribunal at the end made the following observations;

".....The period from the date of compulsory retirement to the date of reinstatement shall be dealt with in accordance with law"

D 2. On 27.10.1993, an order re-instating the petitioner in service was passed. On 15.12.1993, the disciplinary authority informed the petitioner that it proposed to hold further inquiry. We may immediately deal with the arguments advanced on behalf of the applicant, that the disciplinary authority had no jurisdiction to take the decision that it will hold a fresh inquiry after the expiry of period of three months from the date of receipt of the order of this Tribunal. Shri Madan, appearing on behalf of the respondents states that in fact the judgment was received on 24.9.1993 and, therefore, the decision was well within time specified by this Tribunal. Assuming the proceedings were not commenced within a period of three months, we are not inclined to take the view that the disciplinary authority became functus officio immediately after the expiry of a period of three months from the date of receipt of the judgment. The language employed by the Tribunal was that the disciplinary authority should inform the petitioner within a period of three months from the date of receipt of this judgment. Therefore, the Tribunal clearly did not intend to pass a mandatory order.

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Its object was to emphasise that the matter should be disposed of expeditiously by the disciplinary authority. We, therefore, record the finding that no illegality can be attached to the initiation of the disciplinary proceedings by the disciplinary authority, from the stage of the receipt of the inquiry report by him.

3. On 19.11.1993, the Under Secretary to the Government of India passed an order on behalf of the competent authority that the intervening period between the date of compulsory retirement of the petitioner to the date of re-instatement, that is 27.10.1993 will not count as qualifying service under Rule 25 of the CCS(Pension) Rules, 1972. On 15.12.1993, the petitioner was informed that the disciplinary authority had decided not to accept the inquiry officer's report and pursue the matter further from that stage.

4. On 17.1.1994, a memorandum was issued by and on behalf of the Government of India. In substance, by means of this memorandum, the petitioner was called upon to refund the entire amount received by him towards D.C.R.G., Commuted value of Pension, Encashment of Leave and Pension & Dearness Relief.

5. In this O.A., the prayer, in substance, is that the aforementioned order dated 15.12.1993 may be quashed. We have already dealt with the legality of the order dated 15.12.1993, and we need not say anything further in relation to that order. Coming to the order of 19.11.1993, after having heard the learned counsel for the parties for quite sometime, we are of the opinion that the said order is not sustainable on more than one

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First Rule 25(2) will apply only where an order of reinstatement has become final. This can happen only when an order setting aside an order of dismissal etc. has attained finality. In the instant case the old disciplinary proceedings have recommenced. Secondly Rule 25 has no connection with the payment of emoluments. It is confined to the counting of qualify service. Thirdly, the order was prematurely passed as the disciplinary proceedings are still going on and the possibility of the applicant being exonerated is not ruled out.

6. We may recapitulate that the Tribunal had left it free to the disciplinary authority to make up its mind as to whether it should resume the disciplinary proceedings. Rule 54 of the Fundamental Rules, on the face of it, will be applicable where an order of dismissal, removal or compulsory retirement of a Government servant is set aside in a departmental appeal or review. Nonetheless, what is important in this provision is that the authority passing the order of re-instatement has to first consider and thereafter pass any specific order regarding payment etc. Clearly, the consideration mean there is an objective consideration. Therefore, application of mind is implicit. Therefore, Rule 54 will not apply to the present case.

7. Rule 54-A, inter alia, states that where dismissal, removal or retirement of a government servant is set aside by a Court of Law and such government servant is re-instated without holding any further inquiry, the period of absence from duty should be regularised in accordance with the

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provisions contained in sub-rule(2) and (3) and he shall be paid his pay and allowances. This Rule clearly postulates a situation where a dismissal or removal of a government servant is set aside by a Court of law and the government servant is re-instated without holding any further inquiry. This provision, therefore, would not be applicable to the case of the petitioner.

8. Rule 10 of the CCS(CCA) Rules deals with suspension. Sub-rule(4) of Rule 10, inter alia, provides that where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government 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 government 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. The proviso to this sub-section says that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case. Here, as already indicated, the Tribunal quashed the order of compulsory retirement on a purely technical

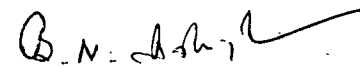
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
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ground without going into the merits of the case. Here again, the disciplinary authority has taken a decision to resume the disciplinary proceedings. Once the disciplinary authority takes that decision a deemed order of suspension automatically comes into existence (See: Nelson Motis Vs. Union of India and Another (JT 1992(5) SC 511). Rule 10(4) squarely applied to the applicant's case.

9. In view of the foregoing discussions we quash the order dated 19.11.1993. Having done so, we have to necessarily quash the order dated 17.1.1994, calling up the petitioner to make certain refunds. The respondents shall now calculate the subsistence allowance that would be payable to the applicant keeping in view the terms of Rule 10(4) of the CCS (CCA) Rules. The respondents thereafter shall adjust the amount payable as subsistence allowance to the applicant with the amount refundable by him and thereafter pass a fresh order directing the petitioner to make necessary refunds.

10. There shall be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER(A)


(S.K. DHONI)
ACTING CHAIRMAN

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