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MAHENDER SINGH

*v.*

UNION OF INDIA AND ANR

AUGUST 2, 1991

B [K. JAGANNATHA SHETTY, V. RAMASWAMI AND YOGESHWAR DAYAL, JJ.]

*Service Law: Central Civil Services (Classification, Control and Appeal) Rules, 1965—Rule 10(4)—Scope of—Services of employee terminated by a simple termination order under Rule 5(1) of the CCS (Temporary Service) Rules, 1965—Termination order set aside by* C *Tribunal—Retrospective suspension from the date of original order of termination—Whether justified.*

**The appellant, a cash clerk in the establishment of Delhi Milk Scheme, was placed under suspension under Rule 10(2) of the Central** D **Civil Service (Classification, Control and Appeal) Rules, 1965, pending investigation into a criminal case, connected with the forgery of a cheque, in which he was arrayed as an accused. Subsequently, his services were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. Though he was acquitted in the criminal case, he was not re-instated. However, the Central Adminis-** E **trative Tribunal set aside the termination order and directed that the appellant would continue to be under suspension from the original date of termination of service, and that it would be open to the competent authority, to revoke his suspension and re-instate him in service or continue him under suspension, if it decided to initiate disciplinary proceedings against him.**

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**Pursuant to the decision of the Tribunal, the Management passed an order under Rule 10(4) of the Rules placing the appellant under suspension from the date of original order of termination and also directed that there should be further enquiry against the appellant.**

G **Allowing the appeal preferred by the appellant and modifying the Tribunal's order,**

**HELD: 1.1 There are three requirements for the application of Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. These are (i) the Government servant is dismissed,** H **removed or compulsorily retired as a measure of penalty; (ii) the said**

**penalty is set aside or declared or rendered void by a decision of a Court of Law; and (iii) the disciplinary authority decides to hold a further inquiry against the Government servant on the allegations on which the original order of penalty was imposed. [334F-G]**

**1.2 In the instant case, the original order of termination was not passed against the appellant as a measure of punishment. It was a 'simpliciter termination' under Rule 5(1) of the CCS (Temporary Service) Rules, 1965. The Tribunal has set aside that order on the ground that it amounts to punishment and the order of punishment could not have been made without holding an inquiry. But that is not the same thing to state that the Management made an order terminating the services by way of penalty. It treated the said order as a simpliciter discharge. Hence Rule 10(4) has no application. Besides, there was no question of the Management deciding to hold a further inquiry, since there was no earlier inquiry against the appellant and it would be misnomer to call it a further enquiry as contemplated under Rule 10(4). [335B-C]**

**1.3 Thus, the power to place a delinquent officer under suspension from the date of the original order of dismissal, removal or compulsory retirement from service would be available provided the original order was made by way of penalty and that order has been set aside by a Court of Law. Since there was no inquiry leading to the removal of the appellant in the first instance, the decision to hold fresh inquiry does not attract Rule 10(4). The retrospective suspension of the appellant is, therefore, unjustified and without authority of law. However the order of suspension would operate prospectively and the appellant would be entitled to re-instatement with all back wages till that day since the original order of termination has been set aside by the Tribunal. The Tribunal's order is modified accordingly. [335D-G]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1821 of 1991.

From the Judgment and Order dated 17.4.1990 of the Central Administrative Tribunal, Delhi in R.A. No. 117/88 in T.A. No. 351 of 1986.

O.P. Saxena and Mukul Gupta for the Appellant.

J.D. Jain, Kailash Vasudev, Ms. Sushma Suri and S.N. Terdal for the Respondents.

A The Judgment of the Court was delivered by

**K. JAGANNATHA SHETTY, J.** This appeal is from an order of the Central Administrative Tribunal, New Delhi and concerns with the scope of Rule 10(4) of the Central Civil Service (CCA) Rules, 1965 ('the Rules')

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The facts leading to the appeal are these: The appellant was a cash clerk in the establishment of Delhi Milk Scheme, New Delhi. There was some criminal case connected with the forgery of a cheque in which the appellant was arrayed as an accused. Pending investigation of the criminal case, he was placed under suspension. The order of C suspension was made on March 27, 1976 under Rule 10(2) of the Rules. On January 10, 1976 his services were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. On March 7, 1980, the appellant was acquitted in the criminal case. On January 5, 1981 the appellant filed a civil suit in the District Court, New Delhi, challenging the order of termination of his services. The D suit was transferred to the Central Administrative Tribunal for disposal. The Tribunal has, by its judgment dated September 5, 1988 set aside the termination order with the following conditions:

> "(i) The impugned order of termination dated 10.1.1978 is quashed. Consequently, status quo ante as in regard to E applicant being under suspension will continue from 10.1.1978.
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> (ii) It will be open to the competent authority to take a final decision on the continuance or otherwise of the suspension in the light of the judgment of Chief Judicial F Magistrate dated 7.3.80 in case No. 57/2. It will be open to the competent authority to revoke the order of suspension and reinstate the plaintiff into service as cash clerk. In that event, the pay and allowances of the plaintiff during the period of his actual suspension from 27.3.1976 to 10.1.78 and deemed suspension thereafter shall be regulated in G accordance with the provisions of F.R. 54-B. Necessary adjustments, if any, should be made or in regard to the subsistence allowance already paid to him. The defendants shall also consider and decide whether the period of actual and deemed suspension shall be treated as a period spent on duty or not.

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(iii) It will also be open to the competent authority, if so advised, to continue the plaintiff on suspension if it is decided to initiate disciplinary proceedings against him based on his conduct which led to his prosecution before the criminal court. The disciplinary proceedings if initiated should be completed within a period of six months from the date of communication of this order.

(iv) The competent authority shall take appropriate decision as regards (ii) and (iii) above within a period of two months from the date of communication of this order."

Pursuant to the decision of the Tribunal management made an order dated November 10, 1988 under Rule 10(4) of the Rules placing the petitioner under suspension w.e.f. January 10, 1978. The appellant shall be deemed to have been suspended from the date of the original order of termination. The management also directed that there should be further enquiry against the appellant. The relevant portion of the order dated November 10, 1988 reads:

" AND whereas the undersigned on a consideration of the circumstances of the case, has also decided that a further enquiry should be held under the provision of CCS(CCA) Rules, 1965 against the said Shri Mohinder Singh, Ex. Cash Clerk on the allegation which led to his termination of service.

NOW THEREFORE the undersigned hereby:-

(i) set aside the order of termination of services of Shri Mohinder Singh, Ex. Cash Clerk

(ii) directs that further enquiry should be held under the provisions of CCS(CCA) Rules, 1965 against Shri Mohinder Singh on the allegations of misappropriation of Govt. Money which led to the termination of service.

(iii) directs that the said Shri Mohinder Singh, Ex. Cash Clerk shall under sub-rule 4 of Rule 10 of the CCS(CCA) Rules, 1965 be deemed to have been placed under suspension w.e.f. 10.1.1978 and shall continue to remain under suspension until further orders.

(Baldev Chand)
Disciplinary Authority
Dy. General Manager (A)"

A After holding the enquiry the appellant was again dismissed from service. That order was made on December 1, 1989. It is said that the dismissal has been challenged by the appellant before the Tribunal.

From the above narration of facts it will be seen that the Tribunal while setting aside the termination order has directed that the appel-
B lant shall continue in suspension from January 10, 1978. The management while deciding to hold further enquiry has also directed that the appellant shall be deemed to have been placed under suspension w.e.f. January 10, 1978. The management made this order under Rule 10(4) which reads as follows:

C "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, decides to hold a further inquiry against him on
D 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
E suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case."

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There are three requirements for the application of Rule 10(4); (i) The Government servant is dismissed, removed or compulsorily retired as a measure of penalty; (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a Court of Law; (iii) The disciplinary authority decides to
G hold a further inquiry against the Government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirements and he shall continue to remain
H under suspension until further orders.

The order of the Tribunal and the management as to the retrospective suspension of the appellant cannot be sustained under Rule 10(4) of the Rules. It may be relevant to remember that the original order of termination was not passed against the appellant as a measure of punishment. It was a 'simpliciter termination' of the appellants' service under Rule 5(1) of the CCS (Temporary Service) Rules 1965. The Tribunal has set aside that order on the ground that it amounts to punishment and the order of punishment could not have been made without holding an inquiry against the appellant. But that is not the same thing to state that the management made an order terminating the services of the appellant by way of penalty. The management treated the said order as a simpliciter discharge. Rule 10(4) therefore, has no application to the case of the appellant.

Secondly, it would be misnomer to call it a furth inquiry as contemplated under Rule 10(4). There was no question of the management deciding to hold a further inquiry since there was no earlier inquiry against the appellant.

The power to place delinquent officer under suspension from the date of the original order of dismissal, removal or compulsory retirement from service would be available provided if the original order of dismissal, removal or compulsory retirement from service was made by way of penalty and that order has been set aside by a Court of law. Since there was no inquiry leading to the removal of the appellant in the first instance, the decision to hold fresh inquiry does not attract Rule 10(4). The retrospective suspension of the appellant is therefore, unjustified and without authority of law.

However, it may be stated that the order of suspension dated November 10, 1988 would operate prospectively and the appellant would be entitled to reinstatement with all back wages till that day since the original order of termination has been set aside by the Tribunal.

The appeal is accordingly allowed modifying the impugned order. In the circumstances of the case, however, we make no order as to costs.

N.P.V. Appeal allowed.