CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2105/2004

This the 31st day of October, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE MR. M.K.MISRA, MEMBER (A)

D.R.Rohilla,
No.9-4-9, New Delhi Sweets,
Railway Station,
Secunderabad (AP).

(By Advocate: Sh. L.R.Khatana)

Versus

1. Union of India
through Secretary to the Govt. of India,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi.

2. Department of Personnel & Training,
through Secretary to the Govt. of India,
North Block, New Delhi.

(By Advocate: Sh. B.K.Berera)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Learned Division Bench of the Principal Bench of the Tribunal while interpreting sub Rule (7) of Rule 10 of CCS (CCA) Rules, 1965 (in short, the Rules, 1965) has taken a view which is in conflict with the decision of another bench of this Tribunal dated 18.1.2005 in OA-3011/2004 Shri Dharam Pal vs. Union of India and another.

2. The bench has referred the question for decision by a larger bench. The question has not been formulated in the order of reference but the question which precisely craves answer may be summarily put as under:-

"Whether the order of suspension made under sub rule (1) of Rule 10 of the Rules, 1965, on 12.6.2002 shall become invalid and liable to be revoked by virtue of sub rule (7) of Rule 10 of Rules, 1965, if the same is not extended for a further period by the competent authority, after review, within 90 days ending

on 2.6.2004, the day on which sub Rule (6) & (7) were inserted in Rule 10 by way of amendment."

3. Shorn of unnecessary details the factual matrix of the case may be succinctly stated as follows. Applicant is a Chemist Grade I in the Bank Note Press, Dewas (M.P.) under Department of Economic Affairs, Ministry of Finance, Government of India. He was placed under suspension w.e.f. 12.6.2002 by an order of the same date in contemplation of disciplinary proceedings to be initiated against him (Annexure P-2). Applicant challenged this order in OA-3292/2002 but the same was dismissed on 23.7.2003. The suspension order has been reviewed on 21.6.2004 and has been extended for a further period of 180 days vide order dated 1.7.2004 (Annexure A-1). Applicant has challenged its legal validity on the ground that mandate of sub Rule (7) of Rule 10 of Rules, 1965 has not been complied with as the review of the suspension order is not before the expiry of 90 days from the date of the order, i.e., it is beyond the period of 90 days ending on 2.6.2004. The applicant in support of his contention primarily relies on OM No.11012/4/2003-Estt.(A) dated 19.3.2004 which will be discussed at an appropriate stage later.

4. The respondent in the counter have contested the claim of the applicant that the order dated 1.7.2004 is not valid and the suspension order is liable to be revoked in view of sub rule (7) ibid.

5. As such the basic issue in this reference relates to the scope of ambit of sub rule (7) of Rule 10 of Rules, 1965 vis a vis OM dated 19.3.2004 (Annexure A-4).

6. Amended Rule 10 is pivotal provision around which the controversy revolves and it reads as follows:-

> "10. Suspension
>
> (1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension -
>
> (a) where a disciplinary proceeding against him is contemplated or it pending; or
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> (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
>
> (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority -

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation - The period of forty-eight hours referred to in Clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(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 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.

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension, before expiry of 90 days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking he suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding 180 days at a time.

(7) Notwithstanding anything contained in sub-rule 7(a), an order of suspension made or deemed to have been made under sub-rules (1) of (2) of this rule shall not be valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days."

7. As can be seen from above as per the insertion of sub rule (6) an order of suspension shall be reviewed by the authority who is competent to modify or revoke the suspension before the expiry of 90 days from the date of suspension and the extension of suspension shall not be for a period exceeding 180 days at a time. However, sub rule (7) above states that the order of suspension made or deemed to have been made shall not be valid after a period of 90 days unless it is extended after review for a further period before the expiry of 90 days.

8. It will be pertinent here to notice that sub rule (6) & (7) quoted above were inserted in Rule 10 by the notification dated 23.12.2003 which, inter alia, provided that the amended rules "shall come into force on expiry of 90 days from the date of publication in the official Gazette." The notification was published in the official Gazette on 3.1.2004. Thereafter the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) issued office Memorandum 7.1.2004 Annexure A-3A laying down the guidelines for the constitution of the Review Committees envisaged under the amended sub rules. OM dated 19.3.2004, which is the main-stay of the argument of the applicant, being relevant, may be reproduced below:-

"The undersigned is directed to refer to this Department's OM of even number, dated 7.1.2004 (Sl. No.69 of Swamysnews of March, 2004) which contains guidelines for constitution of Review Committees to review suspension cases. The Notification of even number, dated 23.12.2003 (Sl.No.22 of Swamysnews of February, 2004) inserting sub-rule (6) and (7) in Rule 10 of the CCS (CCA) Rules, 1965 has been published as GSR No.2 in the Gazette, dated 3.1.2004. It would, therefore, be necessary to review pending cases in which suspension has exceeded 90 days, by 2.4.2004. Other suspension cases will also have

to be reviewed before expiry of 90 days from the date of order of suspension.

2. Ministries/Departments are requested to ensure that necessary Review Committees are constituted as per the guidelines laid down in the OM, dated 7.1.2004 and suspension cases are reviewed accordingly."

9. By another Notification dated 2.4.2004 published in the official Gazette of the same day the Notification dated 23.12.2003 came into force on 2.6.2004. It need not be reproduced since the parties agree that the amended Rule 10 with insertion of sub rule (6) and (7) came into force on 2.6.2004.

10. Learned counsel for the applicant has argued that by virtue of sub rule (2) of Rule 1 the Notification dated 23.12.2003 which was published in the Gazette of India 3.1.2004 was to come into force on 3.4.2004 but before the crucial date the Notification dated 2.4.2004 changed the date of its enforcement to 2.6.2004. Reading the Notification dated 19.3.2004 above-mentioned, learned counsel has fervently argued that 90 days margin was given for amended rules to come into force in terms of Rule 1 of the amended rules dated 23.12.2003 and the date of enforcement of this provision was deferred to 2.6.2004 manifestly with the devout object that in the meantime departmental machineries would be put in motion and the mandatory requirement of sub rule (7) would be fulfilled in anticipation well before the crucial date on which the rule was brought on the rule book. According to him OM dated 19.3.2004 made the intention of government further clear by directing the subordinate offices to review the pending cases in which suspension exceeded 90 days, by 2.4.2004. It is submitted by him that by Notification dated 2.4.2004 the date of enforcement of the notification dated 23.12.2003 was changed to 2.6.2004 so the OM dated 19.3.2004 would be read to convey the intention of the Government to review all pending cases in which suspension had exceeded 90 days by 2.6.2004. Since it was not done and the suspension order dated 12.6.2002 has been reviewed only on 21.6.2004 and the suspension has been extended for a further period of 180 days by an order dated 1.7.2004 it is clear contravention of the governmental instructions dated 19.3.2004 and sub-rule (6) which renders the extension illegal and invalid by virtue of sub rule (7).

11. Learned counsel for applicant produced a table drawn by him to impress upon that the cases where the suspension order was made or deemed to have been made

before 3.3.2004 were required to be reviewed and extended before 2.6.2004 (90 days of the order) the orders which were made on or before 4.3.2004 were required to be reviewed and extended before 3.6.2004 i.e. within 90 days, the orders, which were made on or before 4.4.2004 were to be reviewed and extended before 3.7.2004 i.e. within 90 days and, the suspension orders made on or before 5.4.2004 were to be reviewed and extended on or before 3.8.2004 i.e. within 90 days to make them valid. He argued that if 2.6.2004 is taken as exterior limit for review then all the suspension cases will be reviewed within a uniform period of 90 days from the date of the order but in case the review and extension is made within 90 days reckoned from 2.6.2004 i.e. on or before 1.9.2004 it would create serious anomaly as different suspension will get different period of review and it will be more than 90 days thereby making these suspensions invalid under sub rule (7).

12. Emphasizing that the true scope and meaning of sub Rule (7) is discernible from the Government's OM dated 19.3.2004 he argued that the Tribunal should give it due weight. The learned counsel has referred to a judgment of Hon'ble Supreme Court in Ajeet Singh Singhvi Vs. State of Rajasthan 1991 Supp (1) SCC 343 wherein in para 12 of the judgment it is observed as under:-

> "Another Significant factor which leans towards such an interpretation is the stance of the State which militates against the views canvassed on behalf of the appellants. There is an inbuilt safety kept in the explanation added to sub-rule (8) of Rule 28-B which prescribes that if any doubt arises, amongst others, about the categorization of the posts as the highest posts in the Service, the matter shall be referred to the government in the Department of Personnel and Administrative Reforms, whose decision thereon shall be final. The appellants could easily have raked up and got referred the matter to the government to have a decision thereon. The view of the government in maintaining that the Super Time Scale posts are highest posts is not only a bare and literal interpretation given by it to the Rules but also is reflective of its policy in this regards and no decision needs to be given by the court in normal circumstances to amend or alter such policy. In such a realm even contemporaneous exposition of a similar rule in another set of rules cannot play their part to influence either the court or the government to give the same interpretation or exposition to the rules requiring interpretation herein. Besides the government being the author of the rule, has kept to itself, as a matter of prudence, the right to remove any ambiguity about the identification of any post including the highest post/posts. The stance of the government in this regard should have clinched the matter but since the same had been put forth as a defence in the High Court, its view nonetheless is entitled to great weight and the burden of the appellants to lift that weight, an uphill task by all means, has remained unfulfilled."

13. Learned counsel for applicant has heavily relied upon the observation of the learned Division Bench and the case law cited by it in the order of reference in regard to the interpretation of sub rule (7). In addition he also drew our attention to a judgement of Hon'ble Supreme Court in State of Kerala and another Vs. P.V.Neelakandan Nair and others X-2005 (3) AISLJ 130 where the Hon'ble Supreme Court has discussed succinctly and elaborately the rule of interpretation of a statute, in particular in para 12, 13 and 14 where it was observed as under:

> "12. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous result which could not have been intended by the Legislature. "An intention to produce an unreasonable result," said Danackwerts, L.J. in Artemiou vs. Procopiou, (1966) 1 QB 878, "is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke vs. IRC, 1963 AC 557) where at p.577 he also observed:" this is not a new problem, though our standard of drafting is such that it rarely emerges."
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> 13. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accident." "But," on the other hand, it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton vs. Hampton, (1858) XI Moore, P.C. 347. A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inavertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute – Casus omissus et oblivioni datus dispositioni communis juris relinquitur, "a casus omissus," observed Buller, J. in Jones v. Smart, 1 T.R. 52, "can in no case be supplied by a Court of law, for that would be to make laws."
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> 14. The golden rule for construing will, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further: See Grey v. Pearson, 1857 (6) H.L. Cas. 61. The later

> part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J. "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words use, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See Abley v. Dale 11, C.B. 378)."

14. Referring to the order of Bench in Dharam Pal (supra) he has argued that the question that had arisen for decision in the case was different and not similar which required determination in the present reference. He referred to para 4 of the order where the questions raised by the counsel for applicant of the said case were noted as under:

> "4. Learned counsel for the applicant has raised two pertinent arguments:
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> a) the order of suspension was passed on 28.7.2003. It was invoking sub rule (2) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short Rules). Thereafter, there is no fresh application of mind and the suspension could not have continued for departmental action that is to be initiated against the applicant;
>
> b) in terms of the amendment, that has been effected in the Rules and after the addition of sub rules (6) & (7) of Rule 10 of the Rules, there has been no review within 3 months of the amendment that has been effected then, therefore, the suspension order is invalid."

15. Counsel for the applicant, therefore, argued that the decision in Dharampal's case being distinguishable is not applicable in the present case.

16. He has concluded his argument by emphasizing that any interpretation other than that has been put by the Bench, which has made the reference, will not be in consonance with sub rule (7) since this sub rule has made it incumbent upon the competent authority to review and extend the suspension order within 90 days "from the date of order of suspension".

17. To the contra, the argument of the counsel for respondents is short and simple. The amended sub rule (7) has come into force on 2.6.2004 and the mandatory requirement of review and extension of suspension within the time stipulated therein has to be fulfilled after sub rule (6) & (7) were inserted in Rule 10 and not before that in anticipation. He submitted that by notification dated 7.1.2004 guideline were laid down for the constitution of the review committee and OM dated 19.3.2004 which is an

administrative instruction cannot supplant and supersede the provision of sub rules (7), non-compliance thereof, therefore, is inconsequential. He also referred to Chandra Singh Vs. State of Rajasthan and Another JT 2003 (6) SC 20 where in para 32 the Hon'ble Apex Court has held as under:

> "32. The impugned orders, therefore, could not have been passed in terms of the 'Exception' contained in Rule 56 of the Rajasthan Service Rules. Further contention of the appellants to the effect that the High Court, keeping in view the fact that amended rules were to come into force with effect from 31.3.1999, could not have initiated a proceeding, prior thereto also appears to be correct. This Court in Boppanna Venkateswaraloo and Others (supra) categorically held that the orders affecting substantive right could be made under such law only after it comes into force and no in anticipation thereof."

18. The learned Division Bench which has referred the matter for decision by a Larger Bench has held, primarily relying upon OM dated 19.3.2004, that the order of suspension dated 12.6.2002 was required to be reviewed and extended as per sub rule (6) of Rule 10 on or before 2.6.2004 and since it is reviewed on 21.6.2004 and further extended by order dated 1.7.2004 it is in transgression of the mandate of sub rule (7). In para 28, 29 & 30, it has made the following observations:-

> "28. In the above view of the matter, DOP&T OM dated 23.12.2003, which had been made effective after three monthsfrom 3.1.2004 i.e. upto 2.4.2004 and having regard to DOP&T OM dated 19.3.2004 whereby a review of all pending cases of suspension where 90 days have exceeded by 2.4.2004 was to be made, the object of the Act was that the reviewing authority is mandated to modify or revoking the suspension before expiry of 90 days. Accordingly, after sub rule (5) © of Rule 10 of the CCS (CCA) Rules, 1965, rules 6 & 7 have been added with a clause that in case it is not validated before the expiry date, suspension would be invalidated.
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> 29. Taking stock of the entire gamut and also interpretation of OM dated 2.4.2004, it has only partially modified sub-para (2) of paragraph 1 of OM dated 23.12.2003, there has not been any alteration or modification in date of publication but the only amendment as a modification has been made in effect of the notification i.e. earlier it has to be effective from 2.4.2004 by which all the pending cases of suspension would have to be reviewed, this period has been extended by 2.6.2004.
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> 30. The aforesaid is clear proposition to the effect that the Notification shall come into force with expiry of 90 days from the date of publication i.e. 2.6.2004 and in that event, as per DOPT OM dated 19.3.2004, all the pending cases of suspension have to be reviewed by 2.6.2004 and thereafter added provision of rule 7 would come in being and the suspension, which had resorted to before 23.12.2003, has to be reviewed on or before 2.6.2004, failing which the same will be invalidated."

19. It has diferred from the decision of another coordinate bench of the Principal Bench in Dharam Pal (supra) where the question involved was precisely identical though the question whether review ought to have been made upto 2.6.2004 was not specifically raised. The applicant government servant was placed under suspension on 28.7.2003 in accordance with deemed provision of sub rule (2) of Rule 10 of the Rules, 1965 i.e. having been detained for more than 48 hours in a criminal case. After the amendment in Rule 10 came into force the suspension order was reviewed much after 90 days from 2.6.2004. One of the two questions pressed before the bench was whether in terms of the amendment in sub Rule (6) & (7) of Rule 10 if there had been no review within 3 months of the amendment that had been affected, then the suspension order is invalid. The bench after examining the rule position has decided the question in para 13 & 14 as under:-

> "13. As regards the second plea of the learned counsel, we can easily revert to the fact that after the decision in the case of Union of India vs. Rajiv Kumar (supra), which was rendered by the Supreme Court on 28.7.2003, it was felt that there should be, in all cases of suspension, a review which should be effected periodically. On 23.12.2003, the Union had come up with the Notification. In pursuance of the same, sub-rules (6) & (7) have been added to Rule 10 of the Rules and further it provided that this amendment would take effect after 90 days from the publication of the Notification in the Official Gazette. It was published in the Official Gazette on 3.1.2004. However, subsequently a corrigendum had been issued firstly on 29.3.2004 followed by an amendment that has been effected on 2.4.2004. The said amendment reads:
>
> "Amendment to CCS (CCA) Rules, 1965
>
> G.S.R.....(E) .... In exercise of the powers conferred by the provision to Article 309 of the Constitution, in partial modification of sub-paragraph (2) of paragraph 1 of the Notification of Government of India in the Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) dated 23.12.2003 {Sr. No.18 of Swamy's Annual 2003 (GSR-2, dated 3.1.2004 published in the Gazette of India in Part-II, Section 3, sub-section (i)}, the President hereby directs that said notification shall come into force on 2.6.2004."
>
> It is obvious from the amendment that has been effected that the provisions that have been amended would come into play only from 2.6.2004.
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> 14. Under sub-rules (6) & (7) of the added provisions to Rule 10 of the Rules, it is obvious that notwithstanding anything contained in sub-rule (5), to which we have referred to above, and order of suspension which has been made, shall not be valid after 90 days unless it is extended after a review. This is a mandatory provision. The language is clear and unambiguous. It casts a duty on the concerned authority to review the orders that have been passed suspending persons within three months of the coming into force of the amendments, to which we have referred to

above. A review necessarily has to be effected within 90 days from 2.6.2004."

20. Which of the two views are in accord with sub rule (7) is a question that arise for determination before us.

21. Counsel for applicant has fairly and candidly admitted that sub rule (6) & (7) are substantive provision of law and have to be applied prospectively. But he laid a great deal of emphasis on the words "before the expiry of 90 days from the date of order of suspension" used in sub rule (6) and "shall not be valid after a period of 90 days unless it is extended after review for a further period before the expiry of 90 days" in sub rule (7). The Hon'ble Supreme Court examined the principles of law applied for interpreting statute or rules in the Institute of Chartered Accountants of India vs. M/s Price Waterhouse and another JT 1997 (6) SC 607, State of Gujarat and others vs. Dilipbhai Nathijibhai Patel and another JT 1998 (2) SC 253, Dr. Venaktchalam and others vs. State of Maharashtra AIR 1968 SC 800, Commissioner of Sales Tax (M.P.) vs. Popular Trading Company, Ujjain JT 2000 (4) SC 253 and a gamut of English law and observed as under:

> "Two principles of construction, one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole appeared to be well settled. Indeed first principle casus omissus cannot be supplied by the court except in the clear necessity and when reason for it is found in the fore corners of the statute itself. But at the same time a casus omissus should not be readily interfered and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads manifestly absurd or anomalous results which could not have been intended by the Legislature."

22. In Dadi Jagannadham Vs. Jammulu Ramulu and Others, 2001 (7) SCC 71 the Hon'ble Supreme Court has held:

> "the settled principles of interpretation are that the court must proceed on the assumption that the Legislature did not make a mistake and that it did what it intended to do. The Court must as far as possible adopt a construction which will carry out the obvious intention of the Legislature. Undoubtedly if there is a defect or an omission in the words used by the Legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading producing intelligible result. The court cannot aid the Legislature's defective phrasing of an act, or add and mend, and, by construction, make up deficiencies which are there.

23. Similar view was taken in Union of India Vs. Elphinstone Spinning and Weaving Company Ltd. And Others, (2001) 4 SCC 139 which is a Five Bench decision. It was held:

> "The duties of the Judges is to expound and not to legislate is a fundamental rule There is no doubt a marginal area in which the courts mould or creatively interpret legislation and they are thus finishers, refiners and polishers of legislation which comes to them in a state requiring in varying degrees of further processing (See Corocraft Limited Vs. Pan American Airways Inc. WLR (1968) 2 All ER 1059 and State of Haryana Vs. Sampuran Singh (1975) 2 SCC 810). By no stretch of imagination a Judge is entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. It is, therefore, a cardinal principle of construction of statues that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

24. In Gurudevdatta VKSSS Maryadit and Others Vs. State of Maharashtra and Others (2001) 4 SCC 534 it was held:

> "that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning."

25. The principles of law laid down in the case of State of Kerala and Others (Supra) are similar to the observation of the Hon'ble Supreme Court in the case of Union of India Vs. Rajeev Kumar, JT 2003 (5) SC 617.

26. To sum up when the words of statute are clear, plain and unambiguous then the courts are bound to give effect to that meaning, irrespective of the consequences.

27. The sub-rule (6) and (7) in Rule 10 were inserted after the Hon'ble Supreme Court in various judicial pronouncement manifested the need for periodical review of the suspension cases and deprecated prolonged suspension of the government servant without good reasons. The government in its wisdom thought it proper to bridle the unfettered power of the administrative machinery in this regard and fixed 90 days limit for review and extension or revocation of the order of suspension. Clause (a) of sub-rule (5) of Rule 10 had provided that an order of suspension was made or deemed to have been made under rule 10 shall "continued to remain in force until it is modified or revoked by the authority competent to do so". Though the competent authority was supposed to review the suspension case periodically to decide about the need of keeping

a government servant under suspension but no rule or statute made review of suspension obligatory on it as a result this exercise was either not done or was not done in all the cases uniformally. Sub-rule (6), therefore, prescribed the maximum limit of 90 days from the date of the order for reviewing and extending a suspension and further restricted 180 days as the maximum period for further extension in order to ensure that the review and extension orders in all cases would be made by the competent authority as prescribed in sub-rule (6), though subsequent review and extension would be made before the expiry of the extended period and sub-rule (7) rendered the suspension which were not reviewed and extended before the expiry of 90 days from the date of the order illegal and invalid. Same will be the consequences if the review and extension of suspension order was not done before the expiry of the extended period.

28. The question arises as to what is the meaning of the expression "from the date of the order" used in sub-rule (6) afore-cited. The language is simple and unambiguous. Literal meanings are that stipulated time will be calculated from the date on which order was made. The initial suspension shall be reviewed and extended within 90 days of the suspension order. Sub-rule (6) & (7) are prospective in application. In other words, the suspension order, which is made or deemed to have been made on or after 2.6.2004, when the amended Rule 10 came into force, will become invalid if it has not been reviewed and extended within 90 days of the suspension order. There is no quarrel on this proposition of law by either of the parties.

29. The controversy is about the review and extension of suspension orders which were in force on 2.6.2004. Giving narrow meaning to the words, "before the expiry of 90 days from the date of the order of suspension" will render all the suspension orders which have been made or deemed to have been made 90 days prior to 2.6.2004 invalid, which is neither the intention of the legislative authority nor the purpose for which sub-rules (6) and (7) have been added to the Rule 10. Rule 10 as it stood before amendment did not require the competent authority to compulsorily review and make an order of extension of the suspension. There was indeed no bar to the competent authority to review the suspension order of its own or in exercise of the administrative instructions in OM dated 19.3.2004 and decide about the need for further extension or revocation of suspension but omission of such an exercise before 2.6.2004 will not render all

suspension invalid and illegal in view of the provisions of sub-rule (6) and (7) of Rule 10 of the Rules 1965.

30. After the issue of notification for amendment of the rules on 3.1.2004 the Government issued memorandum dated 7.1.2004 laying down the guide-lines for constitution of review committees needed to review the suspension as envisaged in the proposed amended rules. It issued another memorandum dated 19.3.2004 as a forewarning to the subordinate offices to gear up their machinery and be ready for implementing and for acting according to the rule since the pending suspension orders would become invalid if not reviewed within prescribed time after the amended rule came into force. The OM dated 7.1.2004 and 19.3.2004 were the spade work for laying a foundation and facilitating taking of action within the time prescribed under the amended rules so that the pending suspension cases are not gone by default.

31. It is fairly conceded by the counsel for applicant that OM dated 19.3.2004 had no statutory force and was not legally enforceable.

32. Before 2.6.2004 there was no provision under rules 1965 which made it mandatory for the competent authority to review the suspension orders within a specified period. The reasonable and rationale interpretation of sub-rule (6) and (7) which are prospective in application would be that after the sub-rules were inserted in the Rule Book the competent authority would review and decide about the further extension of the pending cases. An interpretation that the requirement of sub-rule (6) and (7), was to be fulfilled in anticipation and the competent authority was to review and decide about the extension or otherwise of the pending suspension orders upto 2.6.2004 would be akin to putting a cart before the horse. When there is no provision in Rule 10 or any other Rules of the Rules 1965 about reviewing and extending the suspension order before 2.6.2004 we cannot add anything in the provision in the light of the OM dated 19.3.2004 to read that all pending suspension cases were supposed to be reviewed and extended on or before 2.6.2004. As observed earlier the competent authority was free to review pending cases even prior to 2.4.2004 but such an exercise, by no stretch of reasoning, could be treated to have been made under sub rule (6). Violation of instructions in OM dated 19.3.2004 were not enforceable in law in view of the sub-rule (5)(a).

33. The table which has been drawn and has referred to by the learned counsel for applicant is also in the light of OM dated 19.3.2004. In fact, the words "by 2.4.2004" used in this OM have swayed the mind of the learned Bench which has referred the case heavily in coming to the conclusion that sub-rule (6) and (7) intended review and extension of pending cases by 2.6.2004. The pending suspension cases in which 90 days period has expired could not have been reviewed and extended on a single day of 2.6.2004. Review or extension in anticipation of the proposed amendment which came into effect on 2.6.2004 had no meaning and could not come to the rescue of the authorities since such review and extension was manifestly not under sub-rule (6) and (7). Accordingly in the context of the pending cases or the superior order in force the period of 90 days shall reckon from 2.6.2004.

34. Reference to the judgment in Ajeet Singh Singhvi (supra) is misplaced since under the rules the government had kept to itself right to remove any ambiguity about the identification of any post including highest post(s). It was in this background that the Hon'ble Supreme court observed that the view of the government was entitled to great weight. In the instant case, OM dated 19.3.2004 is not a clarification or decision of the government under the rules. The judgment, therefore, does not advance the case of the applicant.

35. The contention that in Dharam Pal's case (Supra) a different question was posed before the Tribunal to our view is not correct. Indeed no contention was raised that review and extension was invalid as the same has not been made by the competent authority by 2.6.2004 in view of OM dated 19.3.2004. But examination of scope and import of sub rule (6) & (7) was necessary for deciding the question. Interpreting sub-rule (7) the bench decided that the extension after review could be made before the expiry of 90 days form 2.6.2004, i.e., up to 1.9.2004. After the sub-rule (6) and (7) became part of Rule 10 it was incumbent upon the competent authority to act in accordance with the mandate of this rule, i.e., review and extend the order of suspension within 90 days. The reasonable interpretation would be that these 90 days are calculated from the date on which the sub-rule (6) and (7) came into force on 2.6.2004 since the rules are not retrospective in their application. The administrative instructions like OM dated 19.3.2004 cannot supplant or supersede the rules or given effect prior to 2.6.2004

in anticipation. This view clearly finds support from the judgment of the Hon'ble Supreme Court in Chandra Singh (Supra) where it has been held that the amended rules which had come into force w.e.f. 31.3.1990 could not have been initiated a proceeding prior thereto and the judgment in Boppanna Venkateswaraloo & others vs. Superintendent, Central Jail, Hyderabad State 1953 SCR 905 where it was categorically held that orders affecting substantive rights could be made under such law only after the law had come into force and not in anticipation thereof. This judgment clearly supports the view taken by us.

36. Accordingly we hold that the review and further extension of the suspension orders in the pending cases were to be made by the competent authorities before the expiry of 90 days from 2.6.2004. As a result the review of suspension order dated 12.6.2002 on 21.6.2004 and also extension of suspension by order dated 1.7.2004 was in accordance with sub rule (6) & (7) ibid. We answer the question referred accordingly.

37. Since the only question involved in the present OA is about the conflict between the decision in Dharam Pal (supra) and the view taken by the Division Bench in the present OA, which we have answered hereinabove, instead of placing the matter once again before the concerned Division Bench for deciding the OA accordingly, We deem it fit and proper to dismiss the present OA in view of the discussion made hereinabove and the findings recorded by us.

(M.K.MISRA)
Member (A)

(MUKESH KUMAR GUPTA)
Member (J)

(M.A. KHAN)
Vice Chairman (J)

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