

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

Original Application No. 132 of 1992

## Versus

2. Original Application No. 241 of 1992

## Versus

Union of India & Others . . . . . Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

( By Hon'ble Mr. Justice U.C. Srivastava, VC)

As the pleadings are complete, the cases are being heard and disposed of together as identical question arise in these two cases.

2. The applicants are challenging the validity and legality of the order dated 31.7.1991 passed by the General Manager, Ordnance Factory, Kanpur. The applicants were permanent Defence employees and were posted as orderlies under respondent No. 2. Their services were terminated vide order dated 18.3.1975 against which the applicant A.K. Mishra filed O.A. No. 747 of 1987, A.K. Misra Vs. Union of India and others before this tribunal. The tribunal, vide its judgement dated 17.5.1991 allowed the application and quashed the orders dated 18.3.1975 and 4.1.1985, but with the respondents were left of liberty to proceed with the enquiry again after providing fresh opportunity of hearing to the applicant to appear in the fresh enquiry. In O.A. No. 747 of 1987 challenge was made on various ground including that reasonable opportunity was not afforded to the applicant as defence counsel of the applicant was not informed of the date, the order was passed by the

authority who was not competent to pass the order and that a copy of the enquiry report was not supplied to the applicant. On the application of the applicant dated 8/10.7.1991 alongwith the copy of the judgement allowing the application and setting aside removal order with liberty to take fresh proceeding; the respondents vide order dated 31.7.1991 passed an order placing the applicant under suspension from the date of removal i.e. 18.3.1975 retrospectively. The applicant was not suspended earlier viz. during the period of proceeding till the date on 18.3.1975 on which date the order of removal was passed; as such it has been contended that provision as quoted in the impugned order of sub-rule 4 of Rule 10 of C.C.S.(C.C.A) Rules, 1965 was not attracted. According to the applicant, the respondent no. 2 has deliberately misinterpreted the Rules 10(4) to flout the order passed by this tribunal quashing the removal order. The applicants represented against the order dated 31.7.1991 and filed certain representations in this behalf, but without any result that is why he approached this tribunal. On behalf of the applicants it has been contended that the order dated 31.7.1991 is illegal, arbitrary and without jurisdiction. It has further been contended that where a penalty of dismissal, removal or compulsory retirement from service is imposed upon a Government Servant is set aside by a decision of Court and the authority decides to hold a further enquiry on the same allegations on which he was originally penalised, the Government servant shall be deemed to have been placed under suspension from the date of the original order; but not in every case including when the employee was not under suspension earlier. It

has been pointed out that these deeming provisions as laid down in the sub-rule 2,3, and 4 of Rule 10 of C.C.S. & (C.C.A.) Rules, 1965 mention a similarity of suspension automatically and due to suspension of the Government Servant in contemplation prior to original disciplinary proceeding. There is no provision in law to place a Government servant <sup>was</sup> under suspension whose initial penalty/set aside by a court of law. A reference has been made by the applicant to the case of H.L. Mehra Vs. Union of India and others A.I.R. 1974,S.C. 1281 in support of the contention that a fresh order can not be passed having retrospective effect; and the applicant contended that the order dated 31.7.1991 is illegal arbitrary and without jurisdiction and therefore, the applicant has prayed that the order dated 31.7.1991 be quashed and the applicant be treated to be re-instated with effect from 18.3.1975 with back wages and all consequential benefits.

3. It has been contended on behalf of the respondents that the judgement of this tribunal dated 17.5.1991 had left it open for the disciplinary authority to proceed with the enquiry after providing a fresh opportunity to the applicant to appear in the fresh enquiry. Accordingly, an order was

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passed dated 31.7.1991 whereby the applicants were deemed to be under suspension in terms of Rule 1 (4) of the C.C.S.(C.C.A.) Rules, 1965. The respondents have further contended that before passing an order of deemed suspension under Rule 10(4) of the C.C.S. &(C.C.A.), Rules, it is not necessary that the applicant should have <sup>been</sup> under suspension during the previous proceedings till the date of order of removal dated 18.3.1975. A perusal of Rule 10(4) of the C.C.S.(C.C.A.), Rules 1965 makes it clear that whenever a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside by a Court of Law and the Disciplinary Authority decides to hold a further enquiry against the employee or 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.

4. In the instant cases the applicants were not under suspension and as such an observation made by the Supreme Court regarding the exception of as they were not circumstances will apply in the case of applicants, /

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under suspension; and in this connection a reference was made to the case of H.L. Mehra Vs. Union of India & Others (A.I.R. 1974, Supreme Court page 1281). In the said case the appellant was suspended vide order dated 11.4.1963 pending a criminal prosecution, later on the departmental proceeding was also started on 8.3.1965 that is some two years after till suspension order. The charges which were different. The applicant was convicted of a criminal charge and his conviction was confirmed by the High Court in appeal and during the pendency of the appeal before the Supreme Court an order was passed on 26.6.1976 dismissing him from service. In the criminal case, the appellant was acquitted by the Supreme Court and the president passed the order dated 9.6.71 under Rule 10(5)(b), (i) setting aside of the order of dismissal (ii) continuance of the pending departmental enquiry till finalisation and (iii) continuance of the suspension until further order". In this connection, it was held that :

" two conditions must co-exist before action can be taken under Rule 10(5)(b): one is that the Government servant must be under continuing suspension and the other is that during the continuance of such suspension "any other disciplinary proceeding" should be commenced against him. When the order of dismissal was passed on 26.10.67, the order of suspension dated 11.4.63 ceased to exist and it did not revive thereafter by the subsequent setting aside of the order of dismissal by the first part of the impugned order. In the circumstances the impugned order continuing suspension could not be justified under Rule 10(5)(b). Neither could be, the order continuing the suspension be justified under Rule 10(3) or (4), nor sustained by reference to Rule 10(5)(a)."

5. On behalf of the respondents it was contended that the facts of the H.L. Mehra's case were different as it was the case arising out of the conviction and that suspension order earlier existed, and in the instant case as the applicant has been re-instated in service and an enquiry is to take place, the respondents were within their right to pass a fresh suspension order as provided under Rule 4. A reference was made in the case of Mahender Singh Vs, Union of India and another(1991 Supreme Court Cases (L&S) 1170), the Hon'ble Supreme Court has laid down three requirements for the application of Rule 10(4):

- (i)" The Government servant is dismissed removed or compulsorily retired as a measure of penalty."
- (ii)" A penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of Court of Law."
- (iii) "The disciplinary Authority decides to hold a further enquiry against the Government servant on the allegations on which the original order of penalty was imposed."

If these requirements are satisfied then the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders. In the Mahinder Singh case three requirements of the Rules have been pointed out but when a person can be deemed to be under suspension no such requirement that if court of law or in the tribunal itself direct holding a further enquiry

beyond a particular stage will also be condition under which a person could be deemed to be under suspension has not been passed. A reference has also been made in the case of S.P. Vishwanathan Vs. Union of India and others reported in 1992(S.C.C.(L & S)-137 in which case a reference was made to the case of Khem Chandra A.I.R. 1958 S.C. page 300, the case was under Rule 5(4) of the Railway Service(Disciplinary & Appeal) Rules 1968 in which ~~exists~~ validity of said Rule was upheld. The provision for consideration was Rule 12(4) of the Central Civil Services classification and control Rules 1957. Rule 12(4) which has now been substituted by same parts of the Rule 10(3) & (4). The Rules 12(3) &(4) reads as follows:

- (12(3) "Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders."
- 12(4) There is no difference worth the name between the effect of Rule 12(4) on a government servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is decided upon and the effect of Rule 12(4) on another government servant, a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases, the government servant will be deemed to be under suspension from the date of the original order of dismissal except that where in a departmental enquiry a government servant was not placed under suspension prior to the date when the penalty was imposed this result will not follow, as Rule 12(3) would not then have any operation. It is entirely unlikely however that ordinarily a government servant will not be placed under suspension prior to the date of his dismissal".

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The some amendment has been made in rule 12(4). The proviso was added on 7 September, 1981. The minor amendment which has made in rule 12(3) & (4) do not affect the legal position at all.

6. As a matter of fact the tribunal quashed the punishment order but observed that the same will not preclude the disciplinary authority from going ahead with the enquiry proceeding beyond the stage of giving enquiry Officer's report. The applicant was not under suspension before the punishment order which was quashed was passed and as such he could not have been placed under suspension <sup>and</sup> as such rule 10(4) will not be invoked, rule 10(5) will also be not applicable. In case when an employee is not under suspension earlier and the punishment order is quashed and the enquiry directed to proceed beyond the particular stage, the employee can not be placed under suspension or can not be deemed to be under suspension and accordingly the suspension order which has been passed is violative of Rule 10(3) and (4) of the C.C.S. (C.C.A.) Rule 1965; and accordingly the suspension order is without jurisdiction and manifestly illegal and the suspension order in both the case deserves to be quashed and accordingly is quashed.

Sd.

Member (A)

Sd.

Vice-Chairman

Allahabad dated: 27.7.1992.

(RKA)

Prepared on

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6/11/92