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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 578/89

New Delhi this the 21st day of March, 1994

COURT :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN  
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Chand Kishore S/O Roop Chand Sharma,  
S.S. Grade-I in the Central  
Institute for Cotton Research  
(I.C.R.), Civil Lines,  
Nagpur and Resident of  
House No. 1895, Gali Lehswa,  
Moh. Imli, Bazar Sitaram,  
Delhi - 110006.

... Applicant

By Advocate Shri K. P. Dahre

Versus

1. Director General,  
Indian Council of Agricultural  
Research, Krishi Bhawan,  
New Delhi - 110001.

2. The Director, Institute of  
Cotton Research (I.C.R.),  
Post Box No. 125,  
Nagpur - 440001.

3. The Administrative Officer,  
Central Institute for  
Cotton Research (I.C.R.),  
Post Box No. 125,  
Nagpur - 440001.

... Respondents

By Advocate Shri A. K. Sikri

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath --

The petitioner joined as a Class-IV employee in the year 1976 and says that he came to be promoted as a Semi-Skilled Grade-II official in 1978. There were a couple of suspensions and revocations which we do not consider it necessary to advert to. The petitioner remained absent from duty for a considerable period and reported to duty on 5.3.1979. He applied for leave for a day but appears to have remained absent

thereafter. For the first time he has tried to knock the doors of the administration on 24.12.1988 when he went to the office and tried to persuade the authorities to take him back. The authorities had virtually forgotten his presence by that time and were not willing to take him back after nearly ten years of his absence. He appears to have threatened the authorities to go on hunger strike. It is in this background that the authorities issued him a notice dated 31.12.1988 in which he was asked to explain on three points. Firstly, he was asked to explain about his absence from 5.3.1979 from the headquarters without permission to leave the headquarters. He was asked as to why disciplinary action should not be taken for this misconduct of his. The second point on which he was asked to explain is that while under suspension, he was required to remain in the headquarters and report to the office regularly which he failed to do. He was asked to explain his conduct in this behalf. Thirdly, he was asked to state as to whether during his absence he had taken employment in any Government or semi-Government undertaking or a private organisation during the period of suspension and if so, to furnish the information about the same. He was also advised to refrain from undertaking any demonstration in or around the office campus and was warned that such conduct would amount to misconduct and misbehaviour unbecoming of a Government servant. What the petitioner, however, did was to give his reply as per Annexure-IX dated 5.1.1989 in which he has stated that he was present in the office on 24.12.1988 and that he was still  under suspension and attending to the office daily.

He, therefore, prayed that he be permitted to resume duty w.e.f. 24.12.1988. It is interesting to note that he did not give any reply or explanation to any of the three points highlighted in the memorandum dated 31.12.1988 which we have summarised above. This was followed by the impugned order of the authorities made on 11.4.1989 by which the petitioner's services were deemed to have been terminated w.e.f. 5.3.1979 stating that such a consequence flows from the conduct of the petitioner abstaining from duty and leaving headquarters since 5.3.1979 without permission. These facts would make it clear that no disciplinary inquiry as such was held against the petitioner before the authorities made the impugned order treating the petitioner's services as having been terminated w.e.f. 5.3.1979. It is also interesting to note that in the notice served on the petitioner dated 31.12.1988 the petitioner was informed that if he does not give a satisfactory reply, the authorities would be constrained to initiate disciplinary action against him. We have already said that there has been no satisfactory reply from the petitioner to this notice. This would justify initiation of a disciplinary inquiry against the petitioner. Instead of initiating a disciplinary inquiry as the authorities have themselves proclaimed in their notice dated 31.12.1988, they proceeded straightaway to terminate the petitioner's services by order dated 11.4.1989. This is clearly impermissible.

2. We are now required to examine as to what directions we should issue having regard to the circumstances of this case. We cannot be unmindful of the fact that the

petitioner has remained away from the office for several years. The counsel for the petitioner would say that we should direct the said period being treated as suspension period and subsistence allowance being paid. The other side would say that this is not a case in which the petitioner is entitled to be paid any amount by the administration he not having rendered any service to the administration on his own volition. At this stage, it would not be proper to express ourselves either in favour of the petitioner or against him in regard to his conduct. That is a matter which yet to be gone into in appropriate disciplinary proceedings. But having regard to the conduct of the petitioner, we would like to say that the question as to whether any emoluments should be paid to the petitioner or whether any subsistence allowance should be paid, would depend upon the ultimate outcome of the disciplinary proceedings. In the event the petitioner is exonerated, it would be just and proper to require the authorities to make a just and reasonable order in regard to the manner in which the entire period should be treated until his reinstatement. If, however, the authorities hold that the petitioner is guilty and his services are liable to be terminated, we are inclined to take the view that it would be just and reasonable to deny the petitioner subsistence allowance as also the emoluments for the entire period of absence. But, then the decision on this question would depend upon the outcome of the disciplinary proceedings. Hence, we do not propose to issue any directions in regard to emoluments, backwages or subsistence allowance during the

✓ interregnum.

3. For the reasons stated above, this application is disposed of with the following directions :-

1. The respondents shall within a period of one month from the date of receipt of a copy of this order issue a memorandum of charges including the statement of imputations. It is made clear that the memo of charges is not restricted to what has been stated in the notice dated 31.12.1988.
2. After serving the memo of charges, the authorities shall on consideration of the cause shown by the petitioner, proceed to conduct a disciplinary inquiry in accordance with law with utmost expedition.
3. The question as to whether any emoluments, or any backwages or subsistence allowance should be paid to the petitioner, would arise only if the disciplinary proceedings culminate in an order of reinstatement being made in favour of the petitioner. In that event a just and reasonable order be passed as to how the said entire period should be treated.
4. In the event of the disciplinary proceedings culminating in an order of termination of the petitioner from service, no direction need be made for grant of backwages or subsistence allowance for the period during which the petitioner has not actually worked.
5. To avoid expense and inconvenience to the petitioner, we direct that the inquiry be held

in Delhi. If the petitioner does not cooperate in the conduct of the inquiry, the respondents would not be under an obligation to hold the inquiry as directed above.

4. With the above directions, this application is disposed of. No costs.

*Adige*  
( S. R. Adige )

Member (A)

*Malimath*  
( V. S. Malimath )  
Chairman

/as/