

12/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.2031/91
MP.No.3477/91

Date of Decision: 22.5.92

Shri Hemant Juyal

Applicant

Shri S.C. Luthra

Counsel for the applicant

Vs.

Union of India & Ors.

Respondents

Shri H.K. Gangwani

Counsel for the respondents

CORAM:

The Hon'ble Shri. T.S. OBEROI, MEMBER(J)

The Hon'ble Shri. B.N. DHOUNDIYAL, MEMBER(A)

1. Whether Reporters of local papers may be *yes*. allowed to see the judgement?
2. To be referred to the Reporter or not? *yes*.

JUDGEMENT

(delivered by Hon'ble Member Shri B.N. DHOUNDIYAL)

In this OA, the following reliefs have been sought by the applicant Shri Hemant Juyal, a P.T.I. (under suspension) employed in the Oak Grove School, Northern Railway, Jharipani, Mussorie (U.P.).

a) The suspension order contained in letter No.0G/E9/D&A HJ-III dt. 1.4.91 in respect of the applicant be revoked immediately and he should be put back on duty as P.T.I. in Oak Grove School, Jharipani,

or alternatively

b) Respondents be directed to allow the applicant to take free meal in the school mess as per terms contained in his appointment letter,

or

VB

- c) The applicant should be allowed to live with his wife at Dehradun (which is about 25 km. from Jharipani) during the suspension period; and
- d) Respondents be directed to enhance the subsistence allowance of the applicant from 50% to 75% of his pay with retrospective effect as admissible under Rule 2043 - R II.

2. In his Miscellaneous Petition No.3477/91 filed on 30.10.91, the applicant has alleged that after receipt of the notice for the aforesaid O.A., the authorities have started harassing him more and has sought interim relief on the basis of reliefs at (b) or (c) in the main O.A. As the pleadings in this case are complete, it is proposed to deal with the main O.A. and the M.P. by the same order.

3. The applicant was appointed as a temporary P.T.I. wef 31.7.89 in the Oak Grove School, Jharipani, and in terms of his appointment order dated 31.7.89, was entitled to free accommodation and meals in the students' mess. He was placed under suspension on 1.4.91 and a charge sheet was issued to him on 12.6.91. Since 22.4.91, he has been denied the facility of free meal in the mess and his representation dated 25.4.91 on the subject has not been replied to. The wife of the applicant works at Dehradun, some 25 km. away and alternative facilities for lodging are not available at Jharipani.

4. The main plea taken by the respondents is that the facility of free board is allowed to the teachers for discharging their official duties in the school and since the applicant was placed under suspension and was not discharging his official duties, he was not allowed the facility of free meals in the school mess. He can, however, be allowed this facility on payment of Rs.15/- per day.

5. We have gone through the facts of the case and heard the learned counsel for both the parties.

John

6. It is well known that whenever an order of suspension is made against a Government servant pending enquiry into his conduct, the relationship of master and servant does not come to an end. What the Government, as a matter, does in such a case is merely to suspend the Government servant from performing the duties of his office. The Government issues a direction forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service or the statute or rules governing his conditions of service. In other words "the employer is regarded as issuing an order to the employee which because the contract is subsisting the employee must obey". Secondly, the appointment order itself mentions that free meals will be available. One more consideration in this case is the time taken in completing the enquiry, in what appears to be a simple case. The need for expeditious completion of departmental enquiry has been emphasised in different Government circulars obviating the need for Government servant being kept under suspension for long periods. Though the respondents have mentioned the review of the subsistence allowance carried out after 3 months of suspension, it does not show that any review of need for suspension itself has been carried out. The disciplinary authority always have a choice of transferring the employee to another post. It is not known whether this option has also been considered by the departmental authority i.e. whether posts in different school run by the Railways are transferable and Shri Juyal can be transferred to some other school.

7. In the facts and circumstances of the case, we feel that this is the fit case in which the authority next higher than the disciplinary authority should carry out a review to see whether there is need for continuing the suspension, increasing the subsistence allowance or giving

another post to the employee. The application is therefore, disposed of with the following directions:-

1. The authority next higher to the Principal, Oak Grove School, Jharipani, shall carry out a review of this case (need for continuance of suspension order as well as quantum of subsistence allowance) in the afore-mentioned manner, within the period of three months and pass speaking orders.
2. Pending this review Shri Hemant Juyal, the applicant will be allowed to stay with his family at Dehradun, subject to the condition that he shall make himself available, whenever required for the conduct of the enquiry and no TA/DA shall be payable to him for this purpose.
3. As and when the applicant is required to stay at Jharipani for the purpose of the enquiry, or otherwise, he shall be treated as on duty for the purpose of availing the facility of free meals.

The parties will bear their own costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER(A)
22.05.1992

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)
22.05.1992

kam
190592