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

+ **W.P.(C) 8404/2017 & CM Appl.No. 34583/2017 (stay)**

UNION OF INDIA AND ANR

..... Petitioners

Through Mr. Ruchir Mishra, Mr. Sanjiv Kumar  
Saxena, Mr. M. K. Tiwari,  
Mr. Ramneek Mishra and  
Mr. Abhishek Rana, Advocates

Versus

SATISH KUMAR KALOTHRA

..... Respondent

Through Mr. M. K. Bhardwaj and Mr. Akash  
Dahiya, Advocates

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

% **13.11.2019**

**Dr. S. Muralidhar, J.:**

1. The Union of India through the Department of Personnel and Training (DoPT) and the Ministry of Rural Development (MRD), Government of India has filed the present petition challenging an order dated 19<sup>th</sup> May, 2017 passed by the Central Administrative Tribunal (CAT), Principal Bench, allowing OA No. 648/2017 filed by the Respondent. The CAT held that the Respondent was entitled to all amounts attached to the post of Deputy Secretary in the Department of Rural Development ('DRD'), which were denied to him on account of suspension order dated 8<sup>th</sup> May, 2015 which was extended on five occasions. As a consequence, the Respondent was held entitled to the difference of the amount between the subsistence allowance and the salary admissible under the rules.

2. At the time of issuing notice in the present petition on 29<sup>th</sup> September, 2017, the impugned order of the CAT was stayed.

3. This Court has heard the submissions of Mr. Ruchir Mishra, learned counsel for the Petitioners and Mr. M. K. Bhardwaj, learned counsel for the Respondent.

4. Mr. Ruchir Mishra points out that the relief granted by the CAT was on a technical ground of the initial suspension order having been issued without the approval of the competent authority. He pointed out that under Rule 10 (2) and (5) of the CCS (CCA) Rules, 1965 the Government servant would be 'deemed' to have been placed under suspension by an order of the Appointing Authority and therefore there was in fact no need to formally issue an order of suspension.

5. Mr. Bhardwaj, learned counsel for the Respondent on the other hand submitted that by passing a fresh order of suspension, pursuant to the impugned judgment of the CAT, the Petitioners have in fact complied with the order and therefore nothing survives. He further pointed out that in para 4.9 of the counter affidavit filed by the CAT, the Petitioners had themselves admitted to the illegality of the suspension order.

6. Rule 10 (2) of the CCS (Rules) reads as under:-

“(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.”

7. This has to be read along with sub-Rule 5 of Rule 10 which reads as under:

“(5)(a) Subject to the provisions contained in sub-rule (7), 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.

(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.

(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.”

8. It is therefore clear that the above rules contemplate two situations under which the suspension takes place. One is deemed suspension and the other is

where a formal order of suspension is issued.

9. In the present case, the facts speak for themselves. These have been noted in para 2 of the impugned order which reads as under:

“2. Briefly stated, the applicant was working as Deputy Secretary in the Department of Rural Development, He was given charge of four divisions, i.e. Administration, Parliament & Coordination, General Administration and Finance. On registration of a case by CBI against the applicant and one Pradhan Singh u/s 120B IPG r/w Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the applicant was detained in custody of CBI on 05.05.2015, and again in police custody for a period exceeding 48 hours. He was placed under deemed suspension vide order dated 08.05.2015 w.e.f. 05.05.2015. His suspension was later extended vide the orders referred to hereinabove from time to time. The criminal charge-sheet was filed by CBI on 16.02.2016.”

10. It is clear that in the case of the Respondent, Rule 10 (2) (a) of the CCS (CCA) Rule was attracted. In other words, he was deemed to have been placed under suspension with his detention in custody for the period exceeding 48 hours. There was no necessity for any formal order of suspension to be issued at all. The fact of such an order being issued, perhaps by an authority not authorised to do so, would not make a difference to the factum of deemed suspension.

11. This has been explained by the Supreme Court in *Union of India v. Rajiv Kumar (2003) 6 SCC 516* 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."

12. In that view of the matter, the impugned order of the CAT is hereby set aside. The petition is allowed but in the circumstances no order as to costs. The pending application is also disposed of.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**NOVEMBER 13, 2019/mw**