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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.233 of 1987

Salik Ram Applicant

Versus

Secretary to Govt. of India, Respondents
Ministry of Defence, New Delhi
and two Others.

Hon. Ajay Johri, A.M.
Hon. G.S.Sharma, J.M.

(By Hon.G.S.Sharma, J.M.)

The applicant who has filed this petition under Section 19 of the Administrative Tribunals Act XIII of 1985 had joined the Ordnance Depot Allahabad in December, 1983 as a Mazdoor (Labour). Certain other persons were also appointed as Mazdoor with him and the names of all the candidates were sponsored by the Employment Exchange, Allahabad. On a complaint by one other person of the same name Salik Ram S/O Ram Sumer Yadava to the effect that actually his name was sponsored by the Employment Exchange and the person (applicant) appointed by the respondents was given ^{the} ~~a~~ wrong appointment. After having their satisfaction the respondents summarily dismissed the applicant from service vide order dated 11.6.1984 which was served on him on 13.6.1984. Aggrieved by this order the

applicant challenged the validity of the order of his dismissal before the High Court of Judicature at Allahabad by filing Civil Misc. Writ Petition No.7917 of 1984 on the ground that he was not given an opportunity of hearing before his dismissal. This argument was accepted by the Hon'ble High Court and vide its order dated 18.4.85 the dismissal order dated 11.6.1984 was quashed and the respondents were granted liberty to proceed against the applicant afresh in accordance with law . The applicant was accordingly reinstated in service on 27.5.1985 by the respondents but on the same date he was suspended under Rule 10 (1) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as C.C.A.Rules). He preferred an appeal against the order of his suspension on 4.1.1986 which is still stated to be pending. In this petition the applicant has claimed arrears of his pay from 14.6.84 to 27.5.1985, revocation of the suspension order dated 27.5.1985 and for his reinstatement with all consequential benefits with the allegations that his suspension is illegal being in contravention of the orders passed by the High Court in the aforesaid Writ Petition and as he was not under suspension before his dismissal he could not be placed under suspension this time and Rule 10(1) of C.C.A. Rules is not applicable to him.

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2. The petition has been contested on behalf of the respondents. In the reply filed by their Administrative Officer, Ordnance Depot, Fort, Allahabad it has been stated that the appointment of the applicant was void from the very beginning and his name was not at all sponsored by the Employment Exchange and only when a complaint was received from the real candidate Salik Ram necessary investigation was made and on getting a report from the Employment Officer the services of the applicant were dispensed with. The applicant was rightly placed under suspension under Rule 10 (4) of C.C.A. Rules and he is not entitled to any relief. The respondents have not disobeyed the orders passed in the Writ Petition by the High Court and the applicant is not entitled to any relief.

3. In the rejoinder filed by the applicant it was stated by him that in fact his name was sponsored by the Employment Exchange and there was no irregularity in his appointment. As he was removed from service without giving him any opportunity, the order of his removal was set aside by the High Court and the respondents have clearly disobeyed the orders of the High Court by placing him under suspension without paying the arrears of his pay to which he became entitled on the setting aside the order dated 13.6.1984 of his dismissal.

4. At the time of arguments it was conceded on behalf both the parties that a disciplinary enquiry as permitted by the High Court in the Writ Petition was initiated by the respondents against the applicant after placing him under suspension. It has also not been disputed on their behalf that no ~~subversion allowance~~ arrears of the pay have been paid to the applicant by the respondents and he continues to be under suspension from 27.5.1987. We will first like to consider import of the order passed by the Allahabad High Court in the Writ Petition No. 7917 of 1984 filed by the applicant. Annexure-I to this petition is the copy of the said order. The operative portion of the order runs as follows :-

" In the result this petition succeeds and is allowed. Order dated 11th June, 1984 is quashed. It shall be open to opposite party to proceed against petitioner in accordance with law. Petitioner shall be entitled to its costs. "

The order shows that the order dated 11.6.1984 dismissing the applicant from service was quashed by the High Court without giving any direction regarding the payment of arrears of salary to him. The High Court had clearly permitted the respondents to proceed against the applicant afresh in accordance with law and the respondents accordingly initiated the

disciplinary proceedings against the applicant for the fraud or illegality committed in connection with the appointment of the applicant as Mazdoor. In such a case Sub-Rule (4) of Rule 10 of C.C.A. Rule will apply. For the sake of convenience this Sub-Rule is 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 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. "

5. In our opinion the suspension of the delinquent whose dismissal or removal from service is set aside by the Court of law, will automatically follow in case it is decided to hold a further enquiry against

him on the allegations on which he was originally dismissed or removed from service. It was therefore not necessary for the respondents to pass a specific order placing the applicant under suspension by impugned order dated 27.5.1985. The provisions of Sub-Rule (4) of Rule 10 of C.C.A. Rules are mandatory and even in the absence of the impugned order the applicant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of his dismissal and he will continue to remain under suspension until further orders.

6. It was contended on behalf of the applicant that he was not suspended under Sub-Rule (4) but was suspended under Sub-Rule (1) of Rule 10 of C.C.A. Rules and his suspension under Sub Rule (1) is illegal. No doubt, the impugned order shows that the applicant was placed under suspension under Sub-Rule (1) but in the reply the respondents have stated that he was suspended under Sub-Rule (4) of Rule 10 of the C.C.A. Rules. In our opinion, in view of the mandatory provisions of Sub-Rule (4) the mistake pointed out by the applicant in the impugned order of suspension is meaningless and cannot help the applicant and he shall be deemed to be under suspension with effect from the date of his original dismissal. The suspension order therefore cannot be held to be illegal nor can be revoked on this ground.

7. The High Court had not specifically passed any order regarding the payment of arrears of his pay to the applicant and in the absence of such direction the relevant provisions of rules have to be applied. As the applicant has been deemed to be under suspension there is no question of paying the salary for the period of his absence from the date of his original dismissal till the date he was specifically placed under suspension vide order dated 27.5.1985 and he is entitled to get only the subsistence allowance for the period of suspension according to the provisions of F.R. 53.

8. It was contended on behalf of the applicant that he is under suspension for more than two years and as the disciplinary enquiry has not been concluded so far his suspension should be revoked by the Tribunal. We agree with the contention of the applicant that there has been undue long delay in the finalization of the disciplinary action against him. We were however informed by Shri Ashok Mohiley, the learned Additional Standing Counsel for the respondents that the disciplinary proceedings are likely to be concluded very soon. Instead of revoking the suspension on the ground of delay we, therefore, direct the respondents to conclude the proceedings now latest by December 31, 1987,

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failing which the suspension of the applicant shall stand revoked. The relief of reinstatement claimed by the applicant cannot be granted to the applicant at this stage. The applicant is not entitled to any other relief in this petition.

9. The petition is disposed of accordingly without any order as to costs.

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10.11.87.
Member (A)

Marwa
10/11/87
Member (J)

Dated the 16th Nov., 1987

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