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Central Administrative Tribunal
Principal Bench, New Delhi

O.A.1106/1988

New Delhi, This the 17th Day of February 1994

Hon'ble Shri C.J. Roy, Member(J)

Hon'ble Shri P.T. Thiruvengadam, Member(A)

Shri P.N. Gupta
s/o Shri J.N. Gupta
resident of 107, New Rajdhani Enclave,
Vikas Marg,
Delhi - 110092.

...Applicant

By Advocate Shri G D Gupta

Versus

1. Union of India Through the
Secretary to the Govt of India
Ministry of Urban Development
Nirman Bhavan, New Delhi.
2. Director General(Works), Central Public
Works Department, Nirman Bhawan, New Delhi.
3. The Superintending Engineer(Enquiries)
Central Public Works Department
Nirman Bhavan, New Delhi -110001.

...Respondents

By Advocate Shri P.H. Ramchandani

O R D E R(Oral)

Hon'ble Shri C.J. Roy, Member(J)

1. This OA is filed by the applicant claiming the following reliefs:-

- (a) to allow this application of the applicant with costs.
- (b) to issue appropriate order or orders, direction or directions.
 - i) setting aside the impugned order dated 11.12.1986 with all consequential benefits.
 - ii) directing the respondents to reinstate the applicant with all consequential benefits as per orders of this Hon'ble Tribunal 3.7.1986.
 - iii) declaring that the applicant could not be placed under deemed suspension from retrospective effect as he was not already under suspension before dismissal/removal from service nor he could be placed under suspension prospectively as there could be no reason for doing so when he was not under suspension earlier.
- (c) to issue such other appropriate order or orders, direction or directions as deemed fit and proper by this Hon'ble Tribunal to meet the ends of justice.

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2. The brief facts of the case are the Ministry of Works & Housing (now Ministry of Urban Development) vide their order dated 22.10.1973 (Annexure B) imposed the penalty on the applicant of reduction of pay by two stages in the time scale of pay for a period of two years for the charge that the applicant had not complied with the transfer order of 3.9.1971 posting him to Shillong.

3. Even after imposition of this penalty the petitioner continued to remain absent from duty and the penalty order dated 22.10.1973 has become "unenforceable and infructuous" and it called for review. The review was undertaken under Rule 29 of the Central Civil Services (classification, control & Appeal) Rules, 1965, after the issue of show-cause notice of 18.6.1975 proposing the penalty of removal from service. Since the notice sent by the registered envelope returned unserved, the notice was posted on his house ^{and thus} the penalty of removal from service was imposed on him. On this, applicant approached the Hon'ble High Court in June 1976 under the articles 22 of the Constitution for quashing the punishment of removal and the said case was transferred to the Tribunal after the CAT Act 1985 came into force. (T.A No.241/1985). This case was heard by a division bench and disposed of on 3.7.86.

4. While disposing this case, the Division Bench observed as under:-

"In the instant case the respondent authorities were justifiably irked when the petitioner continued to disobey the transfer order under various pretexts even after the first penalty of reduction of pay had been imposed on him. Instead of taking recourse to the fresh disciplinary proceedings, which would have entitled the respondents even to suspend the petitioner, they took recourse to the apparently easier and quicker but dubious method of imposing a harsher punishment of removal from service by reviewing the original order. It is also admitted that no enquiry was held into the subsequent conduct of the petitioner for not reporting to Shillong after the original order of punishment had been passed in 1973.

In the facts and circumstances of the case discussed above, we allow the petition and quash the impugned order No.1/109/69-Admn.IV (Annexure II) of January 1976. The petitioner should be reinstated in service with effect from the date he was removed with all consequential benefits. However, the respondents are at liberty to proceed against the petitioner for his conduct ...3/-

subsequent to the passing of the original order of punishment dated 22.10.1973, if so advised. There will be no order as to costs."

5. Taking a clue from the judgement, the applicant was deemed to have been placed under suspension with effect from 8.1.76 from service vide order No.1/109/69-EC-IX/EW.I dated 11 Dec 86(Annexure A). The President now therefore, hereby directs that a further enquiry should be held under the provisions of the CCS(CCA) Rules 1965 against Shri P.K. Gupta the architect, on the charges which led to imposition of the penalty of removal from service. So he was placed under suspension with retrospective effect from 8.1.76 under sub rule(4) of Rule 10 of the CCS(CCA) Rules, 1965.

6. It is brought to our notice by the learned counsel for the respondent that a fresh enquiry officer was appointed and file was handed over to him. But the enquiry officer sent back the file stating that an enquiry was already held and in view of the fact there was no need to hold further enquiry. In the meanwhile the applicant was superannuated on 31 Aug 93. It may be seen that more than 8 years have been elapsed and the respondents have not chosen to rise the occasion to put the law into motion.

7. Keeping the applicant under suspension for such a long period without conducting another enquiry amounts to not only humiliation of the applicant in the society in which he moves and the consequent anguish that has caused to him and loss of prestige suffered to him. All these, because he has not joined duty on a order of transfer.

8. Apart from the above, by the impugned order dated 11.12.86 an enquiry is sought to be made against the applicant on the charges which led to imposition of penalty of removal from service. In the earlier order of this CAT dated 3.7.86 referred to in para 3 above, it has been held that the removal in 1976 was inflicted because of the applicant's conduct in not moving on transfer even after imposition of penalty in 1973.

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9. An opportunity was given to the respondent to proceed against the petitioner, obviously by fresh disciplinary proceedings. Instead of resorting to issue of fresh proceedings which should commence with the issue of fresh chargesheet, the respondent have invoked sub rule 4 of Rule 10 of the CCS(CCA) Rules, 1965. Such an invocation is not in order since this sub rule contemplates 'further' enquiry and a further enquiry could be only in relation to the charges which had been framed at the commencement of the original proceedings. Under the circumstances, we hold that sub rule 4 of rule 10 of the CCS(CCA) Rules 1965 does not apply to the present case. Accordingly we have no other option except to quash the impugned order dated 11 Dec 86 and set aside the same. We further hold that the applicant is eligible for consequential benefits. No costs.

P. J. Rao

(P.T. THIRUVENGADAM)
Member(A)

LCP

W. S. Roy
(C.J. ROY)
Member(J)