

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

+ **W.P. (Civil) No. 12906/2009**

% Reserved on: November 05, 2009

Decided on: December 07, 2009

R P S PANWAR Petitioner

Through: Mr. R.P. Kapur, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. R.V. Sinha, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgment should be reported in the Digest? | Not necessary |

MUKTA GUPTA, J.

1. A case was registered against the Petitioner under the Prevention of Corruption Act, 1988 and he was arrested on 18th September, 2003 by Central Bureau of Investigation. As the Petitioner was under detention for more than 48 hours vide order dated 23rd September, 2003 he was placed under

suspension under Rule 10 (2) of Central Civil Services (C.C.A.) Rules, 1965 (in short CCS (CCA) Rules). In view of the amendment to Rule 10 of CCS (C.C.A.) Rules, 1965 and introduction of sub-rules 6 and 7, the order of suspension of the Petitioner was reviewed on 19.4.2004, 8.10.2004, 10.3.2005, 8.8.2005 and 15.2.2006. On 30th April, 2006 the Petitioner retired as General Manager (Telephone). Before his retirement an order dated 13th April, 2006 was passed stating that the Petitioner will continue to be under suspension till finalization of all the cases and shall remain under suspension until further orders. The order dated 13th April, 2006 is reproduced below:

“WHEREAS Shri R.P.S. Panwar, GM (Telecom), Muzaffarnagar, was placed under suspension w.e.f. 18.09.2003 vide order of even number dated 23.09.2003 in view of his detention in police custody for a period exceeding 48 hours in criminal case under investigation.

AND WHEREAS, Shri R.P.S. Panwar continues to be under suspension vide order dated 15.02.2006.

AND WHEREAS, Shri R.P.S. Panwar is going to retire on 30.04.2006 on attaining age of superannuation.

NOW, THEREFORE, the President has carefully considered the case of Shri R.P.S. Panwar and keeping in view that 10 departmental cases, in addition to a criminal case in which he was formally placed under deemed suspension, are pending against him, has ordered that Shri Panwar will continue to be under suspension till finalization of all the cases (Department /criminal) and a decision of his

suspension period will be taken only on conclusion of all such cases, depending on the outcome thereof.

NOW, THEREFORE, the said Shri R.P.S. Panwar is deemed to have been suspended from the date of his detention i.e. 18.09.2003 in terms of sub-rule (2) of Rule 10 of CCS (C.C.A.) Rules, 1965 and shall remain under suspension until further orders.

By order and in the name of the President.”

2. The Petitioner was served with two memorandum of charges dated 5th October, 2006 and 15th March, 2007. He challenged the same by way of Original Application No. 1658/2007 filed in the Central Administrative Tribunal *inter alia* on the grounds that the same have been issued after his retirement contending that his case was not covered by CCS (C.C.A.) Rules, 1965/CCS (Conduct) Rules, 1964 but only by CCS (Pension) Rules, 1972. The Tribunal rejected the pleas of the Petitioner and dismissed the Original Application pursuant to which the Petitioner filed Writ Petition (C) No. 3012/2008 raising the above mentioned plea.

3. Writ petition (C) No. 3012/2008 was decided on 4th July, 2008 wherein after a detailed consideration of Rule 10 of CCS (CCA) Rules, 1965 and Rules 9 (2) and 9 (6) (a) of CCS (Pension) Rules, 1972, this Court in para 13 of the judgment held:

“13. However, a very significant development took place after passing of orders dated 15.2.2006, which has changed the nature of suspension order. As pointed out above, the petitioner was to attain the age of superannuation on 30.4.2006. The case of the continuation of the petitioner’s suspension beyond superannuation was, therefore, considered by the President and orders dated 13.4.2006 was passed stating that he would continue to be under suspension till finalization of all cases and decision on treatment of suspension period would be taken only on the conclusion of all such cases. This order does not limit the scope of cases to criminal case alone but, in no uncertain terms, mentions about the departmental cases as well, as is clear from the operative portion of the said order dated 13.4.2006, which is as follows:

“NOW, THEREFORE, the President has carefully considered the case of Shri R.P.S. Panwar and keeping in view that 10 departmental cases, in addition to a criminal case in which he was formally placed under deemed suspension, are pending against him, has ordered that Shri Panwar will continue to be under suspension till finalization of all the cases (departmental/criminal) and a decision of his suspension period will be taken only on conclusion of all such cases, depending on the outcome thereof.

By order and in the name of the President.”

This order, thus, in no uncertain terms and unambiguously records the decision making process. Having regard to the pendency of 10 departmental cases, in addition to a criminal case, the President had decided that he would continue to be under suspension “till finalization of all the cases (departmental/criminal....”. Since his continuation was treated, by the said order, pending departmental cases as well, the petitioner cannot argue that the suspension was only with reference to the criminal investigation and had nothing to do with the departmental cases.

We, therefore, do not accept the submission of learned counsel for the petitioner in this behalf.”

After considering the judicial precedents cited by the Petitioner the writ petition was dismissed with the following observations:

“18. Once the aforesaid position is to be accepted as irrefutable, it is not difficult to find the answer to the issue arising out of the situation at hand. Here the petitioner was suspended while still in service and investigation into the alleged irregularities initiated. It is to be borne in mind that sometimes having regard to the complicated nature of charge, substantial time is taken in the investigation. In the present case itself, the FIR against the petitioner was lodged in September, 2003, i.e. much before the petitioner's retirement on 30.4.2006. Keeping in view the fact that the petitioner remained in custody for more than 48 hours, though initially order of deemed suspension was passed, the President chose to extend this order from time to time after re-assessment, keeping in view the seriousness of the charges leveled against the petitioner. In such cases, where the investigation gets completed after the retirement, the very purpose of introducing Rule 9 of the Pension Rules, would be defeated if the contention of the petitioner is accepted and it is held that the provision of deemed suspension would not be acceptable.”

4. The above narration of facts is essential for adjudication of the present writ petition, as in the present petition also the Petitioner though has impugned order dated 22nd April, 2009 passed in Original Application No. 855/2009 and a different memorandum of charge dated 31st July, 2008, than the one impugned in O.A. No. 1658/2007 and W.P. (C) No. 3012/2008, however, the grounds urged are the same. The Tribunal while dismissing Original Application No. 855/2009 held that the issue of non-applicability of

CCS (CCA) Rules, 1965 in view of the applicant's retirement on superannuation has been considered threadbare by the High Court in its judgment dated 4th July, 2008. The decision of the High Court in W.P. (C) No. 3012/2008 having attained finality is applicable to the present writ petition also.

5. We are also of the view that in view of the order dated 13.4.2006 continuing the Petitioner under suspension till finalization of all his cases (Departmental/Criminal) the Petitioner's case is covered by Rule 9 (6) of the CCS (Pension) Rules which is reproduced herein below:

“9. (6): For the purpose of this rule,-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date.”

6. In view of the order dated 13th April, 2006 passed by the Respondents, continuing the Petitioner to be under suspension till the finalization of all his cases (departmental/criminal), it is not possible to accept the plea of the Petitioner that the Respondent could not have issued him memorandum of charge and initiate departmental proceedings in view of his retirement.

7. We find no infirmity in the impugned order dated 22nd April, 2009 of the Tribunal in Original Application No. 855/2009.

8. The present writ petition is dismissed. No order as to costs.

MUKTA GUPTA, J

MADAN B. LOKUR, J

DECEMBER 07, 2009

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