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STATE OF HARYANA

v.

HARI RAM YADAV AND ORS.

JANUARY 19, 1994

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[A.M. AHMADI, K. RAMASWAMY AND S.C. AGRAWAL, JJ.]

All India Services (Discipline and Appeal) Rules 1969 : Rule 3 :

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Suspension—Order passed without recital as to the satisfaction of competent authority—Validity of.

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Respondent-1, a member of the Indian Forest Service belonging to Haryana State Cadre, was suspended during the pendency of disciplinary proceedings initiated against him. He assailed the validity of the suspension order contending, *inter-alia* that it was passed without satisfying the requirement of rule 3(1) of the All India Service (Discipline and Appeal) Rules, 1969. The Central Administrative Tribunal, Chandigarh Bench quashed the suspension order on the ground that it does not contain a recital to the effect that the Governor of Haryana was satisfied that it was either necessary or desirable to place the respondent under suspension.

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Against the order of Tribunal State preferred an appeal before this Court.

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

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HELD : 1. The mere fact that the impugned order of suspension does not contain a recital that the Governor was satisfied that it is either necessary or desirable to place the respondent under suspension does not render the said order invalid. [173-D]

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2. In cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on

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the authority passing the order if the validity of the order is challenged on

the ground that the said condition is not fulfilled. [173-E-F]

The Swadeshi Cotton Mills Co. Ltd. v. The State of U.P. and Ors., [1962] 1 S.C.R. 422, referred to.

3. In his petition before the tribunal the respondent has concentrated his attack on the allegations levelled against him. There is no averment in the said petition that the Governor of Haryana was not satisfied that it was either necessary or desirable to place the respondent under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of rule 3(1) in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place the respondent under suspension is of no consequence. The tribunal was, therefore, in error in invalidating the impugned order of suspension. [174-G-H, 175-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1247 of 1993.

From the Judgment and Order dated 12.10.1992 of the Central Administrative Tribunal, Chandigarh in O.A. No. 1573/CH/91.

Ms. Nisha Bagchi for Ms. Indu Malhotra for the Appellant.

P.P. Rao and R.K. Gupta for Manoj Swarup for the Respondents.

The Judgment of the Court was delivered by

1. S.C. AGRAWAL, J. This appeal is directed against the order dated October 12, 1992 passed by the Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the tribunal'). The question that arises for consideration is whether the order dated November 25, 1991, whereby Hari Ram Yadav, respondent no.1, was placed under suspension during the pendency of disciplinary proceeding initiated against him, has been passed in accordance with the provisions of rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as 'the Rules').

2. Respondent no.1 is a member of the Indian Forest Service and belongs to Haryana State cadre of the said service. Disciplinary proceed-

A ings were initiated against him on the basis of charge-sheet dated April 29, 1990. During the pendency of the said disciplinary proceedings another charge-sheet dated November 25, 1991 was issued. On the same day, i.e., November 25, 1991, an order was passed whereby respondent no.1 was placed under suspension. Respondent no.1 filed a petition [O.A.No. 1573/CH/91] under Section 19 of the Administrative Tribunals Act, 1985
B which has been allowed by the tribunal by order dated October 12, 1992, and the said order of suspension has been quashed.

3. The impugned order of suspension reads as under :

C "In accordance with rule 3(1) of All India Services (Discipline & Appeal) Rules, 1969 (for short the 'Rules') suspension of an officer can be ordered against whom disciplinary proceedings are pending or contemplated. The Governor of Haryana is pleased to suspend Shri Hari Ram Yadav, IFS, Deputy Conservator of Forests now
D appointed as Forest Expert in the Rural Development Department, Haryana with immediate effect for the following :

E (i) Misuse of funds under the "Million Wells Scheme" in which it has been *prima facie* established that Shri Hari Ram, IFS while he was posted as Divisional Forest Officer, Morni at Pinjore, Distt. Ambala had taken up the execution of this scheme without the approval of the Govt. and did not receive Govt. approval for spending Rs.50,00,000 received as financial assistance from the Development
F Department. There has been misappropriation of funds and labour has not been paid the wages. A departmental enquiry has been ordered.

G (ii) A charge-sheet has been issued under rule 8 of the All India Services (Punishment and Appeal) Rules, 1969 for committing irregularities while posted at Kurukshetra as Deputy Conservator of Forests.

H (iii) He has been chargesheeted under rule 10 of the All India Services (Punishment & Appeal) Rules, 1969 for unauthorised purchase of VCR/TV and its mis-use".

4. Rule 3(1) of the Rules is in the following terms :

"PART-II-SUSPENSION—

3. *Suspension* - (1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may—

(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government request that Government to place him under suspension,

pending the conclusion of the disciplinary proceedings and the passing of the final order in the case.

Provided that, in cases, where there is a difference of opinion,-

(i) between two State Governments, the matter shall be referred to the Central Government for its decision;

(ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail:

Provided further that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be

A recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government".

B 5. Before the tribunal, respondent no.1 assailed the order of suspension on three grounds, namely :

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- (i) it was vitiated by *malafides* since it was passed at the instance of respondent no.3;
 - (ii) it was passed without satisfying the requirements of rule 3(1);
 - (iii) it was passed by abusing the power vested under rule 3(1) of the Rules.

D 6. The tribunal has rejected the first contention urged by respondent no.1 and has held that the allegation of *malafides* do not stand substantiated. The second contention urged by respondent no.1 has, however, been accepted by the tribunal and, in view of the acceptance of the said contention, the tribunal did not consider necessary to deal with the third contention.

E 7. Dealing with the second contention, the tribunal has observed that under rule 3(1) an order of suspension of a member of the All India Services can be made only if the following ingredients are satisfied :

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- (i) That, the disciplinary proceedings are either contemplated or are pending; and
 - (ii) The Central Government or the State Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the service.

G 8. From the order of the tribunal it appears that the learned counsel for respondent no.1 has conceded that ingredient No.(i) stands satisfied in this case. The tribunal has found that the second ingredient was not satisfied because the impugned order of suspension nowhere says that the Governor of Haryana was satisfied that it was either necessary or desirable to place respondent no.1 under suspension. The tribunal, in this context,

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has observed :

"A perusal of the impugned order goes to show that it nowhere says that Governor of Haryana was satisfied that it was either necessary or desirable to place the applicant under suspension. The impugned order Annexure A/1 is, thus, laconic and cannot be sustained for the aforesaid lacuna. Consequently, we find that the impugned order is liable to be quashed".

9. It would thus appear that the only ground on which the tribunal has quashed the impugned order of suspension is that it does not contain a recital to the effect that the Governor of Haryana was satisfied that it is either necessary or desirable to place respondent no.1 under suspension.

10. We find it difficult to agree with the said view of the tribunal. The mere fact that the impugned order of suspension does not contain a recital that the Governor was satisfied that it is either necessary or desirable to place respondent no.1 under suspension does not, in our opinion, render the said order invalid. The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the said condition is not fulfilled. Reference, in this context, may be made to the decision of this Court in *The Swadeshi Cotton Mills Co. Limited v. The State of U.P. and Ors.*, [1962] 1 S.C.R. 422, wherein it has been observed :

"The validity of the order therefore does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence. It would therefore follow that if by inadvertence or otherwise the recital of the formation of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in proceedings where challenge is made to the

A validity of the order, that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made". (p.432)

B "We cannot accept the extreme argument of Shri Aggarwala that the mere fact that the order has been passed is sufficient to raise the presumption that conditions precedent have been satisfied, even though there is no recital in the order to that effect. Such a presumption in our opinion can only be raised when there is a recital in the order to that effect. In the absence of such recital if the order is challenged on the ground that in fact there was no satisfaction, the authority passing the order will have to satisfy the court by other means that the conditions precedent were satisfied before the order was passed. We are equally not impressed by Shri Pathak's argument that if the recital is not there, the public or courts and tribunals will not know that the order was validly passed and therefore it is necessary that there must be a recital on the face of the order in such a case before it can be held to be legal. The presumption as to the regularity of public acts would apply in such a case; but as soon as the order is challenged and it is said that it was passed without the conditions precedent being satisfied the burden would be on the authority to satisfy by other means (in the absence of recital in the order itself) that the conditions precedent had been complied with". (p.434)

G 11. We have gone through the petition filed by respondent no.1 before the tribunal which is on record as Annexure-R-6/A to the Affidavit-in-opposition of respondent no.1. In the said petition, respondent no.1 has concentrated his attack on the allegations/charges levelled against him. There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place respondent no.1 under suspension. In the absence of any such averment it must

be held that the impugned order was passed after fulfilling the requirement of rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent no.1 under suspension is of no consequence. The tribunal was, therefore, in error in invalidating the impugned order of suspension only on the ground that it did not contain a recital to the effect that Governor of Haryana was satisfied that it is either necessary or desirable to place respondent no.1 under suspension. The learned counsel for respondent no.1 has not shown any other infirmity in the order of suspension.

12. The appeal is, therefore, allowed and the order dated October 12, 1992 passed by the tribunal in O.A.No.1573/CH/91 is set aside and the said petition is dismissed. No. order as to costs.

T.N.A.

Appeal allowed.