

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn. No. OA-1270/87.

Decided on 11.9.1989

Saran Singh

.....Applicant.

Vs.

Director of Education,
Old Secretariat, Delhi, & Others.

.....Respondents.

For the Applicant ... Mr. R.D. Gupta, Advocate.

For the Respondent ... Mr. B.R. Prashar, Advocate.

Mr. B.S. Sekhon:

The applicant who was serving as UDC/Cashier Sr. in the Govt. Boys/Secondary School, Sarai Rohilla, Delhi was placed under suspension vide order dated August 30, 1983 (Annexure-I), passed by the Director of Education. The aforesaid order was passed in exercise of the powers conferred by Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that disciplinary proceedings were contemplated against the applicant. The applicant has impugned the aforesaid order on the allegation that he has been suspended without any rhyme and reason. He has not been served with any charge sheet up-to-date nor has the respondent conducted any enquiry in respect of alleged allegations. He was incapable of indulging in any misappropriation in view of the fool proof system of double key lock/of cash chest and that the real delinquents are Heads of School S/Shri Dhian Singh and Kuldeep Singh. The applicant has added that they and indulged in misusing funds/misappropriated funds in the purchase of car and construction of house and these

being influential persons are not being proceeded against.

Another plea raised by the applicant is that the respondent has neither redressed his grievance nor has initiated proceedings despite his representations dated 27.8.83, 25.10.83, 19.6.84, 25.4.85, 11.12.85, 9.5.86, 14.10.86, 12.11.86, 5.1.87, 17.2.87 and the notice dated 23.3.87 given under Section 80 C.P.C. Copies of the aforesaid representations/Notices are Annexures B, C, D, E, F, G, H, I, J, K and M respectively. The applicant has prayed for revocation of his suspension, suitable revision of the subsistence allowance including revision of pay scale as per recommendations of the Fourth Pay Commission and has also claimed compensation for prolonged harassment.

2. The respondents have averred that an appeal against the order of suspension could have been filed to the Chief Secretary within a period of 45 days but the applicant has not filed an appeal within the aforesaid period and the Application does not seem to have been filed within the limitation period. The applicant was suspended on the basis of report dated 29.8.83 (Ann. R/1) showing that the applicant had embezzled an amount of Rs. 8120.45 by way of short depositing fees and fines etc. The respondents have added that Memo. dated 15.7.85 (Annexure R/2) was served on the petitioner to which he submitted a reply dated July 24, 1985. After examining the reply it was decided to initiate joint proceedings against the applicant and S/Shri Dhian Singh and Kuldeep Singh, Principals and the case was forwarded to the Directorate of Vigilance who advised after processing the matter with the competent authorities vide his letter dated 17.9.1986 that major penalty proceedings be

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initiated against the applicant and minor penalty proceedings against Shri Dhian Singh, Principal and that a warning letter may be administered to Shri Kuldeep Singh, Principal. The applicant is stated to have deposited the amount in question. The respondents have also denied the allegation to the effect that no action has been initiated against the Principals of the School adding that S/Shri Dhian Singh and Kuldeep Singh being necessary parties should have been included as respondents.

3. We have heard the arguments addressed by the learned counsel for the parties at the Bar and have also duly considered the pleadings and documents on record. During the course of arguments, the learned counsel for the applicant submitted in the first instance that the applicant has been suspended by an unreasoned order. This submission seems to be devoid of any merit. A clear perusal of Annexure-I leaves little doubt on the point that it contains the reason for suspension of the applicant, the reason being the disciplinary proceeding were contemplated against him. It was next urged by the learned counsel that the cash chest was kept under double key locking arrangement and that it was impossible for the applicant to indulge in the alleged act of misappropriating the funds in question and real defaulters are S/Shri Dhian Singh and Kuldeep Singh. This submission has scarcely any validity in that question as to whether or not the applicant has committed the alleged act of delinquency is to be determined only after holding an enquiry into the matter.

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Before proceeding further we may also deal

with the submission of the learned counsel for the respondents about the Application being barred by limitation. The learned counsel for the respondents contended that the impugned order was made as far back as August 30, 1983 and the applicant not having filed any Application within the period prescribed by Section 21 of the Administrative Tribunals Act, 1985, the Application is barred by limitation. This contention misses the point that the suspension of employee furnishes the recurring cause of action which continues till the suspension order ceases to have ~~no~~ effect either by reason of revocation or for any other. Since the suspension order is still in force, the cause of action survives to the applicant. The plea of limitation is, therefore, held to be meritless and the same is hereby negatived. Adverting to the impugned order, the learned counsel for the applicant stressed that the applicant has been suffering humiliation of the suspension for such a long period, the respondents have not taken any worthwhile steps in respect of the departmental enquiry despite the requests and representations made by the applicant. Pursuant to a specific query made by us, the applicant and the learned counsel for the applicant stated that the respondents have not taken any steps in respect of the departmental enquiry save calling for the explanation of the applicant vide Annexure R/2 to which a reply had also been submitted by the applicant. Present is a typical case depicting indifference by amounting/virtual disregard of the instructions impressing upon the competent authorities to complete the departmental enquiry with due despatch and promptitude. Even though the suspension order may

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not be deemed to be a penalty even so it cannot be gainsaid that prolonged suspension of an employee for such as long a period as six years does visit him with distress, torture and, we may add, humiliation. In the facts and circumstances of the case, keeping the employee suspended for a period of six years without even appointing Inquiry Officer can be regarded as grossly unjust, unfair and unreasonable. It seems to be a fit case justifying revocation of the impugned order. Consequently, the impugned order is hereby revoked.

4. Turning to the question of revision of the subsistence allowance, the applicant is being paid subsistence allowance @ 75%. The learned counsel for the Applicant submitted that the subsistence allowance should be increased on the basis of the revised pay scale recommended by the Fourth Pay Commission. We find substance in the aforesaid submission of the learned counsel for the Applicant for the reason that differential treatment to the employee suspended prior to the coming into force of the recommendations of the Fourth Pay Commission i.e. January 1, 1986 as compared to those suspended on or subsequent to the aforesaid date, appears to be a case of hostile discrimination falling within the vice of Article 14 of the Constitution. In this connection, it may be mentioned that underlying objective of the payment of the subsistence allowance is to enable the suspended employee to meet his expenses, his family expenses, which would include expenses on housing, clothing, education, other necessities of life etc. according to his rank and status in the services. It is stating the obvious, that the Fourth Pay Commission recommended the hike

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in pay scales/salaries in view of the steep rise in such hike the cost of living affects the suspended employee as badly as it affects the employees in service. In view thereof, it would be difficult to say that grouping of the employees suspended prior to January 1, 1986 as compared to the employees suspended on or after January 1, 1986 is based on intelligible differentia. Furthermore, the classification has no rational basis to the objective underlying the payment of subsistence allowance indicated here-in-above. From the foregoing, it can be stated that neither of the twintest stands satisfied in this case and that the payment of subsistence allowance at the unrevised rate falls within ^{the vice of} Article 14 of the Constitution.

In the premises, the impugned order is hereby set aside and the respondents are directed to pay the subsistence allowance to the applicant on the basis of the salary revised by the Fourth Pay Commission w.e.f. January 1, 1986 till the date of his reinstatement. The respondents are directed to reinstate the applicant within forthwith and in any case not later than 45 days from today as also to pay him xxxxxxxxxxxxxxxx arrears of the subsistence allowance within the aforesaid period. The Application is disposed of accordingly with no order as to costs.

D. K. Chakravorty

(D.K. Chakravorty)
Administrative Member

11-9-1989

MSR

B. S. Sekhon
(B.S. Sekhon)
Vice Chairman

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