

PETITIONER:  
UNION OF INDIA

Vs.

RESPONDENT:  
S.B. MISHRA

DATE OF JUDGMENT 14/08/1995

BENCH:  
RAMASWAMY, K.  
BENCH:  
RAMASWAMY, K.  
HANSARIA B.L. (J)

CITATION:  
1996 AIR 613                      1995 SCC (5) 657  
1995 SCALE (5) 84

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

The case has a chequered career . The respondent while working as a lecturer in the college of Military Engineering, pune was compulsorily retired by proceeding, 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 VS. UNION OF INDIA, [1991(1)SCC 588], 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 . vs B. Karunakar & Ors . [1993 (4) SCC 727] by a constitution bench where in it 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.

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 filling a contempt Petition for non - implementation of the order and in the impugned 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 the order, the respondent has been reinstated with all consequential benefits and he is continuing in service.

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 Jagatrai mahinchand Ajwani vs. Union of India 1967 SLR 471 and S. P. Behl vs. 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 exempt 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 as 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 vs. Union of India, 1964(5) SCR 683. It was held that Rules made under proviso to Article 309 will be subjected 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 vs. State of Punjab & Ors, 1975(1) SCR 814. This position was also examined by a constitution bench in Union of India vs. Tulsiram Patel, 1985(3) SCC, 398. A Bench of three judges of this Court in Union of India and Anr. vs. K. S. Subramanian 1989 supp(1) SCC 331 and of two Judges, to which one of us (Hansaria, J.) was a member in Union of India vs. Indrajit Datta in 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 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.