

SUPREME COURT OF INDIA

Union of India

Vs.

Dipak Mali

S.L.P.(C) No.6661 of 2006

(Altamas Kabir and Markandey Katju JJ.)

15.12.2009

JUDGEMENT

Altamas Kabir, J.

1. This Special Leave Petition has been filed by the Union of India and its officers in the Ministry of Defence against the judgment and order dated 1st September, 2005, passed by the Madhya Pradesh High Court at Jabalpur in Writ Petition (S) No.2569 of 2005, dismissing the same. The respondent, who was working as a Civilian Motor Driver-II in the establishment of the Senior Quality Assurance Officer, Senior Quality Assurance Establishment (Armaments) in the Gun Carriage Factory at Jabalpur, was suspended pending inquiry on 10th August, 2002. Under Rule 10 of the *Central Civil Services (CCA) Rules, 1965* amended by Notification dated 23rd December, 2003, Sub-Rules (6) and (7) were inserted. As the same are relevant to the facts of this case, the same are extracted hereinbelow:

“(6) An order of suspension made or deemed to have been made under this rules shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purposes and pass orders either extending or revoking the suspension.

Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty dates at a time.

(7) Notwithstanding anything contained in sub-rules 5, an order of suspension made or deemed to have been made under sub- rules (1) or (2) of this rule shall not be valid after a period ninety days unless it is extended after review, for a further period before the expiry of ninety days.”

2. The aforesaid amendment came into effect from 2nd June, 2004, but as a Review Committee was not constituted, the respondent's suspension was not reviewed as required by the amended Rules. The respondent, therefore, claimed that the suspension order must be deemed to have lapsed and accordingly, he approached the Central Administrative Tribunal by filing O.A. No.540/2004 for a declaration that the suspension order dated 10th August, 2002, became invalid on the expiry of 90 days from the date on which Sub-Rules (6) and (7) of Rule 10 came into force, since the same had not been extended by the Review Committee.

3. There is no dispute that the suspension of the respondent was not extended. The Tribunal, accordingly, allowed the application filed by the respondent and by its order dated 29th March, 2005, quashed the suspension order dated 10th August, 2002. The said order of the Tribunal was questioned before the High Court on the ground that while Sub-Rules (6) and (7) of Rule 10 came into force only on 2nd June, 2004, the application had been made prematurely in July, 2004 even before the expiry of three months. It was contended that since the matter was subjudice on account of the pendency of the Original Application filed by the respondent before the expiry of 90 days from 2nd June, 2004, the petitioners were unable to review the respondent's case.

4. Dealing with the said contention the High Court held that since there was no interim stay in O.A.No.540/2004 filed by the respondent, there was nothing to prevent the petitioners from reviewing the suspension within 90 days from 2nd June, 2004.

On such ground the High Court dismissed the writ petition.

5. It is against the said order of the High Court that the present Special Leave Petition has been filed.

6. On behalf of the Union of India, it was not denied that the amended provisions of Rule 10 came into effect from 2nd June, 2004, and that the case of the Respondent was reviewed on 20th October, 2004, beyond the period envisaged under Sub-rule (6) thereof. It was, however, contended that the delay in conducting the review was not on account of any laches on the part of the petitioners, but having regard to the fact that the Respondent filed OA No.540 of 2004, before the Central Administrative Tribunal in July, 2004, and the same was disposed of by the Tribunal on 18th August, 2004, during which period the petitioner was unable to take any action under Rule 10 in view of the provisions of Section 19(4) of the Administrative Tribunals Act, 1985, which provides that where an application has been admitted by a Tribunal under Sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission, shall abate, and save as otherwise provided by the Tribunal, no appeal or revision in relation to such matter shall thereafter be entertained under such rules.

7. It was submitted that since the proceedings were pending before the Tribunal, the Petitioner had no option but to stay its hands in regard to the proceedings against the respondent. It was also submitted that on 20th October, 2004, when the Reviewing

Committee took up the Petitioners' case, it extended the period of suspension, which was again extended thereafter by order dated 8th April, 2005. Learned counsel for the petitioner submitted that having regard to the above, the order passed by the High Court upholding the order of the Central Administrative Tribunal was liable to be set aside along with the order passed by the learned Tribunal.

8. On behalf of the Respondents, it was urged that Section 19(4) of the Administrative Tribunals Act, 1985, did not contemplate stay but abatement of proceedings before other authorities once an application was admitted by the Central Administrative Tribunal. By virtue of Sub-section (4) of Section 19, on admission of such application proceedings pending before other Courts and Forums would abate unless otherwise directed by the Tribunal.

9. Learned counsel contended that in the absence of any stay, nothing prevented the petitioners from reviewing the petitioner's case and the explanation forthcoming for not taking steps under Sub-section (6) of Section 7 must inure to the benefit of the respondent.

10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the Respondent and when the Petitioner's case came up for review on 20th October, 2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of Sub- rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under Sub- rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

11. The case sought to be made out on behalf of the petitioner, Union of India as to the cause of delay in reviewing the Respondent's case, is not very convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of Sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any 10 review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.

12. For the said reasons, we are not inclined to interfere with the impugned order of the High Court and the Special Leave Petition is, accordingly, dismissed.

13. There will, however, be no order as to costs.