

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 783 OF 2004

New Delhi, this the 16th day of November, 2004

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Bani Singh s/o late Shri Ram Lal
D-208, Anand Vihar,
Delhi - 110 092.

....Applicant

(By Advocate: Shri V.S.R. Krishna)

-versus-

1. Secretary to the Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block,
New Delhi.

3. The Director General of Income Taxes (Vigilance),
Dayal Singh Library,
Rouse Avenue,
New Delhi.

....Respondents

(By Advocate: Shri V.P. Uppal)

ORDER (ORAL)

By Shri Shanker Raju, Member (J):

Applicant impugns respondents' order dated 30.01.2004
whereby, while canceling order dated 17.01.2003, applicant has
been placed under continuous suspension w.e.f. 29.08.1996.



Applicant seeks revocation of suspension from the aforesaid date with accord of posting.

2. Applicant is a Member of Indian Revenue Service. On account of applicant's arrest in a criminal case registered against him under Section 13(1)(e) of Prevention of Corruption Act, 1996 as per the FIR No. 71(A)/96/DLI dated 28.08.1996, he was placed under deemed suspension under Rule 10(2) of the CCS (CCA) Rules, 1965.

3. When the suspension was not revoked and investigation was completed, applicant filed OA No. 2761/1997 before the Principal Bench of this Tribunal. The Tribunal by an order dated 30.11.1998, though not interfered in the matter, directed the respondents to review the order of suspension.

4. Against an order dated 6.8.1999, when on review the suspension was continued, applicant preferred OA no. 833/2000, which was disposed of on 6.02.2001 with a direction to the respondents to re-instate the applicant with immediate effect by according posting. Against the aforesaid order, respondents preferred CWP 3000/2001.

5. In the light of an order passed by the Hon'ble High Court of Delhi in CWP No. 4746/2001 (**Rajeev Kumar vs. Union of India**) on 31.5.2002, the High court of Delhi vide its order dated 1.10.2002 dismissed the CWP leaving open the liberty to the respondents to pass another order of suspension in accordance with law. In compliance thereof, vide order dated 02/03.12.2003,



the respondents reinstated the applicant with effect from the date of the order of the Tribunal dated 06.02.2001 subject to outcome of SLP, if any, to be filed before the Apex Court. Meanwhile, in the light of an order passed by the respondents reinstating the applicant w.e.f. 06.02.2001, the Tribunal vide its order dated 17.12.2002 dismissed the CP No. 153/2001.

6. By an order dated 17.01.2003, in the light of liberty accorded by the High Court of Delhi (Supra), the President, under Rule 10(1) of the Rules ibid passed fresh order of suspension with immediate effect.

7. Respondents preferred Civil Appeal No. 5007-5008 of 2003 before the Apex Court assailing the orders passed by the High Court of Delhi wherein reversing the order passed by the High Court, the Apex Court upheld the continued suspension. However, as regards the fresh order of suspension, liberty was accorded to the respondents therein, i.e., applicant in the present case, to assail this before the Tribunal. This has been done because certain pleas taken before the High Court have not been specifically dealt with.

8. By the impugned order dated 30.01.2004, in the light of order passed in SLP, the President cancelled the order dated 02/03.12.2002 and the applicant was treated under continuous deemed suspension w.e.f. 29.8.1996 and order dated 17.1.2003, placing the applicant under suspension having rendered infructuous, is cancelled.



9. Meanwhile, a charge has been framed by the trial court in a criminal case registered against the applicant under the Prevention of Corruption Act. Applicant had impugned the order dated 17.01.2003, passed by the respondents, in OA No. 269/2003. By an order dated 18.12.2003, the Tribunal dismissed the OA upholding the validity of the impugned order. However, CWP preferred against the aforesaid order has been withdrawn in the light of an order dated 30.01.2004 whereby order dated 17.01.2003 had been withdrawn. This gives rise to the present O.A.

10. Learned counsel for the applicant Shri V.S.R. Krishna contended that once by an order issued in 2002 'deemed suspension' was revoked, the same cannot be given effect to with retrospective effect.

11. Learned counsel Shri Krishna contends that the Tribunal in OA No. 833/2000, without dealing with the issue of Rule 10(2) of the Rules *ibid*, revoked the suspension when the investigation was complete. This has not been overturned by the High Court and the Apex Court has also not considered this issue. The order issued in 2002 in view of the affirmation of the order by the High Court where incidentally the case of the applicant was dealt with the case of one Rajeev Kumar, the deemed suspension had come to an end and cannot be restored back retrospectively.

12. Learned counsel states that placing the applicant under suspension again on 30.01.2004 without any fresh cause of misconduct is without jurisdiction.

13. Shri Krishna states that since the charge has now been framed, all the material is before the court and there is no apprehension of tempering with the evidence or interpolating the records, the continued suspension is without any justification. Learned counsel further states that the applicant has been meted out discrimination as similar situations S/Shri R.K. Shukla, Arvind Mishra and R.K. Mirg, who were facing serious corruption charges, have been put back and are continuing in service. Shri V.S.R. Krishna, learned counsel for the applicant, contends that when a suspended servant is allowed to work, he may not be suspended again as the earlier suspension came to an end and the duty period from 11.2.2002 to 31.1.2003 was treated as deemed suspension. In this backdrop, it is stated that Rule 10(5)(c) of the Rules *ibid*, does not contemplate revocation with conditions.

14. On the other hand, respondents' counsel Shri V.P. Uppal vehemently opposed the contentions and stated that by overturn of the decision of the High Court by Apex Court, it is settled that deemed suspension continues even after release from custody. It is, in this backdrop, contended that what has been done, by reinstating the applicant and issuing a fresh order, is the compliance of the High Court order, which was subject to the final outcome of SLP and as SLP was allowed, there is no illegality in the action of the respondents.

15. Learned counsel Shri Uppal states that as now the charge has been framed in the criminal case, which is grave in nature, continued suspension is justified.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. No doubt, the earlier suspension of the applicant was set aside in OA No. 833/2000 without any reference to Rule 10(2) of the Rules. However, when the aforesaid decision was challenged before the High Court, it was clubbed with the case of one Rajeev Kumar, which was basically decided under Rule 10(2) of the Rules *ibid*. In this view of the matter, the High Court of Delhi vide its order dated 1.10.2002 affirmed the order of the Tribunal in the light of Rule 10(2) but accorded liberty to the respondents to pass a fresh order. This has resulted in compliance of the High Court order and accordingly, the applicant was reinstated in service w.e.f. 6.2.2001 i.e. the date of the order passed by the Tribunal. However, in compliance of the directions of the High Court also, another order under Rule 10(1) of the Rules was passed on 17.1.2003. The applicant continued to work from 3.12.2002 till 17.1.2003.

18. Before the Apex Court, the following observations have been made:

“23. The inevitable conclusion therefore is that the order in terms of Rule 10(2) is not restricted in its point of duration or efficacy to the period of actual detention only. It continues to be operative unless modified or revoked under sub-rule 5(c) as provided under sub rule 5(a).

24. Rule 10(5)(b) deals with a situation where a government servant is suspended or is deemed to have been suspended and any other disciplinary proceeding is commenced against him during continuance of that suspension irrespective of the fact whether the earlier suspension was in

connection with any disciplinary proceeding or otherwise. Rule 10(5)(b) can be pressed into service only when any other disciplinary proceeding is also commenced than the one for an during which suspension or deemed suspension was already in force, to meet the situation until the termination of all such proceedings. In contradiction, Rule 10(5)(a) has application in relation to an order of suspension already made or deemed to have been made. Rule 10(5)(b) has no application to the facts of the present case and no inspiration or support could be drawn for the stand taken for the respondents or the decision arrived at by the High Court. It is Rule 10(5)(a) alone which has application and the deemed suspension would continue to be in force till anything has been done under Rule 10(5)(c). Similarly, Rules 10(3) and 10(4) operate in different fields and merely because a specific provision is made for its continuance, until further orders in them itself due to certain further developments taking place and interposition of orders made by Court or appellate and reviewing authority to meet and get over such specific eventualities in given circumstances and that does not in any way affect the order of suspension deemed to have been made under Rule 10(2).

25. Strong reliance was placed on **Nelson Motis v. Union of India** to contend that omission of the expression "until further orders" in Rule 10(2) was conscious and, therefore, the period covered for "deemed suspension" was restricted to period of detention. Such plea is without substance. In Nelson's case (supra) the respective scope and ambit of Rule 10(2) and Rule 10(3) fell for consideration. As indicated above, the said provisions apply in conceptually and contextually different situations and have even no remote link with a situation envisaged under Rule 10(2). In fact, this Court in the said case categorically observed as under:

"The comparison of the language with that of sub-rule (3) reinforces the conclusion that sub-rule (4) has to be understood in the natural sense" (underlined for emphasis).

26. Another plea raised relates to a suspension for a very long period. It is submitted that the same renders the suspension invalid. The plea is clearly untenable. The period of suspension

should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued merely because it is for a long period that does not invalidate the suspension.

27. Some other pleas were pressed into service to contend that High Court's order is justified. It is submitted that these stands were highlighted before the High Court though not specifically dealt with. Since the High Court has not dealt with these aspects, we do not take the other contentions in account to express any view.

28. Though factually it is undisputed that a fresh order of suspension had been passed in each case, the same relates to a separate cause of action and if any dispute is raised as regards its legality, the same has to be adjudicated by the concerned court or the tribunal, as the case may be, on its own merits and in accordance with law."

19. If one has regard to the above, the deemed suspension has been construed not only operative during the actual detention but till it is modified or revoked under Rules 10(5)(a) and (c) of the Rules *ibid*. However, as the plea on which the Tribunal has earlier allowed the applicant's claim by setting aside the order of suspension was neither dealt with by the High Court or the Apex Court and the respondents in SLP was accorded liberty to assail the order to be passed. However, on challenge of the order dated 17.1.2003 in OA 269/2003, validity of the said order has been upheld and the writ petition filed has been withdrawn in the light of the impugned order.

20. Rules 10(5)(a) to (c) of the Rules *ibid* are reproduced as under:-

"(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.

21. The import of the above is that when a deemed suspension is made, it shall remain in force unless modified or revoked by authorities competent to do so. However, having regard to the observations of the Apex Court in **Rajeev Kumar's** case (supra), a continued suspension or a suspension unnecessarily prolonged has to be justified by plausible reasons and satisfaction arrived at by the authorities that it needs to be continued.

22. As regards legality of the order passed on 30.01.2004 is concerned, this is a natural consequence, import and effect of the Apex Court's order (supra) where the deemed suspension dated 29.08.1996 has been validated with the proposition that deemed suspension would not come to an end and would continue till it is modified or revoked.



23. What has been done vide order dated 02/03.12.2002 is to comply with the orders of the High Court but subject to the outcome of SLP. As in SLP, directions of the High Court are overturned, the applicant continued to be under deemed suspension right from 29.08.1996.

24. The order passed on 17.01.2003 under Rule 10(1) of the Rules ibid is an outcome of liberty accorded by the High Court. As the SLP has been allowed, this order also merged with the Supreme Court's order and is infructuous. Moreover, we are of the considered view that the above order has not been passed under Rules 10(5)(a) & (c) but is a compliance of the directions of the High Court.


25. However, we have gone through the entire pleadings on record and we do not find that the respondents have undertaken an exercise under Rules 10(5)(a) & (c) of the Rules ibid. This we observe in the light that it is mandated upon the respondents in a continued suspension even when deemed suspension on account of a criminal case to record plausible reasons and to arrive at satisfaction as to the continued suspension.

26. In the present case the entire material, which has come forth in the investigation, have already been taken into possession by the Central Bureau of Investigation and after filing a charge sheet a charge has been framed in the trial court. However, the aforesaid charge was set aside by the High Court with liberty to supply documents by an order dated 9.10.2003 but the fact remains that

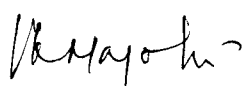


if there is no likelihood of applicant having been tempering with the evidence or interpolating the record, continued suspension has to be justified only after recording reasons and arriving at satisfaction. This aforesaid has not been complied with by the respondents.

27. In the result, OA stands disposed of with a direction to the respondents to review the suspension of the applicant in the light of CCS(CCA) Rules, 1965 by passing a detailed, reasoned and speaking order dealing with all the contentions of the applicant within three months from the date of receipt of the certified copy of this order. No costs.


(Shanker Raju)
Member (J)

/na/


(V.K. Majotra) 16-11-04
Vice Chairman (A)