

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 886 of 1986

Union of India Defendant-Appellant-Applicant.

Versus

Mannu Lal Plaintiff-Respondent.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

Civil Appeal No.244 of 1985 arising out of the judgment and decree dated 9.5.1985 passed by the II Additional Munsif, Kanpur, in Suit No.1053 of 1984, Mannu Lal v. Union of India, in favour of the plaintiff, has been received on transfer from the court of District Judge, Kanpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The defendant-appellant, Union of India, has come up in the appeal on the grounds that the court below had failed to appreciate that the powers of the disciplinary authority and appointing authority stand delegated to the Commandant, C.O.D., Kanpur and he was fully competent to suspend the plaintiff-respondent under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and that the court had erred in holding that the disciplinary authority and the appointing authority of the plaintiff-respondent was Director General, Ordnance Services, and that suspension period was unduly delayed by the defendant-appellant while as a matter of fact the delay was due to the non-cooperative attitude of the plaintiff-

respondent.

3. The plaintiff-respondent's case is that he was appointed in C.O.D., Kanpur on 29.2.1964 as a Civilian Tailor. He was a member of the union and used to agitate against the wrong actions of the administration. He was suspended by the Commandant. He had appealed against the order but his appeal was dismissed. The suspension continued for a long time and beyond the stipulated period. The Commandant, C.O.D. was not competent to suspend him. Hence the order was bad. The defendant-appellant's case is that the plaintiff-respondent was not a member of any union prior to 13.4.1983. He was suspended by a competent officer. There was no malice as alleged. The delay in issue of the charge-sheet which resulted in the prolongation of the suspension period was due to the non-cooperation of the plaintiff-respondent in giving his statement in the preliminary enquiry.

4. The learned trial court had held that as laid down in Rule 10(1) of C.C.S.(C.C.& A.) Rules the suspension could be done by 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 a general or special order, but it has been done by the Commandant, who is in the rank of Brigadier, and since he was appointed by the Director of Ordnance Services/could only by passed by him and he could only act as the disciplinary authority. The only contention raised by the counsel for the defendants in trial court was that a suspension order did not belong to the same category as a punishment order and it could be issued by the

Commandant. No other evidence was led by the defendants. The learned trial court had also held that since the suspension order was continued beyond the limits laid down in Government orders without issue of charge-sheet it was bad in law.

5. In the submissions made at the bar it was contended by the learned counsel for the plaintiff-respondent that the Delegation of powers made in 1979 was not produced in the trial court and fresh documents should not be permitted to be taken into consideration now. The learned counsel further emphasized that the Rule 10(1) of CCS(CCA) Rules was explicit and 'appointing authority' has been defined in Rule 2(a)(i) and (ii) with reference to Rule 9(i), and that the plaintiff-respondent did not belong to the Central Civil Services and hence is not covered by Rule 12(2)(³~~1~~). The learned counsel for defendant-appellant reiterated his contentions that the order was passed by the competent authority in terms of the delegations made by the Army Headquarters letter of 8.12.1971 and 13.8.1979.

6. The 8.12.1971 letter of Army Headquarters is on the subject of Delegation of Powers - Civilians in Defence Services - under CCS (CCA) Rules, 1965. It reads :-

"Under the provisions of sub rule 1 of rule 9 of CCS (CCA) Rules 1965, the powers to make first appointment in respect of class III and IV civilians employed in lower formations under the DOS hereby delegated as under :-

(a) Centrally controlled class III and IV civilian employees.

Officer Incharge
AOC Records.

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|---|---|
| (b) Locally controlled class III and IV civilian employees. | Commandant/CCO/OC of respective depots/Units. |
| (c) Class III and IV civilian employees in Command Stationary Depots. | BSAOC of respective Command. |

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This letter gives powers to the Commandants of Ordnance Depots to appoint locally controlled class III & IV civilian employees.

7. By the Ministry of Defence's order of 13.8.1979 issued in exercise of powers conferred by clause (a) of sub-rule (2) of Rule 12 and clause (1) of Rule 24, the President empowered certain authorities listed in the order to impose penalties specified in sub-rules (i) to (ix) of Rule 11 of the Rules and to act as appellate authorities as shown against the respective disciplinary authorities. For locally controlled employees Commandants can impose all the penalties and the appellate authority is the Director, Ordnance Services.

8. The trial court had held that the Commandant could not suspend the plaintiff-respondent. It is this decision that is sought to be set aside. The plaintiff-respondent was appointed in the COD, Kanpur on 29.2.64. He was suspended on 13.4.1983. Rule 10(1) of CCS (CCA) Rules says that the appointing authority or any authority to which ^{it} is subordinate or the disciplinary authority or any other authority empowered on that behalf by the President by a general or special order may place a Government servant under suspension.

9. Appointing authority in the case of the plaintiff-respondent at the time when he was appointed

in 1964 was the Director. Commandants were delegated the power of appointing class III & IV locally controlled civilian employees in 1971. We cannot but agree with the submission of the learned counsel for the plaintiff-respondent that in his case the Commandant did not appoint him. Delegation of authority in 1971 cannot undo the fact of the original appointment by the Director in 1964. Director is the higher of the two. The plaintiff-respondent was a permanent member of the Service. According to Rule 2(a)(iv) in relation to a Government servant the 'appointing authority' means -

"Where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post."

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The Director^{or Rad} appointed him and thus he was the appointing authority and not the Commandant. The trial court's findings in this regard are, therefore, not incorrect.

10. The delegation of powers made on 13.8.1979 is in exercise of the powers conferred by clause (a) of Rule 12(2) and clause (i) of Rule 24. By these clauses the President can empower any other authority by a general or special order for imposition of any of the penalties specified in Rule 11. Rule 12(2)(a) concerns members of a Central Civil Service other than General Central Service. Rule 24(i) refers to Central Civil Service Group 'A' or Group 'B' or a holder of Central Civil Post Group 'A' or Group 'B'. The contention of the learned counsel for the plaintiff-respondent is that this delegation is not applicable to him as he is a

member of Central Civil Post and not Central Civil Service. The Central Civil Post is covered by Rule 12(2)(b) and not by Rule 12(2)(a) under which the delegation has been made. In the delegation 'Locally Controlled Group 'C' & 'D' employees other than those employed in Command Stationary Depots' are covered. They can be imposed any of the penalties specified in Rule 11 by the Commandants of the respective Depots. The delegation order is in respect of Group 'C' & 'D' Defence Civilian employees of the Army Ordnance Corps under control of Director of Ordnance Services, MCO's branch, Army HQ. The fact is that it was necessary for the President to make a general or special order and he has made it and it covers the Locally Controlled Group 'C' & 'D' employees. It cannot, therefore, be accepted that since the order quotes Rule 12(2)(a) and does not mention Rule 12(2)(b) the inclusion of the Group 'C' & 'D' employees in the schedule given in the order will not hold good. It is a mere technicality and cannot result in the delegation becoming restrictive to only members of Central Civil Service once the order gives details of ~~and~~ ^{as and the powers have been delegated by the President.} the categories covered by it. It is not plaintiff-respondent's plea that he does not belong to the category of 'Locally Controlled Group 'C' & 'D' employees. This submission made, therefore, falls through.

11. But once the appointing authority is the Director of Services and the suspension order could only be issued by the appointing authority, even if the delegation had been made in 1979 to the Commandant, he could not suspend the plaintiff-respondent. In that case he will violate the rule since he is not the appointing authority. He could not have exercised the

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delegated power in respect of the plaintiff-respndent and was debarred from doing so.

12. On the above considerations, the appeal must fail. The appeal is accordingly dismissed. The judgment and decree of the trial court in Suit No.1053 of 1984, Mannu Lal v. Union of India, is upheld. Parties will bear their own costs throughout.

[Signature]
Vice-Chairman.

Dated: September 29, 1987.

PG.

[Signature]

Member (A).