

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A.NO.893/2003

Wednesday, this the 6th day of August, 2003

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

SR Bahadur
House No.6219, Sector-G
Pocket 6 & 7, Vasant Kunj
New Delhi-70

(By Advocate: Shri G.K.Aggarwal)

..Applicant

Versus

Union of India through Secretary
Ministry of Urban Development
& Poverty Alleviation,
Nirman Bhawan, New Delhi-11

(By Advocates: Shri N.S.Mehta and Smt. Avnish Kaur)

..Respondent

O R D E R (ORAL)

Shri Shanker Raju, Member (J):-

Applicant impugns the order dated 31.3.2003 passed by the respondents placing him under suspension under Rule 10 of CCS (CCA) Rules, 1965. Quashment of the above has been sought with all consequential benefits.

2. Applicant, working as an Executive Engineer, retired on superannuation in the afternoon of 31.3.2003 and handed over the charge to one Shri Harendra Shanker.

3. By an order dated 31.3.2003 served upon him on 1.4.2003 showing the time of posting as 7.15 PM dated 31.3.2003, the applicant was placed under suspension on contemplated disciplinary proceedings. No charge-sheet has been filed till date. Terminal benefits provisional or final are also yet to be paid to the applicant.

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4. Learned counsel of the applicant Shri G.K.Aggarwal assails the impugned order on the ground that the orders have been passed as a malafide exercise on extraneous matters. One of the contentions put forth is that the applicant has retired on superannuation in the afternoon, i.e., at 5.30 PM of 31.3.2003 and thereafter ceased to be in service. Accordingly, not being a Government servant and having no relationship of master and servant, the respondents have no jurisdiction to place him under suspension that too by an order in the postal envelope which has been issued and posted at 7.15 PM on 31.3.2003.

5. It is further stated that no reason has been assigned in the suspension order to resort to the same on the penalty made.

6. On the other hand, Shri N.S.Mehta, senior standing counsel and Smt. Avnish Kaur, learned counsel oppose the contentions and stated that when the date of suspension is 31.3.2003, the working period lasts till 12.00 PM on the very day and as the applicant avoided to receive the communication, the same was despatched at 7.15 PM. Accordingly, the suspension order is passed as per rules.

7. As the applicant has been found to be involved in a serious act of negligent and dereliction of duty resulting in considerable loss to the Government with the approval of the President, the orders have been issued, which do not suffer from any legal infirmity.

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8. As regards the terminal benefits, it is stated that the benefits would be regulated in terms of Rule 69 of CCS (Pension) Rules, 1972.

9. We have carefully considered the rival contentions of the parties and perused the material on record. As per FR 56A, the Government servant shall retire from service on the afternoon of the last day of the month. Applicant, who attained the age of sixty years, retired on superannuation in the afternoon of 31.3.2003 and was deemed to be in service till 5.30 PM, i.e., closing of the office hours. The applicant has also handed over the charge to one Shri Harendra Shanker on 31.3.2003 vide Memo dated 31.3.2003 (Annexure A-2). Admittedly, the order of suspension was despatched at 7.15 PM on 31.3.2003, applicant ceased to be a Government servant after 5.30 PM and having no master - servant relationship between the Government and the applicant, he cannot be placed under suspension under rule 10 (1) (A) of CCS (CCA) Rules, 1965. Accordingly, the suspension order is nullity in law and has been issued without jurisdiction and cannot be sustained.

10. Insofar as the plea of the learned counsel that the applicant is deemed to be in service till 12.00 PM cannot be countenanced in view of the provisions of FR-56.

11. Moreover, in the order of suspension, except for a description as to contemplated proceedings, no reasons have been assigned. From the counter reply, what has

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been transpired is that the applicant while posted as Executive Engineer at Prime Minister's office on 22.3.2002, the power supply faulted for ten minutes cannot be a misconduct grave enough to resort to suspension. Although suspension is not a punishment but it is to be resorted to reasonably in cases where the proceedings are on gravest act of misconduct or causing loss to the Government. On this count also, we find that the suspension is an outcome of the malafide exercise on the part of the respondents. No reasonable justification has come forth for resort of suspension.

12. Insofar as the terminal benefits are concerned, on retirement, one is entitled for all his dues and in case of a disciplinary proceedings, Rule 9 of the CCS (Pension) Rules, 1972 shall take ^L stock of the things.

13. In the result, for the foregoing reasons, OA is allowed. The suspension order dated 31.3.2003 is quashed and set aside. We also direct the respondents to pay to the applicant his terminal benefits as due to him in accordance with law, rules and instructions within a period of one month from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

/sunil/

V.K. Majotra

(V.K. Majotra)
Member (A)