

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1301 of 1987 198
T.A. No.

DATE OF DECISION 11-2-88

Shri N.K.Bhatnagar Petitioner

Shri S.C. Gupta with Shri Arvind Advocate for the Petitioner(s)
Gupta,

Versus

Union of India and others Respondent

Shri P.P. Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE J.D. JAIN, VICE-CHAIRMAN

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?

11/2/88
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn.No.OA 1301/87

DATE OF DECISION: 11-2-88

Shri N.K. Bhatnagar

...Petitioner

Versus

Union of India and others

...Respondents

For Petitioner: Shri S.C. Gupta, Sr. Advocate with Mr. Arvind Gupta, Advocate.

For Respondents: Mr. P.P.Khurana, Advocate

CORAM:HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

JUDGMENT:

(Judgment of the Bench delivered by Mr. Justice J.D. Jain, Vice-Chairman)

The petitioner, who is employed as Inspector of Customs and Central Excise has by this application under Section 19 of the Administrative Tribunals Act, 1985 (for short "the Act") challenged the legality and validity of order dated 2.12.85 (copy Annexure 'D') placing him under suspension w.e.f. 2.4.81 to 28th November, 1984.

2. The undisputed facts of the case are that the petitioner joined service as Inspector of Customs and Central Excise on 9.4.79, after having been selected through a competitive examination held by the Staff Selection Board Department of Personnel. In 1981 while he was posted in Japan Airlines Warehouse, there was some complaint against the applicant and vide order dated 2.4.81, the respondents terminated the services of the applicant under proviso to Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 on payment of one month's notice (copy Annexure 'A'). Aggrieved by the said order of the termination of the services, the applicant filed a Civil Writ Petition No.833/81 in the High Court of Delhi challenging the said order of termination inter alia, on the ground that the same was made with a view

to punish him by imposing a penalty of removal from service, but without following the procedure embodied in Article 311(2) of the Constitution of India. This plea prevailed with the High Court and vide order dated 22nd November, 1984 (copy Annexure 'B'), the writ petition was allowed and the impugned order was quashed with the following observations:-

"I allow the petition and quash the impugned order. The effect of it would be that the petitioner shall be deemed to be continuing in the service. The petitioner would be entitled to all the consequential benefits."

Consequent upon the said order, the petitioner reported for duty on 29.11.84 and order of his reinstatement in service was issued by the respondents on 12th March, 1985 w.e.f. 29th November, 1984 (copy Annexure 'C'). The said order, inter alia, mentioned that the order regarding the treatment of the period of petitioner's absence from duty, i.e., from the date of termination of his service to the date of his reinstatement in service would be passed separately. However, vide order dated 2.12.85 which is under challenge (copy Annexure 'D'), the petitioner was placed under suspension w.e.f. 2.4.81 to 28.11.84, i.e., the period he remained absent from duty on account of the termination of his service. Feeling aggrieved by the said order, the petitioner filed the a Contempt of Court application in the High Court contending that the respondents had, instead^{of} implementing the order of the High Court dated 22.11.84, placed him under suspension in gross violation of the aforesaid order. However, he also made representations to the concerned authorities but to no avail. The Civil Contempt of Court Petition filed by the petitioner was eventually rejected by the

High Court vide order dated 19.1.87 with the observations that "no case for taking action under the Contempt of Courts Act is made out, the petitioner is, however, at liberty to challenge the aforesaid order in any other proceedings which he may be advised". Thereupon the petitioner filed this application for quashing the impugned order of suspension.

3. The application is resisted by the respondents who admit all the foregoing facts in ^{vocal}unequitable terms but contend that the petitioner was placed under suspension under Rule 10(4) of the Central Civil Services (C.C.A.) Rules, 1965 (for short "the Rules"). It is averred that a preliminary inquiry was conducted by the C.B.I. after the reinstatement of the petitioner pursuant to order dated 22.11.84 of the High Court of Delhi, vide which the ~~petitioner's~~ order of termination of the services of the petitioner had been quashed for non-compliance with Article 311(2) of the Constitution of India and not on merits, ^{and} it was decided to proceed against the petitioner departmentally. Hence, he was placed under deemed suspension w.e.f. 2.4.81. It is urged that there is no violation of the order of the High Court because even after a Government servant is ^{placed} under suspension, he continues to be in Government service and as such there was no violation of the order of the High Court. Further, according to the respondents, they have already paid an amount of Rs.37,844.25 by way of subsistence allowance to him for the period under deemed suspension. The respondents have explained that investigations were conducted by the C.B.I. after reinstatement of the petitioner and disciplinary proceedings were under process.

4. From the foregoing resume of facts, it is abundantly clear that the petitioner has been placed under suspension by virtue of the power vested in the respondents under Rule 10(4) of the Rules. Hence, the legality and validity of the said order has to be adjudged with reference to the provisions contained therein. It reads as under:

"10(4) 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:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order on technical ground without going into the merits of the case."

On a bare reading of the aforesaid rule, it is manifest that it can be invoked only under certain conditions and circumstances detailed therein. So, the primary question which calls for determination is whether the impugned order is in conformity with the aforesaid rule, in that, it satisfies the conditions embodied therein. On a dichomy^{to}, the said rule postulates the existence of following conditions:-

- (a) There must be a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant.
- (b) Such penalty must have been set aside or declared or rendered void in compliance of or by a decision of a court of law.

- (c) The disciplinary authority on a consideration of the circumstances of the case must decide to hold further inquiry against him.
- (d) The contemplated further inquiry against the delinquent Government servant must be on the allegations on which the penalty of dismissal removal or compulsory retirement was originally imposed.

5. If all these conditions are satisfied, the concerned 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. Obviously, the facts of the case fall short of satisfying the foregoing conditions of the rule. In the first instance, there was no order of dismissal, removal or compulsory retirement in the instant case and the services of the petitioner were sought to be terminated by an order of discharge simplicitor. No doubt, the learned Judge of the High Court of Delhi following the decision of the ^{Supreme} High Court in Anoop Jaiswal Vs. Government of India and another: 1984(1) All India Services Law Journal, 482 and Raj Kumar Sharma Vs. Union of India and others: 1984(2) All India Services Law Journal 20 etc. and on going through the relevant records of the respondents arrived at the conclusion that the foundation of the impugned order dated 2.4.81 was the alleged act of misconduct and that but for the complaint lodged against the petitioner the impugned order would not have been passed and he would have continued to be in service. So, his Lordship quashed the order as being bad in law for ⁿnot ^{ance} complied with the provisions of Article 311(2) of the Constitution of India inasmuch as the petitioner

was not afforded any reasonable opportunity of showing cause against the alleged misconduct. However, the fact remains that the said order was not one of dismissal, removal or compulsory retirement from service as envisaged in Rule 10(4). The three terms "dismissal", "removal" and "compulsory retirement" used in the context of disciplinary proceedings have acquired special significance as the three major penalties that can be inflicted upon a Government servant under the Rules. Dismissal and removal amount to premature termination of his services as a measure of penalty. Admittedly, the services of the petitioner were not terminated as a measure of penalty vide order dated 2.4.81 which purported to be an order of discharge simpliciter^e. It is a different thing that the High Court found the said order to be a ^{on a} camouflage for penalty of removal. It is significant to notice here that no inquiry was held against the petitioner prior to the said order and as such the question of holding a further inquiry against him after his reinstatement on the same allegations does not arise. The proviso to Rule 10(4) makes it abundantly clear that the further inquiry contemplated therein should not be ordered except in a case where the penalty of dismissal, removal or compulsory retirement has been set aside by a court of law on technical grounds without going into the merits of the case or when fresh material has come to light which ^{was} not before the court. In the instant case, termination of the services of the petitioner did not proceed on the basis of any specific charges served on him and therefore, the inquiry, if any, which may be under contemplation

of the respondents shall have to be treated as fresh inquiry in contradistinction to further inquiry within the meanings of Rule 10(4). It may be noticed that under Rule 10(1) of the Rules, the Competent Authority may place a Government servant under suspension, inter alia, where a disciplinary ^{proceeding} against him is contemplated or pending. There is obviously a clear distinction between the fields in which Rule 10(1) and Rule 10(4) operate. In the former case, the Government can place a Government servant under suspension where his continuation in service will prejudice the investigation, trial or any inquiry, for instance, apprehended tampering with witnesses or documents. The object of suspension is that to keep a Government servant off the duty temporarily pending final action for acts of indiscipline, delinquency, misdemeanour etc. However, such an order of suspension can only be prospective in the sense that it will take effect only from the date it is made or subsequent thereto and not retrospectively. It is only when an employee is by legal fiction deemed to have been placed under suspension, that an order of suspension can take effect retrospectively as in a case falling within the purview of Rule 10(4). But in that event all the conditions laid in the relevant rule which gave rise to deemed suspension must be fully satisfied. Obviously, this is not so in the instant case.

6. Under Rule 10(5) of the Rules, an order of suspension made or deemed to have been made under Rule 10 continues to remain in force until it is modified or revoked by the authority competent to do so. It is however well settled that an order of suspension ceases to exist automatically from the

date from which the Government servant is dismissed, removed or compulsorily retired as a result of departmental proceedings. Rule 10(4) therefore has been obviously designed with a view to keep the suspension of a Government servant alive when penalty of removal, dismissal or compulsory retirement from service imposed upon him is set aside or is rendered void in consequence of or by a decision of the Court of law. But if the disciplinary authority proposes to hold a further inquiry into the matter the intendment of the rule clearly is to obviate a fresh order of suspension in a situation like this. However, as observed earlier, the petitioner was never placed under suspension prior to the termination of his service nor was any departmental proceedings or inquiry initiated against him. So, the recourse to Rule 10(4) is totally misconceived. Even on their own showing the case of the respondents at best is that investigations were conducted by the C.B.I. after the reinstatement of the petitioner in service and the disciplinary proceedings are under process against him. Strangely enough, however, the petitioner has not been placed under suspension subsequent to his reinstatement and the respondents were content to pass an order of deemed suspension under sub-rule (4) of Rule 10 upto the date of his reinstatement only. We are told that the petitioner has been consistently working and performing his duty ever since his reinstatement w.e.f. 29.11.84. The order of deemed suspension was passed after he had put in nearly 9 months of service after his reinstatement. It is beyond one's comprehension as to how the period of absence from duty of the petitioner consequent upon wrongful termination of his services could be segregated for purposes of suspension from the post-reinstatement period and what purpose was sought to be achieved by

passing the impugned order. If it was really intended to hold an inquiry and keep the petitioner off the duty during the period of departmental proceedings the two periods, i.e., pre-reinstatement and post-reinstatement should have been continuous with each other. Certainly there is no logic in the petitioners being placed under deemed suspension only for the period of his unavoidable absence from duty under the order of termination dated 2.4.81.

7. There is yet another aspect of the matter, viz., that more than two years have elapsed since the order was passed, however, the respondents took no steps for more than a year and a half to initiate disciplinary proceedings against him. We are informed that the charge sheet has been issued to the petitioner only now i.e., about a couple of months back. Even then there is no justification whatsoever for the deemed suspension of the petitioner during the period which has not even a remote connection with the disciplinary proceedings started against him now. In our view, the impugned order is wholly mindless and seems to have been passed in a very casual ^{and} perfunctory manner. Hence, it cannot be sustained by any stretch of reasoning.

8. The upshot of the whole discussion is that this application succeeds. It is accordingly allowed and the impugned order of suspension is set aside. ^{therefore} The petitioner shall be entitled to all consequential benefits pursuant to the order of the High Court of Delhi. However, we make no order as to costs in this application.

11/2/88

(Birbal Nath)
Administrative Member

J. D. Jain

(J.D. Jain)
Vice-Chairman