H.L. Mehra vs Union Of India (Uoi) And Ors. on 23 April, 1974

Equivalent citations: AIR1974SC1281, 1974LABLC984, (1974)4SCC396, [1975]1SCR138, AIR 1974 SUPREME COURT 1281, 1974 4 SCC 396, 1974 LAB. I. C. 984, 1974 2 SERVLR 187, 1974 SERVLJ 379, 1974 SCD 729, 1975 (1) SCR 138

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Bench: P.K. Goswami, P.N. Bhagwati

JUDGMENT

P.N. Bhagwati, J.

1. This appeal is directed against the judgment of the Delhi High Court dismissing a writ petition filed by the appellant against the respondents challenging the validity of an order dated 9th June, 1971 passed by the President directing that a disciplinary inquiry pending against the appellant shall be continued until its finalisation and the appellant shall continue under suspension under Sub-rule 5(b) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereinafter referred to as CCS (CCA) Rules, 1965, until further orders. The facts giving rise to the appeal may be briefly stated as follows.

2. The territory of Goa, which was under Portuguese domination, was liberated by the Indian Army on 20th December, 1961. The appellant was at that time in the service of the Government if India in the Post and Telegraph Department and was working as Senior Superintendent of Post Offices at Jaipur. Since senior and experienced officers were required for reorganising the administration in the liberated territory of Goa, the appellant was transferred and posted as officer on Special Duty, Post and Telegraph Department. Panjim, Goa. The appellant took charge of his new office on 25th December, 1961 and held that officer till 11th August. 1962 when he was transferred as Senior Superintendent, R.M.S., 'A' Division, Allahabad. Whilst the appellant was functioning as Senior Superintendent, R.M.S., 'A' Division Allahabad he was suspended from service by an order dated 11th April, 1963 made by the President in exercise of the power conferred under Sub-rule (1) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, hereinafter referred to as the CCS (CCA) Rules, 1957 cm the ground that a case against the appellant in respect of criminal offence was under investigation. On the completion of the investigation by the Special Police Establishment, the Government of India sanctioned the prosecution of the appellant and pursuant to the sanction so granted, the appellant was prosecuted in the court of Special Judge, Greater Bombay along with one Raj Bahadur Mathur on four charges. The first and the fourth charges are not material as the appellant was acquitted of those charges by the learned Special Judge and nothing now turns upon them. The third charge is also not material as it was directed

only against Raj Bahadur Mathur and the appellant had nothing to do with it. The principal charge was the second charge which alleged that the appellant had, while functioning as Officer on Special Duly, Post and Telegraph Department, Panjim, Goa, by abuse of his official position or by illegal and corrupt means, obtained pecuniary advantage for himself and/or for others, inasmuch as he had sent or caused to be sent from Panjim to Bombay four consignments specially described in the charge, in trucks and/or railway wagons hired by Post and Telegraph Department for transportation of foreign parcels from Goa to Daman via Margo, Poona and Bombay, without payment of freight charges, customs duty etc., and thereby committed an offence punishable under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. Of the four consignments referred in this charge, the first related to eight cases concealed in five postal bags sent on or about 29th June, 1962, the second related to twelve wooden boxes and a steel trunk concealed in eight postal bags sent on or about 26th July, 1962, the third related to nine cases sent on or about 31st July, 1962 concealed in postal bags and the fourth related to some trunks and leather suitcases sent on or about 31st March, 1962. Whilst the criminal case was pending in the Court of. Special Judge, Greater Bombay, the Government of India issued a memorandum dated 8th March, 1965 to the appellant intimating that the President proposed to hold an inquiry against the appellant under Rule 15 of the CCS (CCA) Rules, 1957. The allegations on which the inquiry was proposed to be held were set out in the statement of allegations enclosed with the memorandum and the charges framed on the basis of these allegations were enumerated in the statement of charges accompanying the memorandum. There were four charges set out in the statement of charges. The first, the third and the fourth charges are not material and we need not refer to them in detail. It would be sufficient to state that they were based on wholly different allegations and had nothing to do with the charges on which the appellant was being prosecuted in the criminal case. The second charge, however, stood on a different footing and in order to appreciate one of the contentions that has been raised before us, it would be desirable to set it out in extenso :

> Shri H.L. Mehra, while functioning as Officer on Special Duty, P. & T. Department, Panjim, Goa between the 24th December, 1961 and the 31st August, 1962, failed to maintain absolute integrity and devotion to duty as required by Rule 3 of the CCS (Conduct) Rules, 1955 and committed misconduct in the discharge of his duties as a public servant inasmuch as he, by abusing his official position, managed to send 9 cases packed with his luxury goods from his residence at Panjim to Margoa Post Office on or about the 31st July, 1962 in the truck of Vasant Shiva Amoncar, hired by the P. & T. Department, Panjim Goa for carrying mails from Margoa to Panjim Post Office, without paying any truck hire charges and also unauthorisedly utilised the services of the postal carpenters on working days during the office hours for packing the aforesaid cases and thereby secured to himself wrongful gain and pecuniary advantage.

3. The disciplinary inquiry into these charges proceeded rather desultorily and not much progress was made. The reason obviously was that the criminal case was pending. At the trial of the criminal case, a large mass of evidence was led on behalf of the prosecution and the appellant also led evidence in support of the defence. On the evidence, the learned Special Judge came to the conclusion that the first and the fourth charges were not established against the appellant and

acquitted him of those charges. The learned Special Judge also acquitted Raj Bahadur Mathur of the first and the third charges framed against him. However, so far as the second charge against the appellant was concerned, the learned Special Judge found that the appellant was guilty of that charge in so far as it related to the first, the second and the fourth consignments referred to in that charge though not in respect of the third consignment of nine cases sent on or about 31st July, 1962. The learned Special Judge accordingly convicted the appellant only in respect of the second charge and that too in so far as it related to the first, the second and the fourth consignments and acquitted him of all the other charges including the second charge in so far as it was based on the third consignment of nine cases sent on or about 31st July, 1962. The appellant preferred an appeal against the order passed by the learned Special Judge in so far as it related to his conviction and the appeal was heard by a Division Bench of the High Court of Bombay. The Division Bench by a judgment dated 17th April, 1967 confirmed the conviction of the appellant and also maintained the sentence passed against him by the learned Special Judge. The appellant immediately applied for a certificate for leave to appeal to this Court and the certificate was granted by the High Court of Bombay on 18th April, 1967. Since an appeal against the conviction was preferred to this Court, the President could have waited for the disposal of the appeal before taking any action against the appellant on the basis of the conviction. But, instead, the President passed an order dated 26th October, 1967 dismissing the appellant from service with immediate effect under Rule 19(1) of CCS (CCA) Rules, 1955 on the ground that the conduct of the appellant, which had led to the conviction, was such as to render his further retention in the public service undesirable. The appeal against the conviction was, thereafter, heard by this Court and by a judgment dated 19th March, 1971 this Court allowed the appeal and set aside the conviction of the appellant. It is necessary for the purpose of the present appeal to make a detailed reference to this judgment but it would be enough to state that the main ground on which this Court exonerated the appellant was that no customs duty was leviable on despatch of goods from Goa to other parts of India and the appellant could not, therefore, be said to be guilty of having obtained pecuniary advantage in the shape of evasion of payment of customs duty by abusing his official position and/or by illegal or corrupt means. The conviction of the appellant having been set aside, the order of dismissal based on the conviction obviously could not be sustained and the President, therefore, decided that the order of dismissal should be set aside and passed an order to the following effect on 9th June. 1971 :

> WHEREAS Shri H.L. Mehra, the then Senior Supdt. of RMS was dismissed from service with effect from 26th October, 1967 on the ground of conduct which led to his conviction on a criminal charge vide order No. 7/6/63-Disc. dated the 26th October, 1967.
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> AND WHEREAS the said conviction has been set aside by the Supreme Court and the said Shri H.L. Mehra has been acquitted of the said charge ;
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> AND WHEREAS in consequence of such acquittal the President has decided that the said order of dismissal should be set aside.
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> AND WHEREAS Shri H.L. Mehra, the then Senior Supdt. of RMS was under suspension vide order No. 10/10 9/63-Vig. dated the 11th April, 1963, at the time of

dismissal, and an enquiry under the provisions of CCS (CCA) Rules, 1957 as ordered vide memo No. 7/6/63-Disc. dated the 8th March, 1965 was pending against him;

AND WHEREAS the President has decided that the said enquiry pending against Shri H. L. Mehra, may be continued and under Sub-rule 5(b) of Rule 10 of CCS (CCA) Rules, 1965, Shri H. L. Mehra should continue under suspension until the termination of such proceedings :--

NOW, therefore, the President hereby--

(i) sets aside the said order of dismissal;

(ii) directs that the enquiry pending against Shri H. L. Mehra, shall be continued until its finalisation;

(iii) directs that the said Shri H.L. Mehra, shall under Sub-rule 5(b) of Rule 10 of CCS (CCA) Rules, 1965 continue to remain under suspension until further orders.

4. The appellant being aggrieved by this order in so far as it directed continuance of the inquiry instituted against him by the Memorandum dated 8th March, 1965 and also continued his suspension under Sub-rule 5(b) of Rule 10 of CCS (CCA) Rules, 1965, filed a writ petition in the Delhi High Court challenging the validity of this order on various grounds set out in the writ petition. Whilst the writ petition was pending, the President issued another Memorandum dated 9th December, 1971 dropping charges Nos. I, III and IV set out in the Memorandum dated 8th March, 1965 and directing that the inquiry be continued only in respect of Charge II and stating that an inquiry should also be held in respect of three further charges set out in the statement of charges enclosed with the Memorandum. The inquiry which was thus continued against the appellant was an inquiry into Charge II set out in the Memorandum dated 8th March, 1965 and the three further charges set out in the Memorandum dated 9th December, 1971. No progress was, however, made in the inquiry in view of the writ petition filed by the appellant. The writ petition was heard by a Division Bench of the Delhi High Court and by a judgment dated 25th February, 1972 the Division Bench rejected the various grounds urged on behalf of the appellant against the validity of the order dated 9th June, 1971 and dismissed the writ petition. Hence the present appeal by the appellant with certificate obtained from the Delhi High Court.

5. The order dated 9th June, 1971, impugned in this appeal, consisted of three parts. One part set aside the order of. dismissal passed against the appellant on 26th October, 1967, the other part directed continuance of the inquiry instituted against the appellant by the Memorandum dated 8th March, 1965, while the third part continued the suspension of the appellant under Sub-rule 5(b) of Rule 10 of the CCS (CCA) Rules, 1965. So far as the second part of the impugned order is concerned, it was no doubt challenged as outside the authority of the President in the writ petition as also in the arguments before the Delhi High Court, but at the hearing of the appeal before us, it was frankly conceded by the learned Counsel for the appellant that it was not possible for him to assail its validity. That part of the impugned order must, therefore, be held to be valid. The only question

debated before us was--and this raised a rather serious controversy--whether the third part of the impugned order was valid : was it competent to the President, in the circumstances of the case, to continue the suspension of the appellant under Sub-rule 5(b) of Rule 10 of the CCS (CCA) Rules, 1965 ? Even if it was not, could this part of the impunged order be sustained under any other provision of Rule 10 of the CCS (CCA) Rules, 1965 ?

6. The suspension of the appellant was originally made under an order dated 11th April, 1963 in exercise of the power conferred under Sub-rule (1) of Rule 12 of the CCS (CCA) Rules, 1957 and it was this suspension which was purported to be continued by the impugned order under Sub-rule 5(b) of Rule 10 of the CCS (CCA) Rules, 1965. There was some controversy before the Delhi High Court as to which set of Rules would be applicable for Continuing the suspension of the appellant at the date when the impugned order was passed. The appellant contended that the Rules applicable would be the CCS (CCA) Rules, 1957 and the impugned order made under the CCS (CCA) Rules, 1965 was, therefore, bad. But this contention was rejected by the Delhi High Court and rightly because Rule 34 of the CCS (CCA) Rules, 1965, which repeals the CCS (CCA) Rules, 1957 provides in Proviso (b) for the application of the CCS (CCA) Rules, 1965 to pending proceedings. This being the clear position, the learned Counsel for the appellant conceded that the validity of the impugned order continuing the suspension of the appellant would have to be judged by reference to the CCS (CCA) Rules, 1965.

7. Now the only provision in the CCS (CCA) Rules, 1965 which deals with suspension is Rule 10. It would be convenient at this stage to refer to the relevant provisions of that rule :

> 10.(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 --
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> (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.
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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, decide 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.

(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.

(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.

8. Since the impugned order continuing the suspension of the appellant is purported to be made under Sub-rule 5(b) of Rule 10, we may first examine whether it is justified on the terms of that sub-rule. Sub-rule 5(b) postulates that a Government servant is suspended or deemed to have been suspended--this latter contingency would arise where a case falls within Sub-rule (2)--and during the continuance of his suspension "any other disciplinary proceeding" is commenced against him and provides that in such a case, a direction may be given that he shall continue under suspension until the termination of such disciplinary proceeding. The words "Government servant shall continue to be under suspension" in the juxtaposition of the opening clause clearly suggest that the basic condition for the applicability of Sub-rule 5(b) is that the Government servant should be under continuing suspension at the date when "any other disciplinary proceeding" is commenced against him and direction is given for continuance of the suspension. It is indeed difficult to see how a Government servant can be directed to continue to be under suspension unless he is under suspension at the time when such direction is given. There can be fresh suspension of a Government servant but we fail to see how there can be continuance of a suspension which does not exist. Two conditions must, therefore, co-exist before action can be taken under Sub-rule 5(b) : one is that the Government servant must be under continuing suspension and the other is that during the continuance of such suspension "any other disciplinary proceeding" should be commenced against him.

9. Now in the present case, we will assume with the respondents that under the second part of the impugned order, a disciplinary proceeding was commenced against the appellant, though it was really a revival of the old inquiry instituted under the Memorandum dated 8th March, 1965 and not the commencement of a new disciplinary proceeding. But even so, the question would still remain whether the appellant was under suspension at the date when the impugned order was made It is only, if he was, that he could be continued under suspension under Sub-rule 5(b) of Rule 10. The appellant was originally suspended under the order dated 11th April, 1963 because a case against hull in respect of a criminal offence was under investigation. This was followed by the institution of a criminal case against him and in this criminal case he was convicted by the Special Judge and his conviction was confirmed by the Bombay High Court. On the basis of the judgment of the Bombay High Court confirming his conviction, he was dismissed by the President by an order dated 26th

October, 1967. The argument of the appellant was that on the passing of the order of dismissal, his suspension came to an end and even though the order of dismissal was subsequently set aside by the President by the first part of the impugned order, that did not have the effect of reviving the suspension and the appellant was accordingly not under suspension at the date when the impugned order was made. The respondents, on the other hand, contended that by reason of Sub-rule 5(b) of Rule 10 the order of suspension passed on 11th April, 1963 continued to remain in force despite the making of the order of dismissal and in any event, even if the suspension came to an end as a result of the passing of the order of dismissal, it was revived with retrospective effect when the order of dismissal was set aside by the President by the first part of the impugned order and, therefore, at the instant of time when the third part of the impugned order was made under Sub-rule 5(b) of Rule 10, the appellant was under suspension. We find there is great force in the argument of the appellant and the contention of the respondents to the contrary must be rejected. Both principle as well as precedent compel us to this conclusion.

10. Let us first examine the question on principle. When an order of suspension is made against a Government servant pending an enquiry into his conduct, the relationship of master and servant does not come to an end. What the Government, as master, does in such a case is merely to suspend the Government servant from performing the duties of his office. The Government issues a direction forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service or the statute or rules governing his conditions of service, at the same rime keeping in force the relationship of master and servant. In other words, to quote Hegde, J., from V.P. Gindroniya v. State of Madhya Pradesh and Ors. "the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey". This being the true nature of an order of suspension, it follows that the Government servant would be entitled to his remuneration for the period of suspension unless there is some provision in the statute or rules governing his conditions of service which provides for withholding of such remuneration. Now, when an order of dismissal is passed, the vinculum juris between the Government and the servant is dissolved : the relationship of master and servant between them is extinguished. Then the order of suspension must a fortiori come to an end. But what happens when the order of dismissal is subsequently set aside ? Does that revive the order of suspension ? We do not think so. Once the suspension has come to an end by an order of dismissal, which was effective when made, it cannot be revived by mere subsequent setting aside of the order of dismissal in the absence of a statutory provision or rule to that effect. That is precisely the reason why Sub-rules (3) and (4) had to be introduced in Rule 10 providing for retrospective revival and continuance of the suspension in cases falling within those sub-rules. This position which emerge clearly on principle is supported also by authority. There is a decision of a Bench of six judges of this Court which endorses the same view. That is the decision in Om Prakash Gupta v. The State of Uttar Pradesh . The appellant in that case was suspended from service with effect from 24th August, 1944 pending an enquiry into his conduct. The Commissioner completed the enquiry and made a report to the Government and on the basis of the report the Government passed an order dated 25th November, 1944 dismissing the appellant from service. The appellant claimed that the order of dismissal passed against him was illegal and void and he continued to be in service and was entitled to recover arrears of salary. The claim that the order of dismissal was illegal and void and the appellant continued to be in service was upheld by the High Court but relief by way of recovery of arrears of salary was

refused and the appellant, therefore, preferred an appeal to this Court. The claim of the appellant for arrears of salary which was debated before this Court related to two distinct periods : one from the date of the order of suspension up to the date of the order of dismissal, and the other from the date of the order of dismissal up to the date when the order of dismissal was set aside by the Court. So far as the claim for the first period was concerned, the appellant gave it up before this Court, as it would have necessitated a remand which would have involved the appellant in heavy expenditure and harassment. The claim for the second period was, however, seriously pressed on behalf of the appellant and this Court decreed it for reasons which may best be stated in the words of Imam, J., speaking on behalf of the Court :

> He, i.e., the appellant, however, contended that the order of suspension continued to be in force only until the 25th November, 1944, the date of the order of dismissal. On that date the order of suspension ceased to exist and the appellant was entitled to recover arrears of salary from the 25th November, 1944, to the 31st December, 1947, inclusive. The Attorney-General strongly contended that it continued to be in force and that it was not at all affected by the declaration of the Civil Judge that the order of dismissal was illegal. In view of that decision the order of dismissal must be regarded as a nullity and non-existent in the eye of law. The inquiry, the outcome of which was the order of dismissal, had not therefore ended. It could only end with a valid order which would replace the order of suspension. Until that happened the accusation against the appellant remained and the inquiry had not ended. He referred to the case of M. Gopal Krishna Naidu v. State of Madhya Pradesh A.I.R. 1952 Nag. 170. On behalf of the appellant reliance was placed on the case of Provincial Government, Central Provinces and Berar through Collector, Amraoti v. Shamshul Hussain Siral Hussain I.L.R. 1948 Nag. 576 : A.I.R. (36) 1949 Nag. 118. The order of suspension made against the appellant was clearly one made pending an inquiry. It certainly was not a penalty imposed after an enquiry. As the result of the inquiry an order of dismissal by way of penalty had been passed against the appellant. With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the appellant. The subsequent declaration by a Civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist. The case referred to by the Attorney-General is not directly in point and that decision does not conflict with the case relied upon by the appellant. The appellant is, therefore, entitled to recover arrears of salary from the 25th November, 1944, to 31st December, 1947.

11. This decision leaves no room for doubt as to the correct legal position and the conclusion must, therefore, inevitably follow that when the order of dismissal was passed on 26th October, 1967, the order of suspension dated 11th April, 1963 ceased to exist and it did not revive thereafter by the subsequent setting aside of the order of dismissal by the first part of the impugned Order. The appellant was accordingly not under suspension at the point of time when the third part of the impugned order was made and in the circumstances, the third part of the impugned order could not be justified under Sub-rule 5(b) of Rule 10.

12. But that does not conclude the question. It is now well settled that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within its power under any other provision. If the power is otherwise established, the fact that the source of the power has been incorrectly described in the order would not make it invalid. Vide P. Balakotaiah v. The Union of India [1958] S.C.R. 1052 and Afzal Ullah v. State of Uttar Pradesh . We must, therefore, proceed to consider whether the third part of the impugned order could be justified under any other provision contained in Rule 10. Sub-rule (3) obviously could not be invoked because the order of dismissal was not "set aside in appeal or on review" under the CCS (CCA) Rules, 1965. The only sub-rule which could be and was relied upon by the respondents was Sub-rule (4) and it was urged that under that sub-rule, the order of dismissal having been set aside by the President in consequence of the decision of this Court acquitting the appellant, the appellant must be deemed to have been placed under suspension by the President from the date of the original order of dismissal and he would continue to remain under suspension until further orders and it was in recognition of this position that the third part of the impugned order was made. This contention of the respondents is also without force. There are two conditions which must be satisfied in order to attract the operation of Sub-rule (4). First, the order of dismissal must be set aside in consequence of a decision of a court of law--we are setting out here only the material part of the first condition, and secondly, the disciplinary authority must decide to hold a fresh enquiry on the allegations on which the order of dismissal was originally passed. The first condition was admittedly satisfied in the present case because the order of dismissal was set aside by the President in consequence of the decision of this Court acquitting the appellant. The question is whether the second condition was satisfied. Was the inquiry continued under the impugned order an inquiry against the appellant on the allegations on which the original order of dismissal was based? To answer this question, we must once again turn to the facts which we have already narrated. The penalty of dismissal was imposed on the appellant on the ground that his conduct, which had led to the conviction, was such as to render his further retention in the public service undesirable. Now the conviction of the appellant was in respect of the second charge in so far as it related to the first, the second and the fourth consignments, and therefore, the conduct of the appellant which led to his conviction was that set out in the second charge in reference to the first, the second and the fourth consignments. So far as the second charge in relation to the third consignment of nine cases alleged to have despatched on or about 31st July, 1962 is concerned, the appellant was acquitted and his alleged conduct in despatching these cases did not lead to his conviction. The allegations on which the penalty of dismissal was originally imposed on the appellant were, therefore, those set out in the second charge in relation to the first, the second and the fourth consignments. The enquiry instituted under the memorandum dated 8th March, 1965, which was revived and continued under the second part of the impugned order; was obviously not an enquiry against the appellant on any of those allegations. The allegations on which this enquiry was instituted were those stated in charges I to IV enclosed with the memorandum "dated" 8th March, 1965 and they did not include any allegations relating to despatch of the first, the second and the fourth consignments which formed the basis of the making of the original order of dismissal. The allegations contained in charges I, II and III were in fact wholly unrelated to any of the charges in the criminal case. The allegations in charge II relating to despatch of nine cases on or about 31st July, 1962, no doubt, formed the subject matter of the second charge in relation to the third consignment, but in respect of this charge, as already pointed out, the appellant was acquitted and

the original order of dismissal was obviously not based on these allegations. The enquiry revived and continued under the second part of the impugned order was, therefore, clearly not an enquiry on the allegations on which the penalty of dismissal was originally imposed on the appellant. Sub-rule (4) of Rule 10 had accordingly no application and it could not be invoked to justify the third part of the impugned order.

13. We must at this stage refer to one other contention advanced on behalf of the respondents in support of the third part of the impugned order. That contention was based on Sub-rule 5(a) of Rule 10, which provides that an order of suspension made or deemed to have been made under that rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. The argument of the respondents was that the order of suspension dated 11th April, 1963, though made under Sub-rule (1) of Rule 12 of the CCS (CCA) Rules, 1957, must, by reason of proviso (b) to Rule 34, be deemed to have been made under Sub-rule (1) of Rule 10, and consequently, it must, by virtue of Sub-rule 5(a) of Rule 10, continue to remain in force until modified or revoked by a competent authority. It was said that the President, who is the competent authority for this purpose, had at no time revoked or modified this order of suspension and it, therefore, continued in force even after the making of the order of dismissal dated 26th October, 1967 and the third part of the impugned order did no more than merely recognise this position. This contention is wholly without force : it has merely to be stated in order to be rejected. We fail to see how an order of suspension can continue to be in force after the relationship of master and servant has come to an end by the making of an order of dismissal. How can a Government servant be forbidden from performing the duties of his office, when his office is no more and he has no duties to perform because he is dismissed? The order of suspension postulates the continuance of the relationship of master and servant and this postulate is not destroyed by Sub-rule 5 (a) of Rule 10. This sub-rule operates only within the framework of the relationship of master and servant. Once the-relationship of master and servant is dissolved, the suspension necessarily comes to an end and Sub-rule 5(a) of Rule 10 cannot possibly be construed to have the effect of continuing the suspension. The third part of the impugned order cannot, therefore, be sustained by reference to Sub-rule 5(a) of Rule 10.

14. We must, therefore, inevitably reach the conclusion that the third part of the impugned order continuing the suspension of the appellant was outside the authority of the President. It could not be sustained under any of the three sub-rules of Rule 10, namely Sub-rules 3, 5(a) and 5(b), on which reliance was placed on behalf of the respondents. Sub-rule (1) of Rule 10 was rightly not invoked by the respondents because, in making the third part of the impugned order, what the President did was merely to continue what he erroneously believed to be a subsisting suspension of the appellant until the termination of the enquiry and he did not claim or even profess to make a fresh order of suspension. The third part of the impugned order continuing the suspension of the appellant could not, therefore, be justified under any sub-rule of Rule 10. It is unfortunate that though different sub-rules of Rule 10 have beer enacted with great care and they are intended to be exhaustive so as to provide for all possible situations where it may be found necessary to revive and continue an order of suspension, a lacuna has remained and there is no provision made for a case such as the one we have before us. Perhaps a case of this kind would be rare and that is why the rule making authority has not thought about making any provision for it in Rule 10. But there can be no doubt that it is a lacuna and it must be remedied in order that there may be no break in the suspension of

the Government servant when an order of dismissal is set aside or declared or rendered void in a situation of this kind. However, as Rule 10 stands to-day, the third part of the impugned order continuing the suspension of the appellant must be held to be void and inoperative. That means that the suspension of the appellant under the order dated 11th April, 1963 came to an end on 25th October, 1967 when the order of dismissal was passed against him and since then the appellant is no longer under suspension. The appellant must, therefore, be held to be entitled to salary from 26th October, 1967 and an order for payment of arrears of salary must be passed in his favour. This of course does not mean that the President cannot now, in exercise of the power under Sub-rule (1) of Rule 10, pass a fresh order of suspension against the appellant pending the enquiry which has been revived and continued against him. It would always be open to the President to take appropriate action by way of suspension against the appellant under Sub-rule (1) of Rule 10, if he so thinks fit. But until such action is taken, the appellant would be entitled to his salary under the conditions of service applicable to him. The claim of the appellant for the period between 11th April, 1963 and 25th October, 1967 stands on a different footing. During this period the appellant was validly under suspension and whilst under suspension he received subsistence allowance as provided in the relevant rules. Whether for this period the appellant is entitled to be paid full pay allowances or some proportion of such pay and allowances or nothing more than the subsistence allowance would be a matter for the appropriate authority to decide under the relevant rules. If the decision of the appropriate authority on this question, when made, is contrary to the rules governing the conditions of service, the appellant would be free to challenge such decision. But that question does not arise now and we do not purpose to express any opinion upon it.

15. We therefore, partly allow the appeal and issue a writ of mandamus quashing and setting aside the third part of the impugned order dated 9th June, 1971 continuing the suspension of the appellant and direct the respondents to pay to the appellant arrears of salary from 26th October, 1967 after deducting the amount of subsistence allowance paid to him. Since the appellant has partly succeeded and party failed, the fair order of costs would be that each party should bear and pay its own costs throughout.