

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.858/92

Date of decision: 17.3.1993.

Between

Kothapalli Veera Krishna Prasad

... APPLICANT

A N D

1. Railway General Manager,
South Central Railway,
Secunderabad.
2. Sr.Divl.Personnel Officer,
S.C.Rly, Vijayawada.1.
3. TheDivl.Rly.Manager,
S.C.Rly., Vijayawada.1.
4. The Sr.Divl.Electrical Engineer,
Traction Rolling Stock,
S.C.Rly., Vijayawada.1.
5. Divl.Electrical Engineer,
Traction Rolling Stock,
S.C.Rly., Vijayawada.9.

... RESPONDENTS.

Appearance:

For the applicant : Shri J.M.Naidu, Advocate

For the respondents : Shri D.Francis Paul, SC for Rlys.

CORAM:

The Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman

The Hon'ble Sri R.Balasubramanian, Member (Admn.)

J U D G M E N T

(Of the Bench delivered by Hon'ble Sri Justice V.
Neeladri Rao, Vice-Chairman).

The point which arises for consideration in this O.A.
is in regard to the scope of Rule 5(4) of the Railway Servants
(Discipline & Appeal) Rules, 1968.

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2. The facts leading to these proceedings are as under: When the applicant was working as Electrical Loco Fitter, disciplinary proceedings were initiated against him. After enquiry, the disciplinary authority ordered removal of the applicant by way of punishment vide order dated 15-2-89 and it was confirmed in appeal. It was challenged in O.A.No.29/91 on the file of this Tribunal. The said O.A. was disposed of by order dated 31-1-91 and para 7 of the judgment therein reads as under:

"Following the above decision of the Supreme Court, we set aside the order of the removal passed by the 5th Respondent in his proceedings No.B/P.5/11/88/46/TRS dated 22-12-1988 and dated 15-12-89 and consequent orders dated 1-5-89 of the 2nd respondent. We direct the respondents to reinstate the applicant into service and pay him all the attendant benefits within a period of two months from the date of receipt of this order. This decision may not preclude the disciplinary authority from reviving the proceedings and continuing with it in accordance with law from the stage of supply of the enquiry report in case where dismissal or removal was the punishment."

Thereupon, the Respondent No.5 issued memorandum dated 10-12-91 and the relevant portion therein reads as under:

"Now, therefore, in compliance with the said judgment, the said Sri K.V.K.Prasad is reinstated as ELF/BLS/BZA with effect from 20-02-1989 and in exercise of powers conferred under sub-Rule (4) of Rule 5 of RS (D&A) Rules, 1968, the undersigned hereby places the said Sri K.V.K.Prasad under deemed suspension with retrospective effect from 20-02-1989 and he shall be continued under suspension till further orders."

The same was assailed in this O.A.

3. When once reinstatement was ordered with retrospective effect as per relevant portion of memorandum dt.10-12-91 issued by R-5, it is not open to the said authority to keep the applicant under suspension with retrospective effect, urged the learned counsel for the applicant.

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It was also contended by him that when reinstatement as attendant benefit was ordered by the Tribunal as per judgment dated 31-1-91 in O.A. 29/91, it is not open for the concerned authority to suspend the applicant with retrospective effect.

4. In order to advert^{to} the above contention, it is necessary to consider the scope of Rule 5(4) of the RS(D&A) Rules and it is as below:

"where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway 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 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 railway servant shall be deemed to have been placed under suspension by the competent 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 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."

It is manifest that the above rule is attracted

(i) where penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant is set aside or declared or rendered void in consequence of or by a decision of a court of law; (ii) when the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void purely on technical ground without going into merits of the case; and (iii) if the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further enquiry against the railway servant on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed. In this case, the

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applicant who is a railway servant was removed from service. The said penalty of removal was set aside by this Tribunal in O.A. 29/91. The said order in OA 29/91 was passed purely on technical grounds without going into merits of the case. After the disposal of the said O.A., the disciplinary authority decided to hold further enquiry against the applicant herein on the very allegations on which the penalty of removal was imposed on 15-2-89. Hence it is obvious that Rule 5(4) is attracted in the circumstances.

5. Rule 5(4) lays down that the railway servant shall be deemed to have been placed under suspension by the competent authority from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. Thus, when Rule 5(4) is attracted, the railway servant shall be deemed to have been placed under suspension for the period referred to and that deemed suspension is on the basis of operation of Rule 5(4) and no separate order need be passed by the disciplinary authority to the effect that the delinquent railway employee shall be deemed to be under suspension for the period in question while deciding to hold further enquiry as envisaged under Rule 5(4). It follows from Rule 5(4) that it is not open to the disciplinary authority to pass any order which is inconsistent with Rule 5(4) in regard to the period from the date of removal until further orders. The deemed suspension in regard to the period from the date of removal until further orders is by operation of Rule 5(4) and as such the disciplinary

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authority cannot pass any order which is more harsh or which is more favourable to the delinquent railway servant than what is contemplated, under Rule 5(4).

6. It is true that as per the order in OA 29/91, a direction was given to the respondents to reinstate the applicant into service and pay him all the attendant benefits. But it was also made clear therein that the said decision does not preclude the disciplinary authority from reviewing the proceedings and continue with it in accordance with the law from the stage of supply of the enquiry report in case where the dismissal or removal was the punishment. But those two portions of the order in OA 29/91 have to be read together. If they are so considered in the light of Rule 5(4), it is evident that the Tribunal directed the reinstatement and payment of attendant benefits in case the disciplinary authority decides not to proceed ^{with} further enquiry. In fairness to the learned counsel for the applicant, it has to be stated that it was not urged that the Tribunal while passing the order dated 31-1-91 was not conscious of Rule 5(4). So it means that the applicant shall be deemed to be under suspension from the date of removal until further orders, in case the disciplinary authority intended to enquire further in the matter and if the disciplinary authority decided not to proceed further with the enquiry, the applicant had to be reinstated and he had to be paid all the attendant benefits.

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7. The learned counsel for the applicant further urged that Rule 5(4) is attracted only in cases where the delinquent railway employee was under suspension by the date of removal. Rule 5(4) of the D&A Rules is similar to Rule 10(4) of the C.C.S.(C.C.& A) Rules, 1965. While the former is applicable to the railway servants, the latter is applicable in regard to Government servants coming within the ambit of Rule 2(4) of the C.C.S. (CC&A) Rules. Except for ^{that difference} ~~the~~ Rule 5(4) of D&A Rules and Rule 10(4) of the CCA Rules are mutatis mutandis. While adverting to the contention that Rule 10(4) of the CCA Rules is not applicable in regard to government servants who are not under suspension by the date of dismissal, removal, etc., it was observed by the Supreme Court in 1993 SCC (L&S) 13* that "the language of sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense." Again after referring to sub-rule (3) of Rule 10 of the CCA Rules, it was stated therein that "the comparison of the language with that of sub-rule (3) reinforces the conclusion that sub-rule (4) has to be understood in the natural sense. It will be observed that in sub-rule (3) the reference is to

* Nelson Motis V. Union of India & anr.

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"a Government servant under suspension" while the words "under suspension", are omitted in sub-rule (4). Also the sub-rule (3) directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in sub-rule (4) it has been said that "the Government servant shall be deemed to have been placed under suspension". The departure made by the author in the language of sub-rule (4) from that of sub-rule (3) is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances, it is not permissible to read down the provisions as suggested." On those observations, it was held therein that sub-rule (4) of Rule 10 of the CCA Rules is applicable even in regard to the government servants who are not under suspension by the date of removal, dismissal, etc.

8. Rule 5(3) of the D&A Rules is similar to Rule 10(3) of the CCA Rules and the difference again is that while rule 5(3) of D&A Rules refers to railway servants, Rule 10(3) of the CCA Rules refers to government servants and the remaining portions of both Rule 5(3) of D&A Rules and Rule 10(3) of CCA Rules are identical. Hence what was held by the Supreme Court in 1993 SCC(L&S) 13 in regard to Rule 10(4) of the CCA Rules holds good even in regard to Rule 5(4) of the D&A Rules. Thus as a result of sub-rule 4 of Rule 5 of D&A Rules it has to be held that railway servants 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 their removal, dismissal or compulsory retirement, provided that the other conditions mentioned in sub-rule (4) of Rule 5 of D&A Rules are satisfied.

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9. In the light of the above discussion, the impugned memorandum dated 10-12-91, the relevant portion of which reads as under, has to be considered:

"Now, therefore, in compliance with the said judgment, the said Sri K.V.K. Prasad is reinstated as ELF/BLS/BZA with effect from 20-02-1989 and in exercise of powers conferred under sub-rule (4) of Rule 5 of RS(D&A) Rules, 1968 the undersigned hereby places the said Sri K.V.K. Prasad under deemed suspension with retrospective effect from 20-02-1989 and he shall be continued under suspension till further orders."

The above portion of the impugned memorandum is to the effect that Respondent No.5 passed the said order in exercise of powers conferred under Rule 5(4) of the D&A Rules. But it is clear from the judgment of the Supreme Court in 1993 SCC (L&S) 13 that the deemed suspension for the period referred to is by operation of Rule 10(4) of the CCA Rules which corresponds to Rule 5(4) of the D&A Rules. As such it is not necessary for the concerned authority while deciding to hold further enquiry as envisaged under Rule 5(4) to pass an order in regard to suspension for the period from the date of original order of dismissal, removal or compulsory retirement until further orders. When once a decision is taken to hold further enquiry as referred to in Rule 5(4) the railway servant shall be deemed to be under suspension from the date of original order of dismissal, removal or compulsory retirement, until further orders. Of course, then it is necessary to ^{pass an order} ~~hold~~ that the railway servant shall be paid subsistence allowance for that period and the rate at which it is payable.

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10. In this case, R-5 in the impugned memorandum passed an order reinstating the applicant with effect from 20-2-89 i.e. the date of original removal order and placed him under suspension from the said date. It is stated that R.5 might have probably felt that it is necessary to pass the order of reinstatement with retrospective effect for there cannot be any suspension unless the railway servant is in service. But once the order of removal is set aside, the railway servant is continued to be in service and by operation of Rule 5(4) he has to be deemed to be under suspension from the date of removal. But as already observed, it is not even necessary for the concerned authority to pass an order placing the railway servant under suspension from the date of original order of removal, dismissal or compulsory retirement in cases coming under the purview of Rule 5(4) as the deemed suspension is by operation of Rule 5(4) itself. Now by reading the entire relevant portion of the impugned memorandum dated 10-12-91 which is extracted above, it is clear that R.5 intended to pass the said order so as to be in conformity with Rule 5(4). At best it can be stated that it was not happily worded. But it is clear that R.5 intended that the applicant is under deemed suspension from 20-2-89, the date of his removal, and that suspension has to be continued as he is not reinstated with effect from any period subsequent to 10-12-91, the date of the impugned memorandum.

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To

Railway

1. The/General Manager, S.C.Railway, Secunderabad
2. The Sr.Divisional Personnel Officer,
S.C.Railway, Vijayawada.
3. The Divisional Railway Manager, S.C.Rly, Vijayawada.
4. The Sr.Divisional Electrical Engineer,
Traction Rolling Stock, S.C.Rly, Vijayawada.
5. The Divisional Electrical Engineer, Traction Rolling Stock,
S.C.Rly, Vijayawada.
6. One copy to Mr.J.M.Naidu, Advocate, CAT.Hyd.
7. One copy to Mr.D.Francis Paul, SC for Rlys, CAT.Hyd.
8. One copy to Hon'ble Mr.Justice V.Neeladri Rao, Vice Chairman,CAT.Hyd.
9. One copy to Mr.R.Malasubramanian, Hon'ble Member(Admn)CAT.Hyd.
10. One copy to Deputy Registrar(J)CAT.Hyd.
11. Copy to All Reporters as per standard list of CAT.Hyd.
12. One spare copy.

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11. Before conclusion we feel that it has to be made clear that it is enough for the disciplinary authority to decide in cases where penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant (for whom Rule 5(4) is attracted)/ a government servant (for whom Rule 10(4) is attracted), is set aside or declared or rendered void in consequence of or by a decision of court of law, where such order was passed purely on technical grounds without going into merits of the case, to hold a further enquiry against such servant on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed. If such a decision is taken, such servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and there is no need for the disciplinary authority to pass an order to that effect. The only order that has to be passed is that such servant shall be paid subsistence allowance and the rate at which the same has to be paid for the period of deemed suspension. This case would not have arisen if R.5 had not passed the impugned order in regard to deemed suspension and if he has merely stated that the applicant had to be paid subsistence allowance for the period of deemed suspension and the rate at which the subsistence allowance had to be paid. Of course, by way of the impugned order, R.5 referred to the rate at which the subsistence allowance has to be paid to the applicant for the period of deemed suspension.

12. In the result the O.A. is dismissed with no order as to costs.

(V. Neeladri Rao)
Vice-Chairman

(R. Balasubramanian)
Member (A)

Dated: 17th March, 1993.

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10/3/93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDRABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO : V.C.

AND

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

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
: MEMBER (J)

AND

THE HON'BLE MR.

DATED: 17-3-1993

~~ORDER~~ JUDGMENT:

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

in

• A. No. 858/92

T.A. No.

(W.P. No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs

Central Administrative Tribunal
DESPATCH
71 APR 1993
HYDRABAD BENCH.

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