

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 17TH DAY OF JANUARY, 2002

Original Application No. 137 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Raj Kishore Sharma, a/a 55 years
Son of Late Shri Jhansi
R/o 204/4 Shastri Nagar,
Kanpur.

.... Applicant

(By Adv: Shri K.K.Mishra)

Versus

1. Union of India through
Secretary, Ministry of Defence
New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A Auckland Road,
Calcutta
3. The Senior General manager,
Ordnance Factory,
Kalpi Road, Kanpur.

... Respondents

(By Adv: Shri ASHOK Mohiley)

O R D E R(Oral)

JUSTICE R.R.TRIVEDI,V.C.

By this OA u/s 19 of A.T. Act 1985 the applicant has prayed to quash order No.858 dated 14.3.1995(Annexure 23) passed by the respondents no.3, Senior General manager, Ordnance Factory, Kanpur. By the impugned order it has been provided that there will be no interruption in his service due to suspension from 4.11.1978 to 2.12.1979 and deemed suspension from 3.12.1979 to 20.2.1991 but it will not count towards his leave, increment and pension etc. The order further provides that applicant is also not entitled for any further pay and allowances ~~except~~ ^{from} subsistence allowance and other allowances already paid to him during the period of suspension.

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The facts giving rise to this dispute are that applicant Raj Kishore was serving as H.S.Grade II Machinist in Ordnance Factory, Kanpur. He was subjected to disciplinary proceedings and an order of removal was passed against the applicant on 3.12.1979. The order of removal was challenged in a suit filed in civil court and registered as O.S. No.108/93. The suit was decreed on 30.7.1983 and the order of removal was declared illegal, ineffective and void. The respondents were directed to reinstate the applicant on his post of Machinist. Against the decree of the trial court, Govt. of India filed civil appeal No.497/83. The appeal was allowed on 15.10.1984. Against the order allowing appeal, applicant filed a review application. The review application was transferred to this Tribunal and was registered as TA No.1079/86. The review application was decided on 14.9.1987 and the appellate order dated 15.10.1984 was set aside. As the appeal filed by Union of India revived on the review application being allowed, it was separately registered as T.No.1664/87. The appeal was dismissed on 26.4.1989. However, liberty was given to respondents to initiate fresh disciplinary action against the applicant. The order of this Tribunal dated 14.9.1987 by which review application was allowed, was challenged before Hon'ble Supreme court in SLP No.,6245-48 of 1990. SLP was dismissed on 23.7.1990. Thus, the decree of the trial court passed in favour of the applicant became final. The respondents passed an order on 25.8.1989(Annexure 5) which was to the effect that the applicant was reinstated w.e.f. 3.12.1979 subject to final outcome of S.L.P filed before the Hon'ble Supreme court. The direction was also given to hold a fresh inquiry according to CCS(CC&A) Rules, 1965.

The third direction which is relevant for this order is being reproduced below:

"directs the said Sri Raj Kishore
Ex.T.No.129/GC shall under sub-rule(4)
of Rule 10 of CCS(CC&A) Rules

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1965, be deemed to have been placed under suspension w.e.f. 3.12.1979 i.e. the date of his removal from service and shall continue to remain under suspension until further order."

Thereafter the respondents passed another order dated 8.9.1989(Annexure 4) reinstating the applicant on the post. This order was however subject to S.L.P pending before Hon'ble Supreme court, which was also dismissed on 23.7.1990.

In pursuance of the order dated 25.8.1989 a fresh memo of charge was served on the applicant on 5.1.1990. In these proceedings order was passed by Disciplinary Authority on 21.2.1991 and punishment of removal was awarded against the applicant. The applicant filed OA 454/91 in this Tribunal which was disposed of on 4.12.1992 giving liberty to the applicant to file appeal. Appeal was filed on 25.2.1993 which was partly allowed by Appellate Authority vide order dated 27.12.1993, and the penalty was moderated and in place of removal reduction in rank was awarded against which applicant has already filed OA 728/96 which is pending in this Tribunal. It is not disputed before us that after the appellate order applicant has joined the service and as the applicant was reinstated the impugned order has been passed with regard to the period during which the orders of removal against the applicant were effective and he was not in actual service.

Shri K.K.Mishra learned counsel for the applicant has submitted that the order dated 26.4.1989 passed by this Tribunal by which appeal of the respondents against the decree dated 30.7.1983 was dismissed, gave liberty only to take fresh action

against the applicant. It is submitted that in case of fresh inquiry, there was no question of any deemed suspension against the applicant. The Rule regarding deemed suspension could be applied only in case the same proceedings were allowed to continue further. In support of this submission learned counsel has placed reliance in a judgement of this Tribunal in case of'

Anand Singh Vs. Union of India and Others, (1995) 30 ATC-660.

Learned counsel has further submitted that while passing the order dated 27.12.1993 partly allowed the appeal of the applicant against the order of removal, and it was legally necessary to pass order taking into account the period during which the order of removal was in effect. The order with regard to such period cannot be passed after a long gap of time and the order dated 14.3.1995 with regard to the period of 4.11.1978 to 2.12.1979 and 3.12.1979 to 20.2.1991 are illegal and without authority.

Reliance has been placed for this purpose in a case 'Giridhar Lal Vs. Delhi Administration, Delhi & Ors, (1993) 25 ATC-321 and

'Basant Ram Jaiswal Vs. Area Manager(North) Maha Nagar Telephone Nigam Ltd, Mumbai Telephones, (1993) 24 ATC-641. Learned counsel

has also placed reliance on an unreported order of this Tribunal dated 31.8.1995 passed in OA 441/94 Dev Raj Tewari Vs. Union of India and Others. The submission of the learned counsel is that for the aforesaid reasons the impugned order is liable to be quashed.

Shri Ashok Mohiley, learned counsel for the respondents, on the other hand, has submitted that Hon'ble Supreme Court in case of 'Nelson Motis Vs. Union of India and Anr, 1993 SCC(L&S) pg.-13 = 1992(4) SCC - 711', has discussed in detail the situations where order of deemed suspension shall be passed under Rule 4. It is submitted that the cases which attract sub-rule(4) are those where the penalty imposed on the government servant is set aside on technical ground not touching the merits of those cases. In the present case, also the order of punishment was set aside on

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technical ground.

on question of delay it has been submitted that the order regarding deemed suspension with regard to the period 3.12.1979 onward was already passed by the respondents on 25.8.1989 which has not been challenged, anywhere and the fact that same order has been repeated in the impugned order does not bring any change and the applicant has rightly been treated under deemed suspension during the period earlier order of removal was in effect. In short, submission is that there is no delay. Shri Mohiley also invited our attention towards the averments made in para 27 of the counter affidavit wherein it has been stated that the applicant has already been paid subsistence allowance for the period 3.12.1979 to 25.8.1989. The amount paid was Rs52,645/- . The payment of this amount is not disputed by the applicant.

We have carefully considered the submissions of the counsel for the parties.

The question for determination is as to whether the provisions contained in sub rule(4) of the Rule 10, regarding deemed suspension of the delinquent employee could be applied in the facts of the present case. It is not disputed that the order of removal passed against the applicant was declared null and void and illegal by the civil court as the authority passing the order was found incompetent for the same.

The impact of decree of civil court, thus was, that entire proceedings including service of memo of charge became without authority. It was for this reason that in appeal filed against the decree of civil court, this Tribunal while dismissing appeal, gave liberty to respondents for a 'fresh action' and not to continue the same proceedings further from any stage. Sub rule(4) of Rule 10 of CCS(CC&A) Rules, 1965, application of which is in question is being reproduced below:-

" Where a penalty of dismissal, removal or

compulsory retirement from service imposed upon a government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such 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"

In the circumstances, we find force in the submission of the learned counsel for the applicant that in the present case order of deemed suspension could not be passed by the respondents. After the order of removal was set aside he was entitled for reinstatement in service with full salary and allowances.

The Division Bench of Jodhpur Bench of this Tribunal, in case of 'Anand DSingh Vs. Union of India and Ors(Supra) has drawn a distinction that Rule 10(4) of Rules 1965 will not be applicable where court has given liberty only to hold a fresh inquiry and not further inquiry. The direction in the present case was to hold fresh inquiry. From the facts and circumstances of the case it can be very well inferred that as the authority which passed the order of removal was not competent, he could also not initiate the disciplinary proceedings by serving the memo of charge. The effect of the decree was that the finding recorded against the applicant also became without authority and could not be counted for any purpose. It was for this reason that this Tribunal gave liberty only for a 'fresh inquiry'. Hon'ble Supreme Court in case of 'Nelson Motis', was examining the constitutional validity of the provisions of Rule 10(3), if the order of suspension was there it shall be deemed to have continued if the order of dismissal is removed or set aside the appeal of review. The applicability of Rule 10(4) on the basis of distinction between a fresh inquiry,

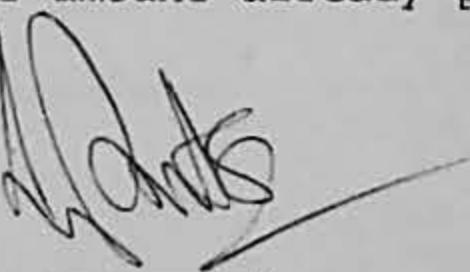
and 'further inquiry' was not before Hon'ble Supreme Court in case of 'Nelson Motis'(supra), hence the judgement is distinguished. On the part of the respondents no other order of judgement has been placed before us where view contrary to that of 'Anand Singh's case' has been taken with regard to Rule 10(4).

Shri Ashok Mohiley, learned counsel for the respondents also submitted that the order was passed on 25.8.1989 treating the applicant under deemed suspension for the period 3.12.1979 onward which has not been challenged. It is true that the order was passed on 25.8.1989 but the respondents passed another order reinstating him on the post w.e.f. 8.9.1989. The occasion for passing the impugned order dated 14.3.1995 only came after the appellate order dated 27.12.1993. In our opinion, it was not open to the respondents to pass this order covering the period from 4.11.1978 to 2.12.1979 and then from 3.12.1979 onwards for which order was already passed on 25.8.1989. By the impugned order the applicant has been further put to disadvantage as the period will not be counted towards his leave, increment and even for pension etc which was not provided in the order dated 25.8.1989. Thus, we are of the opinion that the respondents have passed altogether a new order having fresh impacts on the interest of the applicant and the order, is thus, liable to be quashed. It cannot be said that the order simply carried the effect of the order

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dated 25.8.1989. It may also be noticed that fresh order of removal dated 21.2.1991 remained in force till 27.12.1993. The Appellate Authority provided that the intervening period between the date of removal and the date of reinstatement should be treated as dies-non, which is not in question before us, and will not be affected by this order. In our opinion, the applicant is entitled for relief. As the applicant is entitled to succeed on the first question it does not appear necessary for us to enter into consideration of the second question regarding delay in passing the order.

For the reasons stated above, the impugned order no.858 of 14.3.1995 is quashed. The applicant shall be deemed to have been reinstated during the entire period the earlier order of removal dated 3.12.1979 was in effect(except for the period 25.8.1989 to 8.9.1989) and shall be paid pay and allowances for which he would have been entitled under rules. The amounts which are due to the applicant shall be paid to him within a period of six months after deducting the amount already paid. There will be no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: Jan: 17th, 2002

Uv/