Nelson Motis vs Union Of India And Another on 2 September, 1992

Equivalent citations: AIR1992SC1981, [1992(65)FLR853], JT1992(5)SC511, 1992LABLC2037, (1992)IILLJ744SC, 1992(2)SCALE476, (1992)4SCC711, [1992]SUPP1SCR325, 1992(3)SLJ65(SC), (1992)2UPLBEC1189, AIR 1992 SUPREME COURT 1981, 1992 (4) SCC 711, 1992 AIR SCW 2304, 1992 LAB. I. C. 2037, (1992) 65 FACLR 853, (1992) 2 LABLJ 744, (1992) 2 LAB LN 1059, 1993 BBCJ 65, (1992) 4 SCR 325 (SC), (1993) 82 FJR 417, (1993) 2 PAT LJR 118, (1992) 3 SCJ 201, 1993 SCC (L&S) 13, (1992) 5 SERVLR 394, 1993 UJ(SC) 1 45, (1992) 2 UPLBEC 1189, (1993) 23 ATC 382, (1992) 2 CURLR 825, (1992) 5 JT 511 (SC)

Author: Lalit Mohan Sharma

Bench: Lalit Mohan Sharma, M.M. Punchhi, Yogeshwar Dayal

ORDER

Lalit Mohan Sharma, J.

1. Special leave is granted.

2. The main question which has been raised in this appeal relates to the interpretation and scope of Rule 10(4) of the Central Civil Services (Classification Control and Appeal) Rules, 1965, and its consequent validity.

3. A disciplinary proceeding was initiated against the appellant on the basis of several charges and an inquiry was conducted. The Inquiry Officer submitted a report holding that the charges had been proved. The report was accepted by the disciplinary authority who passed an order of removal of the appellant from service on 4.2.1984. The order was confirmed in departmental appeal. The appellant, thereafter, challenged the order of punishment by an application before the Central Administrative Tribunal which was registered as OA No. 401 of 1987. It was contended that since a copy of the inquiry report had not been served on the appellant, the proceeding got vitiated in law. Relying upon an earlier Full Bench decision of the Tribunal the plea was accepted and the application was allowed setting aside the penalty and directing reinstatement of the appellant with the observations that it would be open to the authorities concerned to take up the proceedings afresh, unless they chose to drop the same. It was also observed that a crimur 1 case which had been started against the appellant on the basis of the same charges had concluded in his acquittal and this fact also shall be

kept in view while deciding whether the proceedings should be dropped or not, The Tribunal did not express its view on the merits of the case against the appellant.

4. The matter was considered by the respondent No. 2, who issued an order to the effect that the disciplinary proceeding shall be continued and that in view of Sub-rule (4) of Rule 10 of C.C.S. (C.C.A.) Rules, 1965 the appellant will be deemed to have been under suspension with effect from 4.2.1984, the date on which he was removed from service. This order was challenged by the appellant by a fresh application before the Tribunal, registered as OA No. 631 of 1989. The continuance of the enquiry was impugned on the ground of the appellant's acquittal in the criminal case. So far the question of deemed suspension is concerned, it was contended on behalf of the appellant that Sub-rule (4) to Rule 10 was ultra vires Articles 14 and 16 of the Constitution. Both the points were rejected by the order of the High Court dated 31.8.1990. An application for review was also dismissed on 31.1.1991. In this background the appellant has now come to this Court.

5. So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has not substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceedings were not exactly the same which were the subject matter of the criminal case.

6. The other question relating to the automatic suspension of the appellant by virtue of Rule 10(4) is a serious one and in order to appreciate the argument of the appellant it is necessary to examine both Sub-rules (3) and (4) of Rule 10, which are quoted below:

> (3) Where 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.
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> (4) 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 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 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.

7. It has been contended on behalf of the appellant that while in a case governed by Sub-rule (3), a Government servant, on the order of his punishment by way of dismissal, removal or compulsory retirement from service being set aside, stands suspended only if he had been under suspension earlier, Sub-rule (4) provides for automatic suspension of a Government servant, even if he was never under suspension at any point of time; and this invidious distinction amounts to illegal discrimination which renders Sub-rule (4) unconstitutional. The argument is that with a view to save the sub-rule, its application has to be limited to cases in which the Government servant has been, during the pendency of the disciplinary proceeding, under suspension. The learned Counsel proceeded to say that the established principle of interpretation favouring reading down of a statutory provision in order to avoid it being struck down as illegal, is applicable to this case. If this is found not possible in view of the clear language of Sub-rule (4), the same should be struck down as unconstitutional. In either event, it should be further held that the appellant, who was not under suspension earlier, cannot be treated to have been placed under suspension when his writ petition was allowed by the Tribunal. Reliance has been placed on the decision of the Central Administrative Tribunal in Shri N.V. Karwarkar v. The Administrator of Goa, Daman and Dieu and Ors. A.T.R. (1988) 2 C.A.T. 232. Reference was also made to certain observations of this Court in Khem Chand v. Union of India [1963] Supp. 1 S.C.R. 229, and Divisional Personnel Officer, Western Railway, Kota v. Sunder Dass .

8. 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 Uttar Pradesh 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:

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

9. The comparison of the. language with that of Sub-rule (3) re-enforces 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", is 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.

10. The question which next arises for decision is whether as a result of the above interpretation, Sub-rule (4) has to be struck down on the ground of illegal discrimination. It is contended on behalf of the appellant that for the purpose of disciplinary proceedings, the cases governed by Sub-rules (3) and (4) cannot be divided into two separate classes and subjected to differential treatment. The point, therefore, is whether the basis of classification of these two categories bears a rational relationship to the object the purpose of Rule 10. In our view the answer is in the affirmative.

11. 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 C.C.S. (C.C.A.) Rules, and the case is remitted for further enquiry 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 29A. 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 arise under Rule 29. Similarly, the provisions of Rule 29A 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 C.C.S. (C.C.A.) 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.
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> 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.

12. The decision of the Constitution Bench in Khem Chand v. Union of India [1963] Supp. 1 S.CR. 229, was referred to on behalf of both sides. This Court was, in that case, dealing with a matter governed by the earlier Rules of 1957, but the learned Counsel relied upon the decision on the ground that the 1957 Rules and the present 1965 Rules are in pan materia. This is not quite accurate. The main portion of the present Sub-rule (4) is in identical terms as Rule 12(4) of 1957 Rules, but the proviso in the present Sub-rule (4) (quoted above) is an addition which was not there in 1957 Rules at all. This addition is significant inasmuch as it cuts down the scope of the application of automatic suspension, confining it only where the court interferes purely on technical grounds without going into the merits of the case. The decision of this Court upholding the constitutional validity of the earlier Sub-rule (4) (without proviso) thus goes a long way to support the case of the respondent, but is of no help at all to the appellant. The learned Counsel for the appellant, has, however, placed great reliance on the observation in the judgment to the effect that it was "entirely unlikely however that ordinarily a Government servant will not be placed under suspension prior to the date of his dismissal". A close examination of the judgment clearly shows that on the basis of this observation, present Sub-rule (4) cannot either be struck down as illegal or be limited in its application only to such cases where the Government servant has been earlier under suspension. The Court, in the cited case, had, before rejecting the plea of discrimination, considered the two Sub-rules (3) and (4) in the light of the other relevant circumstances and the rules, at pages 239 and 240 of the report and had rejected the appellant's argument. Proceeding further, the observation mentioned above was made in relation to Sub-rule (3) and not Sub-rule (4). Besides, we cannot ignore the fact that the observation was made in respect to Rule 12(4) of the 1957 Rules which did not contain the proviso as in the present Sub-rule (4). The learned Counsel for the appellant, next, drew our attention to the fact that Khem Chand, the appellant in that case, was under suspension earlier, and, on that basis urged that the case is distinguishable. We do not find any merit in this suggestion. The decision upholding the validity of Sub-rule (4) was not based on this fact and was arrived at unconditionally and covers the present case against the applicant. Finally, the learned Counsel for the appellant contended that Khem Chand's judgment was, in any event, erroneous and, therefore, fit to be re-examined by a larger Bench. We have examined the matter deeply and for the reasons indicated by us in paragraph 10 above, we do not find any justification for holding that Khem Chand's case requires reconsideration.

13. The case of Divisional Personnel Officer, Western Railway, Kota v. Sunder Dass , is again of no help. The facts stated in the judgment leave no room for doubt that the question which has been agitated before us did not arise for consideration there, as the Government servant was actually under suspension earlier. Interpreting the relevant rules of Indian Railway Establishment Code the Supreme Court agreed with the Department and allowed the appeal against the Government servant.

14. So far the judgment of the Central Administrative Tribunal in Karwarkar's case, ATR (1988) 2 C.A.T. 232, is concerned, the decision does help the appellant, but for the reasons mentioned by us earlier, we hold that the view of the Tribunal declaring the retrospective operation of Rule 10 (4) as invalid, is erroneous.

15. It was pointed out by the learned Counsel for the appellant that in any view of the matter the appellant must be paid his salary for the period 1.10.1988 to 22.2.1989 as he was allowed to join his post and discharge his duties during this period. This claim is well founded. The appellant will have to be paid for this period and the respondents are hereby directed to make necessary payments after adjusting any amount, which might have already been paid within a period of two month from today, failing which the amount will carry interest at the rate of 12% per annum with effect from 1st of November, 1992 till payment.

16. Subject to the relief granted in the previous paragraph the appeal is dismissed, but in the circumstances without costs.