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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 110/2005
Date of order: 10.11.2006

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Shri Y.V. Jain son of Shri Ishwardas Jain, S.E., C.W.E., Air Force, Bikaner, under suspension headquarter at Jaipur, resident of 4/88 S.F.S., Agarwal Farm, Jaipur.

...Applicant.

Mr. Mahesh Bora, counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Government of India, Raksha Bhawan, New Delhi.
2. Deputy Secretary, Ministry of Defence, Government of India, Raksha Bhawan, New Delhi.
3. Chief Engineer (Military Engineering Services), Power House Road, Banipark, Jaipur.

...Respondents.

Mr. B.R. Mehta, counsel for respondents and Mr. M. Godara, Advocate brief holder for Mr. Vinit Mathur, counsel for respondents.

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri Y.V. Jain, the applicant, has invoked the jurisdiction of this Bench of the Tribunal by filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, wherein he has prayed for the following reliefs: -

" In view of the facts mentioned in para 4 and the grounds in para No. 5 the applicant prays that the order dated 14th December 2004 (Annexure A/7) may be quashed including the corrigendum dated nil dated January, 2005."

2. We have heard learned counsel representing the contesting parties at a considerable length and carefully perused the pleadings as well as the records of this case.

[Signature]

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3. The material facts necessitating filing of this Original Application, are that the applicant while working on the post of Superintending Engineer, C.W.E., Air Force, Bikaner was placed under deemed suspension with effect from 26.05.2001 vide communication dated 9th July 2001 under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity, the Rules). He remained under Police custody from 25.05.2001 to 28.05.2001 for more than 48 hours. A notification came to be issued on 23.12.2003 vide which the rule 10 of the Rules came to be amended and sub rule 6 and 7 were inserted. As per the new provisions, a review committee was to be constituted and on the recommendations of the review committee, the suspension period was to be reviewed after 90 days and after 180 days. The case of the applicant was reviewed and his suspension was extended vide order dated 11.08.2004 for a period of 180 days from 02.06.2004 to 01.12.2004. The applicant's suspension period was not extended thereafter. He gave his joining report to the Chief Engineer, Jaipur Zone on 02nd December 2004 but he was not allowed to resume his duties and was not given work though he started attending the office regularly.

4. The further facts of the case are that the applicant received a communication dated 5th February 2005 annexing thereto a letter dated 14th December 2004 to the effect that the petitioner's suspension was further extended from 01.12.2004 to 30.05.2005. The order dated 14th December 2004 was issued after the expiry of the earlier extended period and therefore was not valid. The Original

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Application has been filed on numerous grounds mentioned in para 5 and its sub-paras.

5. The respondents have contested the case and have filed a detailed reply to the Original Application. It has been averred that the suspension period of the applicant was extended from time to time by the Competent Authorities of the department and in the same sequence the order dated 14.12.2004 was issued whereby the period of suspension of the applicant was extended by another 180 days in the same manner as was done earlier vide order dated 11.08.2004 and therefore there is nothing wrong with the order passed by the competent authority of the department and merely because the order of extension was passed after 01.12.2004, the applicant would not get any benefit of reinstatement. It has been further averred that as per the Rules, the suspension is required to be revoked through specific order by the competent authority of the department and until the same is so revoked, the suspension shall continue and the reinstatement is not automatic. The grounds raised in the Original Application have been generally denied. The same is followed by a rejoinder wherein certain legal aspect of the matter has been elaborately discussed. It has also been mentioned that in fact the first extension of suspension order dated 11.08.2004 was also bad in the eyes of law.

6. Learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the applicant. He has submitted that the extension order issued vide Annexure A/4 dated 11.08.2004 was also not in order since the suspension was extended after the expiry of the earlier suspension period. He has made us to

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traverse through the office memorandum dated 07th January 2004 as well as the notification dated 23 December 2003 and has submitted that the rule 10 (7) of the Rules specifically envisages that the review is required to be carried out before the expiry of the period of suspension. Since the review has not been carried out during the extended period of suspension, the further extension is contravention to the mandatory provisions of the statutory rules.

7. Per contra, Mr. B.R. Mehta, learned counsel for the respondents has submitted that the action of the respondents is well in consonance with the rules in force and once extension has been given, the applicant cannot complain of any illegality in the matter. He was supported by Mr. M. Godara, Advocate brief holder for Mr. Vinit Mathur, counsel for respondents, who elaborately discussed and drawn our attention to Rule 10 (5)(a) of the rules and submitted that unless and until a specific written order is passed, one would be continued under suspension and since no order of revocation of the suspension has been passed in case of applicant, no fault can be fastened with the action of the respondents. The respondents have not committed any illegality in the matter and the Original Application does not have any force.

8. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, it is true that the suspension period of the applicant was extended upto 01.12.2004 and thereafter it has been extended only vide order dated 14.12.2004 for a further period of 180 days. Therefore, the case of the applicant has neither been reviewed nor extension order passed within the period of extended period of

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suspension i.e. upto 01.12.2004. Now, we would advert to the legal aspect of the matter. To appreciate the controversy, the contents of relevant provisions of rules i.e. sub-rule 5(a), 6 and 7 of the rule 10 of the Rules are extracted as under: -

"(5) (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) and (C). xxx

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of 90 days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding 180 days at a time.

(7) Notwithstanding anything contained in sub-rule 5 (a), an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of 90 days unless it is extended after review for a further period before the expiry of 90 days."

9. In the instant case, learned counsel for the applicant has laid a great emphasis on rule 10(7) of rules and has submitted that this provision shall take ride over other provisions since the same starts with non obstante clause. The matter regarding to the interpretation of non obstante clause came up before the Hon'ble Apex Court in the case of **State of Bihar vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and others** reported in 2005 SCC (L&S) 460 wherein their Lordships of the Hon'ble Supreme Court in para 45 have held as under: -

"45. A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs.

(See Principles of Statutory Interpretation, 9th Edn., by Justice G.P. Singh - Chapter V, Synopsis IV at pp. 318 and 319.)."

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10. A conjoint reading of the aforesaid provisions makes it evident that the provision starting with non obstante clause shall have overriding effect on all other provisions. In the instant case, we find that it has been specifically said that sub-rule 5(b) of rule 10 of rules would not be given effect to when the sub-rule 7 comes into play. Therefore, the contention of learned counsel for the respondents cannot be countenanced. In this view of the matter, the contention of the learned counsel for the applicant are well founded and the action of the respondents shall have to be declared as illegal and inoperative. However, we are examining the validity of earlier order dated 11.8.2004 since there is no pleading to this effect.

11. In the premises, the Original Application has ample force and deserves acceptance. The same stands allowed accordingly. The impugned order dated 14th December 2004 (Annexure A/7) including the corrigendum issued in January 2005 is hereby quashed as per the relief claimed by the applicant. Both the parties are directed to bear their own costs.

R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

Kumawat



~~Dawn Shaver~~
22/11/06

Rec'd copy
Journals for
Bermuda
22/11/06

Part II and III destroyed
in my presence on 11/14/14
under the supervision of
Section officer () as per
order dated 31/10/14.

Section officer (Record)

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