

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD; Bombay-1

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OA NOs. 731, 800 & 830 of 1992

S.B. Rao
Elve Chawl No.6; Room no.6
Vidya Vihar; Bombay-86

..Applicant in
OA No. 731/92

U B Panigrahi
C/o. US Padhi
Lal Bhadur Shastri Marg
Kanjur Marg; Bombay-78

..Applicant in
OA No. 800/92

Y.R. Yadav
Labour
Naval Dockyard
R/o. New Balaji Nagar
Satyanarain's Kirana Store
Ambernath; Thane

..Applicant in
OA No.830/92

V/s.

1. Union of India
through Flag Officer
Commanding in Chief
Western Naval Command
Bombay 400023

2. Admiral Superintendent
Naval Dock Yard; Bombay-23

..Respondents in
all above 3 cases.

Coram: Hon.Shri Justice S K Dhaon, V.C.
Hon.Shri M Y Priolkar, Member(A)

APPEARANCE:

Mr. D V Gangal
Counsel
for the applicants

Mr. V S Masurkar
Counsel
for the respondents

JUDGMENT:
(PER: S K Dhaon, Vice Chairman)

DATED: 16.10.92

In these OAs the respondents are the same. The controversy raised in these applications is also similar. We are, therefore, disposing of the three applications by a common order.

The applicants in these OAs were removed from service. They preferred OAs before this Tribunal challenging the order of their removal. The OAs in 731/92 and 800/92 were disposed of finally by this Tribunal on 10th September 1991 and the OA in 830/92 was disposed off by this Tribunal on 11th October 1991. In all these three cases this Tribunal set aside the order of removal on the technical ground that a copy of the report of the Inquiry Officer had not been furnished to each of the applicants by the Disciplinary Authority concerned before passing the order of punishment. In all the three cases this Tribunal left it free to the Disciplinary Authority to re-initiate disciplinary proceedings from the stage of handing over a copy of the Inquiry Officer's report. On 18th November 1991 the authority concerned passed separate orders whereby it purported to exercise powers under Sub- Rule 4 of Rule 10 of Central Civil Services(Classification Control and Appeal)Rules, 1965. These orders of suspension are being impugned in OA Nos 731 and 800 of 1992. On 28.1.92 the authority concerned passed an order under the aforesaid provisions of the Rules suspending the applicant in OA 830/92. The effect of the orders of suspension passed is that the

applicants therein would be deemed to be under suspension from the date of the passing of the original order of removal. These orders of suspension are being impugned in the present applications.

We may indicate that the disciplinary authority has re-initiated the disciplinary proceedings against the applicants. However, learned counsel appearing for the applicant has stated at the Bar that the only relief claimed in these applications is that the order of suspension may be quashed.

In the three applications the averment is that at no stage, either prior or during the pendency of the disciplinary proceedings, the applicants had been suspended from service. The common argument is that ^{recourse} could be taken to Sub-rule (4) of Rule 10 of the Rules for passing an order of deemed suspension only if the applicants had been placed under suspension either before or during the pendency of the disciplinary proceedings. Reliance has been placed by the counsel for the applicants on certain decisions given by this Tribunal wherein it has been held that in sub-rule 4 of Rule 10 it is implicit that the delinquent Government servant should have been placed under suspension either before or during the pendency of the disciplinary proceedings.

The controversy has now been set at rest by the Supreme Court in the case of NELSON MOTIS V. UNION OF INDIA AND ANOTHER 1992(2) SCALE page 476. Their Lordships have held that a Government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the appointing authority from the date of original order of suspension, provided of course the other conditions mentioned in the Sub-Rule(4) of Rule(10) of the Rules are satisfied.

Sub-rule(4) of Rule 10 provides interalia that where a penalty of dismissal, removal or compulsory retirement from service 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 on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant concerned 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. The proviso to sub-rule 4 ordains that no further inquiry

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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.

In the instant cases, we have already emphasised, that this Tribunal passed the order setting aside the order of removal on a purely technical ground and without going into the merits, the ground being that a copy of the report of the Inquiry Officer was not furnished to the applicants by the punishing authority before imposing punishment upon them. It is also an admitted position that the punishing authority has taken a decision to hold a further inquiry. Therefore, there can be no escape from the conclusion that the requirement of sub-rule 4 are fully complied with in the instant cases.

In view of the aforementioned judgment of the Supreme Court in NELSON MOTIS's case (supra), there is no substance in these applications. Accordingly they are dismissed, but without any order as to costs.