

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 07.12.2012

WP(C) No.7675/2010 & CM 2754/2011

UNION OF INDIA & ANR.

..... Petitioners

versus

PRAMOD KUMAR BAJAJ

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr R.V.Sinha, Mr R.N.Singh and Mr A.S.Singh

For the Respondent : Mr Shanker Raju.
Mr Jai Bansal for Applicant/Impleader.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. By way of the instant writ petition, the petitioner (Union of India) has challenged the legal validity of the order dated 31.08.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1469/2010.

2. The brief facts giving rise to the instant dispute are enumerated as under:-

- (i) The respondent is a 1990 batch Indian Revenue Service (IRS) Officer.
- (ii) On 16.12.2009, the respondent while discharging his duties as Additional Director of Income Tax, DTRTI, Lucknow, was arrested pursuant to FIR No.33/2009, PS- Bharat Nagar lodged against him under Section 406, 494, 498A, 323, 506 & 120 B of the Indian Penal Code(IPC).
- (iii) It is not disputed that respondent remained in police custody for a period exceeding 48 hours and was only released on bail on 04.01.2010.
- (iv) Subsequent to the arrest of respondent, a complaint dated 22.12.2009 was received in the Office of Chief Commissioner of Income Tax alleging that the respondent has been involved in committing acts of polygamy.
- (v) The Department concerned after taking into consideration the complaint received and also the fact that the respondent was

placed under arrest for more than 48 hours, placed the respondent under deemed suspension w.e.f. 16.12.2009, that is, from the date of detention by virtue of an order dated 31.12.2009. The order by virtue of which the respondent was placed under deemed suspension with effect from his date of detention in police custody was passed under Rule 10(2) of CCS (CCA) Rules, 1965.

(vi) Thereafter, within the statutory period of 90 days as prescribed by Rule 10 (6) of CCS (CCA) Rules, the suspension order dated 31.12.2009 was reviewed by the suspension Review Committee on 05.03.2010. The said committee after taking into account relevant information and material facts passed an order dated 12.03.2010 whereby the suspension of the respondent was continued till further orders.

(vii) Aggrieved by the order dated 31.12.2009 pursuant to which the respondent was placed under suspension and also the order dated 12.03.2010 by virtue of which respondent was continued in suspension after the initial order of suspension, the respondent approached the Tribunal by filing OA No.270/2010

which was withdrawn by the respondent herein with liberty from the Tribunal to file a better OA. Thereafter, the respondent filed another Original Application captioned as OA No.1469/2010 which culminated in the impugned order dated 31.08.2010.

(viii) Subsequently, the respondent was allowed to join his duties w.e.f. 09.09.2010 by an order dated 29.11.2010 and the suspension stood revoked. The said order mentions the fact that suspension of the respondent was continued on 12.03.2010 and extended for 180 days, that is, up to 08.09.2010. As no order extending the period of suspension was passed thereafter, the respondent was entitled to join his duties from 09.09.2010.

3. The Tribunal, after considering the rival contentions advanced by the parties came to the following conclusions in the impugned order dated 31.08.2010:-

(a) No charges of polygamy or corruption has been proved or substantiated by the government against the respondent so far. In fact the ground of suspension nowhere mentions that the respondent is guilty either of polygamy or corruption.

- (b) The respondent had not been suspended due to pendency of any disciplinary proceeding nor was any disciplinary proceeding in contemplation against the respondent.
- (c) The suspension order dated 31.12.2009 as well as the order extending suspension dated 12.03.2009 has been passed on the basis of the complaints and criminal cases filed against the respondent by his wife Smt. Rakhi Bajaj.
- (d) The Department was not correct in issuing the suspension order only on the basis of the complaints pending against the respondent which were filed by his spouse. The relevant portion of the Tribunal's order is extracted below:

“10. It is now well-settled that an order of suspension should not be passed lightly or without proper application of mind and the alleged misconduct should be in the performance of public duty. In cases of marital discord the disgruntled spouse often make complaints against one another. An employee cannot merely be placed under suspension because the estranged spouse has made a criminal complaint against him. The guiding principles for placing a Government servant under suspension, issued by the MHA, which have been quoted above, are quite extensive. These guiding principles do not provide for a situation in which an employee would be placed under suspension because of some criminal charges levelled against the employee by the estranged spouse. Later guidelines issued by the MHA, also placed at Annex-5, provide for suspension of an employee involved in a case

of dowry death. In our opinion it would depend on the facts of each case to decide whether an employee should be placed under suspension if his/her action is not in furtherance of public duty. For example if a Government servant were to be involved in some heinous offence such as murder or rape, he should be placed under suspension. Such an eventuality will be covered also by the guiding principles of suspension in as much as continuance of the employee in office will be against wider public interest. In our considered opinion this would not apply in the instant case, where the estranged spouse has made criminal complaint against the Applicant because no wider public interest is involved in this case.”

4. The Tribunal, however, further considered the import of Rule 10 of CCS (CCA) Rules, 1965 and arrived at the following conclusion which reads as under:-

“11. In the light of above discussion we are convinced that the extension of the suspension of the Applicant beyond 90 days from the first order of suspension, i.e., 31.12.2009 is not in accordance with the Rules. The extension of the order of suspension has been done mechanically and without any application of mind. However, the first order of suspension cannot be faulted because the Applicant had been detained in custody for more than 48 hours. Applicant could be placed under suspension under rule 10 (2) of the CCS (CCA) Rules, 1965.....

.....Under the provisions of Rule 10(7) *ibid*, which is extracted below a review of the period of suspension has to be done within ninety days:

“[(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.”

However, after 90 days the order of suspension has to be reviewed under Rule 10(6) of Rules ibid, which is quoted below:

“10.[(6). An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension [before the expiry of ninety days from the effective date of suspension] on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period of exceeding one hundred and eighty days at a time.]”

It is clear that the review committee should have exercised its judgement under Rule 10 (5) ibid to decide whether to continue the suspension of the Applicant after he was released from detention. It seems that at this stage there has been no application of mind. Also after 90 days, the suspension has been extended mechanically. Moreover, even the validity of suspension after the Applicants release from detention is questionable. It is true that under the Rules the suspension could continue for 90 days. But it does not mean that it cannot be reviewed earlier than 90 days. There was no reason to continue the Applicant under suspension after he was released on bail.

12. In the light of the above discussion we are of the considered opinion that the suspension of the Applicant could not have been continued after his release from detention on 4.01.2010. In view of this the question of extension of the period of suspension by the order dated 12.03.2010 would simply not arise. The order of extension of suspension is quashed and set aside. The Applicant would be considered to be reinstated in service with effect from 4.01.2010, when he was released from detention. He would be eligible for payment of full pay and allowances from 4.01.2010. The Respondent would also pay

subsistence allowance as per the rules to the Applicant for the period of detention...” (underlining added)

5. The learned counsel for the petitioner has challenged the findings of the Tribunal as manifestly erroneous and untenable on two counts. Firstly, the learned counsel for petitioner has urged that the conclusion arrived at by the Tribunal is clearly contrary to Rule 10 of the CCS (CCA) Rules, 1965 as also the OM No.11012/8/2003–Estt.(A) dated 23.10.2003 issued by the Department of Personnel and Training. The learned counsel for the petitioner has contended that once Rule 10(2) of CCS (CCA) Rules, 1965 comes into play there is no occasion or stage for the review committee to re-examine the suspension order passed against the respondent in case he is released from detention prior to expiry of the statutory period mentioned under Rule 10(6) of CCS (CCA) Rules, 1965. Therefore, the finding of the Tribunal to the effect that on release of the respondent from detention on 04.01.2010, the review committee ought to have reconsidered the suspension order passed against the respondent is mistaken and opposed to Rule 10(2). In order to appreciate the contention advanced by the learned counsel for the petitioner, it would be necessary to reproduce Rule 10 of CCS (CCA) Rules, 1965 which is done as under:-

“Rule 10. Suspension

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of forty-eight hours referred to in Clause (b) of this sub-rule 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.

.....

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

5(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

5(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before the expiry of ninety days from the effective date of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub rule (1) or (2) of this Rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub rule 2, if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release is intimated to his appointing authority, whichever is later. ”

6. Secondly, the learned counsel for petitioner has contended that the impugned judgement runs contrary to clear mandate laid down by the

Supreme Court in **Union of India vs. Rajiv Kumar**, (2003) 6 SCC 516. It would be pertinent to mention at this stage itself that the learned counsel for respondent has also strenuously relied upon the same decision and has stated that the findings in said decision of **Rajiv Kumar (supra)** are in fact in his favour.

7. The question which came before the Supreme Court in **Rajiv Kumar (supra)** related to interpretation of the scope and ambit of Rule 10(2) of CCS (CCA) Rules, 1965. In **Rajiv Kumar (supra)**, decision under appeal was rendered by a Division Bench of this court in which it was held that sub-rule (2) of Rule 10 does not contain any provision wherefrom it can be deduced that the deemed suspension in case of custodial detention exceeding forty-eight hours would continue until it is withdrawn. It was further held that on a plain reading of the said provision, it is clear that the suspension comes to an end by operation of law after release of the employee from detention.

8. The Supreme Court after reciting the Rule 10 of CCS (CCA) Rules held as under:-

“14. 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. It does not speak of any period of its effectiveness.

Rules 10(3) and 10(4) operate conceptually in different situations and need specific provisions separately on account of interposition of an order of Court of law or an order passed by the Appellate or reviewing authority and the natural consequences inevitably flowing from such orders. Great emphasis is laid on the expressions "until further orders" in the said sub-rules to emphasise that such a prescription is missing in Sub-rule (2). Therefore, it is urged that the order is effective for the period of detention alone. The plea is clearly without any substance because of Sub-rule 5(a) and 5(c) of Rule 10. The said provisions refer to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under Sub-rule (2). The said provision under Rule 10(5)(a) makes it crystal clear that the order continues to remain in force until it is modified or revoked by an authority competent to do so while Rule 10(5)(c) empowers the competent authority to modify or revoke also. No exception is made relating to an order under Rules 10(2) and 10(5)(a). On the contrary, specifically it encompasses an order under Rule 10(2). If the order deemed to have been made under Rule 10(2) is to lose effectiveness automatically after the period of detention envisaged comes to an end, there would be no scope for the same being modified as contended by the respondents and there was no need to make such provisions as are engrafted in Rule 10(5)(a) and (c) and instead an equally deeming provision to bring an end to the duration of the deemed order would by itself suffice for the purpose.

15. 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. This position was also highlighted in Balvantrai Ratilal Patel v. State of Maharashtra (1997) 6 SCC 312. Indication of expression "pending further order" in the order of suspension was the basis for aforesaid view.

16. Reference has been made to Sub-rule 5(b) of Rule 10. According to the High court the same appears to have been made

"ex majori cautela". Conceptually Sub-rules 5(a) and 5(b) operate in different fields and for different purposes, i.e., when more than one disciplinary proceedings come to be initiated to cover all such situations. Both the provisions have to be read harmoniously. Otherwise, Sub-rule 5(a) would become meaningless and Sub-rule 5(c) purposeless and both provisions would be rendered otiose and superfluous.

17. View of the Full Bench of the Allahabad High court (supra) that the legal fiction created ceases to be effective for the purposes is clearly unsustainable and we do not approve of the same."

9. The learned counsel for the petitioner next drew our attention to the relevant portion of Government of India instructions issued by Ministry of Personnel and Training as OM No.11012/16/85-Estt.(A) dated 10.01.1986 contending that in the instant case it is not that respondent was only taken into custody but no prosecution was launched against him subsequent to his detention. On the contrary, it is averred that charge sheet has been filed against respondent and the said position is evident from the fact that FIR No.33/2009 is pending before a Metropolitan Magistrate, Rohini Courts and this court has dismissed an application filed on behalf of the respondent under Section 482, Cr. P.C, 1973 seeking quashing of the said FIR. It is relevant to note that as per instructions contained in OM No.35014/9/76-Estt.(A) dated 08.08.1977 in cases where deemed suspension under Rule 10(2) is found to be totally erroneous and the employee concerned is not

prosecuted, the deemed suspension in such cases may be treated as revoked from the date the cause of the suspension itself ceases to exist, i.e., the Government servant is released from police custody without any prosecution having been launched. However, it is still desirable for administrative purposes that a formal order revoking suspension under Rule 10(5)(a) be passed. In view of this, the learned counsel for the petitioner submitted that suspension order issued against respondent is not totally baseless or wholly unjustifiable and in fact criminal prosecution is still pending against respondent.

10. Per contra, the learned counsel for respondent has submitted that the reasoning adopted by the Tribunal in holding that the Review Committee ought to have reconsidered the suspension order under Rule 10(5)(a) once the respondent was released from detention on bail is sound and findings of the Tribunal as such warrant no interference.

11. In our considered opinion, the finding of the Tribunal to the effect that there is nothing incorrect with the first order of suspension dated 31.12.2009 by virtue of which respondent was placed under suspension w.e.f. the date of his detention cannot be faulted with. The Tribunal rightly held that as soon as respondent underwent detention for more than 48 hours, he is deemed to

be placed under suspension by invocation of Rule 10(2) of CCS (CCA) Rules, 1965.

12. However, the Tribunal grossly erred in holding that suspension of the respondent could not have been continued after his release from detention on 04.01.2010 and that in such a case the question of extension of period of suspension by the order dated 12.03.2010 would simply not arise. The reasoning adopted by the tribunal is clearly contrary to the dictum laid down by the Supreme Court in *Rajiv Kumar's case (supra)*. The Supreme Court has categorically held that an order of suspension under Rule 10(2) does not lose its effectiveness automatically after the period of detention envisaged under the rules comes to an end. The Supreme Court further held that if the order of deemed suspension was to come to an end once the government official is released from detention, there would be no occasion for the legislature to incorporate Rule 10(5)(a) and Rule 10(5)(c) which provide that the department can modify or revoke the order of deemed suspension. Thus, the decision of the Supreme Court is that the order of suspension passed under Rule 10(2) does not lose its efficacy the moment the period of detention gets over and continues until such order stands modified and/or

revoked, by virtue of Rule 10(5)(a). Therefore, till that time the employee has no right to be reinstated in service.

13. Therefore, in our view, there was no necessity for the competent authority to review order of suspension on release of respondent from custody prior to expiry of statutory period of 90 days.

14. Next, the finding of the Tribunal, holding that the Review Committee's order dated 12.03.2010 is bad in law for the reason that Review Committee did not re-evaluate the suspension order once the respondent was released from detention, is erroneous and cannot be sustained in view of the decision of the Supreme Court in *Rajiv Kumar's case (supra)*. We note that in terms of Rule 10(7) it was necessary for the Review Committee to review the suspension order passed under Rule 10(2) before the expiry of 90 days and in fact, in the instant case, the Review Committee did review the suspension order passed against respondent before the expiry of 90 days and accordingly, the order dated 12.03.2010 came to be passed. Therefore, we do not agree with the finding of the Tribunal that the order dated 12.03.2010 was bad in law. The said order complied with the requirements of Rule 10(7) in every respect.

15. In view of the foregoing discussion, we find merit in the submissions of the petitioner and the impugned order dated 31.08.2010 is accordingly set aside. The writ petition is allowed.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

DECEMBER 07, 2012

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