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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

DA No. 344/86 .. Date of decision: 4.12.92
Sh. Vishwa Nath .. Applicant
Versus
Union of India & Ors. .. Respondents
For the applicant .. Sh. S.N. Shukla, Counsel.
For the respondents .. Sh. M.L. Verma, Counsel.

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters or local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh.B.N.
Dhoundiyal, Member(A))

This DA has been filed by Sh. Vishwa Nath, an ex-Junior Store Keeper in the Delhi Milk Scheme against the impugned order dated 4.4.84 by the disciplinary authority restricting his pay and allowance for the period of suspension to the subsistence allowance already drawn and treating ^{this by} / period as 'not spent on duty' for any purpose and the order dated 18.3.86 by the Appellate Authority rejecting his appeal.

2. According to the applicant, while working as Junior Store Keeper in the D.M.S., he was placed under

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suspension on 20.11.1970 on a false charge of mis-appropriation of 188 Nos. Ball Bearings vide order dated 20.11.70. This order of suspension was revoked by the Disciplinary Authority on 24.7.75. In this case, though initially recovery of ^{loss} the Disciplinary Authority imposed a penalty of Rs. 2450.80 P. and the Appellate Authority reduced it to Rs. 1470.50 P, the President set aside the penalty and the loss was attributed to the faulty procedure and unsatisfactory and insecure accommodation. According to the applicant, it was incumbent on the respondents to pass an order under FR 54 B regarding the period of suspension immediately after the final decision was taken in the case of this enquiry. He received a show-cause notice on 12.12.83 which mentioned for the first time that there was another suspension order relating to another case suspending him with effect from 6.7.74. However, no order under Rule 10(5)(b) of CCS(CCA) Rules, 1965 for the second suspension was passed by the Disciplinary Authority. His period of suspension from 20.11.70 to 5.7.74 was treated as on duty with full pay and allowances. However, the period from 6.7.74 to 24.7.75 has not been treated as on duty and his pay and allowances have been restricted to the subsistence allowance already ^{Av}

drawn by him. This has been done on the ground that on 6.7.74, he was again suspended in another case relating to mis-appropriation of Skimmed Milk Powder. A show-cause notice was issued to him on 12.12.83 which was amended on 14.2.84. He gave his reply to the original show-cause notice on 26.12.83 and the amended one on 18.2.84. By the impugned order dated 4.4.84, his representation dated 18.2.84 was rejected. The applicant contends that the suspension period has been arbitrarily split into two, depriving him of full pay and allowances. This is clear from the Memo dated 8.2.79 from the Deputy General Manager, D.M.S. informing him that a decision regarding his suspension period would be taken when yet another case of seeking employment in Shri Ram Institute while under suspension was decided. This case was withdrawn on 21.9.82. He has prayed that the impugned orders dated 4.4.84 issued by the Disciplinary Authority, treating the suspension period 'as not on duty' and the impugned order dated 18.3.86 by the Appellate Authority be quashed and set aside and the respondents be directed to treat the relevant period 'as on duty' with full pay and allowances. *by*

3. According to the respondents, the applicant was appointed as Junior Store Keeper in D.M.S. on 11-4-68 and his services were terminated on 7-9-80 in accordance with his resignation dated 7-8-80. He was placed under suspension on 20-11-70 in a case relating to loss of 188 Nos. Ball Bearings and his appeals to the appellate authority and the Writ Petition in the Delhi High Court against the suspension order were rejected. On 6-7-74, the suspension order was ⁱⁿ revoked and on 4-5-77, the penalty imposed on him was set aside. The show-cause Notice issued to him on 12-12-83 related to the other case of mis-appropriation of Skimmed Milk Powder and fresh suspension order was issued on 6-7-74 only after finalisation of the earlier case of mis-appropriation of Ball Bearings. The Additional Secretary, Ministry of Agriculture while passing the order of revocation on 24.7.75, had clearly made references to the earlier order of suspension dated 20-11-70 and also ordered that the question of regularisation of his pay would be decided after finalisation of the departmental proceedings pending against him. ^{by}

The petitioner was, therefore, treated on duty in the second case also with effect from 24-7-75.

The penalty of stoppage of two grade increments was imposed on him by the Disciplinary Authority vide order dated 29-4-76, which was reduced by the Appellate Authority by passing an order of stoppage of two grade increments without cumulative effect.

Thus, the Disciplinary Authority has correctly treated the suspension period from 6-7-74 to 24-7-75 on a different footing and was within its rights to restrict the pay and allowances to the subsistence allowance already drawn by him and not to treat this period as spent on duty.

4. We have gone through the records of the case and heard and learned counsel for both parties. The learned counsel for the applicant has argued that even if it is agreed that he was not exonerated in the second enquiry relating to Skimmed Milk Powder, the penalty imposed on him was minor and as such he was entitled to full pay and allowances

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for this period, as held in Harish Chandra Vs. Chandigarh Administration (ATR 1986 (2) 303) and State of Tamilnadu Vs. Baliappa (1984 (3) SLR Madras - 534). When the Additional Secretary, Agriculture had revoked the suspension order in 1975, he treated all the suspension orders on the same footing and the Disciplinary Authority should have also refrained from splitting the suspension period for the purpose of payment of salary. A perusal of the order of the Additional Secretary dated 24.7.75 shows that he had revoked the order of suspension dated 20.11.70 and there was no reference to any other suspension order. The second suspension order dated 6.7.74 has been issued in exercise of the powers conferred by Sub-Rule (1) of Rule 10 of CCS (CCA) Rules, 1965. At this time, the earlier order of suspension had not been revoked and it indicates that this suspension order clearly related to a new enquiry. However, this enquiry ultimately resulted in imposition of a penalty of stoppage of two increments to the applicant. This is admittedly a minor penalty. In a similar case (Constable Harish Chander and Another Vs. Chandigarh Admn. & Others - ATR 1986(2) CAT 303), the Chandigarh Bench of this Tribunal had observed as follows:

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"6. It is an admitted case of both the parties that the petitioners were awarded minor punishment by way of censure.

7. The instructions of Government of India issued vide their letter dated 3.12.85 are very clear on this point.

In a case where departmental proceedings against a suspended employee for the imposition of a major penalty finally ^{by} and with the imposition of minor penalty, the suspension can be said to be only unjustified in terms of Fundamental Rules 54 B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54 B.

8. This court, is of the view that if the penalty imposed upon the delinquent officials is of minor nature, he will be entitled to claim pay and allowances during the period he remain under suspension. The suspension should be resorted to only in those cases in which the charge sheet issued is for major penalty".

5. Respectfully agreeing with the above conclusions, we hold that the applicant is entitled to succeed. The impugned orders dated 4.4.84 and 18.3.86 are hereby quashed and set aside and the respondents are directed to pay the petitioner full pay and allowances for the period of suspension from 6.7.74 to 24.7.75. These orders shall be implemented expeditiously and preferably within three month of the date of receipt of this order.

There will be no order as to costs.

B.N. Dheundiyal
(B.N. Dheundiyal) 4/12/82
Member (A)

P.K. Kartha
(P.K. Kartha)
Vice Chairman (J)