

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

% Judgment reserved on: 01.03.2012
Judgment pronounced on: 12.03.2012

+ W.P.(C) 7303/2010

DELHI DEVELOPMENT AUTHORITY ... Petitioner

versus

S.C. GAUTAM ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Arun Birbal
For Respondent : Mr Siddharth Yadav and Mr Wasim Ashraf

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the orders dated 13.08.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby OA No. 3139/2009 filed by the respondent, was allowed. The facts giving rise to the filing of this writ petition can be summarized as under:

The respondent before this Court was convicted under Sections 7 and 13(1)(d) Prevention of Corruption Act, 1988, vide order dated 07.04.1998, and was sentenced to undergo rigorous imprisonment for three years. Vide order dated 08.12.1998, passed by Commissioner (Personnel) of the petitioner under

Regulation 19(1) of DDA (Salaries, Allowances and Condition of Service) Regulation, 1961, the respondent was removed from service w.e.f. 07.04.1998. WP(C) No. 4260/1999 was filed by the respondent, challenging the order, whereby his services were terminated. The appeal filed by the respondent against his conviction was dismissed by this Court on 01.03.2002. Vide order dated 13.07.2007, Commissioner (Personnel) modified the order dated 08.12.1998 and in modification of that order directed that the removal of the respondent shall be effective from 08.12.1998. WP(C) No. 4260/1999 was transferred to Central Administrative Tribunal and was disposed of vide order dated 08.08.2008, whereby the Lieutenant Governor of Delhi, who is also the *ex officio* Chairman of the petitioner, was directed to take notice of the contention of the applicant S.C. Gautam with respect to competence of the authority empowered to impose penalty on him. It was further directed that if his finding is that the order of removal of the applicant (respondent before this Court) had been passed by a competent officer, nothing more was required to be done, but, if he found that the order had been passed by a person who did not have jurisdiction in the matter, he would ensure that the orders impugned before the Tribunal was set aside and the matter was placed before the Competent Authority for fresh order.

Pursuant to the order of the Tribunal dated 08.08.2008, the Lieutenant Governor held that Commissioner (Personnel) was not competent to remove the

respondent from service and accordingly the order dated 08.12.1998 was set aside by him, with the direction that the matter be placed before the Vice-Chairman, for passing a dispassionate order, after considering the reply submitted by the respondent to the show-cause notice issued on 18.09.1998. Pursuant to the aforesaid order passed by the Lieutenant Governor/Chairman, DDA, the Vice-Chairman issued a notice to the respondent on 05.11.2008, seeking his representation on the proposal to impose penalty of removal from service. After considering the representation made by the respondent, the Vice-Chairman, DDA passed an order dated 16.02.2009, imposing penalty of removal from service w.e.f 07.04.1998 upon the respondent. In the appeal filed by the respondent, the Lieutenant Governor of Delhi, in his capacity as the Appellate Authority, while refusing to interfere with the penalty awarded to the respondent, modified the penalty order to the extent that the same was made effective from 08.12.1998. The respondent filed OA No. 3139/2009, challenging the removal from service, which was allowed by the Tribunal vide impugned order dated 13.07.2007 by directing the petitioner before this Court to reinstate the respondent, but under deemed suspension w.e.f. 8.12.1998 till the date of the order. The petitioner before this Court was also directed to pay arrears of subsistence allowance to the respondent. Liberty was, however, given to the petitioner to pass a fresh order, strictly in accordance with the requirement of law.

2. The Tribunal, while allowing the OA, *inter alia* observed and held as under:-

“In our considered view, applicant, who was convicted and the earlier order of removal passed was by an incompetent authority, accordingly the decision of the Tribunal in TA-181/2007 dated 8.8.2008 set aside the removal with a direction to pass an order on merits on a show cause notice issued to applicant as to the reply filed by the applicant pursuant to earlier notice of 18.9.1998. However, a notice was issued to the applicant under Regulation 19 (1), whereby the DA has not recorded any reasons, did not indicate unfitness of the applicant for service and also not considered proportionality of punishment etc. Basically, as per Regulation 19 (2) of the Regulations it is mandatory upon the DA to record reasons of its satisfaction with regard to dispense with the departmental enquiry. The DA on considering the circumstances of the case may pass an order on a show cause notice to inflict penalty of removal or dismissal. Applicant in response sought certain documents, though few of them were given to him, but were forming part of the court order, including an order passed by the Lieutenant Governor, already served upon him, the DA examined the reply but without recording any reasons and discharging the obligation, mechanically confirmed the penalty proposed. When this has been challenged in appeal, the same has been upheld except modifying the order.

As the applicant was imposed a penalty on his conviction in a corruption case on 7.4.1998 by an incompetent authority of *coram non judis* the order passed by the Lieutenant Governor on 8.10.2008 pursuant upon the direction of the Tribunal, where legalities are to be examined, found that the order passed by the Commissioner (Personnel) on

8.12.1998 was not passed by the competent authority, instead of putting him back and directing the competent authority to pass a fresh order, an order passed to issue show cause notice resulted in its confirmation by an order dated 16.2.2009. In our considered view, the High Court of Delhi in *Rama Tyagi v. DDA*, 87 (2000) DLT 725 clearly ruled that removal by Director (Personnel), whereas Vice Chairman was the appointing authority is not sustainable in law. Applicant on this illegal order, which was corrected only in 2008, should have been made entitled to continue under deemed suspension but that has not been done. Moreover, the Apex Court in *Union of India v. Sunil Kumar Sarkar*, (2001) 3 SCC 414 while considering the impact of Rule 19 of the Rules held that:

“a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show cause notice and reply to such show cause notice, if any, should be properly considered before making any order under this Rule. Of course, it will have to bear in mind the gravity of the conviction suffered by the Government servant in the criminal proceedings before passing any order under Rule 19 to maintain the proportionality of punishment.

The case-law cited by the respondents in *Ramesh Kumar (supra)* being of lesser coram was not on this issue but on the issue of whether suspension of sentence would create a right for reinstatement to a government servant is distinguishable. As we find that when Regulation 19 does not dispense with recording of reasons, unfitness of the applicant having not been considered, the order passed cannot be sustained.

As regards retrospectivity of date of removal is concerned, once the DA has not been found competent, as a natural consequence the order passed cannot be sustained and the applicant from 7.4.1998 to 8.12.1998 is entitled to be retained in service on deemed suspension with all arrears.

As the appellate order also has not recorded any reasons, taking into consideration the contentions of applicant, which is mandated upon the appellate authority as an obligation, the order also goes as illegal.”

3. A perusal of the Schedule to Regulation 15 of Delhi Development Authority (Salaries, Allowances & condition of Service) Regulation 1961, as amended vide Notification dated 01.03.1994, would show that Vice-Chairman, DDA was competent to impose penalty on an employee holding a Group-A post carrying a pay or scale of pay, the maximum of which was less than Rs 6700/-, but not less than Rs 4000/- except those who were appointed by the Government of India. It is not in dispute that on 08.12.1998, when the first order removing the respondent from service was passed, the respondent was not carrying a pay nor was he placed in a scale of pay having maximum pay of Rs 6700/- or more. Therefore, it is not disputed before us that Vice-Chairman, DDA was competent to impose penalty of removal of service upon the respondent. Thus, it cannot be said that the order

passed by Vice-Chairman, DDA on 16.02.2009 was not passed by a Competent Authority.

4. The view taken by the Tribunal appears to be that the order passed by the Vice-Chairman of DDA was not a speaking order and he did not consider whether the respondent was unfit for being continued in the service of DDA or not. This was also the contention of the learned counsel for the respondent during the course of arguments before us. The order dated 16.02.2009, to the extent it is relevant, reads as under:-

“AND WHEREAS Sh. S.C.Gautam, JE has been convicted on the criminal charges under Section 7 and 13(1) (d) of Prevention of Corruption Act 1988 by the Court of Sh. Dinesh Dayal, Spl. Judge, Delhi vide his judgment dt. 07.04.1998.

AND WHEREAS the Chairman vide his order dt. 08.10.2008 set aside the abovesaid order dt. 08.12.1998 of Commr.(Personnel), DDA and direct Vice Chairman, DDA as the Competent Authority to pass an order on merits.

AND WHEREAS after careful consideration of the facts, circumstances and Judgment of Hon'ble Spl. Judge, Delhi the undersigned being the disciplinary authority has come to the conclusion that it is fit case where Regulations 19(1) of Delhi Development Authority (Salaries, Allowances and conditions of Services) Regulation, 1961 should be invoked and have further come to the conclusion that the ends of Justice will be met if Sh. S.C.Gautam, JE is removed from the service of the Authority w.e.f. 07.04.1998 i.e. date of Judgment.

And whereas Sh. S.C.Gautam was given an opportunity vide memorandum dt. 05.11.2008 for making representation on the aforesaid penalty within 15 days from the date of receipt of the memorandum.

And whereas Sh. S.C.Gautam submitted his reply on 15.11.2008 and 11.12.2008.

AND WHEREAS Sh. S.C.Gautam applied under RTI for some documents. He has not replied to the Memorandum dt. 5.11.2008 taking the plea that documents asked for under RTI has not been supplied to him. Most of the documents are already with him being court orders and order of Hon'ble LG was given to him.

And whereas the undersigned has examined the reply given by Sh. S.C.Gautam, JE and facts on the file and has come to the conclusion that penalty proposed vide notice dt. 5.11.2008 is confirmed.

Now, therefore, the undersigned is exercise of powers conferred upon me under Regulation 30 of DDA Conduct, Disciplinary and Appeal Regulations 1999 hereby impose the penalty of removal from service on Sh. S.C.Gautam, JE.”

5. A careful consideration of the above-referred order would show that Vice-Chairman, DDA, who passed this order, had applied his mind to all the facts and circumstances of the case, including conviction of the respondent under Sections 7 and 13(1)(d) of Prevention of Corruption Act, vide judgment dated 07.04.1998, order of Tribunal dated 08.08.2008 passed in WP(C) No. 4260/1999 which was later transferred to the Tribunal and the order of the Lieutenant Governor dated 08.10.2008. It also shows that before passing the order, he had taken into

consideration the reply submitted by the respondent and had also examined his contention that some documents had not been supplied to him. Therefore, the above-referred order cannot be said to be a mechanical order passed without due application of mind to the facts and circumstances of the case.

6. As regards application of mind with respect to proportionality of the penalty to be imposed upon the respondent, consequent to his conviction under Sections 7 and 13(1)(d) of Prevention of Corruption Act, 1988 and consideration of the question as to whether, on account of the misconduct leading to his conviction under Sections 7 and 13(1)(d) of Prevention of Corruption Act, 1988, the respondent was fit to continue in the service of DDA or not, the learned counsel for the petitioner has vehemently contended that if an employee is convicted in a corruption case, his dismissal or removal from service can be the only appropriate penalty to be awarded to him and, therefore, such an employee would never be fit to continue in service. The contention was that if dismissal or removal from service is the only appropriate penalty for such an employee, it would not be necessary for the Disciplinary Authority to indicate in the order, as to why penalty of removal from service was to be imposed and why such an employee was not fit to continue in service.

Regulation 19(1) of DDA (Salaries, Allowances and Condition of Service) Regulation, 1961, empowers the Disciplinary Authority, where a penalty is sought

to be imposed on an employee of DDA on ground of conduct which led to his conviction of a criminal charge, to consider the circumstances of the case and pass such orders as it may deem fit. The term “considers” postulates consideration of all the pros and cons of the matter, after giving opportunity of hearing to the concerned employee. It can hardly be disputed that while considering all the pros and cons of the matter, the Disciplinary Authority will be required to take into account the conduct of the delinquent employee, the gravity of the misconduct, which led to his conviction, the impact which such misconduct is likely to have on the administration and the extenuating circumstances or redeeming features if any. If an employee is convicted for a trivial offence or a technical offence such as violation of Motor Vehicles Act and Rules, it would be difficult to justify imposition of a penalty of dismissal or removal from service on account of such misconduct. In fact, if the Disciplinary Authority feels that the offence committed by the delinquent employee is of a trivial or is of a technical nature, it may not impose any penalty on him, despite his conviction. The discretion vests with the Disciplinary Authority, to decide, after considering all the aspects of the case, as to what penalty the facts and circumstances of the case would justify. But, the respondent before us was not convicted for commission of a technical or a minor offence. He has been convicted under Section 7(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, which is a very serious offence and he was

sentenced to undergo imprisonment for three years. The question which arises for consideration is as to whether the Disciplinary Authority, while dealing with a misconduct of this grave nature is required to indicate, in the order passed by him as to why he was awarding the penalty of removal from service upon the employee and whether he was required to give reasons as to why such a person was unfit to continue in service of DDA.

7. In ***U.P. State Road Transport Corporation v. Suresh Chand Sharma*** 2010 (6) Scale 87, the respondent before Supreme Court was dismissed from service on the charge of embezzlement of a petty amount, which he had recovered from 13 passengers whom he had allowed to travel without tickets in a bus. It was contended on his behalf that dismissal from service, for embezzlement of such a small amount could not be justified, the same being disproportionate to the proved delinquency of the employee. The contention was, however, rejected by Supreme Court. In taking this view, Supreme Court referred to its decision in ***Municipal Committee, Bahadurgarh vs. Krishnan Bihari & Ors.*** AIR 1996 SC 1249, wherein it had observed that in cases involving corruption, there cannot be any punishment other than dismissal. The Court was of the view that any sympathy shown in such cases was totally uncalled for and opposed to public policy. The Court also relied upon its earlier decision in ***Divisional Controller N.E.K.R.T.C. v. H. Amaresh***, AIR 2006 SC 2730 and ***U.P.S.R.T.C. v. Vinod Kumar***, (2008) 1

SCC 115, where it had held that though punishment should always be proportionate to the gravity of misconduct, in a case of corruption/misappropriation, dismissal is the only punishment. A number of other cases reiterating the aforesaid view were referred by Supreme Court in *Suresh Chand Sharma* (*supra*).

8. In the case before us, the respondent, consequent to his conviction, was sentenced to imprisonment for three years. The punishment to undergo rigorous imprisonment for three years is indicative of the gravity of the offence committed by the respondent. Therefore, it would be difficult to say that punishment other than dismissal or removal from service could have been an appropriate penalty to be awarded to the respondent. If removal from service was the minimum penalty which ought to be awarded to the respondent, it was not necessary for the Disciplinary Authority to indicate the reason for awarding this particular penalty. We, therefore, hold that the view taken by the Tribunal in this regard cannot be sustained.

9. The next question which comes up for our consideration is as to whether while passing the order dated 16.02.2009, the Vice Chairman of DDA could have made it effective from 08.12.1998. Pursuant to the order passed by the Tribunal on 08.08.2008, the Lieutenant Governor/Chairman, DDA, on examination of the matter, held that Commissioner (Personnel) of DDA was not competent to impose

the penalty of removal from service upon the respondent and consequently the order passed by the Commissioner (Personnel) on 08.12.1998 was set aside by him. Therefore, it cannot be disputed that the order dated 08.12.1998 was passed by an authority which was not competent to award penalty of removal of service upon the respondent. The learned counsel for the petitioner contended that since the order dated 16.02.2009 was passed pursuant to those very proceedings which had earlier culminated in the passing of the order dated 08.12.1998 by Commissioner (Personnel), it was open to the Vice-Chairman, while passing the order dated 16.02.2009, to give retrospective effect to the penalty with effect from the date the earlier order of removal from service was passed. In support of his contention, the learned counsel for the petitioner has relied upon **Chairman-cum-M.D., Coal India Ltd. & Ors. v. Ananta Saha & Ors** Civil Appeal No. 2958/2011, decided by the Supreme Court on 06.04.2011, **Fateh Singh v. State of Haryana** 2004(136) PLR (D.B), **DDA v. K.P. Garg** WP(C) No. 8151/2008, **State of Punjab v. Harbhajan Singh Greasy** 1996 SCC (L&S) 1248, **Union of India v. Y.S. Sadhu-Ex.-Inspector** 2009 (1) SCC (L&S) 126 and decision of Kerala High Court in **State of Kerala and Ors. v. Janardhanan, A.P.** WA No. 2773/2007, decided on **28.03.2008.**

10. The learned counsel for the respondent, on the other hand, pointed out that subsequent to the order passed by the Lieutenant Governor, a fresh notice was

issued to the respondent on 05.11.2008 and, therefore, it cannot be said that the order dated 16.02.2009 was passed in continuation of the notice which had culminated in passing of the order dated 08.12.1998 by Commissioner (Personnel) of DDA. He also contended that retrospective application of order of removal from service is unknown to service jurisprudence, particularly when the earlier order was passed by an authority which was not competent to pass that order and the same was set aside.

11. In **R. Jeevaratnam v. State of Madras** AIR 1966 SC 951, the Government passed an order on 17.10.1950, directing that the appellant be dismissed from service w.e.f. 20.05.1949. The appellant filed a suit seeking declaration that the order dismissing from service was illegal and void. The suit was dismissed and the order of the trial court was upheld by the High Court in appeal. It was contended before Supreme Court that the order having been given retrospective effect was illegal and inoperative. Rejecting the contention, Supreme Court, inter alia, held as under:-

“An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of

dismissal, but surely it can give effect to the valid and severable part of the order.”

Thus, the proposition of law which one gathers from this judgment is that an order of dismissal giving retrospective effect to the penalty of dismissal would not be per se illegal though it would operate prospectively.

In **Laisram Tombi Singh, Imphal v. Laisram Gopal Singh, Imphal, AIR 1963 Manipur 28**, the petitioner was dismissed from service w.e.f. the date he was suspended. The dismissal was challenged by the petitioner. Dealing with the contention, Supreme Court, *inter alia*, held as under:-

“The ordinary rule is that any order including an order of dismissal can take effect only from the date of the order. If it is to have retrospective effect there must be some provision in the statute or in the rules on which the order was based, permitting retrospective effect to be given to the order. The Central Civil Services Rules, 1957 which are framed under Article 309 of the Constitution to regulate the conditions of service of Government servants provide for various penalties including dismissal. There is nothing in the said rules, which would permit the disciplinary authority to dismiss a person from Government service with retrospective effect.

An order of dismissal with retrospective effect from the date of suspension amounts even to a decision by the disciplinary authority that the Government servant is not entitled even to the subsistence allowance to which he has a right under F.R. 53. The disciplinary authority is bound by the provisions of F.R. 53 and he cannot make

any order which will be against the said provision.”

In **Sudhir Ranjan Halder v. State of West Bengal** AIR 1961 Calcutta 626, a Division Bench of Calcutta High Court took the view that suspension, dismissal or removal from service with retrospective effect is illegal and invalid.

In **Pranlal Manilal Parikh v. State of Gujarat** 1995 SC (L&S) 898, disciplinary proceedings against the judicial officer were initiated by the State Government. He was dismissed from service vide an order dated 03.11.1965 passed by the State Government. A writ petition filed by him against the order of dismissal was allowed by the Supreme Court, holding that the State was not competent to order and initiate an inquiry. Thereafter, the High Court, on the administrative side, initiated a fresh inquiry, suspended the petitioner and later dismissed him from service. The petitioner claimed arrears of salary for the period from 03.11.1965 to 26.06.1975. The respondent resisted the claim on the ground that in view of Rule 5(4) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1975, he was deemed to be under suspension from 03.11.1965. The above-referred Rule reads as under:-

“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,

decided 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.”

The Supreme Court was of the view that the entire proceeding, beginning with the departmental inquiry initiated by the State and concluding with the order of dismissal passed by it, was in derogation of the concept of judicial independence and control enshrined in Article 235 of the Constitution and such an inquiry and consequential order passed pursuant thereto can have no efficacy in law. The Court was of the view that Rule 5(4) does not deal with a situation of this type where the departmental inquiry is initiated and concluded by an authority which was precluded from doing so in view of the clear mandate of Article 235 of the Constitution. The Court felt that such an order can have no existence in law and, therefore, has to be ignored. The Court was of the view that the above quoted Rule would be applicable to the orders which are passed by a Competent Authority but declared void by a Court on grounds, such as, violation of the principle of natural justice, etc. But, the inquiry initiated by the State Government, culminating in the order of removal dated 03.11.1965 can have no existence and efficacy in law and,

therefore, has to be ignored. The Court thus held that the petitioner was entitled to salary for the aforesaid period between 03.11.1965 to 26.06.1975.

12. In ***Fateh Singh*** (*supra*), the petitioner was suspended on 17.07.1993 due to involvement in a criminal case. He was convicted under Section 304 Part-II read with Section 323/326 of IPC vide judgment vide judgment dated 25.10.1997. The appeal filed by the petitioner was disposed of on 15.09.1998. He was dismissed from service on 29.12.1999 w.e.f. 23.05.1993 when he was arrested. The dismissal was challenged amongst others on the ground that it had been made retrospectively which was not sustainable as no rule of law provided for passing such an order. It was also argued on behalf of the petitioner that if a person is serving sentence, he shall remain under suspension and no order of reinstatement could be passed even if the Competent Authority desired to do so and, therefore, giving retrospective effect to an order of dismissal was not sustainable. The High Court noted from the rules applicable to the petitioner that if a person suffered conviction, he would stand dismissed from service and observed that though the order of dismissal could have been passed on the date he was convicted, the same was deferred considering his right of appeal and conviction having been upheld, the order of dismissal was a necessary consequence. The High Court, therefore, upheld the order of dismissal. However, in the case before this Court, the relevant Rule does not provide that the concerned employee has necessarily to be dismissed from service if he is convicted

on account of moral turpitude. Though the dismissal of service is an appropriate punishment to be given to a person convicted under the Prevention of Corruption Act, the Rule does not make it obligatory for the Competent Authority, to dismiss such a person from service. Therefore, this judgment cannot be applied to the case before us, particularly considering the view taken by the Supreme Court in ***R. Jeevaratnam*** (*supra*).

In ***Janardhanan, A.P.*** (*supra*), a Division Bench of Kerala High Court, after considering a number of decisions of the High Court, on the subject was of the view that there was no binding precedent of any Court that a Government servant cannot be dismissed with retrospective effect. The Court noted those judgments where it had been held that an order dismissing an employee from service, from a retrospective date was illegal and void as also the judgment in which retrospective dismissal had been upheld by Kerala High Court. The Court, thereafter, noted that Kerala Service Rules did provide for retrospective dismissal, removal or compulsory retirement of an employee from service and further noted that the Rules had not been challenged before them. The Court, while upholding retrospective dismissal of the respondent, *inter alia*, observed as under:-

“Note 5 under Rule 56B of Part I, K.S.R., deals with dismissal or removal from service of an officer from the date of suspension. The said note reads as follows:

If an officer under suspension is dismissed or removed with retrospective effect from the date of suspension no recovery should be made of the subsistence allowance already paid to him, and arrears of subsistence allowance, if any, due to him upto the date of the order dismissing or removing him should be paid to him. The arrears of subsistence allowance due to the officer should not be adjusted against any amounts due from him to Government.

Note 6 of the said Rule deals with compulsory retirement with retrospective effect from the date of suspension. The said note reads as follows:

If an officer under suspension is compulsorily retired with retrospective effect from the date of suspension, the pension due to the officer from the date of such retirement to the date of the order compulsorily retiring him shall be withheld, if the rate of pension is lower than or equal to the rate of subsistence allowance granted to him. In case the pension happens to be higher than the subsistence allowance granted, the difference shall be paid to the officer.

So, the above provisions in the K.S.R. would show that the Government, which is the author of the Rules and also the disciplinary authority of the respondent, had contemplated dismissal or removal from service with retrospective effect. Compulsory retirement from service with retrospective effect as a punishment was also within the contemplation of the Government. The above provisions in the K.S.R. also form part of the disciplinary code applicable to a Government servant. We notice that there is no challenge to the above statutory provisions. Therefore, if, in an appropriate case the

Government impose the punishment of compulsory retirement with retrospective effect, the same cannot be treated as illegal or unauthorised. There is no binding precedent of this Court or of the Apex Court, concerning the invalidity of imposition of a punishment with retrospective effect, on a Government servant working under the State of Kerala. Even assuming Jeevaratnam's case (*supra*) had considered whether retrospective effect could be given to a dismissal, the same can only be a decision concerning service conditions of Government servants working under the erstwhile Madras Government. So, the said decision cannot have any application to the facts of this case.”

However, the regulations applicable to the respondent do not provide for retrospective dismissal or removal from service. This judgment, therefore, does not apply to the case before us.

In ***K.P. Garg*** (*supra*), the respondent had been removed from service vide an order dated 07.04.1992. The order of removing him from service was set aside by the Tribunal, primarily on the ground that the reply to the show-cause notice submitted by the respondent has not been considered and the Disciplinary Authority had not recorded any reason to impose the extreme punishment of removal. The Tribunal held that the respondent would be entitled to back wages. Setting aside the order passed by the Tribunal, this Court, *inter alia*, observed as under:-

“It is now well settled that there is a procedural lapse in the disciplinary proceedings, and on that account the penalty imposed on the employee cannot be sustained and is set aside, the appropriate course is to permit the disciplinary authority to take a decision, on whether or not it considers it appropriate to proceed in the matter, and if he decides to restart the enquiry, to follow the procedure from the stage at which the lapse has occurred and to take action according to law. In *State of Punjab v. Dr. Harbhajan Singh Greasy* (supra) Supreme Court had held that if enquiry was found to be faulty, it would not be proper to direct reinstatement with consequential benefits as the appropriate course would be to remit the matter to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. The consequential benefits would depend upon the result of the enquiry and the order passed thereon. Similarly in *Union of India v. Y.S. Sadhu*, Ex inspector (supra) it was held by the Apex Court that where the departmental enquiry is found to be defective on account of violation of principle of natural justice, reinstatement could not be ordered on account of such infirmities and the appropriate course is to direct fresh proceedings from the stage of alleged illegalities without ordering reinstatement. Thus on the basis of ratio of *Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors.* (1993) 4 SCC 727; *State of Punjab and Ors. v. Dr. Harbhajan Singh Greasy*: (1996) 9 SCC 322 and *Bharat Coking Coal Ltd. and Ors. v. Babulal and Anr.* 1998 SCC (L&S) 572 it is to be held that the right to reopen the enquiry, when the enquiry has been quashed as not conducted in conformity with the principle of natural justice, cannot be denied. Thus, if the order of removal of respondent from the service is to be

sustained on account of non-consideration of his reply/representation, this should not result in reinstatement of respondent. Rather the proper course would be to direct the petitioner to consider the representation/reply before passing any order imposing any penalty.”

This judgment does not deal with the issue as to whether the order of dismissal from service can be given a retrospective application or not and, therefore, does not advance the case of the petitioner before this Court.

In ***Harbhajan Singh Greasy*** (*supra*), the report of the inquiry officer leading to removal of the respondent from service was passed on an admission alleged to have been made by him. The High Court set aside the order of dismissal on the ground that the alleged admission was not supported by any written statement of the respondent. The High Court while setting aside the order directed reinstatement of the respondent in service. Setting aside the order of the High Court, Supreme Court, *inter alia*, held as under:-

“Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the

enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction.”

Y.S. Sadhu-Ex.-Inspector (*supra*), the departmental inquiry against the respondent was found to be defective inasmuch as the witnesses who had been examined earlier were not produced for cross-examination. Based upon the findings returned in the inquiry, the respondent was dismissed from service. The order of dismissal of the respondent from service was set aside by the High Court which also directed his reinstatement without back wages. The Supreme Court, however, held that the proper course which the High Court should have adopted was to allow the proceedings to continue from the stage where it stood before the alleged vulnerability surfaced. This judgment also does not deal with the issue of retrospective application of the order of dismissal from service.

In **Chairman-cum-M.D., Coal India Ltd. & Ors.** (*supra*), the delinquent was dismissed from service vide order dated 17.06.1993 passed by the CMD of ECL, a subsidiary of CIL. The order of dismissal was set aside in a writ petition filed by the delinquent on the ground that it had not been passed by CMD of CIL, who was the Competent Authority under the Disciplinary Rules. The appeal filed by CIL against that order was dismissed. While dismissing the appeal, it was held by the High Court that the delinquent would be treated in the light of judgment of Supreme Court in **Managing Director ECL, Hyderabad etc.etc. v. B.Karunakar**

etc.: **AIR 1994 SC 1074.** However, the direction for holding the disciplinary proceedings de-novo was not altered. In view of the decision of the Division Bench, the delinquent was reinstated. The disciplinary proceedings were initiated and a fresh suspension order was passed. Vide an order dated 24.2.2004 passed by CMD of CIL, the delinquent was dismissed from service. An appeal was filed by the delinquent challenging the order of dismissal. However, without waiting for the outcome of the appeal, he filed a Writ Petition challenging the order of dismissal. The Writ Petition was allowed on the ground that Disciplinary Authority did not ensure compliance with the order of the High Court and the fresh inquiry was initiated by Officer on Special Duty who was not the Disciplinary Authority. The learned Single Judge was of the view that the proceedings could have been initiated only by the CMD of CIL. The order of dismissal dated 24.2.2010 was therefore quashed. CIL was however, given liberty to hold a fresh inquiry. The appeal filed by CIL was dismissed holding that the disciplinary proceedings had not been initiated by a competent person since no one other than CMD of CIL could have initiated the same. It was also held that the CMD of ECL was not the Competent Authority for the purpose. The Supreme Court, after examining the rules applicable to the delinquent, held that the disciplinary proceedings could be initiated either by the CMD of Coal India Limited or CMD of its subsidiary ECL, and therefore the High Court had erred in holding that CMD of

ECL was not competent to initiate the proceedings. The Supreme Court also held that since the High Court had given liberty to the appellants to hold a de-novo inquiry it was not permissible for them to proceed on the charge-sheet which they had issued earlier and therefore the question of initiating a fresh inquiry without giving a fresh charge-sheet could not arise. It was also found by the Supreme Court that CMD of ECL had merely signed the proposal mooted by the OSD for appointment of an Inquiry Officer to hold a fresh inquiry into the earlier charge-sheet and there was nothing on record to indicate that he had applied his mind before putting his signature on the proposals, though the law required him to pass some positive order taking into consideration the material on record. On this count Supreme Court found no fault with the order of the High Court. The appeal filed by CIL was partly allowed by reversing the finding of the High Court that the CMD of ECL was not competent to initiate the disciplinary proceedings. The Supreme Court directed that it was open to the appellants to initiate a fresh disciplinary proceeding by issuing a fresh charge-sheet. The delinquent sought directions from the Supreme Court for his reinstatement and payment of arrears of salary till the date of the order. This was opposed by the appellants who informed the Court that the delinquent had been practicing privately and question of back wages shall be determined by the Disciplinary Authority on conclusion of the fresh inquiry. It was also submitted that the result of the fresh inquiry in such a case relates back to the

date of termination. Supreme Court was of the view that the submissions of the appellants that the result of the inquiry in such a fact-situation relates back to the date of imposition of punishment, stands fortified by a number of decisions including *R.Thiruvirkolam v. Presiding Officer & Anr:* AIR 1997 SC 637, *Punjab Dairy Development Corporation Ltd & Anr. v. Kala Singh etc.* AIR 1997 SC 2661 and *Graphit India Ltd. & Ors. v. Durgapur Project Ltd. & Ors.* (1999) 7 SCC 645. The Court also noted that in *Managing Director, ECL (supra)* it had been held that where the punishment awarded by the disciplinary authority is quashed on some technical ground, the authority must be given an opportunity to conduct the inquiry afresh from the stage where it stood before the alleged vulnerability surfaced. It was also observed that for the purpose of holding the fresh inquiry, the delinquent need not be reinstated and may be put under suspension and the question of back wages etc. is to be determined by Disciplinary Authority after the fresh inquiry was concluded. Supreme Court also noted that even if the delinquent was reinstated it would not automatically make him entitled to back wages as entitlement to back wages was independent of reinstatement. The Court therefore declined to direct payment of back wages. It was also held that in case the appellants chose to hold a fresh inquiry they were bound to reinstate the delinquent and in case he was put under suspension he shall be entitled for subsistence allowance till the conclusion of the inquiry.

It would thus be seen that in this case the Supreme Court had reversed the view taken by the High Court with respect to the competence of the Managing Director of ECL to initiate the disciplinary proceedings. The order of the High Court setting aside the dismissal of the delinquent was upheld on the ground that neither a fresh charge-sheet had been issued to him despite previous order of the High Court nor had the Managing Director of ECL applied his mind to the proposal placed before him by the OSD to appoint an Inquiry Officer to conduct a fresh inquiry against the delinquent. However, the case before this Court is not of non-application of mind by the Disciplinary Authority. In the case before this Court, the order of dismissal was passed by Commissioner (Personnel) of DDA who was not competent to pass that order whereas in the case of *Coal India Limited (supra)* the order of dismissal dated 24.4.2004 had been passed by CMD of CIL though the disciplinary proceedings were initiated under the signature of CMD of ECL. We also note that pursuant to the order passed by Division Bench of the High Court, in first round of litigation, the delinquent in case of *Coal India Limited (supra)* had been reinstated.

In *R.Thiruvirkolam (supra)*, the appellant was employed as a technician with Madras Fertilizers Ltd. He was dismissed from service after a domestic inquiry on 18.11.1981. The dismissal was challenged by him before the Labour Court. The Labour Court found the inquiry to be defective and permitted the

management to prove the misconduct before it. On the basis of the evidence adduced before the Labour Court, it was held that the punishment was justified. The writ petition as well as the writ appeal filed by the appellant having been dismissed, the matter was taken to Supreme Court by way of Special Leave. The question which came up for consideration before the Court was as to whether the dismissal will take effect from the date of the order of the Labour Court or it would relate to the date of the order of dismissal passed by the employer. It was held that the issue was covered by the Constitution Bench decision in **Kalyani v. M/s Air France Calcutta** 1964 (2) SCR 104, where the Court had made a distinction between a case where no domestic inquiry had been held and a case in which the inquiry was defective for any reason and the Labour Court on its own appraisal of evidence adduced before it, reached the conclusion that the dismissal was justified. The Court noted that the view taken by the Constitution Bench that where the inquiry was found to be defective by the Labour Court and it then came to the conclusion on its own appraisal of evidence adduced before it, that the dismissal was justified, the order of dismissal made by the employer in a defective inquiry would still relate to the date when that order was made and, therefore, the Labour Court's approval of the order of dismissal made by the employer in a defective inquiry would still relate back to the date when the order was made. Supreme Court took note of the observations made by Three-Judges Bench in **Gujarat Steel**

Tubes v. Gujarat Steel Mazdoor Sabha (1980) ILLJ 137 (SC), where the Court had held that a void dismissal does not exist and, therefore, the relation-back doctrine cannot be invoked. The Supreme Court noted that the decision of the Constitution Bench in ***Kalyani*** (*supra*) had been referred to in ***Gujarat Steel*** (*supra*) and an attempt had been made to indicate that there was no difference in the view taken therein. The Court held that the above observations made in ***Gujarat Steel*** (*supra*) are not in conformity with ***Kalyani*** (*supra*). The following observations were made by the Court in this regard:-

“The above extract from *Kalyani* which contains the ratio of the decision clearly indicates that the above observations in *Gujarat Steel* are not in conformity with *Kalyani*. In *Kalyani* it was held that the defect found in the domestic inquiry is nullified by proof of misconduct on the basis of evidence adduced before the Labour Court so that there is no ground available for the Labour Court to set aside order of punishment. The question before the Labour Court is whether the order of punishment should be set aside on any ground and when the Labour Court ultimately reaches the conclusion that even though the inquiry was defective, there is material to justify in the punishment awarded, it rejects the challenge to the order of punishment which continues to operate. It is not as if the order of punishment becomes effectively only on rejection of the challenge to its validity. Unless set aside by a competent court on a valid ground, the order of punishment made by the employer continues to operate. The operation of the order of punishment made by the employer does not depend on its confirmation by the Labour

Court to make it operative. Unless set aside by a competent authority, the order of punishment made by the employer continues to be effective. Obviously this is the ratio of the decision in Kalyani.

These observations directly cover the case before us because though the Labour Court, in the instant case, found that the inquiry was defective as it infringed the principles of natural justice, it came to the conclusion after considering the evidence adduced before it, that the dismissal was justified. The award of the Labour Court must therefore relate back to the date when the order of dismissal was passed on the termination of the Domestic Inquiry.

We may now refer to the juristic principle on which the above quoted observations in Gujarat Steel appears to be based. There is a very useful discussion of the topic under the heading "Void and Voidable" at pages 339 to 344 in Administrative Law by Wade, Seventh Edition. The gist of the discussion in Wade is as under:

...Here also there is a logical difficulty, since unless an order of the court is obtained, there is no means of establishing the nullity of the list. It enjoys a presumption of validity, and will have to be obeyed unless a court invalidates it. In this sense every unlawful administrative act, however, invalid is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe said:

An order, even if not made in good faith, is still an act capable of legal consequence. It bears no brand of invalidity upon its forehead. *Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it*

quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

'Void' is therefore meaningless in any absolute sense. The meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over 'void or voidable' can be avoided.

With great respect, we must say that the above quoted observations in Gujarat Steel at page 215 are not in line with the decision in Kalyani which was binding or with D.C. Roy to which the learned Judge, Krishna Iyer, J. was a party. It also does not match with the underlying juristic principle discussed in Wade. For these reasons, we are bound to follow the Constitution Bench decision in Kalyani which is the binding authority on the point.”

However, the decision of Supreme Court in ***R.Thiruvirkolam*** (*supra*) would not apply to the case before this Court for the simple reason that the order passed by Commissioner (Personnel) on 08.12.1998 was set aside by Lieutenant Governor of Delhi on the ground that Commissioner (Personnel) was not competent to pass that order. On the other hand, in the case before Supreme Court, the order of dismissal from service had not been set aside or quashed by the Labour Court which allowed the evidence to be adduced before it and then approved the order passed by the employer. In ***R.Thiruvirkolam*** (*supra*), the order of dismissal had not been passed by an authority which was not competent to pass that order and,

therefore, it cannot be said that the order passed by the employer in that case was *void ab initio*. The order passed by the employer in that case was only found to be defective and that defect stood nullified by proof of misconduct on the basis of the evidence adduced before the Labour Court. On the other hand, the order passed by the Commissioner (Personnel) on 08.12.1998 was *void ab initio*, having been passed by an incompetent authority.

In *Punjab Dairy Development Corporation Ltd & Anr (supra)*, the employee was dismissed from service after conducting a domestic inquiry. The Supreme Court found the inquiry to be defective, but allowed the management to adduce evidence afresh to justify the order of dismissal and thereafter upheld the charge as well as the punishment. The High Court, however, confirmed the dismissal only from the date of judgment of the Labour Court and not from an earlier date. Relying upon its decision in *R.Thiruvirkolam (supra)*, Supreme Court held that since the Labour Court had recorded a finding that the domestic inquiry was defective and after recording evidence had found the dismissal to be valid, it would relate back to the date of original dismissal and not from the date of judgment of the Labour Court.

13. The order of dismissal passed by an authority which lacks competence to pass that order is void and non-est in the eye of law. No effect can be given to an order passed by an authority which lacked jurisdiction to pass that order. The order

passed by Commissioner (Personnel) on 8.12.1998 had been set aside by the Lieutenant Governor of Delhi, who is also ex officio Chairman of DDA. Once that order was set aside, it ceased to exist for all purposes. The order passed by the Commissioner (Personnel) on 3.12.1998 was not set aside on any technical ground such as violation of principles of natural justice or a defect in the procedure adopted by the Commissioner (Personnel). It was set aside solely on the ground that Commissioner (Personnel) was not competent to pass such an order. Therefore, though it was open to the Competent Authority to pass a fresh order removing the respondent from service, he was not competent to give a retrospective application to the order by him.

The issue before this Court in our view is directly covered by the view taken by Supreme Court in *Pranlal Manilal Parikh* (*supra*). In that case the order of dismissal of a Judicial Officer passed by the High Court was set aside on the ground that it was in derogation of the judicial independence and control enshrined in Article 235 of the Constitution of India. In the case before this Court the order of dismissal passed by Commissioner (Personnel) DDA has been set aside on the ground that he was not competent to pass such an order. Article 311 of the Constitution of India, to the extent it is relevant, provides that no employee of the State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The order passed by the Commissioner (Personnel) of DDA

removing the respondent from service therefore was in contravention of the said Article. Such an order therefore has no effect in law. This view also find support from the decision of Supreme Court in ***R. Jeevaratnam*** (*supra*) where the Court took the view that an order of dismissal with retrospective effect has to take effect prospectively that is from the date it is passed.

We therefore hold that the order of dismissal of the respondent from service passed by the Vice Chairman of DDA on 16.2.2009 would not operate retrospectively and would operate only from the date on which it was passed. To this extent, the order passed by the Tribunal needs to be set aside.

14. It was contended by the learned Counsel for the respondent that since order of dismissal cannot operate retrospectively, the respondent is entitled to full back wages for the period from 8.12.1998 to 15.2.2009. Admittedly, the respondent did not work with DDA during this period and for about 03 years during this period, the respondent was in jail undergoing the sentence awarded to him under Prevention of Corruption Act. Admittedly, no order reinstating the respondent in service was passed at any time before he superannuated. As noted by Supreme Court in the case of ***Coal India Limited*** (*supra*), even in case of reinstatement of an employee, he would not be automatically entitled to back wages and the issue has to be examined by the Court independent of reinstatement. As far as the case before this Court is concerned, we need not go further into the question in view of

Rule 10(2)(b) of CCS (CCA), which provides that a Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority with effect from the date of his conviction. The explanation given below the above-referred Sub Rule provides that a period of 48 hours shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account. Admittedly the respondent, consequent to his conviction under the provisions of Prevention of Corruption Act, 1988, was sentenced to imprisonment and he spent about 03 years in prison. Therefore, he shall be deemed to have been placed under suspension, the moment he completed the total period of 48 hours in prison, consequent to his conviction under Sections 7, and 13(1)(d) of Prevention of Corruption Act, 1988. The deemed suspension under Rule 10(2)(b) of CCS (CCA) Rules continues till the delinquent is reinstated in service by a specific order. In the present case, since the order removing the respondent from service, passed on 8.12.1998 was not passed by a Competent Authority, the effect would be that the respondent continued to remain under suspension under Rule 10(2)(b) of CCS (CCA) Rules and his suspension did not come to an end even on the order dated 8.12.1998 being set aside by the Lieutenant Governor of Delhi. The deemed suspension under the above referred Rule, in our opinion continues till the

delinquent is dismissed or removed or compulsorily retired from service consequent to his conviction.

The question whether deemed suspension under Rule 10(2) of CCS (CCA) Rules comes to an end and if so, when, came up for consideration before Supreme Court in **Union of India v. Rajiv Kumar: (2003) 6 SCC 516**. In that case the respondent employee was arrested and detained in custody for a period exceeding 48 hours and therefore he was deemed to have suspended under Rule 10(2) of CCS (CCA) Rules. The respondent filed an OA before the Tribunal claiming that there was no reason for continuing his suspension. During pendency of the OA before the Tribunal, an order was passed by the authorities, continuing the suspension. Vide order dated 14.3.2001 the Tribunal directed the authorities to dispose of the matter by a reasoned and speaking order. Pursuant to this direction, an order was passed on 21.5.2001 which was challenged before the Mumbai Bench of the Tribunal. A Writ Petition was filed in this Court challenging the orders passed by the Tribunal on 14.3.2001. This Court held that the Tribunal was not correct in remitting the matter back to the Appointing Authority and quashed the order of suspension. It was held that an order of suspension after release of the petitioner on bail could not have been passed under Sub Rule (2) of Rule 10 and such an order could have been passed only in terms of Sub Rule (1) of Rule 10 of CCS

(CCA) Rules. Setting aside the order passed by this Court, Supreme Court inter alia held as under:

Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions.

X X X X X

Thus, it is clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10(5)(c) and until that order is made, the same continues by the operation of Rule 10(5)(a) and the employee has no right to be re-instated to service.

X X X X X

The inevitable conclusion therefore is that the order in terms of Rule 10(2) is not restricted in its point of duration or efficacy to the period of actual detention only. It continues to be operative unless modified or revoked under Sub-rule 5(c), as provided under Sub-rule 5(a).

Rule 10(5)(b) deals with a situation where a government servant is suspended or is deemed to have suspended and any other disciplinary proceeding is commenced against him during continuance of that suspension irrespective of the fact whether the earlier suspension was in connection with any disciplinary proceeding or otherwise. Rule 10(5)(b) can be pressed into service only when any other disciplinary proceeding is also commenced than the one

for and during which suspension or deemed suspension was already in force, to meet the situation until the termination of all such proceedings. In contradiction, Rule 10(5)(a) has application in relation to an order of suspension already made or deemed to have been made. Rule 10(5)(a) has no application to the facts of the present case and no inspiration or support could be drawn for the stand taken for the respondents or the decision arrived at by the High Court. It is Rule 10(5)(a) alone which has application and the deemed suspension would continue to be in force till anything has been done under Rule 10(5)(c). Similarly, Rules 10(3) and 10(4) operate in different fields and merely because a specific provision is made for its continuance, until further orders in them itself due to certain further developments taking place and interposition of orders made by Court or appellate and reviewing authority to meet and get over such specific eventualities, in given circumstances and that does not in any way affect the order of suspension deemed to have been made under Rule 10(2).

We would also like to add here that Sub Rule 5, as substituted by the Government of India vide OM dated 06.06.2007, published in the gazette dated 16.06.2007 and Sub Rules 6 and 7 which have been inserted vide Government of India, DoPT's notification dated 23.12.2003 published in Gazette dated 3.1.2004 read with the corrigendum dated 29.3.2004 published in Gazette dated 4.4.2004 has become effective from 2.6.2004 and therefore, would not apply to the case of the respondent. Consequently, the respondent shall be deemed to be under suspension till he superannuated or was removed from service vide order dated 16.2.2009,

whichever was earlier. He, therefore, is entitled only to subsistence allowance and not to wages for the period of deemed suspension.

In any case, the respondent has not challenged the order of the Tribunal which, while directing his reinstatement held that he shall be under deemed suspension w.e.f. 08.12.1998 till the date of this order.

15. It was contended by the learned Counsel for the petitioner that the respondent is not entitled to subsistence allowance for the period spent by him in prison undergoing the sentence awarded to him. We however, cannot agree to the contention. The Rules dealing with entitlements on suspension do not stipulate that an employee, if he is in prison, would not be entitled to subsistence allowance for the period he spends in prison. Rule 53 of Fundamental Rules which provides for payment of subsistence allowance to an employee who is placed under suspension or is deemed to have been placed under suspension, does not envisage non-payment of the subsistence allowance for the period spent by the employee in prison consequent to his conviction in a criminal case. Therefore, an employee, who is under suspension, irrespective of whether it is a case of deemed suspension or a case of suspension by an order of the Disciplinary Authority and who is later dismissed or removed from service, will be entitled to subsistence allowance for the period of suspension. We also take note of the fact that even while under suspension an employee has to take care not only of his personal needs but also of

the needs of his family. It will, therefore, neither be just nor legal to deny subsistence allowance to him for the period he spends in the prison undergoing the sentence awarded to him.

CONCLUSION

For the reasons given hereinabove, we dispose of the writ petition by directing that (i) the respondent stands dismissed from service of DDA w.e.f. 16.2.2009 (ii) he shall be deemed to be under suspension in terms of Rule 10(2)(b) of CCS (CCA) Rules, till he was removed from service vide order dated 16.02.2009 or till he superannuated, whichever was earlier, and (iii) he shall be entitled to subsistence allowance for the period of his deemed suspension. There shall be no order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

MARCH 12, 2012
BG/vn