

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 893/91

199

~~T.A. No.~~DATE OF DECISION 6.1.1992.

<u>Dr. V.M. Gupta</u>	Petitioner
<u>Shri G.D. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri P.H. Ramchandani, Senior</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

Ram Pal Singh
(Ram Pal Singh)
Vice-Chairman (J)

6.1.1992.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.893/1991

DATE OF DECISION: 6.1.1992.

DR. V.M. GUPTA

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

THE HON'BLE MR. RAM PAL SINGH, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI G.D. GUPTA, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,
SENIOR COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Dr. V.M. Gupta, the applicant in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 has challenged the validity of the order dated 26.3.1991, deeming the applicant to have been placed under suspension w.e.f. 14.6.1988, i.e., the date from which the applicant was compulsorily retired from service by way of penalty, under Rule 10 (4) of the CCS (CCA) Rules, 1965 and that his continued suspension until further orders.

2. The issue raised in the O.A. for our adjudication is whether the applicant can be placed under deemed suspension in terms of Rule 10 (4) of CCS (CCA) Rules, 1965 when he was not under suspension before the penalty of compulsory retirement was imposed and which was set aside later by an order of the Court.

3. The relevant facts of the case are that the applicant was initially appointed as a Class II Medical Officer through Union Public Service Commission (UPSC) in the CGHS in June, 1968. The post was upgraded to Class I on the recommendation of the Third Pay Commission and

the applicant was promoted to the post of Senior Medical Officer (SMO) in 1979. The applicant was served with a chargesheet vide memo dated 22.7.1986 and after completion of enquiry he was finally compulsorily retired on 31.5.1988 by order of the competent authority. As the copy of the enquiry report and the advice of the UPSC was supplied to the applicant only with the order of 31.5.1988, the applicant filed Original Application No.1615/88 in the Central Administrative Tribunal. The said O.A. was partly allowed by the Tribunal vide judgement dated 31.12.1990, setting aside the order of compulsory retirement and ordering his reinstatement in service. The Tribunal, however, made it clear that:

"This decision shall not preclude the disciplinary authority from revising the proceedings and continuing with it in accordance with law from the stage of supply of the copy of the enquiry report to the applicant and giving him an opportunity of making a representation to the disciplinary authority..."

The applicant reported for duty on 5.1.1991 when he was placed under suspension vide impugned order dated 26.3.1991, which reads as under:-

"...AND WHEREAS in pursuance of Hon'ble Tribunal's aforesaid order the President has decided that the order of compulsory retirement from service should be set aside and an opportunity be afforded to Dr. Gupta to make a representation in writing on the report of the Inquiry Officer.

NOW, THEREFORE, the President hereby
(i) set aside the said order of compulsory retirement from service.

2

(ii) directs that the said Dr. V.M. Gupta, shall, under sub-rule (4) of Rule 10 of the CCS (CCA) Rules, 1965, be deemed to have been placed under suspension with effect from the afternoon of 14th June, 1988 and shall continue to remain under suspension until further orders."

The applicant submitted a representation against the impugned order dated 26.3.1991 vide letter dated April 1, 1991 but did not receive any reply. The applicant contends that Rule 10 (4) of CCS (CCA) Rules, 1965 is inapplicable in this case and he cannot be placed under deemed suspension, as he was not under suspension at the time when the penalty of compulsory retirement was imposed on him. According to him the provision of deemed suspension applies only to those cases where the delinquent employee is under suspension before the penalty is imposed on him and since he was not under suspension at the time the penalty of compulsory retirement was imposed on him, the said impugned order is illegal and is liable to be set aside.

By way of relief the applicant has prayed that:

- i) the impugned order dated 26.3.1991 be quashed;
- ii) Rule 10 (4) of the CCS (CCA) Rules, 1965 be declared inapplicable in his case, reading Rule 10 (3) and Rule 10 (4) together. Alternatively he prays that the Rule 10 (4) of the Rules be struck down as discriminatory and violative of Article 14 of the Constitution. He has further prayed that the respondents be directed to implement the judgement and order of the Tribunal dated 31.12.1990 by allowing him to join duty with all consequential benefits.

18

4. The respondents have contested the contention of the applicant that Rule 10 (4) of CCS (CCA) Rules, 1965 is not applicable in his case. They contend that the said rule applies to all cases irrespective of the fact whether or not a Government servant was under suspension. They also contend that the applicant should have waited for the out come of his representation against his deemed suspension, instead he chose to file the O.A. on 10.4.1991 within barely 10 days of submitting the representation to the respondents. It has, however, been submitted that his representation has since been rejected in accordance with Government of India, Ministry of Health & Familay Welfare letter dated 2.5.1991. The respondents further contend that Rule 10 (4) of CCS (CCA) Rules does not stipulate that the Govt. servant have been under suspension at the time of the imposition of penalty of dismissal/removal or compulsory retirement which is subsequently set aside or declared or rendered void by a decision of the Court of law. In these circumstances the disciplinary authority is required to consider the question whether a further enquiry should be conducted against the Govt. servant. Once the disciplinary authority comes to the conclusion to hold a further enquiry against the Govt. servant "by application of legal fiction, he shall be automatically deemed to be placed under suspension by order of the appointing authority." The applicant has, therefore, been correctly deemed to have been placed under suspension w.e.f 14.6.1988, as the President decided to hold a further enquiry. The respondents further contend that Rule 10 (3) and Rule 10 (4) of the CCS (CCA) Rules, 1965 apply to different provisions. The provisions of sub-rule 2, sub-rule 3 and sub-rule 4 of Rule 10 of the CCS (CCA) Rules, 1965 are not inter-dependent but are independent of each other and cover different areas

2

and apply to different situations. It is further contended that the constitutional validity of Rule 10 (4) has been upheld by the Hon'ble Supreme Court. They further submit that the judgement of the Tribunal dated 31.12.1990 in OA 1615/88 has been fully implemented by the respondents vide their order dated 26.3.1991.

5. The applicant has filed a rejoinder.

6. Shri G.D. Gupta, learned counsel for the applicant relied heavily on the language of Rule 10 (3) and Rule 10 (4) of CCS (CCA) Rules, 1965. Before proceeding further, we may reproduce the said rules:-

"(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(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

2

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 purely on technical grounds without going into the merits of the case."

The learned counsel further submitted that in terms of Rule 10 (3) when a penalty of dismissal/removal or compulsory retirement from service is imposed upon a Government servant **under suspension** is set aside in appeal or on review under these rules and the case is remitted for further inquiry, the order of suspension of the delinquent official "shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement."

The Rule 10 (4), however, deals with a situation where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void by the decision of a Court of Law, "purely on technical grounds without going into the merits of the case and the disciplinary authority decides to hold further enquiry, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of dismissal, removal or compulsory retirement." The learned counsel contended that Sub-Rule 3 and Sub-Rule 4 of Rule 10 have to be read together and unless a Government servant is under suspension at the time of imposition of penalty he cannot be placed under deemed suspension. The learned counsel posed the question as to what happens to those who are not under suspension in the situation described in Rule 10 (3) and the penalty is set aside by the appellate

2

authority on technical grounds and answered that obviously such Government servants cannot be placed under deemed suspension. If that be the situation under Rule 10 (3), deemed suspension of the applicant when he was not under suspension at the time of imposition of the penalty of removal, dismissal or compulsory retirement would constitute discrimination and would be infraction of the Articles 14 and 16 of the Constitution of India. The learned counsel contended that the phrase 'under suspension' appearing in Rule 10 (3) also qualifies Rule 10 (4).

The next point agitated by the learned counsel was that a Govt. servant cannot be placed under suspension retrospectively and the deemed suspension in the case of the applicant is tantamount to retrospective suspension. He further contended that the respondents have not implemented the order of the Tribunal regarding reinstatement of the applicant but have chosen to place him under suspension retrospectively and that was done in total violation of the Tribunal's order dated December 31, 1990. Referring to **Khem Chand v. UOI & Ors. AIR 1963 SC 687** the learned counsel contended that Hon'ble Supreme Court has not passed any verdict on the constitutional validity of Rule 10 (4) and has merely observed that "it is entirely unlikely however that ordinarily a Government servant will not be placed under suspension prior to the date of his dismissal." The learned counsel further relied on the following judicial decisions:-

- i) **N.V. Karwarkar v. Administator of Goa, Daman and Diu & Ors. 1988 (2) ATR 232**
- ii) **M.Z. Parcha & Anr. v. UOI & Anr. 1990 (2) SLJ CAT 243**

Wherein the retrospective suspension has been held to be invalid.

2

At this stage, Shri Gupta, learned counsel drew our attention to proviso under Rule 10 (4) and stated that the proviso does not deal with deemed suspension. It deals with the situation where in the given circumstances further enquiry is to be conducted or not. He urged that Rule 10 (4) excluding the proviso has to be read keeping in mind the phrase 'under suspension' appearing in rule 10 (3) which qualifies both Rule 10 (3) and rule 10 (4) excluding the proviso.

7. Shri P.H. Ramchandani, learned senior counsel for the respondents submitted that proviso under Rule 10 (4) of Rule 10 of CCS (CCA) Rules, 1965 does not cover Sub-Rule 3 of Rule 10. Rule 10 (3) and Rule 10 (4) are inclusive and legislature is to be perceived in the words and the language of the said rules. The learned counsel urged that we cannot go beyond the scope of the words and the language used in interpreting the Rules. No canon of interpretation of legislative intent permits insertion or substitution of the words/phrases which are not there. If the legislature intended that the phrase 'under suspension' should appear in Rule 10 (4) it would have been inserted therein as was done in Rule 10 (3). There was nothing to prevent inclusion of the said phrase in rule, if that was required by the Legislature.

The learned counsel further contended that Rule 10 (3) visualises setting aside of the order of the disciplinary authority in appeal or review and remission of the case for further enquiry, where the employee was under suspension prior to the imposition of the penalty. Rule 10 (4) envisages completely a different situation, i.e., when the penalty of dismissal, removal or compulsory retirement is set aside by the Court on technical grounds.

2

In such a case although the order of dismissal, removal or compulsory retirement is set aside by the Court the said order does not dilute in any manner the guilt of the employee. In fact the guilt remains proved but the penalty imposed is set aside merely on technical grounds. Since the guilt of the Government servant is not diluted or tempered with in any manner, it would obviously not be desirable to reinstate such a person in service before completing further enquiry and taking a final decision. the scope of the rule has been defined in Department of Personnel and Administrative Reforms OM No.11012/24/77-Estt.(A) dated 18th March, 1978, reproduce below and the same substantiate the view of the respondents:-

"5. ' A question has been raised regarding the scope of the action that can be taken against a Government employee whose dismissal, removal or compulsory retirement from service has been set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the circumstances which the disciplinary authority should take into account while taking recourse to Rule 10 (4). It is clarified for the information of all authorities concerned that the further enquiry contemplated in this rule should not be ordered except in a case when 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. A further inquiry into the charges which have not been examined by the Court can, however, be ordered by the departmental authorities under this Rule depending on the facts and circumstances of each case."

2

Continuing the learned counsel referred to **Khem Chand v. UOI** (supra) and submitted that the Hon'ble Supreme Court went through the entire matter of Rule 10 (3) and Rule 10 (4) but did not question the validity of the said rule. Regarding the case of **N.V. Karwarkar** (supra) the learned counsel submitted that there is a qualitative difference in **N.V. Karwarkar's** case, as the rule being examined in that case did not have proviso under Rule 10 (4).

Shri Ramchandani, learned senior counsel for the respondents reiterated that the order of the Tribunal in OA 1615/88 was duly implemented by the respondents and that the 'deemed suspension' of the applicant implies reinstatement in service.

7. We have heard the learned counsel for both the parties and considered the rival contentions carefully.

The main ground of attack of the applicant is discrimination against a Government servant in whose case the order of removal, dismissal or compulsory retirement is set aside by the Court on technical grounds compared to the Government servant in whose case the similar penalty is set aside by an appellate/review authority. This issue was clearly before the Hon'ble Supreme Court in the case of **Khem Chand v. UOI** (supra) in the form of Rule 12 (3) and 12(4) of CCS (CCA) Rules, 1957 (which corresponded to Rule 10 (3) and 10 (4) of CCS (CCA) Rules, 1965). The relevant part from the said judgement reads as under:-

"(18) This brings us to the attack on the Rule on the basis of Art. 14. According to Mr. Sharma the result of the impugned Rule is that where a penalty of dismissal, removal or compulsory retirement from service imposed on 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 decides to hold a further enquiry against him on the allegations on which the penalty was originally imposed, the consequence will follow that the government servant shall be deemed to have been placed under suspension from the date of the original imposition of penalty, whereas no such consequence will follow where a similar penalty is set aside not by a court of law but by the departmental disciplinary authority. According to Mr. Sharma, therefore, there is a discrimination between a government servant, the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and another government servant a similar penalty on whom is set aside on appeal by the departmental disciplinary authority...."

After considering the matter the Hon'ble Supreme Court held that:-

"Where a penalty of dismissal, removal or compulsory retirement imposed upon a government servant is set aside by the departmental authority on appeal, it may or may not order further enquiry; just as where a similar penalty is set aside by a decision of a court of law the disciplinary authority may or may not direct a further enquiry. Where the appellate authority after setting aside a penalty of dismissal, removal or compulsory retirement makes an order under r. 30(2)(ii) remitting the case to the authority which imposed the penalty, for further enquiry, Rule 12 (3) will come into operation and so the order of suspension which in almost all cases is likely to be made where a disciplinary proceeding is contemplated or is pending shall be deemed to have continued in force."

on and from the date of the original order of dismissal and shall remain in force until further orders. There is therefore no difference worth the name between the effect of rule 12 (4) on a government servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is decided upon and the effect of R. 12 (4) on another government servant a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases the government servant will be deemed to be under suspension from the date of the original order of dismissal, except that where in a departmental authority and a further enquiry a government servant was not placed under suspension prior to the date when the penalty was imposed, this result will not follow, as r. 12 (3) would not then have any operation. It is entirely unlikely however that ordinarily a government servant will not be placed under suspension prior to the date of his dismissal. Rule 12 (1) provides that the appointing authority or any authority to which it is subordinate or any other authority empowered by the President in that behalf may place a government servant under suspension: (a) where a disciplinary proceeding against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation or trial. Mr. Sharma does not say that ordinarily any cases occur where a government servant is visited with a penalty of dismissal, removal or compulsory retirement, in a departmental proceeding, without

there being a previous order of suspension under the provisions of R 12 (1) and we do not think any such case ordinary occurs. Consequently, the effect of R 12(3) will be the same on a government servant a penalty of dismissal, removal or compulsory retirement on whom is set aside in appeal by the departmental authority as the effect of R 14 (4) on a government servant a similar penalty on whom is set aside by a decision of a court of law. The contention that R 12 (4) contravenes Art. 14 of the Constitution must therefore be rejected."

It will be apparent from the above that there is no difference worth the name between the effect of Sub-Rule 4 of rule 10 of CCS (CCA) Rules, 1965 on a government servant, the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is decided upon, and the effect of sub-rule 3 on another government servant a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. The Apex Court held that in both the cases the government servant will be deemed to be under suspension from the date of the original date of dismissal, except that where in a departmental enquiry a government servant was not placed under suspension on or prior to the date when the penalty was imposed, this result will not follow as sub-rule 3 of rule 10 of the Rules would not then have any operation. Their Lordships proceeded to add that "It is entirely unlikely however that ordinarily a government servant will not be placed under suspension prior to the date of his dismissal.

Keeping the pronouncement in **Khem Chand** (supra) in view and in the facts and circumstances of the case, we are not persuaded to accept the plea of the applicant that Rule 10 (4) is infraction of the Articles 14 and 15 of the Constitution and consequently his deemed suspension was illegal and invalid. We are also not inclined to accept the suggestion that phrase 'under suspension' appearing in Rule 10 (3) has also to be read in Rule 10 (4) and that this phrase qualifies both a government servant in Rule No.10(3) and Rule No.10(4). For obvious reasons we cannot go beyond the language used in the rules and cannot insert extraneous words and phrases to suit certain situations. The interpretation has to be restricted to the words and phrases and the language of the rule. Accordingly, the O.A. fails and is dismissed, with no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 6/1/1992

6.1.1992.

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN