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UNION OF INDIA

v.

S.B. MISRA

AUGUST 14, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Constitution of India : Articles 309, 310, 311—Defence personnel—Applicability of CCS(CC&A) Rules to—Held—Article 310(1) expressly excludes applicability of provisions of CCS(CC&A) Rules to defence personnel.

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Doctrine of pleasure—Applicability of.

Service Law :

D

CCS(CC&A) Rules, 1965—Central Civil Services (Classification Control and Appeal)—Rule 10—Defence personnel—Lecture in College of Military Engineering—Department inquiry against culminating into order of compulsory retirement—Order challenged for non-supply of copy of inquiry report—Held, delinquent not entitled to supply of copy of inquiry report as CCS(CC&A) Rules have no application to defence personnel.

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The respondent, a lecturer in the College of Military Engineering, challenged before the Central Administrative Tribunal, the punishment of compulsory retirement awarded to him consequent upon a departmental inquiry, as invalid for non-supply of the copy of the inquiry report. The tribunal set aside the order giving liberty to the department to

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proceed with the case from the stage of supplying the copy of the inquiry report. The competent authority thereafter purporting to exercise powers under Rule 10(4) of CCS(CC&A) Rules, 1965, ordered that the respondent was deemed to be under suspension till the inquiry was completed. The respondent again challenged the said order before the Tribunal. The

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Tribunal held that Rule 10(4) of the Rules had no application pending inquiry and the respondent would be deemed to be in service. It directed the department to reinstate the respondent with all consequential benefits, Aggrieved, Union of India filed the present appeal by special leave. Meanwhile the respondent was reinstated with all consequential

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benefits.

Allowing the appeal and setting aside the order of the Tribunal, **this Court** A

HELD : 1.1. The order of the Tribunal directing the appellant to supply the copy of the Inquiry Report and to take further action thereon and to reinstate the respondent till the inquiry is illegal. [707-G] B

1.2. The CCS(CC&A) Rules, 1965 have no application to the defence personnel. Consequently, the respondent was not entitled to the supply of the Inquiry Report as contemplated by Clause (2) to Article 311 of the Constitution read with the Rules. [707-F-G]

Union of India and Anr. v. K.S. Subramanian, [1989] Supp. 1 SCC 331, relied on. C

Jagatrai Mahinchand and Ajwani v. Union of India, (1967) SLR 471; *S.P. Behl v. Union of India* C.A.No. (1918) of (1966), decided on 8.3.1968 and *Union of India v. Indrajit Datta*, C.A. 5392-93/93 decided on 6.9.1994, reiterated. D

1.3. The rules made under proviso to Article 309 will be subject to doctrine of pleasure enshrined in Article 310. Article 310(1) expressly excludes the applicability of the provisions of the Rules to the defence personnel. [707-F] E

Moti Lal Deka v. Union of India, [1964] 5 SCR, 683; and *Shamsher Singh v. State of Punjab & Ors.*, [1975] 1 SCR 814, followed.

Ramjan Khan v. Union of India, [1991] 1 SCC 588; *Managing Director, ECIL & Ors. v. B. Karunakar & Ors.*, [1993] 4 SCC 727 and *Union of India v. Tulsi Ram Patel*, [1985] 3 SCC 398, referred to. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7756 of 1995.

From the Judgment and Order dated 1.9.92 of the Central Administrative Tribunal Bombay in C.P. No. 130/92 in O.A. NO. 616 of 1990. G

Ms. Amareshwari, S.A. Matto, Ms. Anil Katiyar, and Ms. Sushma Suri for the Appellants.

Vimal Dave for the Respondent. H

A The following Order of the Court was delivered :

Leave granted.

B The case has a chequered career. The respondent while working as a lecturer in the College of Military Engineering, Pune was compulsorily retired by proceedings dated July 27, 1987, as a measure of punishment, after following departmental inquiry. He challenged its validity in O.A. 616/90 contending that he was not supplied with the copy of the Inquiry Report and, therefore, his compulsory retirement was not valid in law. Following the ratio in *Ramzan Khan v. Union of India*, [1991] 1 SCC 588, C decided by a bench of three Judges, the Tribunal by its order dated July 23, 1992, set aside the order giving liberty to the appellant to take appropriate action from the stage of supplying the copy of the Inquiry Report. Ramzan Khan's ratio was clarified in *Managing Director, ECIL & Ors. v. B. Karunakar & Ors.*, [1993] 4 SCC 727 by a Constitution Bench wherein it D was held that the ratio had no application to cases concluded by that date. Even to cases to which the ratio would apply, fresh enquiry after supplying the enquiry report may be proceeded with and the delinquent officer must be deemed to be under suspension pending enquiry and the consequential benefits would depend on the result of the enquiry.

E When the competent officer exercising the power under sub-rule (4) of Rule 10 of CCS (CC&A) Rules, 1965 (for short 'Rules') passed an order that the respondent was deemed to be under suspension till the inquiry is completed, the respondent again challenged that order by filing a Contempt Petition for non-implementation of the order and in the impugned F order dated September 1, 1992 in C.P. No. 130/92, the Tribunal held that Rule 10(4) has no application since the respondent was not kept under suspension pending inquiry and that, therefore, he must be deemed to be in service and directed to reinstate him with all consequential benefits. We are informed that pursuant to that order, the respondent has been reinstated with all consequential benefits and he is continuing in service. G

H The question is whether the respondent is deemed to be under suspension. Mr. Dave, learned counsel for the respondent contended that the Rules have no application and, therefore, the respondent cannot be treated to be under deemed suspension. It is also contended that since he has also been reinstated the matter became infructuous.

This Court in *Jagtrai Mahinchand Ajwani v. Union of India*, [1967] SLR 471 and *S.P. Behl v. Union of India*, C.A. No. 1918 of (1966) decided on March 8, 1968) held that the CCS (CC&A) Rules have no application to the defence personnel. In fact, Article 310 of the Constitution clearly exempts them from the operation of the rules. Sub-clause (1) thereof says that except as expressly provided by the Constitution, every person who is a member of a defence service or of a civil service of the Union or of an All India Service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State of amenable to the action laid by the President or the Governor, as the case may be. The doctrine of pleasure was subject of consideration by a Bench of 7 Judges in *Moti Lal Deka v. Union of India*, [1964] 5 SCR 683. It was held that the Rules made under proviso to Article 309 will be subject to the doctrine of pleasure as engrafted under Article 310 of the Constitution. Article 310 has to be read subject to Article 311. That ratio was reiterated by another larger Bench in *Shamsher Singh v. State of Punjab & Ors.*, [1975] 1 SCR 814. This position was also examined by a Constitution Bench of *Union of India v. Tulsiram Patel*, [1985] 3 SCC 398. A Bench of three Judges of this Court in *Union of India and Anr. v. K.S. Subramaniam*, [1989] Supp (1) SCC 331 and of two Judges, to which one of us (Hansaria, J.) was a member in *Union of India v. Indrajit Datta*, in a C.A. 5392-93/93 dated September 6, 1994, held that the rules do not apply to defence personnel.

Thus, it is settled law that the Rules made under proviso to Article 309 will be subject to doctrine of pleasure enshrined in Article 310. Article 310(1) expressly excludes the applicability of the provisions of the Rules to the defence personnels. We, therefore, hold that the CCS (CC&A) Rules have no application to the defence personnel. Consequently the respondent is not entitled to the supply of the Inquiry Report as contemplated by Clause (2) to Article 311 of the Constitution read with the Rules. As a result, the order of the Tribunal directing the appellant to supply the copy of the Inquiry Report and to take further action thereon and to reinstate him till the inquiry is illegal. The order of the Tribunal is set aside.

The appeal is allowed. No costs.

R.P.

Appeal allowed.