

(2006) 05 DEL CK 0131

In the Delhi High Court

Case No : Writ Petition (C) 22208 of 2005

Ramesh Chand Tanwar

APPELLANT

Vs

NCT of Delhi Commissioner MCD

RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10
Constitution of India, 1950 — Article 226
Delhi Municipal Corporation Act, 1957 — Section 480

Citation : (2006) 05 DEL CK 0131

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.K. Sharma, for the Appellant; Amit K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner has approached this Court claiming to be aggrieved by his continued suspension w.e.f. 9.4.2002.

2. The facts necessary for deciding the case are that the petitioner joined the services of the respondent Municipal Corporation of Delhi (MCD) in 1974. Sometime in the year 2000, certain irregularities and fraud was detected in relation to disbursement of O.T.A. The petitioner was arrested and taken to custody sometime in April 2002. Pursuant to operation of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the petitioner was issued with a suspension order because in terms of that provision he was deemed to have been suspended. On 11.10.2002, the First Information Report (FIR) was registered inter alias implicating the petitioner.

3. It is undisputed that the petitioner's suspension was continued and he was paid subsistence allowance which was, in terms of CCS(CCA) Rules read with Fundamental and Supplementary Rules enhanced to 75% of the pay and allowances ordinarily admissible to him. He retired from services upon attaining the age of superannuation on 28.2.2005. The claim in these proceedings is

premised upon the suspension order being illegal on the basis of an amendment effected to the CCS Rules of 1965 in December 2003. Learned counsel submits that in terms of the notification, no suspension order can have a life beyond 90 days or in any case beyond 180 days which is the outer limit prescribed under the rules.

4. It was, Therefore, claimed with the advent of the amendments to the CCA Rules, the petitioner's period of suspension automatically ended in view of their operation since the respondents have taken recourse to the powers under the CCS Rules. Learned counsel submitted that as a result the petitioner was entitled to a declaration that the period of suspension ended immediately after the expiry of three months when the amended rules came into force in December 2003 and as a result he was entitled to full salary and allowance.

5. Learned counsel appearing on behalf of respondents submitted that even though the suspension order was originally passed or issued under the CCA Rules as it existed then, the subsequent amendment did not automatically apply; that the MCD had consciously considered the option of extending the amendment and had recommended the amendment but formal orders have not yet been issued since the approval of the Central Government is awaited in terms of Section 480 of the Delhi Municipal Corporation Act. It was also contended that the petitioner attained the age of superannuation and also having regard to the seriousness of the charges leveled against him, this Court ought to decline exercising the discretion under Article 226. In the event, the petitioner is exonerated or acquitted in the juridical proceedings, the respondents, it is submitted would review the entire issue and pass an appropriate order in accordance with law.

6. I have considered the rival submissions and also the materials on record. There is no dispute that the petitioner was placed under suspension on 9.4.2002. His status as suspended employee continued till he attained the superannuation on 28.2.2005. In the interregnum, two events occurred:

(i) The initial subsistence allowance of 50% was enhanced to 75% in compliance with the provisions of the Fundamental Rules.

(ii) Certain amendments were carried out to the CCS (CCA) Rules in the year 2003.

7. Although the submission that the petitioner was initially placed under suspension under the original CCS Rules and, Therefore, the amended rules automatically applied, *prop rice vigore* seems attractive, nevertheless, what has been borne in the mind that in terms, the CCS(CCA) Rules do not apply to the class of employee such as the petitioner. It was extended by the MCD through its policies and resolutions and duly notified in that regard. The conditions of service of the MCD are regulated by the provisions of the Delhi Municipal Corporation Act and DMC Services (Control and Appeal) Regulations. It was Therefore essential for the Corporation to amend the rules which it apparently did, and sought the approval of the Central Government. As per the position taken by the

respondents, the amendments have not been formally notified in the Official Gazette as yet. As a result, the claim that the petitioner's suspension period automatically ended after the expiry of 90 days from the date when the amendments to the CCA Rules were notified by the Central Government, cannot be countenanced.

8. This conclusion, however, does not mean that the petitioner is remedy- less. In view of the circumstance that he is standing trial and no final outcome has yet been indicated, the respondents (who have already disbursed provisional pension and some terminal dues) are under a duty to review the entire issue about the entitlement of the petitioner in terms of FR-54 and FR-55 of the Fundamental and Supplementary Rules, as applicable to the MCD. This would mean that in the event of final decision, in the criminal trial the respondents would be duty bound to consider the petitioner's claim for differential pay for the period 9.4.2002 to 28.2.2005 as also his claim for fixation of proper pension.

9. In this view, the petitioner shall intimate to the respondents about the final outcome of the criminal proceedings and within six weeks of receipt of such intimation, the respondents shall take a final decision on all the matters indicated above. The said order shall be communicated to the petitioner directly.

10. The writ petition is accordingly dismissed with the above directions.