

RANJIT KUMAR MAJUMDAR

v.

UNION OF INDIA AND ORS.

NOVEMBER 28, 1995

[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.]

*Service Law :*

*Central Civil Services (Classification Control and Appeal) Rules, 1965 : Rule 10(1).*

*Suspension—Employee—Criminal prosecution—Suspension during pendency of prosecution under Rule 10(1)—Applicability of 1965 Rules to Defence employee holding civil post—Matter referred to Constitution Bench.*

The appellant, holding a civil post connected with defence, was suspended from service under Rule 10(1) of the Central Civil Services (Classification Control and Appeal) Rules, 1965 during the pendency of criminal prosecution. The validity of the suspension order was challenged before the Administrative Tribunal contending that in view of the decision of this Court in *Union of India & Anr. v. K.S. Subramanian*, [1989] Supp. 1 SCC 331 = AIR (1989) SC 362 the 1965 Rules were not applicable to civilian employee in defence services and, therefore, the suspension effected under the said Rules was incompetent and without jurisdiction.

Relying upon later decisions of this Court in *Union of India v. Inderjit Datta*, CA Nos. 5292-93 of 1993 decided on 6.9.1994 by Supreme Court, and *Director General of Ordnance Services & Ors. v. P.N. Malhotra*, J.T. (1995) 2 SC 98. The Tribunal rejected the contention and held that (i) merely because Article 311(2) has no application to Civilian Employees in Defence Services, it cannot be said that the 1965 Rules have no application to them; (ii) in view of the provisions contained in Rule 3, the said Rules were applicable to every government servant including civilian government servants in Defence service; (iii) the impugned order was not illegal inasmuch as the suspension in question was not pending any departmental inquiry but a criminal prosecution; and (iv) the employer has implied power to suspend his employee.

**A** Against the decision of the Tribunal a petition was preferred before this Court.

Giving reason for referring the matter to a larger Bench, this Court

**B** HELD : This is a matter which requires an authoritative pronouncement by this Court. In view of the fact that the *K.S. Subramanian* case was decided by a Bench of three Judges, it is appropriate that this matter be placed before a Bench of three Judges for hearing. It is for that Bench either to decide the matter themselves or to refer it to a larger Bench, if they think it appropriate. [720-H]

**C** *Union of India and Anr. v. K.S. Subramanian*, [1989] Suppl. 1 SCC 331 = AIR (1989) SC 362; *Union of India v. Inderjit Datta*, CA Nos. 5292-93/93 decided by Supreme Court on 6.9.1994; *Director General of Ordinance Services & Ors. v. P.N. Malhotra JT* (1995) 2 SC 98; *The Management Hotel Imperial, New Delhi and Ors. v. Hotel Workers' Union*, AIR (1959) SC 942;

**D** referred to.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 10901 of 1995.

**E** From the Judgment and Order dated 4-4-95 of the Central Administrative Tribunal, Calcutta in O.A. No. 179 of 1995

H.K. Puri, Rajesh Srivastava and S.P. Lenka for the Petitioner.

**F** Altaf Ahmad, Additional Solicitor General and Ms. Anil Katiyar, for the Respondents.

The following Order of the Court was delivered :

This short order is to indicate the reasons for referring this matter to a larger Bench of three Judges.

**G** The petitioner is holding a civil post connected with defence. Pending inquiry into certain grave charges in respect of which a criminal prosecution was launched, he was suspended on February 3, 1995. The suspension is ordered under Rule 10(1) of the Central Civil Services (Classification Control and Appeal Rules, 1965 (The Rules). On February

**H** 9, 1995 the petitioner approached the Central Administrative Tribunal,

Calcutta Bench questioning the validity of the order of suspension on the ground *inter alia* that the 1965 Rules do not apply to civilian employee in defence services and, therefore, the suspension effected under the said Rules is incompetent and without jurisdiction. The petitioner relied upon a decision of this Court in *Union of India and Another v. K.S. Subramanian*, [1989] Supp. 1 SCC 331 = AIR (1989) S.C. 362. The Tribunal, however, rejected the said contention relying upon the later decisions of this Court in *Union of India v. Inderjit Datta*, Civil Appeal Nos. 5292-93 of 1993 decided on September 6, 1994 and *Director General of Ordnance Services & Ors. v. P.N. Malhotra*, J.T. [1995] 2 S.C. 98. The Tribunal observed that merely because Article 311 (2) has no application to Civilian Employees in defence services, it cannot be said that the 1965 Rules have no application to them. It referred to Rule 3 of the said Rules which says *inter alia*, "(T)hese Rules shall apply to every government servant including civilian government servants in Defence Service .....". The Tribunal further observed that inasmuch as the suspension in question was not pending any department inquiry but a criminal prosecution, the said order of suspension is not illegal. The Tribunal also referred to the implied power of an employer to suspend his employee. The correctness of the Tribunal's judgment is questioned herein.

In *K.S. Subramanian*, a Bench of three learned Judges of this Court observed :

"The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Article 31(2). When Article 31(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion."

The Court also observed that "the exclusionary effect of Article 311(2) deprives him (such employee) the protection which he is otherwise entitled to. In other words, there is no fetter in the exercise of the pleasure of the President or the Governor." In short, the reasoning is that in the absence of the protective umbrella of Article 311(2), the 1965 Rules cannot fetter the exercise of the pleasure in Article 310(1).

A So far as *Inderjit Datta* and *P.N. Malhotra* are concerned, it was held therein that merely because the 1965 Rules are followed - assuming that the said Rules have no application to civilian employees in defence services - no prejudice can be said to have occurred to them nor can the inquiry be held to be void on that account. In *P.N. Malhotra*, it was explained that

B the said Rules merely incorporate the principles of natural justice in an elaborate and more satisfactory manner and that following the said Rules is indeed to the advantage of the employee. The question in this case however is, if the said Rules have no application, then under what power could the Government have suspended the petitioner? When we indicated that such a power is incidental to the relationship of Master and servant

C (reference was to the decision of this Court in *The Management Hotel Imperial, New Delhi and Others v. Hotel Workers' Union*, A.I.R. (1959) S.C. 942) and that all that it means in that the employer would be bound to pay the full salary and emoluments to the employee even during the period the letter is kept away from service, the learned Additional Solicitor General

D appearing for the Union Government, demurred. He submitted that the decision of this Court in *K.S. Subramanian* requires reconsideration. He submitted that merely because Article 311(2) has no application to civilian employees in defence services, the 1965 Rules cannot be said to be inapplicable to them, more particularly when the said Rules expressly say that they apply to civilian employees in defence services. It is submitted that no

E prohibition against applying the said Rules can be inferred from the non-applicability of Article 311(2).

We are of the opinion that this is a matter which requires an authoritative pronouncement by this Court. In view of the fact that *K. S. Subramanian* was decided by a Bench of three learned Judges, we think it

F appropriate that this matter is placed before a Bench of three learned Judges for hearing. It is for that Bench either to decide the matter themselves or to refer it to a larger Bench, if they think it appropriate.

G The matter may be placed before the Hon'ble Chief Justice for orders regarding the posting of the matter before a Bench of three learned Judges.