

**Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+Cont. App. (C) No.20/2007 and CM Appl. Nos.14398/07 &
5035/08**

Date of Decision: 18.07.2008

#R.K. Dey

!

....Appellant

Through: Ms.Maneesha Dhir with
Ms.Preeti Dalal

Versus

\$K.N. Rao & Ors.

^

.....Respondents

Through Mr.R.K. Saini with
Mr.Nikhil Bhalla

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE MANMOHAN SINGH

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

:

1. The respondent No.1 herein, on the basis of judgment dated 8.3.2006 passed by the Division Bench in WP(C) No.4708/1997, wanted payment of subsistence allowance from the date of his dismissal till the date of reinstatement

pursuant to the said orders of the Division Bench. As it was not paid, the respondent No.1 (hereinafter referred to as the 'respondent' since respondents No.2 and 3 are proforma parties) filed Cont. Cas (C) No.240/2007 in which vide order dated 1.8.2007, directions were given by the learned Single Judge to the appellants to make payment of the subsistence allowance to the respondent. Challenging this order, present appeal is filed primarily on the ground that as the Division Bench in its order dated 8.3.2006 had authorized the appellants to pass appropriate orders in respect of the said period and armed with those directions the appellants have passed the orders rejecting the claim of the subsistence allowance and treated that period as *dies non*. On this basis, submission of the appellant, essentially, is that if the respondent was aggrieved against that order, his only remedy was to challenge those orders by filing appropriate proceedings and in no case, contempt would lie. For appreciating this controversy, we will have to traverse the material facts and we proceed to undertake that exercise now.

2. The respondent was an employee of the Central Industrial Security Force (CISF). At the relevant time, i.e., on 17.4.1996

he was working as Lance Naik. On certain allegations he was charge-sheeted. Inquiry was held holding charges as proved and orders dated 11.1.1997 were passed dismissing him from service. He challenged those orders dated 11.1.1997 by filing WP(C) No.4708/1997 in this Court. The Division Bench came to the conclusion that the departmental proceedings, which were initiated against the respondent, were conducted *ex parte*, which was not proper as during the relevant period the respondent was in hospital. Therefore, the inquiry as well as the punishment order set aside giving liberty to the appellant to proceed afresh against the respondent after giving due opportunity to him. While setting aside the orders of termination of service of the respondent as well as the order of the Appellant Authority, the following directions were given with which we are concerned in these proceedings:-

“The petitioner shall be reinstated in service. However, as the petitioner was under suspension at the time when the impugned order of termination was passed he shall be deemed to be under suspension from the date he is reinstated. The petitioner shall be paid subsistence allowance as per rules. So far as the period from the date of his termination till the date of his reinstatement is concerned, appropriate order in respect of the same shall be passed by the respondent in accordance with law. In view of the aforesaid order this writ petition stands

disposed of. It is also made clear that this order is passed in the light of the facts of the present case and shall not in any manner be treated as a precedent for any other case.”

3. It is clear from the above that following three directions are contained in the said order:-

- a) The respondent was to be reinstated in service;
- b) The respondent was deemed to be under suspension from the date of reinstatement and was to be paid subsistence allowance as per the rules;
- c) In so far as the period from the date of termination till the date of reinstatement is concerned, the Competent Authority was to pass appropriate order for this period, in accordance with law.

4. The respondent was reinstated in service vide orders dated 29.3.2006. He was placed under deemed suspension with effect from 23.3.2006. The first two directions were, accordingly, duly complied with. Dispute remains about the third direction.

5. The departmental inquiry was also conducted from the stage of submission of reply to the charge and on the completion of

the same, the respondent was awarded the punishment of reduction of pay to the lowest stage from Rs.3500/- to Rs.3050/- in the time scale of Rs.3050-75-4590 for a period of three years with cumulative effect vide orders dated 31.8.2006. After the imposition of this punishment, show cause notice dated 19.9.2006 was served upon the respondent as to why the period from his initial removal till the reinstatement, on the basis of High Court orders, i.e., from 30.9.1996 to 22.3.2006 be not treated as *dies non*. He was asked to make representation, if any, within a period of 15 days. He submitted his representation, which was not found favourable and the Disciplinary Authority passed orders dated 4.11.2006 treating the said period as *dies non*.

6. On the ground that the Disciplinary Authority could not pass an order treating this period as *dies non* and he was to be treated as under suspension for this period, the respondent filed Contempt Petition No.1384/2006. The appellant contested the petition, as mentioned above, on the ground that since the Division Bench had authorized the appellant to pass appropriate orders and such orders had, in fact, been passed, the third direction contained in the orders dated 8.3.2006 passed by the Division Bench was also complied

with and therefore, there was no question of committing any violation of that order. It was contended that if the appellant was aggrieved by that order, proper remedy was to challenge the same. The learned Single Judge after reproducing the relevant portion of the orders dated 8.3.2006 (which we have also extracted above) interpreted the said order in the following manner and consequently, directed the appellant to pay the subsistence allowance for the period in question:-

“4. Although the sentence in above operative portion reads: “however, as the petitioner was under suspension at the time when the impugned order of termination was passed he shall be deemed to be under suspension from the date he is reinstated”, it is obvious that the word “from” should read as “till” since otherwise the sentence would be inconsistent with the rest of the order.

5. The Respondents are accordingly directed to re-compute the subsistence allowance payable to the petitioner during the period from the date of removal till the date of his reinstatement. Payment of the subsistence allowance be made by the respondents within four weeks and the compliance affidavit be filed within two weeks thereafter.”

7. We may say at the outset that the aforesaid interpretation given by the learned Single Judge is not correct. The learned Single Judge has, in fact, altered the directions given by the

Division Bench by introducing the word “till” in place of word “from” as appearing in the said order. We are also inclined to agree with the contention of the learned counsel for the appellant that once an order is passed giving direction in the judgment to the appropriate authority to pass an order and that order is passed, aggrieved party cannot normally file a contempt petition but is supposed to challenge that order in appropriate proceedings. Reason is simple, by passing the order the directions are complied with and therefore, there is no infraction of the directions.

8. Notwithstanding the above, in the present case we are of the opinion that the respondent was to remain under deemed suspension even for the period from the date of his termination till the date of his reinstatement and therefore, the ultimate outcome, namely, directions given by the learned Single Judge in the impugned order does not call for interference; albeit we do so for different reasons and not subscribing to the view taken by the learned Single Judge. Our reasons, in this behalf, are contained in the following passages.

9. No doubt, the Department/Competent Authority was given liberty by the Division Bench in its orders dated 8.3.2006 to

pass appropriate orders in respect of the period from the date of termination of service till the reinstatement. At the same time, it was made clear that such an order has to be in accordance with law as is clear from the following line in the said order: "Appropriate order in respect of the same shall be passed by the respondent in accordance with law." The Competent Authority, thus, while considering the issue as to what treatment is to be given to the period from the date of termination till reinstatement, when further inquiry was to be held against the respondent herein, was to follow the relevant law. Learned counsel for the respondent has pointed out that the Central Industrial Security Force Rules, 2001, specifically take care of this situation, as is clear from sub-rule (4) of Rule 33 which deals with suspension. This sub-rule reads as follows:-

- "33.** (1) xxxxx
(2) xxxxx
(3) xxxxx
(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an enrolled member of the Force 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] 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 enrolled member of the Force 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.”

10. The aforesaid rule clinchingly stipulates that such an employee like the respondent in the present case has to be treated as under deemed suspension from the date of dismissal/removal etc. by using the expression “from the date of original order of dismissal” In view of this rule, the Disciplinary Authority had no choice to pass any other kind of order. Merely because the Division Bench of this Court had authorized the Disciplinary Authority to pass appropriate orders dealing with the aforesaid period would not give *carte blanche*. It is stated at the cost of repetition that the Disciplinary Authority was under obligation to pass the order “in accordance with law”, which it is supposed to do even otherwise, but here specifically mandated by the Division Bench as well. Once we look into the matter from this angle, it is obvious that the order of the Disciplinary Authority was not in accordance with law and to that extent it was contrary to the directions contained in the aforesaid order of the

Division Bench.

11. In these circumstances, we are of the opinion that the order can be passed even in the contempt proceedings directing the Disciplinary Authority to treat the respondent under suspension for the period in question and pay the subsistence allowance. These are the reasons because of which we affirm the directions given by the learned Single Judge, though we do not subscribe to the reasoning given by the learned Single Judge in support of the said directions. This appeal is accordingly dismissed. We may note that during the pendency of this appeal the appellant had deposited the amount in this Court. This amount shall be released to the respondent forthwith.

(A.K. SIKRI)
JUDGE

July 18, 2008
hp.

(MANMOHAN SINGH)
JUDGE