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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1479/2001

Monday, this the 10th day of September, 2001

Hon'ble Shri Shanker Raju, Member (Judl)

Shri V. K. Jha
s/o late Shri Yugeshwar Jha
R/O I-6/427, Sangam Vihar,
New Delhi-62.

..Applicant

(By Advocate: Shri Piyush Sharma)

Versus

1. Director of Education
Old Secretariate,
Delhi
2. Deputy Director of Education
c/o Directorate of Education
South District
Defence Colony,
New Delhi-24.

..Respondents

(By Advocate: Shri Ashwini Bhardwaj for Shri Rajan Sharma)

O R D E R (ORAL)

Heard the learned counsel for both the parties.

2. In this case, the applicant is aggrieved by the order dated 20.4.2001 whereby he has been placed under deemed suspension under sub-rule (2) of Rule 10 of the CCS (CCA) Rules, 1965 on account of his detention in custody for a period exceeding 48 hours.

3. The applicant states that the order passed is bad in law on two points. Firstly, the same has been passed by an authority who is not competent to issue an order as required under Rule 10 ibid, as he was not the appointing authority of the applicant and secondly, the order passed by the respondents cannot be issued retrospectively.

4. The brief facts of the case are that the applicant, who was posted as a TGT (Sanskrit), was arrested in a

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criminal case registered on 21.12.1997 by FIR No.1032/97 at P.S. Dr. Ambedkar Nagar under Sections 354/323/452/34 IPC. The learned counsel for the applicant states that as the applicant belongs to Uttranchal and there was none with him in Delhi except his son, he (son) sent a UPC letter on 6.1.1998 to the Principal of the School, inter alia, intimating about the arrest of his father and later on also intimations were sent to the Principal from time to time. In this view of the matter, it is stated that the respondents were very much aware about the fact of his arrest in the criminal case but chose not to place him under suspension. The learned counsel for the applicant has further stated that as per the Schedule in Part III of Rules *ibid* as the applicant is the holder of Group 'B' post, the appointing authority as well as the disciplinary authority of the applicant is either the Director or the cadre controlling authority. By drawing my attention to one of the orders passed with regard to the suspension of Yoga Teacher on 2.2.2001, it is stated that the same has been issued by the Director of Education. The learned counsel has also placed reliance on Section 8 of Delhi School Education Act, 1973 to contend that it is the Director who has got approval for suspension and further placing reliance on an office order dated 6.12.1989, it is stated that on the recommendation of Staff Selection Board, the Joint Director of Education has issued appointment of certain Teachers in compliance of the decision of the Apex Court. In this background, it is stated that the Deputy Director of Education is not authorized or competent as he is to only offer the appointment as the appointing authority is the Director. The learned counsel for the

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applicant by taking resort to Rule 10 (2) ibid states that the order of suspension is to be issued by the appointing authority and would not be cured by subsequent approval of the appointing authority in case it is issued by an authority lower than the appointing authority. Reliance has been placed on a decision of this Tribunal in R.K. Mishra Versus Union of India & Another, reported as (1991) 16 ATC 426 to contend that it is only the appointing authority who is competent to issue an order of suspension and the same would not be rendered valid even if it is rectified later on.

5. The learned counsel for the applicant by taking resort to the decision of this Tribunal in A. Palanisamy & Another Vs. Union of India & Ors., reported as 1991 (1) AISLJ 509 stated that in a case where a person is under suspension on account of his retention in police custody for a period exceeding 48 hours, the order of suspension at best would have the effect from the date when it has been served upon the applicant. As such, it is stated that the order passed by the respondents is not legally tenable as the same has been issued on 20.4.2001 deeming the applicant under suspension w.e.f. 4.1.1998 would deprive him of the salary which he had drawn in excess of 50% of the subsistence allowance and that the respondents would also initiate recoveries to this regard.

6. The learned counsel for the applicant further states that he has made a representation on 21.5.2001 but approached this Court in an emergent situation as he had apprehended recovery from his salary by the respondents.

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7. On the other hand, strongly rebutting the contentions of the applicant, the learned proxy counsel for the respondents has produced the records for my perusal. By office order dated 18.12.1980, it is stated that the Deputy Director of Education has offered appointment to the applicant and by an order dated 26.12.1980, the applicant was appointed temporarily to the post of TGT (Sanskrit). It is also stated that the Dy. Director is the competent authority to appoint the TGT and the provisions of Section 8 of Delhi School Education Act, 1973 would have no application to the TGT Teachers employed in Delhi Administration. It is further stated that the applicant has not produced the appointment letter and also that the recommendations, as relied upon by the applicant, would have no application because therein on the basis of the decision of the Apex Court, the Joint Director had complied with the directions and the petitioners in the SLP have been offered appointment itself by the respective Dy. Director of the District. It is also stated that Delhi has been divided in ~~two~~^h zones, each headed by a Deputy Director to which the controlling authority is ~~one~~^h Director ~~for each~~^h Division^h. As regards the case law cited by the learned counsel for the applicant in R. K. Mishra's case (supra), it is contended that the same would have no application because the issue in the present case pertains to suspension under Rule 10 (2) *ibid*, whereas in that case the suspension was resorted to on account of contemplated proceedings. It is also contended that as the orders have been passed by the competent authority, i.e., the appointing authority of the applicant, the requirement of Rule 10 (2) *ibid* has already been complied with. As

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regards the retrospectivity of suspension order is concerned, by taking resort to Rule 10 (2) *ibid*, it is stated that in case of deemed suspension, the same has to take effect from the date of detention. The learned proxy counsel for the respondents has stated that the applicant has never apprised the respondents about his arrest in the criminal case and no UPC letter was received by them. It is also stated that only on the information by police, the matter has been brought into their notice on 4.12.2000 and thereafter the applicant has been asked to explain the matter and by his communication dated 11.12.2000, he has denied the fact of his being arrested in the criminal case. The learned proxy counsel for the respondents has further stated that the ratio in A. Palanisamy's case (*supra*) would have no application as therein, this was admitted that the petitioners were never remained under custody for 48 hours. The learned proxy counsel for the respondents has further placed reliance on a certificate issued by the Delhi Police wherein it is stated that the applicant was arrested on 4.1.1998 and released on 6.1.1998 and stating the procedure as adopted in that case, it is stated that a person is arrested and then produced at 2 PM and released at around 6 or 7 PM as such the applicant has remained for 48 hours in custody, which has not been controverted by the applicant.

8. As regards the suspension order of Yoga Teacher is concerned, it is stated that the same has been passed by the Vigilance Branch of which the Director is the head, as such this cannot be construed that the same has not been passed by the appointing authority. The learned proxy

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counsel for the respondents stated that the applicant has filed this OA without awaiting for a statutory period of six months from the date he filed his appeal against the suspension as provided under Section 20 of the Administrative Tribunals Act, 1985.

9. I have carefully considered the rival contentions of both the parties and have perused the material placed on record. Rule 10 (2) *ibid* is a provision regarding deemed suspension of a Govt. servant from the date he is detained in custody and this period should exceed 48 hours. No doubt, the provision authorizes only the appointing authority to pass an order. As regards the retrospectivity of the suspension order is concerned, in every case of deemed suspension where a person is arrested in a criminal case and detained in custody for 48 hours, the suspension is to take effect retrospectively. In the instant case, the applicant was arrested as reported to the respondents by the police on 4.1.1998 and was released on 6.1.1998 and as the period has exceeded 48 hours, the applicant was placed under suspension as per the provisions of Rule 10 (2) *ibid*. The contention that the applicant was not in detention for a period of 48 hours, is not proved by the learned counsel for the applicant by producing ~~ir~~relevant evidence to sustain his claim. On the other hand, the learned proxy counsel for the respondents has stated that the certificate issued by the police is sufficient to construe and to prove that the applicant was in custody for more than 48 hours. As regards the power of the authority to place a person under suspension retrospectively in a case where the Govt. servant is under detention for 48

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hours, the ratio cited by the learned counsel for the applicant in A. Palanisamy's case (supra) would not apply in the facts and circumstances of the case. In same case of A. Palanisamy (supra), the applicants have contended which was not disputed and rather admitted that they were released on bail after 17 hours and were not in police custody for more than 48 hours. In that conspectus, the Court has observed that as the ~~de~~^hing provision would not have any application, the suspension order is to take effect from the date it is served on the applicant as an order of suspension otherwise made under Rule 10 (2) *ibid.* The contention of the applicant that the same *mutatis mutandis* applies to the facts and circumstances of the case is rejected. Having failed to establish that he had remained less than 48 hours in police custody, the resort to this issue is of no avail to the applicant.

10. As regards the information about the arrest is concerned, I find on record that the applicant's son had sent a UPC letter to the Principal on 6.1.1998, wherein it was stated that his father has been arrested by the police and as his father was alone in Delhi as they were on vacation leave at their native place, he has been falsely implicated. Apart from this UPC letter, the learned counsel for the applicant has not placed on record any other document to show that after his release from the criminal case, he had ever informed the Department either in writing or by making representation. The UPC letter attached with the application has no legal sanctity and only presumption can be brought that something has been sent to the respondents as provided under Section 27 of the

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general Clauses. In this view of the matter and in absence of any authentic proof of communication of the orders to the respondents, this UPC letter cannot be taken into consideration. The contention of the learned proxy counsel for the respondents that on receipt of the complaint, the applicant has been asked to explain the circumstances and in reply to this, the applicant has stated that the complaint made against him is baseless and false grounds. The applicant has not given all the particulars either of the criminal case or his arrest. The applicant's attempt to interpret in a manner that the arrest was disclosed about the factum of criminal case and the complaint has been denied, is not acceptable. The only interpretation which could be given to this statement is that the applicant has denied about his arrest as such the respondents, who were informed for the first time about the arrest of the applicant on 4.1.1998, have immediately resorted to Rule 10 (2) *ibid* after getting a certificate from the police which cannot be found fault with. As regards the issue of appointing authority in the present case is concerned, the applicant has firstly not produced his appointment letter and on a perusal of his appointment letter issued by the respondents and produced by them today, I find that by orders dated 19.12.1980 and 26.12.1980, the applicant has been appointed by the Deputy Director of Education as one of the Deputy Directors of West District. The resort of the applicant to Part III of the Rules *ibid* that in case of holder of a Group "C" post, the appointing authority as well as the disciplinary authority is only the Director or the cadre controlling authority is a general provision. Having regard to the

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fact that the Deputy Director of Education is the appointing authority of the applicant and furthermore, it has been stated by the learned counsel for the applicant that the Deputy Director of Education has already been accorded sanction in this regard, is the appointing authority. The resort of the applicant further to Section 8 of Delhi School Education Act, 1973 would be of no avail to the same as the provisions of the Act *ibid* would have no application to the Govt. servants, rather it would apply to the Teachers who are working in recognized and aided schools. Admittedly, the institution of the applicant is not either recognized one or aided one. The decision cited by the learned counsel for the applicant in R. K. Mishra's case (supra) would have no application, firstly the suspension resorted to under Rule 10 (2) *ibid* and secondly, in this case, admittedly, the orders have been issued by the competent authority not being the appointing authority and having no evidence that the same have been rectified by subsequent approval as contained in DOP&T's instructions dated 9.8.1974, the orders have been declared illegal, whereas in the instant case as the orders have been passed by the competent authority, who is the appointing authority of the applicant and the applicant has failed to show any provision/rule relevant to indicate that the Deputy Director is not the appointing authority, the contention of the applicant does not hold the field. The resort of the applicant to the suspension order passed in case of one Yoga Teacher, where the order has been passed by the Director, I find that the orders have been issued by the Vigilance Department of which the Director is the head of the Department as in such capacity, he has passed the

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order not acting as an appointing authority and also would not indicate that the Director is the appointing authority of TGT.

11. In view of the aforementioned facts and circumstances, the OA is dismissed as devoid of any merit. There shall be no order as to costs.

S. Raju
(Shanker Raju)
Member (J)

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