Union Of India vs Rajiv Kumar Bani Singh on 18 July, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2917, 2003 (6) SCC 516, AIR 2004 JAMMU & KASHMIR 23, AIR 2002 JAMMU & KASHMIR 134, 2003 AIR SCW 3507, 2003 (4) SLT 500, 2004 (1) SERVLJ 1 SC, 2003 (5) SCALE 297, 2003 (6) ACE 157, 2003 (8) SRJ 128, (2003) 5 JT 617 (SC), (2004) 1 SERVLJ 1, 2003 (3) UPLBEC 2059, (2004) 3 ACJ 2150, 2003 SCC (L&S) 928, (2003) 3 SCT 704, (2003) 3 UPLBEC 2059, (2003) 105 DLT 576, (2003) 70 DRJ 146, (2003) 98 FACLR 753, (2003) 4 SERVLR 730, (2003) 5 SUPREME 208, (2003) 5 SCALE 297, (2003) 4 ESC 596, (2003) 8 INDLD 258, (2003) 4 ALL WC 3020, 2003 (3) KLT SN 52 (SC)

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  5007 of 2003
Appeal (civil)  5008 of 2003

PETITIONER:
Union of India

Union of India and Ors.


RESPONDENT:
Vs.

Rajiv Kumar

Bani Singh


DATE OF JUDGMENT: 18/07/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.


JUDGMENT:
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J U D G M E N T WITH (Arising out of SLP(C) No. 4491 of 2003) (Arising out of SLP(C) 12703/2003 (CC.5872/2003) ARIJIT PASAYAT,J Delay condoned in SLP(C)...../2003 (CC 5872/2003). Leave granted.

The basic issue in these two appeals relates to the scope and ambit of Sub-Rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short the 'Rules') vis-à-vis other provisions of the said Rule.

Division Bench of the Delhi High Court by the impugned judgment in each case held that Sub-Rule (2) of Rule 10 does not contain any provision wherefrom it can be deduced that the deemed suspension for custodial detention exceeding forty eight hours would continue until it is withdrawn. It was further held that on a plain reading of the said provision it is clear that the same comes to an end by operation of law after release of the employee from detention.

Factual scenario is almost undisputed and needs to be noted in brief.

Respondent-employee in each case was arrested and detained in custody for a period exceeding 48 hours. With reference to Sub-Rule (2) of Rule 10, the order was passed in each case indicating that in view of the detention in custody for a period exceeding 48 hours, the concerned employee is deemed to have been suspended with effect from the date of suspension and shall remain suspended until further orders.

The background facts of the appeal relating to respondent-Rajiv Kumar is referred for the purpose of adjudicating the issues involved as the factual position in the appeal relating to Bani Singh would not affect ultimate conclusions. Rajiv Kumar was arrested on 26.3.1998 for allegedly accepting bribe and was released on bail on 2.4.1998. The order purportedly under Sub-Rule (2) of Rule 10 to formally place on record was passed on 15.5.1998. On 2.7.2000 the order dated 15.5.1998 was assailed before the Central Administrative Tribunal (in short the 'CAT') at its Delhi Bench on the ground that there was no reason for his continued suspension. The prosecuting agency filed challan on 2.9.2000. On 11.10.2000, Rajiv Kumar filed an application for interim relief. On 9.11.2000 an order was passed by the authorities continuing suspension. By judgment dated 14.3.2001 CAT directed the authorities to dispose of the matter by a reasoned and speaking order. An application for review was filed on 26.4.2001. It was rejected by an order dated 15.5.2001. In terms of the CAT's directions, an order was passed on 21.5.2001. The same is stated to be the subject matter of challenge before the Mumbai Bench of CAT. On 3.8.2001, Civil Writ Petition No.4746/2001 was filed before the Delhi High Court challenging the aforesaid orders dated 14.3.2001 and 15.5.2001. At this juncture, it needs to be noted that there was no challenge to the order dated 9.11.2000.

By the impugned judgment, the Delhi High Court came to hold, as noted above, that CAT was not correct in remitting the matter back to the appointing authority for consideration of the matter afresh. It was, inter alia, observed that if a question of law had been raised before it, CAT was required to apply its mind and pass appropriate orders. The impugned order of suspension was quashed. It was held that the order dated 15.5.1998 cannot be treated to be one passed under Sub-Rule (2) of Rule 10. It was held that an order of suspension after release of the petitioner on bail could not have been passed under Sub-Rule (2) of Rule 10 and such order could have been passed only in terms of Sub-rule (1) of Rule 10. View expressed by a Full Bench of the Allahabad High Court in Chandra Shekhar Saxena and Ors. v. Director of Education (Basic) U.P.,Lucknow and Anr. (1997 Allahabad Law Journal 963) was followed. It was further held that a combined reading of Rules

10(1), 10(2), 10(3), 10(4) and 10(5)(a) makes the position clear that the order of suspension was effective for the period of detention and not beyond it where by legal fiction a person is deemed to be under suspension for being in custody for a period exceeding 48 hours.

For the sake of brevity, different Sub-rules have been referred as Rules 10(1), 10(2), 10(3), 10(4), 10(5)(a), 10(5)(b) and 10(5)(c).

In Bani Singh's case, the logic was applied, since the legal position was held to be similar.

In support of the appeals, learned counsel for the Union of India submitted that if the interpretation put by the High Court is accepted the same would mean addition of words to Rule 10(2). The language used in the said provision is clear and unambiguous and, therefore, there is no scope for making any alteration in the statutory texture. It was further submitted that by accepting the interpretation, Sub- Rule 5(a) of Rule 10 would also be rendered purposeless. Per contra, respondents-employees who appeared in person submitted that the interpretation brings out the true essence of a deeming provision, which cannot be extended beyond the purpose for which it was enacted. On a combined reading of Rules 10(2), 10(3), 10(4) and 10(5)(a) it is claimed for the respondents that the order of suspension in a case covered under Rule 10(2)(a) has limited operation for the period of detention and not beyond it. Further it is submitted that an employee cannot be placed under suspension for an indefinite period of time. Though suspension is not penal in character yet it has serious civil consequences. In the fact till date there has been practically no progress in criminal proceedings and the departmental actions initiated.

With reference to the Central Civil Services (Classification, Control and Appeal) Rules, 1957 (in short the 'Old Rules'), it is pointed out that there is conceptual difference in the relevant provisions and the interpretation put by the High Court is in order. Additionally, it is submitted that fresh order of suspension has been passed and the appeals have become infructuous because of subsequent events. Rule 10 is the pivotal provision around which the controversy revolves, and it reads as follows:

> Rule 10. Suspension (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension –
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> (a) where a disciplinary proceeding against him is contemplated or is pending; or (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
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> (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:
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> Provided that, except in case of an order of suspension made by the Comptroller and Auditor- General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular

member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made. (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.

(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 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.

(5)(a) 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.

5(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.

5(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."

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 loose 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.

Thus, it is clear that the order of suspension does not loose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10(5)(c) and until that order is made, the same continues by the operation of Rule 10(5)(a) and the employee has no right to be re-instated to service. This position was also highlighted in Balvantrai Ratilal Patel v. State of Maharashtra (AIR 1968 SC 800). Indication of expression "pending further order"

> in the order of suspension was the basis for aforesaid view.
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> Reference has been made to Sub-Rule 5(b) of Rule 10. According to the High Court the same appears to have been made "ex majori cautela". Conceptually Sub-Rules 5(a) and 5(b) operate in different fields and for different purposes, i.e., when more than one disciplinary proceedings come to be initiated to cover all such situations.

> Both the provisions have to be read harmoniously. Otherwise, Sub-Rule 5(a) would become meaningless and Sub-Rule 5(c) purposeless and both provisions would be rendered otiose and superfluous. View of the Full Bench of the Allahabad High Court (supra) that the legal fiction created ceases to be effective for the purpose of suspension while operative for other purposes is clearly unsustainable and we do not approve of the same.

It is well settled principle in law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers.

Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the Legislature or the Authority enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74)) The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures, defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (Also See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253)). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors.(AIR 1962 SC 847). The question is not what may be supposed and has been intended, but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

In D.R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842), it was observed that Courts must avoid the danger of an a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (2000 (5) SCC 515). The legislative casus omissus cannot be supplied by

judicial interpretative process.

Two principles of construction – one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand,"it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton 11 Moore, P.C. 345). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislatores, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws." The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See Grey v. Pearson 6 H.L. Case 61). The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See Abley v. Dale 11, C.B. 378). The inevitable conclusion therefore is that the order in terms of Rule 10(2) is not restricted in its point of duration or efficacy to the period of

actual detention only. It continues to be operative unless modified or revoked under Sub-Rule 5(c), as provided under Sub-rule 5(a).

Rule 10(5)(b) deals with a situation where a government servant is suspended or is deemed to have suspended and any other disciplinary proceeding is commenced against him during continuance of that suspension irrespective of the fact whether the earlier suspension was in connection with any disciplinary proceeding or otherwise. Rule 10 (5)(b) can be pressed into service only when any other disciplinary proceeding is also commenced than the one for and during which suspension or deemed suspension was already in force, to meet the situation until the termination of all such proceedings. In contradiction, Rule 10(5)(a) has application in relation to an order of suspension already made or deemed to have been made. Rule 10(5)(b) has no application to the facts of the present case and no inspiration or support could be drawn for the stand taken for the respondents or the decision arrived at by the High Court. It is Rule 10(5)(a) alone which has application and the deemed suspension would continue to be in force till anything has been done under Rule 10(5)(c). Similarly, Rules 10(3) and 10(4) operate in different fields and merely because a specific provision is made for its continuance, until further orders in them itself due to certain further developments taking place and interposition of orders made by Court or appellate and reviewing authority to meet and get over such specific eventualities, in given circumstances and that does not in any way affect the order of suspension deemed to have been made under Rule 10(2).

Strong reliance was placed on Nelson Motis v. Union of India (1992 (4) SCC 711) to contend that omission of the expression "until further orders" in Rule 10(2) was conscious and, therefore, the period covered for "deemed suspension" was restricted to period of detention. Such plea is without substance. In Nelson's case (supra) the respective scope and ambit of Rule 10(2) and Rule 10(3) fell for consideration. As indicated above, the said provisions apply in conceptually and contextually different situations and have even no remote link with a situation envisaged under Rule 10(2). In fact, this Court in the said case categorically observed as under:

> "The comparison of the language with that of Sub-Rule (3) re-inforces the conclusion that Sub-Rule (4) has to be understood in the natural sense".

(underlined for emphasis).

Another plea raised relates to a suspension for a very long period. It is submitted that the same renders the suspension invalid. The plea is clearly untenable. The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely because it is for a long period that does not invalidate the suspension.

Some other pleas were pressed into service to contend that High Court's order is justified. It is submitted that these stands were highlighted before the High Court though not specifically dealt with. Since the High Court has not dealt with these aspects, we do not take the other contentions into account to express any view. Though factually it is undisputed that fresh order of suspension had been passed in each case, the same relates to a separate cause of action and if any dispute is raised as regards its legality, the same has to be adjudicated by the concerned Court or the Tribunal,

as the case may be, on its own merits and in accordance with law. The impugned order of the High Court in each case stands quashed. The appeals are allowed leaving the parties to bear their own costs.