

(2013) 04 SC CK 0116

In the Supreme Court Of India

Case No : Civil Appeal No. 2968 of 2013 (Arising out of SLP (C) No. 34394 of 2011)

Rushi Guman Singh

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 10, 10(3), 10(3), 10(4), 10(4)
Constitution of India, 1950 — Article 14, 16, 19(1)
Orissa Civil Services (Classification, Control and Appeal

Citation : (2013) 5 AD 173 : (2013) 116 CLT 439 : (2013) 137 FLR 753 : (2013) 6 JT 394 : (2013) 5 SCALE 480 : (2013) 11 SCC 266 : (2013) 3 SCT 50

Hon'ble Judges : Surinder Singh Nijjar, J;M. Yusuf Eqbal, J

Bench : Division Bench

Advocate : K.V. Viswanatha, Sunil Mund, T. Sakthi Kumaran and Sibbo Sankar Mishra, for the Appellant; Kirti Mishra and Shibashish Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh Nijjar, J.—Leave granted.

2. This appeal is directed against the order dated 15th September 2011 of the High Court of Orissa at Cuttack dismissing the Writ Petition (C) No. 16450 of 2010 filed by the Appellant challenging the order dated 25th February, 2009 directing that the Appellant shall be under deemed suspension with effect from 14th February, 2003.

3. Briefly stated the facts are that the Appellant, who was working as a Soil Conservation Officer (Class I) with the Government of Orissa, was placed under suspension by order dated 12th June, 1998 in contemplation of a disciplinary inquiry as envisaged under Rule 12(1)(a) of the Orissa Civil Services (CCA) Rules, 1962 (in short "OCS (CCA) Rules"). However, the suspension was revoked during the pendency of the enquiry proceeding on 20th July, 1999. In his report,

dated 30th March, 2000, the enquiry officer exonerated the Appellant of all the charges. However, the disciplinary authority disagreed with the findings of the enquiry officer and issued a show cause notice to the Appellant dated 4th February, 2002 proposing the punishment of dismissal. The Appellant submitted his reply to the show cause notice on 4th March, 2002. By an order dated 14th February, 2003, the disciplinary authority passed an order imposing the punishment of removal on the Appellant. It was also directed that the period of suspension from 13th June, 1998 to 20th July, 1999 is treated as such.

4. Aggrieved by the order dated 14th February, 2003, the Appellant moved the Orissa Administrative Tribunal, (OAT), Cuttack Bench, Cuttack in OA No. 994 of 2003. On 7th July, 2006, the OA was dismissed by the OAT. The Appellant challenged the order of OAT in Writ Petition (C) No. 10653 of 2006 in the Orissa High Court. By an order dated 24th June, 2008, the writ petition was allowed. The order of OAT was set aside and the order of the Government of Orissa dated 14th February, 2003 was quashed. A direction was issued to the disciplinary authority to provide reasonable opportunity to the Appellant before taking a final decision in the matter relating to the findings on the charges framed against him. SLP (C) No. 24190 of 2008 filed by the State of Orissa against the aforesaid order of the High Court was dismissed by this Court on 17th October, 2008. After dismissal of the aforesaid SLP, pursuant to the orders passed by the High Court on 24th June, 2008, the disciplinary authority issued a show cause notice dated 25th February, 2009 to the Appellant calling for his representation. He was also informed that as per the provisions of law in Rule 12(4) of the OCS (CCA) Rules, he has been placed under suspension from the date of the original order of removal, i.e., 14th February, 2003, from Government service and shall continue to remain under suspension until further orders. Being aggrieved by the aforesaid order of suspension, the Appellant moved the OAT Bench at Cuttack in OA No. 1915 (c) of 2009 which was dismissed. The Appellant challenged the order passed by the Government of Orissa dated 25th February, 2009 and the order passed by the OAT, by filing the Writ Petition (C) No. 16450 of 2010. The aforesaid writ petition has been dismissed by the High Court by an order dated 15th September, 2011. It is this order which has been challenged in the present appeal.

5. In the impugned order, the High Court has considered the provisions contained in Rule 12(4) of the OCS (CCA) Rules which reads as under:

Rule 12(4). Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared void or rendered void in consequence of or by a decision of a court of law and disciplinary authority, on a consideration of the circumstances of the case decides to hold a further inquiry against him on 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 orders of dismissal, removal or compulsory

retirement and shall continue to remain under suspension until further orders.

6. It has been held that under the aforesaid provision where a penalty of removal from Government service has been set aside by a Court of law and the disciplinary authority decides to hold a further inquiry against him, on the allegations on which the penalty of removal was originally imposed, the Government servant shall be deemed to have been placed under suspension. In coming to the aforesaid conclusion, the High Court has relied on the ratio of law laid down by this Court in the case of H.L. Mehra Vs. Union of India (UOI) and Others, and the Constitution Bench judgment in the case of Khem Chand Vs. Union of India (UOI),

7. We have heard the Learned Counsel for the parties.

8. Mr. K.V. Viswanathan, learned senior advocate appearing for the Appellant has submitted that after the order of removal was quashed by the High Court on 24th June, 2008, the Appellant was entitled to be reinstated in service. In passing the order dated 25th February, 2009 retrospectively placing the Appellant under the deemed suspension with effect from 14th February, 2003, the Respondents have wrongly invoked Rule 12(4) of the OCS (CCA) Rules. He submitted that the Appellant was not under suspension at the time when the order of removal was passed on 14th February, 2003. Therefore, it was necessary for the Respondents to consider the question as to whether the Appellant was to be placed under suspension under Rule 12(1) of the OCS (CCA) Rules. Learned Counsel submitted that this Court in the cases of H.L. Mehra and Khem Chand (supra) had considered a similar situation under Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which is *pari materia* to Rule 12(4) of the OCS (CCA) Rules. Therefore, the law laid down in the aforesaid two judgments would be applicable to the facts of this case.

9. Mr. Shibashish Misra, Learned Counsel appearing for the Respondents submitted that the order under Rule 12(4) of the OCS (CCA) Rules dated 25th February, 2009 was consequential to the direction issued by the High Court on 24th June, 2008. By the aforesaid order, the High Court had directed to provide reasonable opportunity of hearing to the Appellant before taking a final decision in the matter relating to the findings on the charges framed against him. Therefore, under Rule 12(4) of OCS (CCA) Rules, the Appellant was deemed to be placed under suspension, by operation of Law, even if he was not under suspension at the time Order dated 14th February, 2003 was passed.

10. We have considered the submissions made by the Learned Counsel for the parties. We do not find any merit in the submissions of Mr. Viswanathan that even though the order of removal was set aside by the High Court on the ground that the disciplinary authority had passed the order dated 14th February, 2003 directing the removal of the Appellant from Government service, in breach of rules of natural justice, it was necessary for the Government to pass an order of suspension of the Appellant under Rule 12(1). The High Court directed the

Disciplinary Authority to continue with the Disciplinary Proceedings after giving an opportunity of hearing to the Appellant. Rule 12(1) enables the appointing authority or any authority to which it is subordinate to place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending. The aforesaid stage in the present case came to an end when the Appellant was suspended for the first time on 12th June, 1998. Undoubtedly, the aforesaid order of suspension was revoked on 20th July, 1999. Thereafter the Appellant was removed from service on 14th February, 2003 when the disciplinary authority disagreed with the findings of the enquiry officer exonerating the Appellant. It was this order of removal which has been set aside by the High Court on 24th June, 2008 in W.P.(C) No. 10653 of 2006. At that stage, a department had no option but to pass an order under Rule 12(4) directing that the Appellant shall be deemed to have been suspended w.e.f. 14th February, 2003. The aforesaid understanding of the Rules by the Government of Orissa as well as by the High Court is in consonance with the interpretation of the identical rule, Rule 12(4) which was under consideration of this Court in the case of Khem Chand (supra). In Khem Chand's case (supra), the Appellant had challenged the vires of Rule 12(4) of Central Civil Service (Classification, Control and Appeal) Rules, 1957, this Court upon consideration of the entire matter held that the rule did not offend the provision contained in Article 19(1)(f) of the Constitution of India.

11. Mr. Viswanathan, however, submitted that this Court had held that Rule 12(3) will come into operation when the appellate authority sets aside a penalty of dismissal, removal or compulsory retirement and remits the case to the authority which imposed the penalty for further enquiry. In such circumstances, there would be no deemed suspension unless the employee was earlier under suspension. But in the same situation, there would be deemed suspension when the order of removal is set aside by the Court. This, according to Mr. Vishwanathan, would render Rule 12(4) ultra vires Articles 14 and 16 of the Constitution of India. It is not necessary for us to examine the aforesaid submission on merits as the issue is no longer res integra. A three Judge Bench of this Court in Nelson Motis Vs. Union of India and another, considered the scope and ambit of the provisions contained in Sub-rule (3) and (4) of Rule 10 of OCS (CCA) Rules. The aforesaid rules are pari materia to Rule 12(3) and (4) of OCS (CCA) Rules. Rule 12(1), (3) and (4) of OCS (CCA) Rules reads as under:

12. Suspension - (1) The appointing authority or any authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending, or
(b) where a case against him in respect of any criminal offence is under investigation or trial.

(3) Where a penalty of dismissal, removal or compulsory retirement from service

imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where 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 decision of a court of law and disciplinary authority, on a consideration of the circumstances of the case decides to hold a further inquiry against him on the allegation 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 orders of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

12. Considering the *pari materia* Sub-rule (3) and (4) of Rule 10 of OCS (CCA) Rules, this Court has held that Sub-rule (3) of Rule 10 is applicable to cases where interference with the penalty is connected with the merits of the charges against the Government servant and is set aside by the appellate authority under Rule 27 or by the Revisional authority under Rule 29 or by the Reviewing authority under Rule 29A. In such circumstances, Government servant shall be deemed to be under suspension only if he was under suspension at the time when the order of punishment was passed. On setting aside the order of punishment in such a case by the Departmental authorities, the findings against the Government servant disappeared and he is restored to the earlier position. This, however, is not the position under Sub-rule (4), the language of which clearly stipulates that 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, the Government servant shall be deemed to have been placed under suspension by the appointing authority, during the pendency of a further proceeding against him, in a departmental enquiry until further orders are passed. This Court rejected the submissions that the deemed suspension under Rule 12(4) should be read down to mean that the deemed suspension shall only be in case the employee was under the suspension at the time when the order of punishment was passed. It was observed by this Court as follows:

The language of Sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in innumerable cases in India and in England, the expression used in the statute alone declares the intent of the

legislature. In the words used by this Court in *State of U.P. v. Dr. Vijay Anand Maharaj* when the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. Reference was also made in the reported judgment to Maxwell stating:

The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words.

The comparison of the language with that of Sub-rule (3) reinforces the conclusion that Sub-rule (4) has to be understood in the natural sense. It will be observed that in Sub-rule (3) the reference is to "a Government servant under suspension" while the words "under suspension", are omitted in Sub-rule (4). Also the Sub-rule (3) directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in Sub-rule (4) it has been said that "the Government servant shall be deemed to have been placed under suspension". The departure made by the author in the language of Sub-rule (4) from that of Sub-rule (3) is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances it is not permissible to read down the provisions as suggested. We, therefore, hold that as a result of Sub-rule (4) a government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, provided of course, that the other conditions mentioned therein are satisfied.

13. Rejecting the next submission that sub-rules (3) and (4) cannot be divided into two separate classes and subjected to differential treatment. The court observed as under:

Let us examine the circumstances which separate the two categories of cases to be governed by the two sub-rules. Sub-rule (3) is attracted only to those cases of dismissal etc. where the penalty is set aside under the CCS (CCA) Rules, and the case is remitted for further inquiry or action in accordance with the direction. The application is, therefore, confined to cases where the penalty is set aside by the appellate authority while hearing a regular appeal under Rule 27 or by the President exercising the power of revision under Rule 29 or of review under Rule 29-A. On all such occasions a reconsideration of the merit of the charge is involved. The grounds mentioned in Rule 27 (2) permit the appellate authority to re-appraise the evidence on the record for examining whether the findings recorded by the disciplinary authority are warranted by such evidence. So far non-compliance of a procedural rule is concerned, the appellate authority is enjoined, by Clause (a) of Rule 27 to consider whether such non-compliance has resulted in the failure of justice or in the violation of any constitutional provision, before interfering with the punishment. In view of its Sub-rule (3), the same consideration arises under Rule 29. Similarly, the provisions of Rule 29-A indicate that the power to review can be exercised by the President only on discovery of such new evidence which has the effect of changing the very nature of the case.

Sub-rule (3) of Rule 10 is applicable to these groups of cases, where the interference with the penalty is connected with the merits of the charge against the government servant. On the setting aside of the order of punishment in such a case, the finding against the government servant disappears and he is restored to the earlier position. Consequently only if he was under suspension earlier, he will be deemed to have continued so with effect from the date of the order of dismissal. On the other hand, the second category of cases attracting Sub-rule (4) is entirely on a different footing. Sub-rule (4) governs only such cases where there is an interference by a court of law purely on technical grounds without going into the merits of the case. In cases governed by the CCS (CCA) Rules, a court of law does not proceed to examine the correctness of the findings of the disciplinary authority by a reconsideration of the evidence. Unless some error of law or of principle is discovered, a court of law does not ordinarily substitute its own views on the evidence. But the matter does not end there. The scope of the sub-rule, for the purpose of automatic suspension has been further limited by the proviso as mentioned earlier in paragraph 6, which reads as follows:

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.

The cases which attract Sub-rule (4), are thus those where the penalty imposed on the government servant is set aside on technical grounds not touching the merits of the case. Since at one stage the disciplinary authority records a finding on the charges against the government servant, which is not upset on merits, the situation is entirely different from that in the cases covered by Sub-rule (3). The classification is thus founded on an intelligible differentia, having a rational relation to the object of the rules and Rule 10 (4) has to be held as constitutionally valid.

14. In our opinion, the aforesaid observations are a complete answer to the submissions made by Mr. Viswanathan.

15. We see no merit in the appeal and the same is hereby dismissed.