

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.(G)76/87

Shri N.V.Karwarkar,  
17A, Government Quarters,  
Patto,  
Panaji,  
Goa.

... Applicant

vs.

1. The Administrator of  
Goa,Daman and Diu,  
Panaji - Goa.
2. Chief Secretary,  
Government of Goa,Daman & Diu,  
Secretariat,  
Panaji-Goa.
3. The Dy.Director(Vigilance)  
Directorate of Vigilance,  
Junta House Annexe,6th Floor,  
Govt. of Goa,Daman & Diu,  
Panaji - Goa. ... Respondents

Coram:Hon'ble Vice-Chairman Shri B.C.Gadgil

Hon'ble Member(A)Shri P.Srinivasan.

JUDGMENT

Date: 18/03/1988

(Per Shri P.Srinivasan,Member(A)

The genesis of this application goes back to 1975, when by an order dtd.27.11.1975 the applicant, an Industries Officer in the Directorate of Industries and Mines of the Union Territory of Goa was placed under suspension. The suspension was later revoked with immediate effect by order dtd. 21.9.1976 in which it was promised that "order regarding pay and allowances to be paid to Shri Karwarkar during the period of suspension ending with reinstatement and treatment of the same period will be issued

in due course". The respondents in their reply have clarified that suspension was ordered in the first instance"as the investigation into the case was in progress and there was need to keep the applicant away from the office in order to facilitate the investigation" and "as soon as no such need was felt the applicant was reinstated". As regards the promised order regulating pay and allowances during the period of suspension, the respondents have merely said that the applicant "was not entitled to any pay and allowances but merely subsistence allowance which have since been paid to him as per the rules in that line", thereby implying that no separate order was required to be made.

2. After the revocation of his suspension mentioned above, two sets of charges constituting the subject matter of two proposed departmental inquiry proceedings were served on the applicant along with two memoranda dtd. 8-10-1976 and 30-6-1977. Both the proceedings terminated in positive findings of guilt against the applicant. The then Administrator of Goa, Daman and Diu (the Administrator for short) as the Disciplinary Authority, by his order dtd. 20-3-1979 imposed the penalty of reduction in salary of the applicant by three stages and withholding of increments for 3 years without cumulative effect in respect of the charges communicated along with memorandum dtd. 8-10-1976. In respect of the other set of charges communicated to the applicant along with memorandum dtd. 30-6-1977, the same authority passed a separate order on 29-5-1979

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compulsorily retiring the applicant from service. Having failed to obtain any relief through appeals to departmental authorities against these orders, the applicant challenged them in two separate writ petitions filed before the High Court of Bombay. In its judgment dtd. 27-2-1984 disposing of Writ Petition No.207/B of 1982 directed against the penalty of reduction in pay and postponement of increment, the High Court held that the applicant had been denied the opportunity to defend himself in the enquiry and, as a consequence, set aside the order dtd. 20-3-1979 imposing punishment and the order of the Appellate Authority confirming the same. While doing so, the Court observed "it will, however, be open for the respondents to hold a fresh inquiry on the same charges by giving petitioner a proper opportunity to defend himself, and in particular, by allowing him to examine the two witnesses". Disposing of the other Writ Petition No.205/B of 1982 filed by the applicant against his compulsory retirement, by an order of the same date viz. 27-2-1984, the Court held "that injustice had been done to the petitioner by not giving him a sufficient opportunity to inspect the concerned documents which contain valuable material in support of his defence". The Court, therefore, set aside the order of punishment dtd. 29-5-1979, quashed "all the proceedings in the inquiry" and directed "that a fresh inquiry may be held after giving the petitioner an opportunity to inspect all the documents that are annexed to the charge sheet as well as the documents which the petitioner may want to rely

on, notwithstanding the fact that they are not referred to in the charge-sheet. It is only after such inspection is given that a date be fixed for recording the evidence".

3. In view of the judgments referred to above, the Administrator passed a fresh order dtd. 10-8-1984 in which he set aside the earlier punishment orders dtd. 20-3-1979 and 29-5-1979, directed fresh inquiry on the same charges, reinstated the applicant in the post of Industries Officer w.e.f. 1-6-1979, placed him under suspension with retrospective effect from the same date i.e. from 1-6-1979 purporting to do so under Rule 10(4) of the C.C.S(CCA)Rules and ordered that the suspension would continue until further orders. However, the suspension was revoked soon after "with immediate effect" by another order dt. 22.10.1984 also issued in the name of the Administrator and the applicant was posted as Industries Officer in the Directorate of Industries and Mines, Panaji. Both the orders narrated that orders regarding pay and allowances for the period of suspension as also regarding the "treatment of the same period" would be issued in due course.

4. In pursuance of his order dt. 10.8.1984, the Administrator served two separate memoranda, Both dated 8-1-1985 on the applicant proposing to hold a fresh departmental inquiry in respect of both the original sets of charges. The inquiry in respect of both the sets of charges was entrusted to a Commissioner of Departmental Inquiry of the Vigilance Commission. The applicant renewed his request to

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the respondents to allow him to inspect certain documents relied upon in the charge sheets served on him. After receiving this request, the respondents deleted some documents from the lists attached to the chargesheets, while in respect of some other documents not listed therein but sought for by the applicant himself for his defence, he was told that these documents were not now available. The inquiry proceedings were pending when the present application was filed and this Tribunal by its order dtd. 9-2-1987 declined to stay these proceedings while expressing the hope that they would be completed expeditiously. In another interlocatory order passed on 9-4-1987 during the pendency of this application, this Tribunal directed the Respondents to give the applicant inspection of certain documents within a fortnight from that date and observed that "If the inspection is not so given for any reason, the applicant will be at liberty to argue with much substance before the Inquiry Officer that the adverse inference should be drawn for not giving inspection of these documents". We may also here notice another interlocutory order passed by this Tribunal on 1-12-1987 in which the applicant's grievance of documents not having been made available to him by the respondents was noticed and the respondents were directed to inform the Central Vigilance Commissioner of this position and to request him to complete the inquiry "even without the documents". Another direction issued by this Tribunal during the pendency of this

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application which also requires to be noticed appears in the order dtd. 9-4-1987 commanding the respondents to pay subsistence allowance to the applicant for the period from 1-6-1979 to 22-10-1984 when he was under suspension at the rate of 50% for the first three months and at the rate of 75% for the subsequent period.

5. One more fact relevant to this application is that the applicant, who joined service in the erstwhile Government of the Union Territory of Goa, Daman and Diu in 1965 as an Economic Investigator, was promoted as Industries Officer, a Class II Gazetted post, in 1971 in which he was required to be on probation for two years. He completed the period of probation in 1973 and was due for confirmation that year. He was not confirmed in the post in 1973 and has not been so confirmed even till date. In response to a specific query raised by this Tribunal, the respondents have stated that the Departmental Promotion Committee for considering confirmations due in 1973 did not meet in 1973 or immediately thereafter, and when it did so in 1975 the case of the applicant was not considered because of the preliminary inquiries then under way into the allegations against the applicant received in July, 1975. The said reply which was filed on 1-4-1987 goes on to say "that recently D.P.C. met and considered the case of the applicant for confirmation in the post of Industries Officer. However, in accordance with the instructions contained in Govt. of India O.M. No. 39/4/56-Ests(A) dated 3.11.1958 and O.M. No. 39/3/59-Ests(A) dated 31-8-1960, the findings

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of the D.P.C. have been kept in sealed cover as the Departmental Inquiry is in progress against the applicant. I say that as per the said instructions the sealed cover will be opened after the termination of the disciplinary proceedings and the findings will be known and implemented thereafter".

6. In the background of the facts set out above we now proceed to examine the applicant's grievances in this application, taking them up in their chronological order and not in the order in which they appear in the application. At para 7(h) of the application the applicant seeks a direction from this Tribunal to the respondents to confirm him in the post of Industries Officer from 1973 when he completed ~~the~~ probation and to give him further promotions on that basis. When the matter was heard Shri C.U.Singh, learned counsel for the applicant said he would not press this ground at this stage as the question of the applicant's confirmation would be considered by the respondents themselves after the conclusion of the departmental inquiry. This ground is therefore rejected as not pressed.

7. In paras 7(a)(b) of the application the applicant seeks a direction from this Tribunal to the respondents to pay him full pay and allowances for the period of his suspension from 27-11-1975 to 21-9-1976. Shri C.U.Singh

submits that the suspension itself is now invalid, since the disciplinary proceedings initiated in 1976 and 1977 and completed in 1979 were quashed by the High Court in Writ Petitions No.205/B and 207/B of 1982. The suspension was ordered on 27.11.1975 in view of the investigations into the allegations against the applicant which were then under way and which resulted in the initiation of the disciplinary proceedings in 1976 and 1977 culminating in the punishment orders which were set aside by the High Court along with all the proceedings in the inquiry. The very basis for the suspension therefore, had been removed and so the applicant should have been given full pay and allowances for this period instead of subsistence allowance which was paid to him. Shri Singh urged that in view of the quashing of the inquiry proceedings by the High Court in 1984, the suspension which was relatable to these proceedings also stood cancelled. The period of suspension should therefore be treated as period spent on duty and the applicant paid full pay and allowances along with increments due from time to time for the said period.

8. Shri M.I.Sethna submitted on the other hand that the High Court had quashed the order of punishment only on a technical ground and not on merits. The High Court had directed the respondents to hold a fresh inquiry in respect of one set of charge and had given liberty to the respondents to hold a fresh inquiry in respect of the other set of charges. The respondents had in fact initiated proceedings in respect of the same charges and the

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inquiry was now pending. The inquiry was in respect of events which happened in 1975 and is for all intents and purposes a continuation of the old inquiry started in 1976 and 1977. The suspension of the applicant during the period of 27.11.1975, 29.11.1976 is therefore, relatable to an inquiry which is still continuing and as such it was not affected by the judgment of the High Court.

9. After careful consideration we are of the view that the suspension of the applicant from 27.11.1975 to 29.11.1976 cannot be held to have been invalidated by the two Judgments of the High Court already referred. The fresh inquiry commencing after the decision of the High Court is in reality a continuation of the same inquiry which was started in 1976 and 1977 and the suspension was indeed relatable to this inquiry. We agree with Shri Sethna that the suspension of the applicant during this period cannot be invalidated. This being so, the applicant is, as of now, entitled to no more than subsistence allowance for this period and this has been given to him in accordance with the rules on the subject. As and when the inquiry now pending is completed the competent authority will have to review the position and pass suitable orders thereafter. We, therefore, reject the applicant's contention that he should be paid full pay and allowances for the period 27.11.1975 to 29.9.1976.

10. The next grievance of the applicant is that he has been wrongly denied full pay and allowances for the period from 27-5-1979 till his reinstatement in service on 10-8-1984 as a result of the decisions of the High Court referred to above. While reinstating the applicant by order dtd. 10-8-1984 the respondents made the reinstatement effective from 1-6-1979 but placed him under suspension from that date till 10-8-1984. We are told subsequently the date of reinstatement and of commencement of fresh suspension was changed to 27-5-1979. On 22.10.1984 the applicant's suspension was revoked and he was appointed again as Industries Officer. Therefore, for the period from 27-5-1979 to 21.10.1984 he was paid subsistence allowance on the basis that he was under suspension. Shri Singh points out that the retrospective suspension of the applicant from 27-5-1979 by the order dtd. 10-8-1984 was purported to be in pursuance of

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Rule 10(4) of the CCS(CCA)Rules. According to Shri Singh, where a penalty of compulsory retirement is set aside by a Court of law and a further inquiry is initiated against the delinquent official, he can be deemed to have been placed under suspension from the date of original order of compulsory retirement only if he was already under suspension on that date, but not otherwise. The applicant was not under suspension on the date of the order by which he was compulsorily retired i.e. on 29.5.1979 and therefore the deeming provision in Rule 10(4) would not come into operation. He concedes that the order of suspension dt. 10.8.1984 would be valid so far as it related to the period on and after 10.8.1984 but not for the earlier period.

11. Shri M.I.Sethna for the respondents supported the order dt. 10.8.1984 and contended that the applicant was validly placed under suspension retrospectively from 1.6.1979 (subsequently changed to 27.5.1979).

12. We have given the most anxious thought to the matter. We may here reproduce Rule 10(4) of the CCS (CCA) Rules under which the applicant was placed under suspension retrospectively from the date of his compulsory retirement by the order dt. 10.8.1984:

"10(4) 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

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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".

It will be seen from the language of the rule that there is no condition that it will operate only in a situation where the delinquent government servant was already under suspension on the date on which he was compulsorily retired. But the matter does not rest here. Rule 10(3) of the CCS (CCA) rules deals with a case where compulsory retirement is set aside in appeal or a review under the rules i.e. by departmental authorities. We may now extract the said rule:

"10(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 inquiry 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."

It will be seen from the above that where a compulsory retirement is set aside by a departmental authority in an appeal under the rules, the delinquent Government servant will be deemed to be under suspension from the date of compulsory retirement only if he was already under suspension on that date; in that event the suspension shall be deemed to have continued in force from that date, but not otherwise. It would thus seem that in a case where a Government servant was not under suspension on the date he was compulsorily retired, there would be no automatic suspension from that date under Rule 10(3), if the inquiry is resumed after the original order was set aside by a departmental authority while if the original order is set aside by a Court of Law he would stand automatically suspended from the date of the original order. There is thus an apparent discrimination

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between a Government servant who gets ~~a~~ reprieve from the departmental authorities and another who has to approach a Court of law for obtaining relief. In *Khemchand v. Union of India AIR 1963 SC 687*, the Supreme Court was dealing with a challenge to the constitutional validity of Rule 12(4) of the CCS(CCA) Rules, 1957 which was in all respects in pari materia with the provisions of Rule 10(4) CCS(CCA) Rules 1965 with which we are here concerned. It was contended on behalf of the appellant in that case that the said Rule 12(4) discriminated against Govt. servants who obtained relief from a Court of law as compared to those who could obtain the same relief in departmental appeal and would be governed by Rule 12(3) which again is in all material respects similar to the present Rule 10(3). While dealing with this challenge, the Court observed that "it is entirely unlikely, however, that ordinarily a Govt. servant will not be placed under suspension prior to the date of his dismissal" and this being so those who obtained relief from departmental authorities equally with those who obtained relief from a Court of law would suffer suspension from the date of original order of punishment either under Rule 12(3) or 12(4) of the said rules as they then stood. Based on this reasoning their Lordships upheld the validity of Rule 12(4) as not being discriminatory. In other words, by and large, cases would be rare where a person who is compulsorily retired by way of punishment would not already have been placed under suspension on the date of the order by which he was compulsorily retired and if that be so, either under Rule 12(3) or under Rule 12(4) he would continue to remain

under suspension from that date if the punishment is set aside on a technical ground either by a departmental authority or by a Court of law and a further enquiry is continued on the same charges. But what about the rare case where a person was not under suspension on the <sup>10/10/</sup> date of original order of punishment and the said punishment was subsequently set aside by a Court of law? To avoid discrimination in such a case the only course open is to interpret Rule 10(4) as it now stands in a manner consistent with the provision of the Rule 10(3). If that be so we must hold that the automatic suspension from the date of original punishment contemplated in Rule 10(4) will come into operation only if the delinquent Govt. Servant was already under suspension on that date as in Rule 10(3). This would resolve the apparent contradiction between 10(3) and 10(4) bearing in mind that the Supreme Court has upheld the validity of a provision similar to Rule 10(4) in Khemchand's case. We, therefore hold that the retrospective suspension of the applicant by the order dt.10.8.84 purporting to be under Rule 10(4) of the CCS(CCA) was invalid and that such suspension can operate only prospectively i.e. on and from 10.8.1984 till the date of revocation of suspension. The applicant would be entitled to get full pay and allowances and increments due to him from time to time during the period 27.5.1979 to 9.8.1984. The respondents are directed to refix the pay and allowances of the applicant during this period accordingly and pay him all the arrears due to him as a result thereof within three months of receipt of a copy of this order. We, however, uphold the validity of the suspension <sup>on and after</sup> ~~10.8.1984~~.

13. The next grievance of the applicant is that when the order dt. 20.3.1979 imposing the punishment of reduction in salary by three stages and withholding

of increments for a period of three years thereafter was set aside by the High Court in 1984, the reduction in salary as well as the three increments withheld should have been restored to him. But the respondents did not do this. Shri Singh contends that with the cancellation of the order imposing the penalty the reduction in salary and the increments withheld should have been restored to them.

14. Shri Sethna on the other hand submitted that the applicant was not entitled to the restoration sought for.

15. We are of the view that Shri Singh is right. When the punishment was set aside, the loss in salary suffered by the applicant as a result of the punishment has to be restored to him. The respondents are directed to restore the reduction in salary effected by the punishment order dt. 20.3.1979 and to allow him increments thereafter as and when due. Arrears arising out of this direction should be calculated and paid to the applicant within 3 months from the date of receipt of this order.

16. For reasons stated earlier we reject the next ground in the application seeking a direction to the respondents to pay full pay and allowances for the period of suspension from 10.8.1984 to 22.10.1985 as we have held that this suspension to be valid.

17. The next two grounds relate to the inquiry resumed after the order of the High Court. The applicant wants us to set aside the memorandum of charges dtd. 8-1-1985 issued to him resuming the inquiry. In the alternative, he wants a direction from this Tribunal to the respondents, to give him inspection of documents to him, during the inquiry including documents relied upon in the

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*M* and chargesheet ~~or~~ others which the applicant may require for his defence.

18. Shri Sethna submits that the memorandum of charges issued to the applicant after the original orders of punishment were set aside by the High Court were **in no way violative** of the orders of the Court. The High Court had, in one case given the respondents liberty to hold a fresh inquiry on the same charges, while in the other it had issued a direction to that effect. The impugned charges were the same as the ones in respect of which the earlier inquiries had been held. There was therefore no legal infirmity in the resumption of the inquiry by issue of the impugned chargesheets. So far as inspection of documents was concerned, Shri Sethna submitted some of them are not available with the respondents now and some of them are irrelevant for the inquiry.

19. Shri Singh, at this stage, in our opinion rightly, did not press his objection against the chargesheets issued to the applicant but prayed for directions in regard to inspection of documents.

20. As we have already mentioned, the High Court itself, in one of its judgments, directed the respondents to allow the applicant to inspect documents whether cited in the charge sheet or required by him for his defence. If the respondents are unable to do so in respect of any document or feel that *M* ~~it is~~ <sup>they are</sup> irrelevant,

*P. S. Sethna*

they may inform the applicant and the Inquiry Officer. Shri Sethna was apprehensive that the interim order passed by this Tribunal on 9-4-1987 on this subject might be construed by the applicant as a direction to the Inquiry Officer to necessarily draw an adverse inference if inspection of any document is not allowed for any reason whatsoever. We may clarify that what the Tribunal said in that order was that the applicant could well make such a plea before the Inquiry Officer, but it is for the Inquiry Officer to determine the effect of the respondents' inability to allow inspection of any document after hearing both sides and considering all the circumstances of the case. We leave the matter at that. We must here observe that the Inquiry against the applicant is nearly twelve years old now and in its fresh incarnation also it is nearly four years since the High Court delivered judgment. We hope the respondents will do everything possible to bring the pending inquiry to a conclusion as early as possible, preferably within six months from the date of this order.

21. To recapitulate our decisions on the various grounds raised in this application

(i) we reject the applicant's prayer for a direction to the respondents to confirm him straightway as Industries Officer with effect from 1973 as it was not pressed before us. The respondents will consider the question of his confirmation from 1973 onwards after the conclusion of the pending departmental inquiry.

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(ii) We reject the applicant's claim of full pay and allowances for the period of suspension from 27-11-1975 to 29-9-1976 as the inquiry is still pending. The respondents will, however, review the position in this regard after the conclusion of the inquiry and pass suitable orders in accordance with law;

(iii) We hold that the retrospective suspension of the applicant from 27-5-1979 upto 9-8-1984 under Rule 10(4) of the CCS(CCA) Rules, 1965 is invalid. We direct the respondents to pay normal salary and allowances to the applicant for this period including increments due from time to time. Respondents will effect payment of the arrears flowing from this order to the applicant within three months of receipt of this order.

(iv) We, however, upheld the validity of the suspension of the applicant on and after 10-8-1984 upto 22-10-1984 and reject the applicant's claim of full pay and allowances for this period.

(v) We direct the respondents to restore to the applicant the reduction in his pay by three stages and the three increments withheld as a result of the order dt. 20-3-1979 and effect payment of the resultant arrears to him within three months from the date of receipt of this order;

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(vi) We reject the prayer that the charges issued to the applicant along with memorandum dated 8-1-1985 be quashed. We leave it to the Inquiry Officer to determine the effect of the respondents' inability to allow the applicant inspection of any document in accordance with law after considering the facts relating thereto and after hearing the views of both the parties; and finally

(vii) We hope the respondents will make every effort to bring the now long pending inquiry against the applicant to an early conclusion, preferably within six months from the date of this order.

22. In the result, the application is allowed in part and in the circumstances of the case parties will bear their own costs.



(B.C.GADGIL)  
Vice-Chairman



(P.SRINIVASAN)  
Member(A)