

27

Central Administrative Tribunal, Principal Bench

Original Application No. 1387 of 2001
M.A. No. 2266/2002

New Delhi, this the 21st day of May, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Ms. Jaishal Vijay Singh,
w/o Dr. Mukhtiar Singh,
r/o 53, Baldev Park,
Parwana Road, Delhi-51

.... Applicant

(By Advocate: Shri R.P. Kapoor)

Versus

1. The National Capital Territory of Delhi through Secretary (Education) Directorate of Education, Old Secretariat, Delhi
2. The Directorate of Vigilance, Govt. of NCTD, through its Director, Old Secretariat, Delhi.
3. The Director (Education) Govt. of NCTD, Old Secretariat, Delhi.
4. The Drawing and Disbursing Officer, Sarvodaya Kanya Vidyalaya No.2 Mansarovar Park, Shahdara, Delhi-32
5. Shri G.N. Srivastava, Director (Education) NCTD, Old Secretariat, Delhi.
6. Shri Swantantr Pal Singh, S.I. (Wireless) D-1329, Ashok Nagar, Delhi-92

.... Respondents

(By Advocate: Shri George Paracken, for respondents 1-5
Shri Sachin Chauhan, for respondent 6)

O R D E R

By Justice V.S. Aggarwal, Chairman

Applicant Ms. Jaishal Vijay Singh was a Principal working under the Director of Education. She seeks quashing of the orders whereby she has compulsorily been retired besides quashing of the suspension order and

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consequential benefits.

2. On 9.10.2000, the disciplinary authority had suspended the applicant and had passed the following order:

"WHEREAS a disciplinary proceeding against Smt. Jaisal Vijay Singh, Principal, Sarvodaya Kanya Vidyalaya No.2, Mansarovar Park, Shahdara, Delhi, is contemplated.

Now, therefore, the undersigned, in exercise of powers conferred by sub-rule (1) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Smt. Jaisal Vijay Singh, Principal, Sarvodaya Kanya Vidyalaya No.2, Mansarovar Park, Shahdara, Delhi under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force, the headquarters of Smt. Jaisal Vijay Singh, Principal, should be Delhi and the said Smt. Jaisal Vijay Singh, Principal shall not leave the headquarters without obtaining the previous permission of the undersigned.

It is further ordered that Smt. Jaisal Vijay Singh, Principal, shall be entitled to a subsistence allowance at an amount equivalent to the leave salary which Smt. Jaisal Vijay Singh, Principal, would have drawn if she had been on half average pay or on half pay in addition, dearness allowance, if admissible, on the basis of such leave salary. Such payment shall not be made unless the Govt. servant furnishes a certificate that she is not engaged in any employment/business/profession."

3. Subsequently on 25.5.2001, in exercise of powers under rule 56(j)(i) of the Fundamental Rules, the applicant was retired from service. According to her, the said orders are not valid because three months salary which is a sine qua non before serving an order under Fundamental Rule 56 was not given and further that the disciplinary proceedings earlier initiated, had been dropped and there was precious little on the record to enforce F.R.56 of the Rules.

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4. On behalf of the respondents, a preliminary objection had been taken that the present application is not maintainable because the applicant has not exhausted the alternate remedies available. Reliance on behalf of respondents is placed on F.R.56 (jj)(i) of the Rules referred to pointing out that a representation could be filed against the said order compulsorily retiring the applicant under F.R.56(j)(i) of the Rules.

5. So far as the preliminary objection is concerned, in our considered opinion, the same is devoid of any merit. Under Section 20 the Administrative Tribunals Act, 1985, a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him. The remedy contemplated would be a remedy under the law. Herein a specific remedy has not been provided against the order that has been passed by the Lieutenant Governor. Rule 56(jj)(i) of the Fundamental Rules refers to a situation where on a review application or otherwise on a representation, the order is recalled and the person is reinstated. If such a right is exercised, this cannot be taken as an efficacious alternate remedy and, therefore, the said plea on behalf of the respondents must fail.

6. Reverting back to the contentions of the applicant, in the first instance it has been urged that three months' salary was not paid and what was paid was three months' subsistence allowance. Learned counsel for

6 Ag

the applicant relied upon the decision of this Tribunal in the case of K. Thirumalai vs. The Collector of Central Excise, Madras, AISLJ 1987 (1) (CAT) 33. Therein also, the person was under suspension and he was paid three months subsistence allowance rather than salary. This Tribunal had allowed the application and quashed the order of suspension to be violative of rule 56(j)(i) of the Fundamental Rules. However the law has undergone change since then. The Supreme Court has considered this aspect in the case of State of Orissa vs. Balakrushna Satpathy, 1995 SCC (L&S) 267, where a similar question came up for consideration. It was held that the right is to get three months' salary and the validity of the order does not depend on its prior full payment as a prerequisite. The Supreme Court held:

"8. The rule requires three months' prior notice to be given or payment of three months' pay and allowances in lieu of such notice. In other words, the alternative mode prescribed of payment of the amount in lieu of three months' notice, when adopted, entitles the government servant to get that amount, but the validity of the order of compulsory retirement does not depend on its prior full payment as a prerequisite. The only right of the government servant under such an order is to get the amount of three months' pay and allowances in lieu of such notice, and no more. This is the manner in which similar provisions have been construed in Raj Kumar vs. Union of India, (1975) 4 SCC 13 and Union of India vs. Arun Kumar Roy, (1986) 1 SCC 675."

7. Same view had again been reiterated in the decision in the case of State of A.P. vs. T.K. Seshadri and another, 2002 SCC (L&S) 196 wherein the Supreme Court held:

"The decision on which the High Court relied has been overruled by a Bench of three Judges of this Court in the case of A.L. Ahuja vs. Union of

18 Aug

India, (1987) 3 SCC 604. The view taken by the High Court on the question of payment of three months' salary as a condition precedent is also contrary to a decision of this Court in State of Orissa vs. Balakrushna Satpathy, 1995 Supp (4) SCC 511 where this Court has held that the validity of an order of compulsory retirement does not depend on prior full payment of three months' salary as a prerequisite. The only right of the government servant under such an order is to get the amount of three months' pay and allowances in lieu of such notice."

8. Keeping in view the authoritative pronouncements of the Supreme Court, the said argument necessarily must be rejected.

9. Learned counsel for the applicant had even urged that the departmental proceedings were to be initiated, but the same were withdrawn and dropped. According to the learned counsel, in this process the order compulsorily retiring the applicant would be in the nature of punishment.

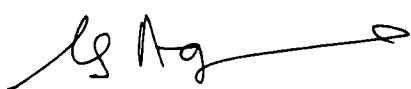
10. We know from the decision of the Supreme Court in the case of State of U.P. and another vs. Abhai Kishore Masta, (1995) 1 SCC 336 that if during the pendency of the disciplinary proceedings, a person is retired compulsorily it would not be deemed that the order is penal in nature. By necessary corollary, it follows that if during the period of suspension the present order compulsorily retiring the applicant was passed, unless there are other cogent reasons, it cannot be taken that the same is penal in nature.

11. The principle of law is that when rule 56(j) of the Fundamental Rules is pressed into service, it does not

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tantamount to a punishment. If it is so done by way of punishment, the order will not be valid is not in dispute. The Supreme Court in the case of K. Kandaswamy vs. Union of India and another, (1995) 6 SCC 162, held that formation of bonafide opinion by the appropriate authority has to be co-read with the scope of judicial review. If the appropriate authority in a bonafide manner forms an opinion that in view of doubtful integrity it would not be desirable in public interest to retain the officer concerned in service, the correctness thereof on merits cannot be challenged before courts. However if there is no evidence or decision has been formed for extraneous consideration in an arbitrary manner, the courts can indeed interfere. Similar was the view expressed in the case State of Gujarat and anr. vs. Suryakant Chunilal Shah, JT 1998(8) S.C. 326.

12. In the present case in hand, the earlier departmental proceedings admittedly had been dropped but it had been pointed that the applicant had sought political influence to have the affect of extraneous ~~person~~ ^{influence} on the authority. She had been warned. Besides that the record indicates that there were certain other complaints. Thus when the applicant has been using political influence, that by itself, keeping in view the totality of facts, may prompt the authorities to invoke rule 56(j)(i) of the Fundamental Rules. It is not necessary that reasons must be stated in the order so passed. Therefore, we are not dwelling into the other acts that are brought on the record against the applicant. On that count, therefore, there is



no ground to quash the order compulsorily retiring the applicant.

13. At this stage, it is worth noting that the applicant has been placed under suspension on 9.10.2000. Once she has compulsorily been retired, as a necessary consequence, it must be taken that the suspension order also comes to an end and that for the period onward 9.10.2000 till she is retired compulsorily, she is entitled to the full salary. She would also be entitled to three months' full salary i.e. for the notice period contemplated under rule 56(j)(i) of the Fundamental Rules.

14. For these reasons, we direct as under:

- (a) the application challenging the order compulsorily retiring the applicant is dismissed;
- (b) the applicant would be entitled to three months' full salary for the notice period as contemplated under Fundamental Rule 56(j)(i); and
- (c) once the suspension order has come to an end from the period 9.10.2000 till the order was passed compulsorily retiring the applicant, she would be entitled to full pay and allowances.

No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman