

(47)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 103 of 1990

Date of Order: 22/6/90

Between:

Ch.Narayanacharyulu

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Applicant

and

The Flag Officer Commanding-in-
Chief, Eastern Naval Command,
Naval Base, Visakhapatnam-14. ..

Respondent

Appearance

For the Applicant : Party-in-person

For the Respondent : Shri E.Madan Mohan Rao, Addl.CGSC.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER (JUDICIAL))

1. The applicant herein was an U.D.C. working in the Headquarters of the Eastern Naval Command, Naval Base, Visakhapatnam. He alleges that he had been dismissed from service by an order of the ~~xxx~~ respondent No.CE/9103/7, dated 27-2-1989. He had filed O.A.171 of 1989 which was allowed on the ground that the order of dismissal was bad since the Enquiry Officer's report has not been furnished to the applicant before the Disciplinary Authority passed the punishment. It has been directed by this Tribunal in O.A.171 of 1989 that the applicant could raise objections to the Enquiry Officer's report before the Disciplinary Authority within 15 days from the date of receipt of the order in O.A.171 of 1989. It was further observed by this Tribunal that the manner as to how the period viz., from the

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date of impugned order dated 27-2-1989 till culmination of the proceedings should be treated would depend upon the ultimate result.

2. The applicant alleges that after receipt of the judgement in O.A.171 of 1989, the respondent issued an order No.CE/9103/71, dated 5-1-1990 keeping the applicant under deemed suspension and directed the applicant to submit his representation. The applicant contends that the said deemed suspension order dated 5-1-1990 is illegal. He contends that deemed suspension under Rule 10(4) of the CCS (CCA) Rules 1965 can be ordered only when there is further enquiry on allegations which ^{enquiry} is supposed to be done by the Enquiry Officer. In the instant case, he contends that no further enquiry by the Enquiry Officer is contemplated and therefore there cannot be any deemed suspension. He further contends that earlier to passing of the order dated 27-2-1989, he had been placed under suspension for a long period of 27 months and this suspension was revoked by the Disciplinary Authority in view of an order of this Tribunal in O.A.514/87, wherein this Tribunal had observed that there is no question of the applicant tampering with any document ^{since} and ~~that~~ he had been transferred. He seeks to contend that in view of these observations, the deemed suspension is bad. He also contends that action could ^{only} have been taken under F.R.54-B after the closure of the proceedings against the applicant and not under rule 10(4) of the CCS(CCA) Rules. He also seeks to contend that CCS(CCA) rules are inapplicable to him. For these reasons he seeks quashing of the impugned order of deemed suspension dated 5-1-1990.

3. This application has come up today for admission. We had ordered notice before admission to the respondents and the respondents appeared through their Counsel, Shri E.Madan Mohan Ra

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Additional Central Govt. Standing Counsel.

4. We have heard the applicant in person and Shri E. Madan Mohan Rao, Additional Central Govt. Standing Counsel, for the respondent.

5. The first contention of Shri Narayanacharyulu is that once an enquiry is completed and all that is left is passing ^{and} a decision by the Disciplinary Authority, an employee cannot be treated as deemed to be under suspension under rule 10(4) of the C.C.S. (C.C.A.) Rules. Rule 10(4) of C.C.S. (C.C.A.) rules reads as follows:-

" 10. Suspension

(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 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.

"

6. Shri Narayanacharyulu seeks to read the word "inquiry" ^{as} ~~under~~ Rule 10(4) to mean inquiry before an Inquiry Officer alone and not to any subsequent proceedings before the disciplinary authority. We are unable to agree with this contention. The word "inquiry" means the entire departmental proceedings from the filing of the charge sheet to the conclusion

thereof i.e. till the passing of an order of acquittal or punishment as the case may be. This would be clear from the observations of the Full Bench decision of the Bombay Bench of the Tribunal in Prem Nath K. Sharma v. Union of India and others (New Bombay) (1988) 6 ATC 904 which are reproduced below:-

" Even after the 42nd Amendment to Article 311(2) the enquiry cannot be said to conclude by the submission of an enquiry report. It continues till the Disciplinary Authority receives the entire material and reserves it for recording his findings on charges and imposes the penalty, if any.

"

This observation makes it clear that the term "inquiry" cannot be limited to pendency of proceedings before the Inquiry Officer. This contention is accordingly rejected.

7. The next contention is that the Applicant could not have been placed under deemed suspension since there cannot be any apprehension that he would interfere with the inquiry or tamper with the documents and he relies on this Tribunal's decision in O.A.514 of 1987 directing his reinstatement to service. These objections are also in our view untenable since the observations made relate to a suspension pending inquiry. The present case is one of suspension after inquiry, after an order imposing a major punishment had been set aside — not on the merits of the case, but due to a technical flaw viz., non-observance of the procedure. In such cases Rule 10(4) introduces a fiction whereby from the date of the impugned order set aside, the employee shall be deemed to be under suspension and that he shall continue to remain under suspension until further orders. The applicant cannot seek to import the conditions applicable to suspension under Rule 10(1) to a deemed suspension under Rule 10(4). This contention is also rejected. It also follows that the

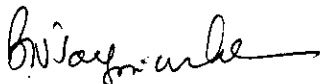
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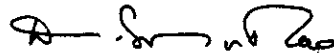
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contention that the respondents in the instant case could only act under F.R.54 after conclusion of the disciplinary proceedings and not under Rule 10(4) of the C.C.S.(C.C.A.) rules is untenable.

8. It is not open to the applicant to raise the plea that the C.C.S.(C.C.A.) Rules are not applicable to ~~him since he is a~~ civilian member of the Defence Services, since this contention has been heard and dealt with in O.A.171 of 1989.

9. For the reasons given above we find no merit in the claims put forth by the applicant. The application is dismissed. There is no order as to costs.


(B.N.JAYASIMHA)


(D.SURYA RAO)

(Date: 22nd June 1990)


For DEPUTY REGISTRAR(J)

nsr

TO:

1. The Flag officer, commanding-in-chief, Eastern Naval Command, Naval Base, Visakhapatnam-14.
2. One copy to Ch.Narayanacharyulu, ~~XXXXXXXXXX~~ (Party-in-person), E/1 Pallava Park, kancharapalem P.O., Visakhapatnam-530 008.
3. One copy to Mr.E.Madan Mohan Rao, Addl.CGSC, CAT, Hyderabad.
4. One spare copy.

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CHECKED BY RNS
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APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B.N. JAYASIMHA: V.C. 2

AND

THE HON'BLE MR. D. SURYA RAO: MEMBER (JUDL.)

AND

THE HON'BLE MR. J. NARASIMHAMURTHY: M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATE : 22-6-90

ORDER / JUDGMENT

M.A./R.A./C.A./No.

in

T.A.No.

G.P.No.

D.A.No. 103/90

~~Admitted and Interim directions Issued.~~

~~Allowed.~~

~~Dismissed for default.~~

~~Dismissed as withdrawn.~~

~~Dismissed.~~ ✓

~~Disposed of with direction.~~

~~M.A. ordered/rejected.~~

~~No order as to costs.~~ ✓

