

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 10 of 2008

Union of India & another.

..... Appellants

Versus

Iftakar Ahmad.

..... Respondent

Ms. Anjali Bhargava, Addl. Standing Counsel (Central Govt.) for the appellants.
None for the respondent.

JUDGMENT

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble Alok Singh, J.**

BARIN GHOSH, C. J. (Oral)

Respondent / writ petitioner, a Central Government employee, was taken in custody on 3rd November, 2005 and he was released on bail on 16th November, 2005. On 16th November, 2005, an order was passed and, thereby, respondent / writ petitioner was informed that he stands suspended, for he remained in custody for a period in excess of 48 hours. Inasmuch as the said order was passed on 16th November, 2005 when the respondent / writ petitioner was released on bail, respondent / writ petitioner contended that the said order is bad in a writ petition filed by him. By the judgment and order under appeal, a learned Single Judge held that, by the order dated 16th November, 2005, respondent / writ petitioner has been suspended; on the contrary, a look at the order dated 16th November, 2005 will show that the same was a mere communication of the fact that, by reason of detention of the respondent / writ petitioner for a period exceeding 48 hours from 3rd November, 2005, respondent / writ petitioner should be deemed to be suspended w.e.f. 3rd November, 2005. The learned Judge noticed Sub-Rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the "said Rules"), which provides for deemed suspension, if a Central Government employee is detained in custody for a period in excess of 48 hours. After having had noticed the same, the

learned Judge did not notice Sub-Rule (5) of Rule 10 of the said Rules, which provides that such suspension will continue until the same is revoked. The learned Judge felt that, since, on 16th November, 2005, the order impugned was passed, and since, in the order rejecting the representation of the respondent / writ petitioner for revocation of his suspension, reference was given to Rule 14, which deals with procedure for awarding major punishment; the order dated 16th November, 2005 is interferable.

2. There being no dispute that the respondent / writ petitioner remained in custody from 3rd November, 2005 to 16th November, 2005, i.e. in excess of 48 hours, there was no question of interfering with the order dated 16th November, 2005, by which the respondent / writ petitioner was merely communicated the fact of his deemed suspension. However, the fact remains that, while considering the representation of the respondent / writ petitioner for revocation of the said suspension, there was non-application of mind as Rule 14 was considered, but not Rule 10, which dealt with the subject.

3. In the circumstances, while we allow the appeal and uphold the order dated 16th November, 2005 communicating the deemed suspension of the respondent / writ petitioner, we hold that the representation of the respondent / writ petitioner for revocation of the suspension order was not appropriately dealt with. The learned counsel for the appellants has assured us that the same was subsequently appropriately dealt with and the revocation order has since been revoked. In those circumstances, there is no necessity of issuing any direction in that regard.

(Alok Singh, J.)
28.02.2013

(Barin Ghosh, C. J.)
28.02.2013

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