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Central Administrative Tribunal  
Principal Bench, New Delhi

OA 2754/2004  
WITH  
OA 370/2005

New Delhi, this the 25<sup>th</sup> day of July, 2007

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)  
Hon'ble Mr. V.K. Agnihotri, Member (A)

OA 2754/2004

Yateendra Singh Jafa ... Applicant  
(By Adv. Shri A.K. Behera)  
Versus

UOI & Ors. ... Respondents  
(By Adv. Sh. A.K. Bhardwaj & Sh. Ravinder K. Adsure)

WITH

OA 370/2005

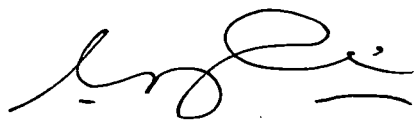
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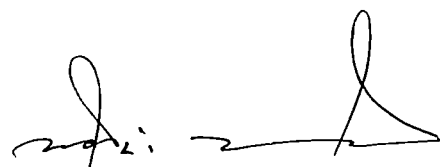
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1. To be referred to the Reporter or not.
2. To be circulated to other Benches or not.

✓  
Yes / No

✓  
Yes / No

  
(V.K. Agnihotri)  
Member (A)

  
(Mukesh Kumar Gupta)  
Member (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

OA 2754/2004

WITH

OA 370/2005

New Delhi, this the 25<sup>th</sup> day of July, 2007

**HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**  
**HON'BLE MR. V.K. AGNIHOTRI, MEMBER (A)**

OA 2754/2004:

Yateendra Singh Jafa,  
S/o Late Shri H.C.S. Jafa,  
R/o 148, SFS Apartments,  
Hauz Khas, Aurobindo Marg,  
New Delhi – 110 016

... Applicant

(By Advocate: Shri A.K. Behera)

Versus

1. Union of India,  
Through the Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi – 110 001
2. State of Maharashtra,  
Through its Chief Secretary,  
Mantralaya, Mumbai
3. Director Civil Defence & D.G. Home Guards,  
Old Secretariat Annexe,  
Fort, Mumbai – 400 032
4. Accountant General,  
Room No.1, Maharashtra Old CGO Building,  
New Marine Lines 101,  
Maharishi Karve Road,  
Mumbai – 400 032

... Respondents

(By Advocates: Shri A.K. Bhardwaj for Respondent No.1  
Sh. Gautam Godara proxy for Ravindra K. Adsure for R 2 to 4)

OA 370/2005:

Yateendra Singh Jafa,  
S/o Late Shri H.C.S. Jafa,  
R/o 148, SFS Apartments,  
Hauz Khas, Aurobindo Marg,  
New Delhi – 110 016

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Versus

1. Union of India,  
Through the Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi – 110 001
2. State of Maharashtra,  
Through its Chief Secretary,  
Mantralaya, Mumbai
3. Shri R.S. Moosahary,  
The Enquiry Officer,  
At present Director General, Border Security Force,  
(Formerly Director General, National Security Guard),  
CGO Complex,  
New Delhi – 110 003. ... Respondents

(By Advocates: Shri A.K. Bhardwaj for Respondent No.1  
Sh Gautam Godara proxy for Ravindra K. Adsure for R- 2)

### O R D E R

**By Mukesh Kumar Gupta, Member (J):**

As legal issues raised in these two OAs filed by the same applicant are grounded on same facts and incident, the same were heard together & are being dealt with by present common order.

2. Two basic questions, which need adjudication, are: (i) Whether deemed suspension order could be passed taking recourse to provisions of Rule 3(6) of All India Services (Discipline & Appeal) Rules, 1969? and (ii) Whether charge memorandum initiating departmental proceedings is legally sustainable in the eyes of law?.

3. Vide OA 2754/2004, basic challenge is made to Order dated 24<sup>th</sup> November, 2003 whereby applicant was placed under deemed suspension w.e.f. 23.1.2001, i.e. the date of his dismissal from service, and, directed to continue till the date of superannuation or until further orders, whichever is earlier in terms of Rule 3 (b) of All India Services (Discipline & Appeal) Rules, 1969 [for short, AIS (D&A) Rules]. He seeks further consequential benefits like arrears of pay &

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allowances, promotion as DGP, payment of retiral benefits with interest and costs.

4. Vide OA No.370/2005, challenge is made to Order dated 12.08.2004 initiating disciplinary proceeding under Rule 8 of aforesaid Rules read with rule 6 of All India (DCRB) Rules, 1958. Orders dated 06.01.2005 appointing Enquiring Authority as well as Presenting Officer, which are consequential are also challenged.

Back-ground facts:

5. Applicant is a directly recruited officer of Indian Police Service (IPS) of 1967 batch of Maharashtra Cadre. He had been awarded Indian Police Medal for meritorious service in 1986. While working as Inspector General of Police, BSF, Srinagar, on central deputation a raid was planned and executed on 24.03.1992 by Shri M.L. Purohit, Commandant, 116 Bn. BSF at Bemina near Srinagar, leading to capture of some notorious and hardened terrorists as well as recovery of large cache of arms & ammunition. It is stated that the applicant was in indifferent health at that point of time. He was transferred from Srinagar to Delhi, the shock of which landed him in a hospital for nearly a month. Subsequently, a Court of Inquiry was ordered by IG, BSF, Kashmir, when his presence as a witness was desired, he appeared on 27.7.1992. He learned that DG, BSF had made certain adverse recommendations against him on the basis of which Respondent No.1 was about to pass orders dismissing him from service without holding any enquiry. Apprehending such action, he filed OA No. 1430/1993 before this Tribunal wherein ad interim order dated 09.09.1993 was issued directing respondents "not to resort to any action under Article 311 (2) of the Constitution without initiating regular disciplinary action in accordance with law". Respondents' SLP filed against said order was dismissed by Hon'ble Supreme Court on 10.11.1994 but with an observation that: "the applicant is not precluded from taking such disciplinary proceedings against respondent as are

permissible under the law". However, no action was taken by respondents for next five years. Said OA was ultimately dismissed being premature on 13.08.1999 based on Department's averment that no decision had been taken in respect of applicant. Applicant's Civil Writ Petition filed challenging aforesaid order, before Hon'ble Delhi High Court was disposed of on 6.9.2000 with the observation that respondents are not precluded from taking such disciplinary proceedings against the petitioner under the law & as pointed out by the Tribunal. SLP filed against it by the applicant, was disposed of like-wise on 29.09.2000 by the apex Court.

6. On 23.1.2001, respondents, invoking proviso (c) of Article 311 (2) of the Constitution, dismissed him holding that it was not expedient to hold an enquiry in the interest of security of State, which order became the subject matter in OA No. 729 of 2001. Said OA was allowed vide order dated 29.07.2003 holding that:

*"52. In the result, having regard to the above, the irresistible inference that emerges is that the **present case is not a fit one for taking resort to proviso to Article 311 (2) (c)** of the Constitution of India. The aforesaid provision has been resorted to more in breach than compliance, as the **satisfaction** arrived at is **mechanical for want of independent application** and arrived at mechanically keeping at bay all the relevant considerations the same cannot be sustained in the eyes of law."* (emphasis supplied)

It was further observed that Respondents had chosen a short cut which they should not have traversed. Applicant was directed to be reinstated immediately. However, an observation was made that it would not come in the way of applicant being proceeded against in a duly constituted enquiry in terms of AIS (D&S) Rules, 1969. The Tribunal also observed that:

*"If the respondents deem it necessary to do so, they may initiate the proceedings accordingly. We also direct that the period between the date of his dismissal and his reinstatement be regularized by the competent authority in accordance with law and the outcome of the disciplinary proceedings, if the same are to be initiated"*. (emphasis supplied)

7. In purported compliance of aforesaid order, respondent No.1 passed order dated 24.11.2003 and decided to implement aforesaid directions by reinstating him in service. However, it was also decided to initiate disciplinary proceedings under rule 8 of the All India Services (Discipline & Appeal) Rules, 1969. Said reinstatement was ordered: "without prejudice to the Disciplinary Proceedings contemplated against him under the relevant rules on his misconducts for which he was dismissed". By another order of the said date, applicant was placed under deemed suspension from the date of his dismissal from service, i.e. 23.01.2001 which was to remain in operation till the date of his superannuation or until further orders, whichever earlier, in terms of rule 3 (6) *ibid*. It is this order which has been challenged in OA 2754/2004.

8. It would be expedient, at this stage, to notice the relevant excerpts of said order dated 24.11.2003, which reads as under:

*"And whereas the competent authority has decided to implement the said order and has also decided to initiate disciplinary proceedings against Shri Y.S. Jafa under rule 8 of the All India Services (Discipline & Appeal) Rules, 1969:*

*And whereas the said Shri Jafa has been reinstated in service in compliance with the order of the Hon'ble Tribunal dated 29.07.2003, vide Govt. of India Order No.16013/16/2001-IPS.II dated 24.11.2003 without prejudice to departmental proceedings contemplated against him under the provisions of the All India Service (Discipline & Appeal) Rules, 1969;*

*Now therefore the said Shri Y.S.Jafa, IPS (MH:67) is deemed to have been placed under suspension with effect from the date of his dismissal from service i.e. 23.01.2001, and shall continue to remain under suspension till the date of his superannuation or until further orders, whichever is earlier, in terms of his rule 3 (6) *ibid*. Orders relating to the grant of subsistence allowance to Shri Y.S.Jafa shall issue separately.*  
(emphasis supplied)

6 days after passing of aforesaid Order, applicant retired on attaining the age of superannuation w.e.f. 30.11.2003. He made several representations to respondent no.1 for releasing arrears of pay as well as retrial benefits besides promotion to the grade of DGP w.e.f. the date of promotion of his immediate junior with all consequential benefits. As the same remained unattended, CP No.

190/2004 was preferred. During its pendency, respondent no.1 issued order dated 3.6.2004 whereby payment of subsistence allowance @ 50% of his pay last drawn for the first 3 months and @ 75% of his pay last drawn for the remaining period of his deemed suspension till his retirement, was ordered. Said order further directed that he would be paid provisional pension and other retirement benefits on that basis. Noticing above aspect, aforesaid CP was disposed of vide order dated 03.09.2004 with liberty to applicant to challenge the same in substantive proceedings. Hence OA No. 2754/2004 was preferred.

9. During pendency of aforesaid OA, respondent no.1 issued Memorandum dated 12.8.2004 initiating departmental proceedings under Rule 8 of All India Service (Discipline & Appeal) Rules, 1969 read with Rule 6 of the AIS (DCRB) Rules, 1958. Said memorandum contained four articles of charge, which reads as follows:

Statement of Articles of Charge framed against Shri Y.S.Jafa, IPS (MH:67) (Retired) former IG, BSF, Srinagar.

Article-I

That, the said Shri Y.S.Jafa, while functioning as Inspector General, Frontier HQ BSF Srinagar during March 1992 having information that 116 Bn. BSF had not declared the complete quantity of arms/amm/explosives, gold ornaments and other household items seized from the house of Mohd Maqbool Dar in Bemina Colony, Srinagar, in operation conducted on the intervening night of 23/24 March 1992 did not take timely action to verify the facts and to get all seized arms/amm/explosives/accessories and other items properly accounted for and disposed off as per law and established procedure.

Article-II

That, Shri Y.S.Jafa, did not visit the location of 116 Bn. BSF or carry out spot verification of the place of operation from 24 March 1992 till 5.4.1992 in spite of the importance of the operation and in spite of having received specific information regarding non accounting of the complete seizures made by the unit during that operation and other irregularities regarding documentation relating to that operation.

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Article-III

That, Shri Y.S.Jafa having received information regarding serious irregularities accounting of seizures made during the operation conducted by 116 Bn BSF on the intervening night of 23/24 March, 1992 did not take prompt and effectual steps to ascertain truth and to initiate legal and administrative action with regard to the irregularities committed, thereby failing in his supervisory and command responsibilities as Inspector General BSF, Srinagar.

Article-IV

That, Shri Y.S.Jafa with intention of disclaiming his personal knowledge regarding non-declaration and non-accounting of the complete seizure made by 116 Bn BSF on the intervening night of 23/24 March, 1992, despite having received written reports, relating to the operation, deliberately avoided to append his initials on such documents in token of having perused the same."

On receipt of said Memorandum, applicant made representation dated 25.10.2004 and questioned its maintainability. Validity of said Memorandum has been challenged by instituting OA 370/2005.

10. The basic ground urged in support of relief claimed in OA 2754/2004 among other is that impugned Memorandum dated 24.11.2003 placing him under deemed suspension with retrospective effect is illegal, unjustified and unsustainable in law inasmuch as Rule 3 (6) of All India Service (Discipline & Appeal) Rules, 1969 is inapplicable in peculiar facts and circumstances of present case. Since he was not under suspension when dismissal order was passed on 24.01.2001 in exercise of power under Article 311 (2) (c) of the Constitution of India, he cannot be placed under deemed suspension & that too retrospectively. It is settled law that no administrative order can be retrospective in nature. Similarly, impugned Memorandum dated 03.06.2004, which ordered release of subsistence allowance was not sustainable inasmuch as no disciplinary proceedings were pending against him even on 30.11.2003 when he attained the age of superannuation. Therefore, he is entitled to full pay and arrears from 23.01.2001 till his date of retirement with all pensionary and retrieval



benefits. Delay in making said payment is attributable solely to respondents and not to him. His junior, namely Shri Singarabal, was promoted to the grade of DGP w.e.f. 22.3.2002, and therefore, he is entitled to be promoted from the said date. The basic ground urged in support of relief claimed in OA 370/2005 has been that as the basic order dated 24.11.2003 is clearly illegal, no inquiry could have been initiated under the provisions of Rule 3 (6) of said Rules, 1969 particularly when the charges levelled vide Memorandum dated 12.8.2004 pertained to the year 1992. In any case, the incident being more than 4 years prior to said date, the proceedings are non-est in the eyes of law.

11. The respondent no.1 as well as respondents no.2 to 4 filed their separate reply and contested the claim laid. Respondents no. 2 to 4 in their affidavit stated that since competent authority, i.e. President has already decided to initiate disciplinary proceedings under Rule 8 of All India Service (Discipline & Appeal) Rules, 1969, till the outcome of said proceedings, he is not entitled to execute order dated 29.07.2003 passed by this Tribunal in OA 729/2001. So far as regularization of period of service between the date of dismissal and reinstatement is concerned, the same is within the jurisdiction & competence of Central Government. Arrears of salary for aforesaid period would be paid only after conclusion of afore-noted departmental inquiry. His request for interest on gratuity and other retrial benefits is premature as the same have not become due so far. Shri Singarabal, his immediate junior was considered for promotion in the meeting held on 28.1.2002 when he was out of service and, therefore, he was "not considered for promotion". As far as release of traveling allowance and payment of provident fund are concerned, necessary payments have already been made. In compliance of order passed in CP, he has already been paid a sum of Rs.7,07,799/- vide cheque No.950020 dated 12.10.2004 on account of subsistence allowance for the period 23.1.2001 to 30.11.2003, and provisional pension will continue to be paid till finalization of departmental inquiry. Unless

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and until departmental inquiry is duly completed, claim for pension-cum-final pensionary benefits cannot be submitted and processed.

12. Respondent no.1 in its reply affidavit stated that they decided to implement directions of Tribunal dated 29.7.2003 in OA 729/2001, & needful was done vide order dated 24.11.2003. The competent authority decided to proceed against the applicant departmentally and, therefore, he was placed under deemed suspension. He was allowed to retire on attaining the age of superannuation on 30.11.2003 without prejudice to the disciplinary proceedings being contemplated against him, which indeed were initiated under All India Service (DCRB) Rules. This Tribunal did not prescribe any time-limit to re-instate him. On the other hand, it observed that reinstatement would not come in the way of applicant being proceeded against in a duly constituted inquiry in terms of All India Service (Discipline & Appeal) Rules. The fact that he was due to superannuate on 30.11.2003 has no relevance to the basic issue of deemed suspension as well as initiating departmental action against him. Before conclusion of aforesaid disciplinary proceedings, question of promoting him to DGP's grade did not arise. Dismissal order dated 23.1.2001 was set aside on technical grounds and not on merits. Provisions of Rule 3 (6) of All India Service (Discipline & Appeal) Rules, 1969 are clearly applicable in such circumstances as it provides that when the order of dismissal, removal or compulsory retirement from service is rendered void by a decision of a Court of Law and on a consideration of the circumstances of the case, concerned authority decides to hold further inquiry, the member of the service shall be deemed to have been placed under suspension. Proviso to this Rule is inapplicable in present facts and circumstances. Since the competent authority decided to hold further inquiry against him on the allegations on which penalty of dismissal was originally imposed, applicant being the member of the service shall be deemed to have been placed under suspension. In terms of provisions of Rule 6 (1) (a) of AIS

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(DCRB) Rules, said disciplinary proceedings will be deemed to have continued under the said Rule after applicant's retirement. His claim for promotion, as such, will be decided on conclusion of aforesaid disciplinary proceedings. Applicant be directed to co-operate with departmental inquiry proceedings initiated against him. Union of India also contested the prayer made in OA 370/2005 stating that proceedings initiated vide Memorandum dated 12.8.2004 is very well within the purview of rules & justified in the eyes of law. Disciplinary proceeding are deemed to have been initiated when the member of service is placed under suspension and as such in terms of provisions of Rule 6 (1) (a) of AIS (DCRB) Rules, the same will be deemed to have been continued under said rules after applicant's retirement.

13. By filing detailed rejoinder, applicant reiterated contentions so advanced vide OAs.

14. We have heard learned counsel for parties and perused the pleadings besides judgments cited & noted hereinabove.

15. Shri A.K. Behera, learned counsel forcefully contended that provisions of Rule 3(6) of the Rules are inapplicable inasmuch as the term "**further enquiry**" employed therein assumes greater importance & significance. Moreover in terms of Proviso to said sub- rule a person can be placed under deemed suspension only when penalty order is rendered void by a decision of court of law & disciplinary authority decides to hold further enquiry and not otherwise. Said term "further enquiry" pre-supposes that some enquiry, as per provision of rules/regulation, had been conducted on an earlier occasion, which resulted into passing of penalty order. Since order dated 24.1.2001 was passed invoking clause (c) of Article 311(2), neither any kind of enquiry was held nor was he placed under suspension prior to passing of aforesaid dismissal order. Moreover, Rule 3(6) of All India Services (Discipline & Appeal) Rules, 1969 is

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para-materia to Rule 10(4) of CCS (CCA) Rules, 1965, and therefore the judgments rendered on said issue would squarely apply. Placing strong reliance on ***Mahender Singh V. Union of India [1991 Supp (2) SCC 127]*** it was emphasized that respondents' action of deemed retrospective suspension cannot be sustained under aforesaid Rules. Aforesaid penalty order dated 24.1.2001 was not issued without holding any enquiry.

16. We may note that the expression "**further inquiry**" has acquired a technical meaning and that it simply means reconsideration of the matter (Shyam Lal vs State, **AIR 1954 Pat 441** at 442. Similarly **AIR 1938 Mad 742** In re Harishchandra Reddy, it was observed that "further inquiry" is not limited to inquiry upon further material or further additional evidence. It may involve reconsideration of the evidence already on the record.

16. Before proceeding further it would be expedient to notice relevant excerpts of provisions of Rule 3 of All India Services (Discipline & Appeal) Rule, 1969, which read as under:-

**"3. Suspension-(1)** If, having regard to the circumstances in any case and, where articles of **charge have been drawn up**, the nature of the charges, Government of a State or the Central Government, as the case may be, is **satisfied** that it is **necessary or desirable** to place under suspension a member of the Service, against whom disciplinary proceedings are **contemplated** or are **pending** that Government may-

- (a) if the member of the Service serving under that Government, pass an order placing him under suspension, or
- (b) if the member of the Service is serving under another Government, request that Government to place under suspension,

*pending the conclusion of the disciplinary proceedings and the passing of the final order in the case:*

*Provided that.....*

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service 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

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from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(6) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service is set aside or declared or **rendered void in consequence of or by a Court of Law**, and the disciplinary authority, on a consideration of the circumstances of the case, **decides** to hold **further inquiry** against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the Service shall be deemed to have been placed under suspension by the Central Government from the date of 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.**"

(highlighted by us for emphasizing )

17. It would also be necessary to notice relevant provisions of Rule 10 of CCS (CCA) Rules, 1965, which reads as under:-

"10 (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 is pending; or
- (b) 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
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided.....

(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 :

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*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."*  
*(highlighted for emphasis)*

18. Perusal & comparison of aforesaid Rules would establish that language employed under sub-rule (1) of Rule 10 is totally distinct & different vis-à-vis Rule 3 (1) of the Rules. Under Rule 10(1) of CCS (CSA) 1965 rules, there is no requirement of drawing up of charge before placing the delinquent under suspension, which is the condition precedent while invoking Rule 3 (1) of AIS (D&A) Rules. On the other hand, we find that language employed under sub-Rule (6) of Rule 3 of AIS (D&A) Rules vis a vis Rule 3 of CCS (CCA) Rules is same, identical & para-materia. It would further show that there are four ingredients are to be satisfied for application of said Rule 3 (6) namely: **a)** member of service is dismissed, removed or compulsorily retired as a measure of penalty; **b)** such penalty is set aside or declared or rendered void by a decision of court of law; **c)** it is decided to hold "**further enquiry**" against member of service on the allegations on which original order of penalty was imposed; & **d)** *Court* has passed an order purely a "**technical grounds**" without going into the merits of the case. If aforesaid ingredients are satisfied, then member of service could be placed under deemed suspension by Central Government from the date of original order of dismissal, removal or compulsory retirement, and he shall continue to remain under suspension until further orders. Counsel also laid emphasis that as per proviso to sub-rule (6), no such further enquiry can be ordered unless it is intended to meet the situation where court has passed order purely on technical grounds without going into the merits of case. In facts & circumstances of present case, as noticed hereinabove, it would be seen that Tribunal while allowing OA No.729/2001, vide order dated 29.7.2003, specifically observed that the exercise of said proviso 'c' to Article 311 (2) was more in breach than compliance as the satisfaction arrived at was mechanical & for want of independent application the same cannot be sustained in the eyes of law.

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Stress was laid that such findings cannot be arrived at without touching upon merits of the case. On the other hand, respondents have contended that this Tribunal had passed afore-said order purely on technical grounds & did not touch upon the merits of dispute.

19. Before proceeding further it would be expedient to notice the language of Article 311 of the Constitution of India, which has a great bearing on the issue being examined in present case, relevant extracts of which read as under:

" 311 (1)

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause **shall not apply-**

(a).....

(b).....

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to **hold such inquiry**.

(3)....." (highlighted for emphasis)

20. We may notice facts of **Mahender Singh (supra)**, on which reliance was placed. Para-2 of said judgment, which narrated facts, reads as under:-

*"(2) The facts leading to the appeal are these:*

*The appellant was a cash clerk in the establishment of Delhi Milk Scheme, New Delhi. There was some criminal case connected with the forgery of a cheque in which the appellant was arrayed as an accused. Pending investigation of the criminal case, he was placed under suspension. The order of suspension was made on March 27, 1976 under Rule 10(2) of the Rules. On Jan, 10, 1978 his services were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. On March 7, 1980 the appellant was acquitted in the criminal case. On January 5, 1981 the appellant filed a civil suit in the District Court, New Delhi, challenging the order of termination of his services. The suit was*

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*transferred to the Central Administrative Tribunal for disposal. The Tribunal has, by its judgment dated September 5, 1988, set aside the termination order....."*

Pursuant to decision of the Tribunal, the management made an order dated November 8, 1988 under Rule 10 (4) of the CCS (CCA), Rules placing said appellant under suspension w.e.f. January 10, 1978 and also directed that there should be further enquiry against him. On challenged made, Hon'ble Court held that:

"The order of the Tribunal and the management as to the retrospective suspension of the appellant cannot be sustained under Rule 10 (4) of the Rules. It may be relevant to remember that the original order of termination was not passed against the appellant as a measure of punishment. It was a 'simpliciter termination' of the appellant's service under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965. The Tribunal has set aside that order on the ground that it amounts to punishment and the order of punishment could not have been made without holding an inquiry against the appellant. But that is not the same thing to state that the management made an order terminating the services of the appellant by way of penalty. The management treated the said order as a simpliciter discharge. Rule 10 (4) therefore, has no application to the case of the appellant.

8. Secondly, it would be misnomer to call it a further inquiry as contemplated under Rule 10 (4). **There was no question of the management deciding to hold a further inquiry since there was no earlier inquiry against the appellant.**" ( highlighted for emphasis)

21. Ld. Counsel for respondent No1 pointed out that court of inquiry had been conducted against the applicant in terms of BSF Act/Rules, and therefore it cannot be urged that no inquiry was ever conducted prior to inflicting punishment of dismissal vide Order dated 24.1.2001. With reference to language employed under Article 311 (2) it was emphasized that said provisions deals with "inquiry", while Rule 3 (6) of aforesaid Rules laid emphasis on "holding" an inquiry and not on either "continue" or "carry on" such inquiry. Therefore, there is perceptible difference in the language employed therein, contended Ld. Counsel.

22. We have given our thoughtful consideration of the rival contentions raised by parties. We find no justification & substance in said contentions raised by respondents. In our considered view the inquiry conducted under the BSF

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Act/Rules, had no relevance & cannot be looked into for more than one reason. Applicability of provisions of aforesaid Act/ Rules, to applicant, has already been rejected by this Tribunal in earlier proceedings, which has attained finality. Moreover, applicant was not governed by the provisions of said Act/Rules. When we read clause (c) to 2<sup>nd</sup> Proviso to Article 311 (2) alongwith Rule 3 (6) of All India Services (Discipline & Appeal) Rules, 1969, besides the fact of present case, it would be established beyond doubt that ingredients of said Rule 3(6) had not been satisfied in the present case, which were the conditions precedent to invoke the provisions of said sub-rule. It is undisputed fact that applicant was dismissed vide Order dated 23.1.2001, invoking proviso (c) to Article 311 (2), which ex-facie shows that such action was taken as the President was satisfied that in the interest of the security of the State it was not expedient to **"hold such inquiry"**. Provisions of Rule 3 (6) of aforesaid rules, deals with the circumstances where "deemed" suspension could be resorted to when the disciplinary authority on a consideration decides to hold **"further inquiry"**. When on earlier occasion, it was felt that it was not expedient to hold such inquiry, how the question of holding **"further"** inquiry could arise. In our considered view, such an eventuality would not arise at all. Moreover, the exercise of power under aforesaid sub-rule was dependant upon the fact that penalty order was rendered void purely on **"technical grounds without going into the merits of the case."** Can it be argued that Order of this Tribunal dated 29<sup>th</sup> July, 2003 was rendered on technical grounds without going into the merits? A bare perusal of findings recorded by this Tribunal and extracted hereinabove would establish that findings recorded were that the facts of the case did not warrant invocation of the provisions of Article 311 (2) (c) and said provisions were resorted to: **"more in breach than compliance"** as well as **"the satisfaction arrived at is mechanical for want of independent application"**. These observations presuppose & in fact establish that Tribunal indeed had examined the merits of

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the dispute and said Order & findings cannot be termed as Order passed purely on "**technical grounds**", without touching the merits of the case.

23. Shri A.K. Behera, learned counsel, with reference to second issue raised & noticed hereinabove, placing strong reliance on **State of Bihar & Ors. vs. Mohd. Idris Ansari [1995 Supp (3) SCC 56]** contended that the impugned memorandum dated 12.8.2004 contained allegations of alleged misconduct committed in the year 1992 i.e four years' prior to the date on which applicant retired, i.e. 30.11.2003, and therefore provisions of Rule 6 of All India Services (Death cum Retirement Benefits) Rules, 1958 were inapplicable. It was further emphasized that Rule 43(b) of Bihar Pension Rules is para-materia to aforesaid Rule-6. Mere deemed suspension order dated 24.11.2003 would not make any material difference.

24. Respondents, per contra, refuted the aforesaid contentions. It was forcefully contended that application of rule 3(6) is not restricted to cases where no regular departmental inquiry was held earlier. In other words, said provisions becomes operational & applicable where earlier penalty order is set-aside/quashed by Court and the concerned authority decides to hold further inquiry on same allegation. Since the disciplinary authority, in present case, consciously decided to hold inquiry on the allegation for which he was earlier dismissed, holding inquiry or otherwise on earlier occasion looses significance and has no relevance. Sh. A.K.Bhardwaj, Ld. Counsel placing reliance on **UOI vs Rajiv Kumar 2003 (6) SCC 516**, particularly para 23, contended that two principles of construction - one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole - appear to be well settled.

25. On perusal of said judgment we observe that basic issue which fell for consideration before the Court had been the scope and ambit of sub rule (2) of Rule 10 of the CCS (CCA) Rules, 1965, which deals with deemed suspension in

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the circumstance prescribed therein i.e. delinquent official detained in custody whether police or judicial for a period exceeding 48 hours. Under the provisions of said sub-rule an actual order of suspension is not required to be passed. This is deemed to have been passed by operation of legal fiction. In our considered view said judgment is quite distinguishable & has no application or relevance in the given circumstances.

26. Placing reliance on **UOI vs Upendra Singh 1994 (3) SCC 357**, it was contended that Court/Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal/Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. Similarly, reliance was placed on **Secretary to Government, Prohibition & Excise Department vs L.Srinivasan 1996 (1) SC SLJ 361** to contend that when disciplinary proceedings as well as trial were in progress, Tribunal's order quashing the DE only on the ground of delay was grossest error in its exercise of the judicial review. **1996 (2) ATJ 241, Shri S.P.Singh vs UOI** was relied on to contend that plea of quashing charge Memo on account of delay of more than four years in issuing charge sheet was rejected. Further reliance was placed on Order dt **3<sup>rd</sup> March, 2006 in OA No 2033/2005 Sh. Korada Srinivasa Rao vs UOI**, where challenge made to charge Memorandum dated 11.4.2005 was rejected following **Upendra Singh (supra)**. Lastly, **2006 (8) SCC 776 P.D.Agarwal vs State Bank of India**, was relied on to contend that delay in initiating departmental inquiry in itself would not be justified to tinker with it, particularly when the delinquent not only participated therein without any demur but also cross-examined the witnesses and had not raised the plea of causing any prejudice to him before the concerned authorities. Moreover, we may note that alleged delay in initiating departmental proceedings had been about three years from the date of alleged incidents.

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27. Inviting our attention to Explanation (a) under Rule 6 (1) of AIS (DCRB) Rules, 1958 it was canvassed that a departmental proceeding is deemed to be instituted when applicant was placed under deemed suspension, i.e. prior to his attaining the age of superannuation and, therefore, its validity cannot be questioned. Merely because an incident alleged by had occurred or taken place more than four years prior to such date, would be of no consequence, contended Ld Counsel.

28. Respondents No 2-4 adopted the submissions made by Respondent No 1.

29. Before we proceed further, it would be expedient to notice the relevant excerpts of provisions of Rule 6 of All India Services (Death cum Retirement Benefits) Rules, 1958 vis-à-vis Rule 43(b) of Bihar Pension Rules, which read as under:-

**Rule 6 of All India Services (Death cum Retirement Benefits) Rules, 1958**

*"6 Recovery from pension. (1) The Central Government reserves to itself the right of withholding whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence during his service, including service rendered on re-employment after retirement.*

*Provided that no such order shall be passed without consulting the Union Public Service Commission*

*Provided further that*

*(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;*

*(b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his reemployment;*

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(i) shall not be instituted save with the sanction of the Central Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

(c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

### **Explanation**

For the purpose of this rule:

(a) a departmental proceeding shall be **deemed to be instituted** when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of a civil proceedings, on the date on which the plaint is presented, or, as the case may be, an application is made, to a civil court.

### **Rule 43 (b) of Bihar Pension Rules reads as under:-**

"(b). The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that -

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

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(ii) shall be in respect of an **event which took place not more than four years before the institution of such proceedings;** and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;" (highlighted for emphasis)

30 On perusal & comparison of Rule 6 of AIS (DCRB) Rules, and Rule 43 of Bihar Pension Rules, as well as Rule 9 of CCS (Pension) Rules, 1972, we are of the considered view that said provisions are para-materia.

31. On examination of facts in **Mohd. Idris Ansari (supra)**, wherein respondents had retired on 31.1.1993 and show cause notice under Rule 139 (a) & (b) was issued on 27.9.1993 alleging grave misconduct and certain irregularities committed during the period 1986-87, Hon'ble Supreme Court observed that:-

*"a mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired Government servant, it must be shown that in departmental proceedings or judicial proceedings the concerned Government servant is found guilty of grave misconduct. This is also subject to the rider that such **departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings.**"* (highlighted for emphasis)

32. Under aforesaid Rule 43, no departmental proceedings could have been initiated in 1993 in connection with alleged misconduct took place in the year 1986-87. Hon'ble Court further held as follows:-

*"10. So far as the second type of cases is concerned the proof of grave misconduct on the part of the concerned Government servant during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be **initiated even after his retirement** in such type of cases. **But such departmental proceedings will have to comply with the requirements of Rule 43(b).** Consequently a retired Government servant can be found*

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guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but **such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him.....**

Rule 139 (a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which show cause notice dated 27-9-1993 was issued, the appellant **authority had no power to invoke Rule 139 (a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent.**" (highlighted for emphasis)

33. We may also note that a co-ordinate Bench of this Tribunal in V.K.Gupta vs UOI, **1987 (4) ATC 185 (Delhi)**, had an occasion to consider a case in relation to Rule 9(2)(b) of CCS (Pension) Rules, 1972, a para-materia provision to Proviso (b) to Rule 6(1) of 1958 Rules, and concluded as under:-

"But because of the statutory embargo laid down by Rule 9 of the Pension Rules, no disciplinary proceedings can be initiated against a pensioner in respect of any event which took place more than 4 years prior to the initiation of such proceedings and failure to institute the proceedings within that period is coming in the way of the disciplinary proceedings. The rule of limitation knows no equity. Even for prosecution of offences under the criminal law, Section 468 of the CrPC prescribes a period of limitation. The rule-making authority has in our view advisedly prohibited initiation of any proceedings against pensioners under Rule 9 in respect of any event which may have occurred more than 4 years prior to the institution of the disciplinary proceedings so that they may live in peace after retirement. If any proceedings are not initiated in respect of a serious case of grave misconduct or negligence on the part of the one or the other officers it is because no proceedings are instituted within the time although they were suspected and partial enquiry was held well within the time. Time, once it begins to run, runs remorselessly and inexorably both for the good, bad and the ugly and like death makes no distinction. While the public policy also dictates that public servants guilty of misconduct or negligence should be brought to book even after their retirement the very same policy dictates that any such proceedings should be instituted within a period of 4 years. A Damocles' sword should not be hanging over them for an indefinite period." (emphasis supplied)

34. Facts of present cases being similar to aforesaid cases & the issues decided therein, having laid down unambiguous ratio, in our considered view,



squarely hold the field, and is applicable in facts & circumstances of present cases.

35. We have bestowed our thoughtful consideration to rival contentions of parties, and are of considered view that respondents' contentions merit out-right rejection. None of judgments cited by respondents are applicable in facts & circumstances of present cases. We may observe that impugned retrospective deemed suspension Order dated 24<sup>th</sup> Nov, 2003 was passed under Rule 3 (6) of the Rules, 1969, while suspension order issued on account of contemplation or pending proceedings takes effect from the date of passing such order, is issued under Rule 3(1) of the said Rules. At the same time such an event is dependant on satisfying certain more aspects, as enumerated therein. In our considered view when retrospective deemed suspension is held to be unjustified and without authority of law, it cannot be argued that such order would be valid for future period. We may note that suspension order could be passed/issued under the provisions of Rule 3(1) of 1969 rules where articles of charge have been "**drawn up**", which condition had not been satisfied in present cases. Moreover, the impugned Order dated 24<sup>th</sup> Nov, 2003 had not been passed taking recourse to said provisions. When such is the fact, it cannot be held that the disciplinary proceedings initiated vide Memorandum dated 12.8.2004 would be covered by the Explanation to Rule 6(1) of AIS (DCRB) Rules, 1958. In our considered view said Explanation is not attracted & has no application in the fact of present cases. Following the law laid down in Mohd. Idris Ansari & V.K.Gupta (supra), we have no hesitation to conclude that framing of charges, relating to events more than four years old at the time of initiation of proceedings, was illegal, impermissible, unjustified & beyond the time-limit prescribed in proviso (b) to Rule 6(1) of 1958 Rules. Therefore, neither orders dated 24.11.2003 nor 12.08.2004 could be sustained in law.




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36. Accordingly, our conclusions are:-

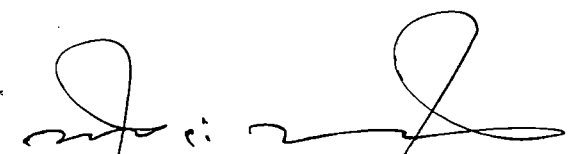
- a) Memorandum dated 24<sup>th</sup> November, 2003 issued under Rule 3(6) of AIS (D&A) Rules, 1969, is unsustainable & without any authority of law and accordingly same is quashed with all its consequences.
- b) Memorandum dated 12<sup>th</sup> August, 2004, issued under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969, read with Rule 6 of All India Services (Death-cum-Retirement Benefits) Rules, 1958, is unjustified, illegal and without any authority of law. Consequently, the same is quashed and set aside with all its consequences.
- c) Applicant would be entitled to consideration for promotion to the next higher grade of Director General of Police, Maharashtra, from the date his immediate junior Sh. Singarabal was promoted w.e.f. 22.3.2002, and if he is found fit by the Selection Committee, in accordance with rules in vogue, he would be entitled to promotion, on notional basis with fixation of pay & retrial benefits should also be revised. Furthermore, applicant would also be entitled to regularization of the period of service between the date of his dismissal and reinstatement, with consequential benefits, as ordered in earlier proceedings as well as undertaken in the reply.

37. Aforesaid exercise is directed to be carried out by respondents within a period of three months from the date of receipt of a certified copy of this Order.

OAs are, thus allowed. No costs.

  
(V.K. AGNIHOTRI)  
MEMBER (A)

/pkr/

  
(MUKESH KUMAR GUPTA)  
MEMBER (J)