

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.441/2004

New Delhi, this the 4th day of April, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Head Constable Satender Singh (893/PCR)
(Under Suspension)
s/o Shri Mahender Singh
r/o Village & P.O. Kalandi
P.S. Sarfana
Distt. Meerut, U.P. ... Applicant

(By Advocate: ^{Sh.}Shyam Babu)

Versus

1. Government of N.C.T. of Delhi
Through its Chief Secretary
Player's Building, I.P. Estate
New Delhi.
2. Deputy Commissioner of Police
(Police Control Room)
Police Headquarters
I.P.Estate
New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant challenges the order passed by the disciplinary authority dated 24.11.2003 contending that placing him under suspension is without jurisdiction. The said order reads:

"In pursuance of judgement dated 28.7.2003 delivered by the Hon'ble C.A.T. in O.A. No.1221/2002 - Satender Singh Vs. UOI & Ors. and opinion of L.A. to C.P., Delhi conveyed vide DCP/Vigilance, Delhi's memo. No.11170/P. Cell/Vig. (P-V) dated 21.10.2003, the order passed by the disciplinary authority vide No.--

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763-850/HAP (P-II)/PCR dated 9.10.2000 imposing the punishment of dismissal upon HC Satender Singh No.893/PCR and order of appellate authority issued vide No.1857-58/I/C Appeal/Addl. C.P./PCR & Commn, dated 19.11.2001 reducing the punishment from dismissal to that of removal from service, are hereby quashed and set-aside and HC Satender Singh No.893/PCR is re-instated in service with immediate effect. However, he shall be deemed to be under suspension. Further in terms of the above judgement the D.E. ordered vide this office order No.271-90/HAP (P-II)/PCR dated 12.1.2000 against HC Satender Singh No.893/PCR is hereby remitted to the E.O. from the stage of supplying the required documents to the Head Constable. Since, ACP Shiv Lal, the E.O. has been transferred from PCR, the D.E. is entrusted to ACP Jialal Shawney to complete the same in accordance with law on day to day basis and submit his findings expeditiously. His intervening period from the date of removal to the date of re-instatement in service and suspension period will be decided lateron.

Let the applicant Head Const. be informed accordingly.

Sd/-
(Dr. A.K.Singh)
Dy. Commissioner of Police
Police Control Room: Delhi."

2. Some of the relevant facts would precipitate the question in controversy. Departmental proceedings had been initiated against the applicant pertaining to certain alleged misconduct regarding which no opinion need to be expressed at this stage. The applicant was placed under suspension by an order of 11.11.1999 pending enquiry. The inquiry officer had submitted the report recording that the charge against the applicant is not proved. However, the then Additional Commissioner of Police recorded a **'note of disagreement'** and thereafter imposed a penalty of



dismissal from service. In appeal, the order was modified to removal from service. In this process, the applicant remained under suspension from 11.11.1999 to 09.10.2000. Aggrieved by the same, he preferred OA 1221/2002 in this Tribunal. This Tribunal had allowed the said petition holding that the applicant was not supplied with the basic documents and, therefore, prejudice had been caused to him. The impugned orders were quashed and the matter was remitted to the inquiry officer to supply the necessary documents to the applicant and from that stage to proceed afresh. It was further recorded that if the inquiry officer has been changed, the disciplinary authority would be competent to appoint another person and the applicant would only be entitled to the consequential benefits in accordance with law.

3. It is thereafter that the above said impugned order of 24.11.2003 has been passed.

4. Needless to state that in the reply filed, the application has been contested.

5. During the course of submissions, the applicant's learned counsel, in the first instance, had urged that there is no inherent power to suspend the applicant. But the answer would be provided by a decision of the Constitution Bench of the Supreme Court in the case of R.P.KAPUR v. UNION OF INDIA AND ANOTHER, AIR 1964 SC 787. The **Supreme Court held** that authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct and

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the general principle is illustrated by the provision in Section 16 of the General Clauses Act.

6. However, the main submission made was that the order has been passed suspending the applicant retrospectively or in other words, it has been directed that it is a deemed suspension. Strong reliance, on behalf of the applicant, has been placed on a decision of the Supreme Court in the case of **H.L. MEHRA v. UNION OF INDIA AND OTHERS**, AIR 1974 SC 1281. In the cited case, Shri H.L.Mehra, a Government servant, was suspended from service by an order of the President dated 11.4.1963 pending a criminal prosecution against him. Later on, departmental proceeding was also started on the charges, which were different from those on which he was being prosecuted. The applicant was convicted by the Court and the order was confirmed by the High Court in appeal. While the matter was pending in the Supreme Court, the President passed a fresh order dismissing him from service. Subsequently, the applicant was acquitted by the Supreme Court. It is thereafter that the President passed the order invoking Sub-Rule (5)(b)(i) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 pertaining to (i) setting aside of the order of dismissal, (ii) continuance of the pending departmental inquiry till finalisation and (iii) the continuance of the suspension period until further orders.

7. The **Supreme Court held** that two conditions must coexist before action can be taken under Rule 10(5)(b) of the said Rules - one is that the Government servant must be under

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continuing suspension and the other is that during the continuance of such suspension 'any other disciplinary proceeding' should be commenced against him. The **Supreme Court further held** that when order of dismissal was passed, the order of suspension came to an end and did not revive thereafter.

8. Perusal of the facts clearly shows that the facts in the present case are patently distinguishable. Here, in the case before us, it is the same inquiry, which is continuing and it is not that it is in pursuance of an acquittal of the concerned person that such an order necessarily must be passed afresh. Herein, there was no criminal proceeding against the applicant and, therefore, once the same inquiry is continuing, we find no reason as to why the order of suspension or deemed suspension could not be passed.

9. Another Constitution Bench of the Supreme Court in the case of **MANAGING DIRECTOR, ECIL, HYDERABAD AND OTHERS** v. **B. KARUNAKAR AND OTHERS**, (1993) 25 ATC 704 had considered somewhat a similar controversy. The **Supreme Court held** that when an order is set aside by the Tribunal or the Court, the proper relief would be to direct to reinstate the concerned person and for fresh inquiry by placing the employee under suspension. The **Supreme Court** observed:

"..... Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The

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question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

10. Another decision of the Supreme Court in the case of **NELSON MOTIS v. UNION OF INDIA AND ANOTHER**, JT 1992 (5) SC 511 cannot be ignored. In the cited case, disciplinary proceedings had been initiated on the basis of certain charges. Inquiry officer was appointed. He submitted a report that charge stood proved. The report was accepted and an order was passed removing the concerned person from service. It was confirmed in appeal. He filed an Original Application in the Central Administrative Tribunal. This Tribunal had accepted the application and order of penalty was set aside directing for the reinstatement with the observation that it was open to the authorities to take up the proceedings afresh. The **Supreme Court held:**

"8. The comparison of the language with that of sub-rule (3) re-inforces the conclusion that sub-rule (4) has to be

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understood in the natural sense. It will be observed that in sub-rule (3) the reference is to "a Government servant under suspension", while the words "under suspension", is omitted in sub-rule (4). Also the sub-rule (3) directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in sub-rule (4) it has been said that "the Government servant shall be deemed to have been placed under suspension." The departure made by the author in the language of sub-rule (4) from that of sub-rule (3) is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances it is not permissible to read down the provisions as suggested. We, therefore, hold that as a result of sub-rule (4) a Government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, provided of course, that the other conditions mentioned therein are satisfied."

This decision was followed by a subsequent decision of the Supreme Court in the case of **UNION OF INDIA AND OTHERS v. V.B. HAJELA**, 1997 SCC (L&S) 1627.

11. Similarly, in the case of **STATE OF U.P. AND ANOTHER v. T.P. LAL SRIVASTAVA**, (1996) 10 SCC 702, when on a technical ground the order was set aside, the **Supreme Court held** that respondent shall be deemed to be continued under suspension. The findings are:

"4. This appeal by special leave arises from the judgment of the Allahabad High Court made on 15-3-1993 in Writ Petition No.12480 of 1987. The admitted position is that while the respondent was working as a Senior Marketing Inspector, a charge-sheet was served on him on 23-11-1984 calling upon him to explain the charges for committing gross irregularities in the movement of wheat outside the State of U.P. Instead of submitting reply to the charge-sheet, he went on dilly-dallying in submitting the reply. Several

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letters addressed to the respondent proved ineffective. Resultantly, the appellants took a decision on 26-6-1987 holding that the respondent was found guilty of misappropriation. Consequently, he came to be dismissed from service. The respondent challenged the same in the writ petition. The High Court has set aside the order in the impugned order holding that the documents have not been supplied to the respondent and, therefore, the action was vitiated by error of law. We do not find any justification in the view taken by the High Court; the substratum of the result is that the appellants have not conducted any enquiry though the respondent had been avoiding to give the reply. Since the respondent had avoided to submit the reply, he has forgone his right to submit his reply. Nonetheless, the appellants are not absolved of the duty to hold an ex parte enquiry to find out whether or not the charge has been proved. In the event of the Enquiry Officer finding that the charge is proved, he would submit his report to the disciplinary authority. The disciplinary authority should communicate the copy of the enquiry report to the respondent and seek an explanation for the proposed action thereon. If the respondent submits any explanation, the same may be taken into consideration and appropriate order may be passed according to law. **Until then, the respondent must be deemed to be under suspension."**

12. In an identical term was the decision rendered in the case of STATE OF PUNJAB & ORS. v. DR. HARBHAJAN SINGH GREASY, JT 1996 (5) SC 403 wherein, the **Supreme Court again held** that pending inquiry, the concerned person would be deemed to be under suspension. Herein also, the matter was remitted to follow the procedure from the stage the fault was found. The findings read:

"3. It is seen that the Enquiry Officer's report is based on the alleged admission made by the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing.

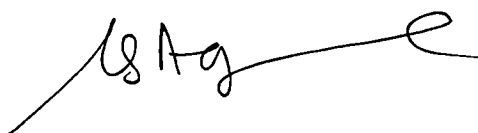
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Subsequently, the respondent has denied having made any admission. As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he voided responsibility as a Doctor to treat on flood victims and that was cause for the suspension."

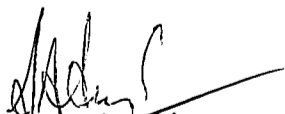
13. Even in the case of N.T.C. (WBAB & O) LTD. v. ANJAN K. SAHA, 2005 (1) AISLJ SC 215, when on a technical ground the order of dismissal was set aside, the **Supreme Court held** that employer can place him under suspension for completing the inquiry and it is thereafter that it will be decided as to how the intervening period from the date of dismissal has to be so treated.

14. It is not merely the decisions of the Supreme Court that make us to come to the said conclusion. At the outset, it must be stated that the applicant was admittedly under suspension. The suspension is on an interim order passed during the pendency of the proceedings. Once on the technical ground the proceedings had been set aside, necessarily, the interim order will be revived automatically. That apart, as one goes through the order, it is



obvious that it has to be read in an objective manner. After this Tribunal had quashed the order of the disciplinary and the appellate authority, the disciplinary authority had reinstated the applicant. That was necessary because reinstatement had to be done once the order of dismissal/removal had been set aside. The applicant had to be placed under suspension and in the present case, rightly under the deemed suspension because undoubtedly the inquiry is still continuing. This becomes apparent from the fact that the intervening period from the date of removal to the date of reinstatement has to be decided later on in accordance with the decisions of the Supreme Court. In the light of these facts, it becomes clear that when for this period the decision is yet to be taken which will be after the completion of the inquiry, it will not be proper even to accept that it could not be a deemed suspension. In the sequence of events, it would be necessary to be so, keeping in view the ratio deci dendi of the decision in the case of **Nelson Motis (supra)**. Though the Supreme Court had considered Rule 10 of CCS (CCA) Rules, 1965 but the basic principle, to which we have referred to above, remains the same. The interim order that had earlier been passed would automatically be revived.

15. For these reasons, the OA being without merit must fail and is accordingly dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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