

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

Date of hearing and order: 26th February 2015

+ W.P.(C) 15756/2006

UNION OF INDIA

..... Petitioner

Through: Mr. Manish Mohan, CGSC Ms.
Sidhi Arora, Mr. Gaurav Sharma &
Ms. Hina Shaheen, Advocates

Versus

R.C.BAKSHI

..... Respondent

Through: Mr. R.C. Saxena, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

26.02.2015

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KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Article 226/227 of the Constitution of India, petitioner seeks to challenge the order dated 5th April 2006 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) in O.A. No. 2261/2005.

2. Brief facts of the case are that the respondent was working as Income Tax Officer (Group B). On 26.06.1997 a trap was laid down by

CBI wherein he was caught red handed for accepting bribe of Rs.10,000/-. A case was registered against him under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he was taken into custody on the same date i.e. on 26.06.1997 and was released on bail on 1.7.1997. Since the respondent was detained in the custody for more than 48 hours, he was placed under deemed suspension vide order dated 16.7.1997, passed under Sub-Rule 2 of Rule 10 of CCS (CCA) Rules, 1965 (*hereinafter referred to as the 'Rules, 1965'*) w.e.f. 26.6.1997. Later he was acquitted vide order dated 12.8.2005 passed by the learned Special Judge, Delhi on the ground that the complainant had died and there was no other evidence to corroborate the trap laid down against him. As a result of his acquittal in the said case, the respondent vide his letter dated 29.8.2005 made a request to the petitioners to revoke the order of his suspension and to direct his reinstatement and also to regularise his past services treating him on duty w.e.f. 26.6.1997 along with the release of all consequential benefits etc. The petitioner vide order dated 9th September 2005 not only rejected the request of the respondent but also extended his suspension for a further period of 180 days or till the date of his superannuation whichever is early from the date of the said

order.

3. Feeling aggrieved by the aforesaid decision taken by the petitioners, the respondent had preferred O.A. No. 2261/2005 before the learned Tribunal. The learned Tribunal further placed reliance on the judgment of the Apex Court in the case of ***Union of India vs. Rajeev Kumar, JT 2003 (5) SC 617*** and on interpretation of Rules 10(1), 10(2), 10(3), 10(4), 10(5)(a), 10(5)(b) and 10(5)(c) of the Rules, 1965 came to conclusion that it was impermissible for the petitioner to have continued the suspension of the respondent at a stretch without passing any order under Rule 10(1)(b) of the Rules, 1965 as the suspension which was extended by the order dated 9.9.2005 to 180 days, as per amended rules, was passed in review and the same was without jurisdiction in terms of Rule 10(5)(b) of the Rules, 1965. The Court further observed that the suspension which was resorted to on account of a criminal trial on a deemed suspension basis, automatically comes to an end on the acquittal of the respondent in the criminal case and for this intervening period FR-54B will come in operation to treat the intervening period as per the Rules. The Court observed that the order dated 9.9.2005 passed by the petitioner was not in tune with Rule 10(1)(b) of the Rules, 1965 and

therefore the period of suspension has to be regulated on the acquittal of the respondent. Feeling aggrieved by the said order passed by the learned Tribunal, the petitioner preferred the present petition.

4. Mr. Manish Mohan, the learned counsel for the petitioner submits that there were two criminal cases registered against the respondent both under the Prevention of Corruption Act, 1988 while the respondent was acquitted in one criminal case but another case was of possessing disproportionate assets was still pending against him and thus by order dated 9.9.2005 passed by the petitioner, the suspension period of respondent was further extended for a period of 180 days or till the date of his superannuation, whichever is earlier from the date of the order. The counsel further submits that the learned Tribunal has misinterpreted the import of the judgment in *Rajeev Kumar* (supra) which is very much in consonance with the order dated 9.9.2005 passed by the petitioners. The counsel also argued that once the suspension order comes to an end, the same can be modified and revoked by another order as envisaged under Rule 12(5)(c) and till such an order is passed, the earlier order continues by operation of Rule 10(5)(a) of the Rules, 1965 and the employee has no right to be regulated in the services. Counsel further submits that the

Hon'ble Supreme Court in the said judgment also made it clear that Rule 10(5)(b) of the Rules, 1965 can only be pressed into service when any other disciplinary proceedings is also commenced than the one during which suspension or deemed suspension was already in force. Counsel thus submits that the opinion of the learned Tribunal as to the application of Rule 10(5)(b) of the Rules, 1965 is absolutely misplaced and the same has no relevance to the factual matrix of the present case. Counsel thus submits that the respondent's deemed suspension and extension therefore in terms of Rule 10(2)(b) and 10(5)(a) of the Rules, 1965 is very much followed by the force of law and the impugned order passed by the learned Trial Court of reinstatement of the respondent with the release of consequential benefits is arbitrary and contrary to the legal principles laid down by the Hon'ble Supreme Court.

5. Refuting the aforesaid submissions made by the learned counsel for the petitioner, Mr. R.C. Saxena, the learned counsel for the respondent submits that the respondent was placed under deemed suspension in terms of Rule 10(2) of the Rules, 1965 vide orders dated 16.07.1997 because the respondent remained under detention for a period of more than 48 hours. The learned counsel for the respondent further submits that the

CBI had registered another case of disproportionate assets against the respondent on 2nd July 1997 but in that case there was no detention for a period of more than 48 hours so no deemed suspension order was issued or could be issued against the respondent by the petitioners. The learned counsel for the respondent further submits that it is an admitted fact that the respondent was acquitted by the Trial Court on 12.08.2005 in the first case in which he was detained and deemed suspension order was issued. Thus, on his acquittal, the deemed suspension order automatically ceases to have effect and became non-est and consequentially he was required to be regularised in service with the grant of all consequential benefits. Counsel further submits that instead of directing reinstatement of the respondent, the petitioners have illegally extended the period of his suspension even though there was no detention of the respondent in the criminal case registered against him for possessing disproportionate assets. Counsel thus submits that the direction of the learned Tribunal is illegal and vitiated on the very face of it as deemed suspension order under sub-rule 10(2) of the Rules, 1965 cannot be applied to a case in which there was no detention of more than 48 hours. In support of his argument, the learned counsel for the respondent has placed reliance on

the decision in *Jatinder Nath Mandal vs. State of West Bengal*, AIR 1969 Calcutta 461 and *Om Prakash Gupta vs. The State of Uttar Pradesh*, 1957 AIR 458. Based on these submissions, the learned counsel for the respondent submits that the present writ petition filed by the petitioner deserves to be dismissed with costs and the order passed by the learned Tribunal be upheld.

6. The respondent was under detention for a period of exceeding 48 hours in a case registered against him under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he was placed under deemed suspension vide order dated 16.07.1997 passed by the Competent Authority under Sub-Rule 2 of Rule 10 of the Rules, 1965. This suspension of the respondent was extended from time to time. Vide judgment dated 12.08.2005, the Special Judge Delhi had acquitted the respondent from the said case. Based on his acquittal, the respondent made a representation to the petitioner making a request for revocation of his suspension with effect from the date of his suspension, i.e. dated 26.06.1997. Vide order dated 09.09.2005, the petitioner informed the respondent that his case was considered by the Review Committee and on recommendation of the Committee the decision was taken to extend the

suspension of the respondent for a further period of 180 days or till the date of his superannuation, whichever is earlier. This suspension of the respondent was extended for a further period of 180 days on account of pendency of another criminal case against him which was registered against him vide R.C. No.54(A)/97- DLI for possessing disproportionate assets. This order dated 09.09.2005 was assailed by the respondent before the learned CAT in the OA No.2261/2005. It is not in dispute between the parties that in the said case of possessing disproportionate assets, the respondent was not under detention for a period exceeding 48 hours and therefore, there could not have been question of his deemed suspension in terms of Rule 10(2)(a) of the Rules, 1965. Another admitted fact is that no disciplinary proceedings were pending or initiated against the respondent due to his alleged misconduct relating to his involvement in the said two criminal cases.

7. Rule 10 (2) of the Rules, 1965 is a deemed provision and creates a legal fiction. A bare perusal of the provision shows that an order of suspension is deemed to have been passed and no actual order is required to be passed. This order of deemed suspension shall continue to remain in force until it is modified or revoked by the Competent Authority. The

power to modify or revoke the order is derived from Rule 5(a), however the same is subject to provision contained in Sub- Rule 7. In the present case due to detention for a period exceeding 48 hours, the respondent was under deemed suspension under Rule 10 (2). Thereafter the respondent was acquitted in a criminal case in which he was under detention. However, the petitioner instead of revoking the order as required under Rule 10 (5) (a), extended his suspension period on the ground of pendency of another criminal case against him for possessing disproportionate assets. Rule 10(5)(b) deals with a situation where the Government Servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise). However, if any other disciplinary proceedings are commenced against him during the continuance of that suspension in that case, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, can direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings. Thus for continuance of the suspension order there must be some other disciplinary proceedings pending at the time when the first disciplinary proceeding comes to an end and then the Competent

Authority shall, for reasons recorded may order that the government servant shall continue to remain under suspension till the termination of all such proceedings against him.

8. In ***Union of India v. Rajiv Kumar (supra)***, the Apex Court while interpreting Rule 10 (5) (b) of the Rules, 1965 took a view that Rule 10(5)(b) can be pressed into service only when any disciplinary proceeding is also commenced and when the earlier order of the deemed suspension is also in force. Relevant para of the said judgment is reproduced as under:

“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.”

9. The learned CAT also placed reliance on the said judgment of the Apex Court in ***Rajiv Kumar’s case (supra)*** and also referred to the Office Memorandum No.109/3/80-AVD I dated 21.07.1980 which dealt with the issue of second suspension order on a fresh charge while under

suspension. For better appreciation, this Office Memorandum is reproduced as under:-

“2. Issue of second suspension order on a fresh charge while under suspension quotation:- Reference is invited to the two prescribed standard forms to be used while issuing orders of placing Government servants under suspension under Rule 10(2) of the CCS (CCA) Rules, 1965. It has come to notice that these forms have been more or less mechanically followed by the various authorities without suitably modifying or adopting them to suit the requirements of individual cases, whenever required. In this connection, it has been particularly noticed that when, at the time a Government servant was placed under suspension, apart from a criminal offence which was trial against him, there was also certain other disciplinary cases under contemplation, as well as criminal cases, under investigation against him, which were also taken into consideration for placing him under suspension, the order of his suspension was issued in standard form and in which it was only stated. “Whereas a case against in respect of a criminal offence is under trial” limiting the suspension only to the criminal case under trial. As a result of this, it happened that when the particular criminal case resulted in the acquittal of the Government servant and the question of regulating the period of his suspension was considered, it was found that the period had to be regulated only on the basis of the outcome of that criminal case which was referred to in the order of suspension, i.e., the one which was under trial at the time of issue of the order which ended in his acquittal and regulation of the suspension period could not be based on other cases which, though taken into account by the Competent Authority at the time of placing him under suspension are not referred to in the order of suspension. Thus, even though the other Departmental/ Court cases which were under contemplation/ investigation at the time, the Government employees was placed under suspension did end or could have ended on his being convicted or punished, the period of his suspension had to be regulated only in the light of the specific cases referred to in the order of the suspension which ended in acquittal. Although the Competent Authority desired to take the results of the other cases also into account, this was not possible in view of the specific wording of the order of suspension which referred only to “a criminal case under trial”. To obviate such

a situation, it is clarified that if the two standard forms are not found fully to meet the requirements of any cases, then the Competent Authority should amplify/ modify the appropriate forms suitably to meet the requirements of the case and should indicate all the cases (criminal/ Departmental under investigation/ trial/ contemplation) on the basis of which it is considered necessary to place the Government servant under suspension so that in the event of reinstatement of the Government servant, the outcome of all such cases can be taken into account while regulating the period of suspension.

2. *In this context, attention is also invited to Rule 10(5) (b) of the CCS (CCA) Rules, 1965, which requires that, if during the course of suspension of a Government servant, whether in connection with any disciplinary proceedings or otherwise, any disciplinary proceeding is commenced against him, the authority competent to place him under suspension for reasons to be recorded by him in writing, may direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceeding. Therefore, whenever an official is under suspension, and any other case is initiated against him and the concerned authority considers it necessary that the official should remain under suspension in connection with that case also, then the Competent Authority should pass another order to this effect in accordance with the rule so that in the event of reinstatement of the Government servant, the facts of the later case can also be taken into account while regulating the period of his suspension."*

10. In the present case, apparently no such order of continuation of suspension order was passed by any competent authority. The learned CAT while taking note of the decision of the Apex Court in ***Rajiv Kumar's case (supra)***, took a view that it is impermissible for the petitioner to continue the suspension at a stretch without passing any order under Rule 10(5)(b). We are in a complete agreement with the

reasoning given by the learned CAT in the impugned order and we are not persuaded to taken any contrary view to the same.

There is no merit in the present petition and the same is hereby dismissed.

KAILASH GAMBHIR, J.

I.S. MEHTA, J.

FEBRUARY 26, 2015
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