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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA. No. 139/94

New Delhi, dated the 24th March, 1994

Hon'ble Sh. N.V. Krishnan, Vice Chairman (A)

Hon'ble Sh. B.S. Hegde, Member (Judicial)

Shri Trilok Chand Jain,  
R/O 436/174, Jacob Pura,  
Gurgaon-122001

... Applicant

(By Advocate Sh. S.C. Luthura)

Versus

1. Union of India through,  
The Secretary,  
Deptt. of Women & Child Development  
Ministry of Human Resources Development,  
Shastri Bhawan, New Delhi.
2. Secretary,  
Deptt. of Personnel & Training,  
M/O Personnel Public Grievance &  
Pension, North Block, New Delhi

... Respondents

(By Advocate Sh. P.H. Ramchandani)

ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A))

Additional reply has been filed by the respondents today with a copy to the learned counsel for the applicant enclosing a copy of the order dated 17.3.1994 by which the respondents have taken back on duty the applicant on provisional basis, in pursuance of our interim order. The learned counsel for the respondent submitted that the OA can be disposed of.

2. We have heard the parties. The prayer made

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in the O.A. is to quash the order of suspension (Ann.A.1) passed by the IInd respondent under Rule 10(1)(b) of the CCS(CCA) Rules, 1965 as it is void and untenable in law because no government servant can be suspended with retrospective effect under the said Rule. Ld. counsel for the applicant states that such power for retrospective suspension exists only under Rule 10(2). Respondents have not invoked that power in passing the impugned order. Ld. counsel for the applicant relies in this respect, on 1990(2) ATJ MS Shashi Bala Sharma V/s U.O.I. delivered by the Principal Bench. In that case also, the facts are similar. It was held "that under Rule 10(1) retrospective suspension can not be made, it can be made only under Rule 10(2). Therefore, the impugned order was quashed.


3. We notice that the Bench did not further consider the question whether, where a particular power is available, an order passed in exercise of that power is void merely because the correct source of power has not been indicated. Admittedly, Rule 10(2) confers the power to suspend retrospectively in certain circumstances. The non mention of this rule is a mere technical irregularity. It will not vitiate the order.

4. In the circumstances, we find no merit in the prayer that the order of suspension should be quashed. The OA is therefore liable to be dismissed. As do so.

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5. The interim order already passed is made absolute. The respondents are now directed to pass an appropriate order in accordance with law regularising the period of suspension within a period of two months from the date of receipt of this order.

O.A. is disposed of accordingly.

  
(B.S. Hegde)

Member (J)

sk

  
24/3/74  
(N.V. Krishnan)

Vice Chairman (A)