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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2338 of 2004

New Delhi, this the 14 day of April, 2005

HON'BLE SHRI M.K. MISRA, MEMBER (A)

Lakhminder Singh Brar
Son of Shri G.S. Brar
R/o E-2, PS Kalkaji,
New Delhi.

....Applicant

(By Advocate : Ms.Jaswinder Kaur)

versus

1. Union of India
Ministry of Home Affairs Through
Secretary (Home),
North Block,
New Delhi.

2. Joint Secretary (UT),
Ministry of Home Affairs,
North Block, New Delhi.

....Respondents

(By Advocate : Shri N.S. Dalal)

ORDER

Applicant - Shri Lakhminder Singh Brar, an employee under Delhi
Police working as Sub Inspector ^{⊗ A.C.P.} He filed this OA challenging the
impugned order of suspension dated 19.7.2004 and seeks the following

reliefs:-

⊗ vide Order
dated 24-5-05.
Or 31/5/05.

Relief's sought

In view of the facts mentioned in para 6 above the applicant
prays for the following relief(s):

- 8.1 The impugned order of suspension dated 19.07.04 may be
quashed and set aside for the reasons stated in paragraph no.5
of the O.A.;
- 8.2 Direct the Respondents to reinstate the Applicant in service
from the initial date of suspension i.e. 12.04.04, in pursuance

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to O.M. dated 07.01.04 with all consequential benefits including arrears of pay & allowances etc.;

- 8.3 May pass such other further orders/directions deem fit and proper in the facts and circumstances of the case.”

2. Briefly the facts of the case are that suspension orders were passed in the case of the applicant vide orders dated 27.4.2004, 31.5.2004 and 19.7.2004. The last order of suspension was passed against the applicant on 13.10.2004. The claim of the applicant is that the order of suspension passed earlier to this date 19.07.2004 were not passed as per CCS (CCA) Rules, 1965. Therefore, the present suspension order dated 19.7.2004 is *void ab initio* and the applicant should have been allowed to join duties with all consequential benefits.

3. The amendment clause made by the President of India through Gazetted Notification dated 23-12-2003 under Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 in the following manner:-

“G.S.R. 2. --- In exercise of the powers conferred by the proviso 10 Article 309 and Clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Service (Classification, Control and Appeal), Rules, 1965, namely:-

1. (1) These rules may be called the Central Civil Services (Classification, Control and Appeal) Amendment Rules, 2003.

(2) They shall come into force on expiry of 90 days from the date of their publication in the Official Gazette.

(2) In the Central Civil Service Classification, Control and Appeal Rules, 1965, in rule 10, after sub-rule 5 (c), the following sub-rules shall be added, namely:-

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“(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 the 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 5 (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.”

4. In the light of that Notification, DoPT issued Instructions vide letter dated 7.1.2004 directing all the Ministries/Departments to constitute Review Committees and also to take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case. It was also directed that all the disciplinary authorities are to ensure that necessary Review Committees are constituted and the suspension order is reviewed as per directions issued in the Notification. Again directions were issued by the DoPT on 19.3.2004 reminding the Ministries/Departments in respect of the amended rules. Since the Instructions were not followed by the disciplinary authority in the case of the applicant, therefore, the applicant seeks reliefs in the light of the amended rule of Rule 10 relating to suspension with the prayer that the suspension be revoked with all consequential benefits to the applicants.

5. The learned counsel for the respondents submitted that there is no principle of deemed reinstatement in the case of suspension and to revoke the suspension order, the competent authority has to pass a speaking order depending on the facts and circumstances of the case. He further averred

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that suspension order dated 13.10.2004 which was served on the applicant after the issue of the chargesheet is not under challenge in this OA. Therefore, the claim of the applicant is not maintainable at all. He further submitted that the order of suspension dated 13.10.2004 was issued in supersession of earlier suspension orders and since it is not under challenge, therefore, the applicant has no case. He further submitted that the Rule 10 of the Rules *ibid* is not applicable in the case of the applicant and in support of his contention, he quoted the various decisions in the following manner:-

1. 2003 (8) SLR 578;
2. 2003 (5) ATJ 617 (SC);
3. 2002 (3) SLR 217;
4. 2003 (1) LSR 794;
5. 2004(4) LSR 281;
6. 2004 (4) LSR 730;
7. 2004 (2) LSR 92; and
8. 2001 (2) LSR 41.

6. All these rulings suggested that since in this case the suspension order was not passed with mala fide intention by the competent authority and there was no speaking order about the revocation of the earlier order, therefore, the claim of the applicant fails as alleged by the learned counsel for the respondents.

7. It was also reiterated by the learned counsel for the respondents that since in this case the charges were of serious nature against the applicant and the applicant has already been served with the charges and the matter is pending before the Trial Court and the suspension order was again issued on 13.10.2004 after the issuance of the chargesheet, therefore, the applicant is not entitled to any relief from this Tribunal.

8. I have heard the learned counsel for both the parties at great length and also perused the material available on record. It is observed that it is an *me*

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admitted fact that amendments to Rule 10 of CCS (CCA) Rules, 1965 have been made vide Notification dated 23.12.2003. The order came into force on expiry of 90 days from the date of their publication in the Official Gazette. Sub-rules 6 & 7 are relevant in the case of the applicant, which clearly indicate that an order of suspension made or deemed to have been made under Rule 10 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 as per DoPT Instructions dated 7.1.2004 and subsequent reminder dated 19.3.2004 and such duly constituted Review Committees shall pass orders either extending or revoking the 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. Rule 7 provides that notwithstanding anything contained in sub-rule 5 (a), an order of suspension made or deemed to have been made under sub-rules 1 of Rule 2 of Rule 10 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.

9. It is observed that above amended rules have not been followed by the respondents - department and there is nothing in the reply of the respondents to indicate that such exercise was taken by them in the light of the sub-rules 6 & 7 of Rule 10 which came into effect after 90 days from the date of their publication in the Official Gazette, i.e., dated 23.12.2003. I am, therefore, of the considered view that such exercise should have been carried out by the respondents - department by the competent authority in

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this respect immediately after the amended rules came into force and since the same has not been done, the respondents are directed to impress upon the disciplinary authority to carry out such an exercise as per amended sub rules 6 & 7 of Rule 10 of CCS (CCA) Rules, 1965 in the case of the applicant.

10. In view of above discussions, the respondents are directed to consider the case of the applicant particularly the suspension order dated 19.7.2004 in the light of the amended sub-rules 6 & 7 of Rule 10 ibid and pass a speaking order on the basis of the material available on record as well as the facts and circumstances of the case within a period of two months from the date of receipt of a copy of this order and communicate the same to the applicant. Liberty is granted to the applicant if he is still aggrieved by the order to be passed by the respondents to approach the appropriate forum meant for removal of such grievances. OA is disposed of accordingly. No order as to costs.


(M.K. MISRA)
MEMBER (A)

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