

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1070/2004

Wednesday, this the 8th day of September 2004

Hon'ble Shri Justice M. A. Khan, Vice Chairman (J)
Hon'ble Shri S. K. Naik, Member (A)

B.P. Rattan
SKSS, A Block
Keshav Puram
Delhi-35

..Applicant

(By Advocate: Shri Shrigopal Aggarwal)

Versus

Govt. of NCT of Delhi through

1. The Secretary (Education)
Delhi Administration, New Delhi
2. The Directorate of Education
Old Sectt., Delhi Administration, Delhi.

..Respondents

(By Advocate: Shri George Paracken)


ORDER

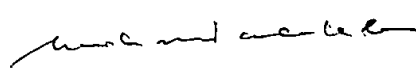
Shri S. K. Naik:

After hearing the arguments of the parties at length, we had dismissed the OA on 8.9.2004 with reasons to follow. Now, we are recording the reasons.

2 This application is directed against the order dated 14.11.2003 passed by the Director of Education, the disciplinary authority, imposing a penalty of removal from service upon the applicant with the condition that the said penalty will not be a disqualification for future employment under the Government. The order in appeal passed by the Secretary (Education) on 5.3.2004 against the order dated 14.11.2003 of the disciplinary authority has also been assailed in this OA.

2A. Brief facts of the case are that the applicant, who was working as UDC in the Government Boys Secondary School, Raghbir Nagar, applied for 60 days leave w.e.f. 24.9.1993 on the ground of suffering from mental depression and undertaking some religious yatras to seek mental solace and peace. The leave application was addressed to the Vice Principal who, vide his Memo dated 24.9.1993 asked the applicant to specify his programme along with the desired (type of) leave and the station/spots, which he intended to visit. He was also asked to produce the medical certificate and





thereafter hand over charge in the Office. In response thereto, the applicant replied that he has no pre-determined tour programme and with regard to nature of leave he stated that whatever leave was in his credit be considered. The applicant, however, abstained from duties and proceeded on leave without producing any medical certificate. Thereafter, vide his application dated 30.9.2003 addressed to the Commissioner-cum-Secretary of Education, the applicant submitted his resignation in which he had stated that in view of the bitter humiliation, mental torture and great mental depression, he was being forced to submit his resignation with immediate effect. The request for resignation was, however, rejected by the competent authority vide its order dated 17.11.1993.

3. The applicant, however, did not re-join duties even after his resignation was rejected and finally turned up to re-join his duties on 22.9.1998 after a period of more than five years from the date of filing his application for leave. While he contends that in between he had been seeking extension of his leave through his son, he could re-join his duties only on 22.9.1998 and he was posted by the respondents at SKV-2, Punjabi Bagh, New Delhi. Thereafter the respondents issued him a memo calling for the explanation with regard to applicant's absence from duty from 24.9.1993 to 21.9.1998 and issued a charge-sheet on 8.3.1999 for absentsing himself from duty without proper permission/approval of the competent authority. On the denial of the charge by the applicant, an inquiry officer was appointed and inquiry held into the matter. The inquiry officer returned the charge that the applicant proceeded on leave without prior permission as proved and thereafter the disciplinary authority, after following the procedure of forwarding a copy of the inquiry report to the applicant and receiving his comments thereupon, imposed the penalty of removal from service. An appeal there-against also stands rejected.

4. The applicant has assailed the orders passed by the disciplinary as well as the appellate authorities primarily on the following counts:-

- i) that there had been inordinate and unexplained delay of about five years and five months in the serving of the charge-sheet.
- ii) that there has again been inordinate delay in passing of the final order after the findings of the inquiry officer; and

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- iii) that the punishment awarded is quite disproportionate in comparison to the misconduct.

5. Learned counsel for applicant has contended that while the respondents alleged that the applicant absented himself without prior permission/leave w.e.f. 24.9.1993, the charge-sheet was issued on 8.3.1999. Thus, there has been a delay of more than five years in the issuance of the charge-sheet, which has a bearing on this case as it runs contrary to the guide-lines issued by the Government, according to which if a Government servant remains absent without proper permission, he should be proceeded against immediately. Learned counsel has stated that the applicant indeed was not absent without permission since the Vice Principal had asked him to give charge in the Office. In support of this contention that delay vitiates the disciplinary proceedings, learned counsel has referred to the judgment of the Jodhpur Bench of this Tribunal in the case of Ram Niwas Jangid v. Union of India & others (OA-17/2002) decided on 16.10.2002.

6. Learned counsel further contends that since the applicant had applied for extension of leave from time to time, which has not been rejected by the respondents, issuance of charge-sheet for unauthorized absence would not be sustainable, as has been held by the Hyderabad Bench of this Tribunal in OA 918 of 1988 decided on 13.11.1991 in T. Subbarao v. Union of India & others.

7. Contending further, the learned counsel has argued that while the inquiring authority submitted its report to the disciplinary authority on 29.9.2000, the final order has been passed by the disciplinary authority on 14.11.2003 after a period of more than three years. This delay has occurred despite the repeated representations by the applicant requesting the disciplinary authority to finalize the proceedings against him at an early date. The learned counsel contends that during this period, the applicant had to undergo a lot of mental agony besides being unable to get any promotion or benefits of ACP scheme. Since the disciplinary authority slept over this matter for over three years and thereby allowed the applicant to continue in service despite his repeated request to decide the matter early and finally passed the order of removal from service goes to show that the disciplinary

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authority had not acted judicially and his decision was totally bias, arbitrary and motivated.

8. Finally, the learned counsel argued that the punishment of removal from service is too harsh and totally disproportionate to the alleged misconduct of proceeding on leave without permission and has, therefore, submitted that the application be allowed and the impugned orders set aside and quashed.

9. The respondents have contested the OA. Learned counsel appearing on behalf of the respondents has submitted that the allegation of delayed charges has no weight. The entire delay has been caused because of the conduct of the applicant himself. Since he remained absent without permission/sanction of leave from 24.9.1993 to 21.9.1998 without indicating his whereabouts, the charge-sheet could not be served on him during the continuance of the misconduct. However, soon after his re-joining he has been proceeded against. Thus, the entire delay is attributable to the conduct of the applicant. The learned counsel further stated that the applicant simply submitted an application for leave before the Vice Principal and then stopped coming to the School without awaiting for a response and sanction of the leave. When he was advised to submit the medical certificate and hand over the charge report of his seat, he did not bother to do so and deserted his post. The learned counsel contends that leave cannot be claimed as a matter of right and no Government employee can proceed on leave without prior approval/permission. The applicant had scant regard for the rules and could not, therefore, take the plea that there has been inordinate delay in the issue of the charge-sheet. The learned counsel further contends that the applicant within a few days of submitting his application for leave, i.e., on 30.9.1993, submitted his resignation, which was conditional and had to be refused. Therefore, a duty was cast on him to re-join his post, which he did not do.

10. With regard to the delay in passing of the final order by the disciplinary authority, the learned counsel contends that in order to be fair and objective, the disciplinary authority had to ask for the original records from the District Office and take into consideration all aspects of the case, which no doubt took sometime but that does not vitiate the proceedings in any manner. Moreover, the interest of the applicant has not been prejudiced inasmuch as

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he continued to remain in service during this period and was paid full pay and allowances.

11. On the question of penalty being very severe when compared with the misconduct, the learned counsel has submitted that the disciplinary as well as the appellate authorities have given full consideration to the report of the inquiry officer as well as the submissions made by the applicant in the matter and taking into account the behaviour and conduct of the applicant and the utter disregard for the discharge of his public duties, they have rightly come to the conclusion that the applicant is not a fit person to be retained in service. When complete procedure has been followed and the principle of natural justice has been fully adhered to, learned counsel submits that it would be better for the Tribunal to keep its hands off in interfering with the quantum of punishment. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the case of State Bank of India & others v. Samarendra Kishore Endow & another, (1994) 2 SCC 537, wherein the Apex Court has held that "the High Courts or the Administrative Tribunals cannot interfere if the punishment has been imposed after holding the inquiry but even if it is considered that the punishment imposed is harsh, the proper course is to remit the case back to the appellate authority or the disciplinary authority. In the case in hand, the punishment awarded is quite in keeping with the gravity of the misconduct and, therefore, the learned counsel for respondents submits that there is no occasion for this Tribunal to interfere in the matter.

12. We have heard the learned counsel for the parties as also have perused the material placed on record. On the question of delayed charge-sheet, we are afraid, the contention raised by the learned counsel for applicant has to fail. It is clear from the records as also admitted by the applicant that he did not wait for the approval/sanction of his leave for proceeding to visit various religious places, nor did he submit any medical report as directed. Besides, within a few days of applying for leave, he had submitted his resignation, which reads more as a letter of protest. It was not a letter of resignation simplicitor. Besides, the so-called request for extension of the leave has been made by his son and not by the applicant himself. If the applicant was an employee of the Department, a duty was cast on him to have not only waited for the sanction of the leave but also to have applied for extension of leave himself. No reason has been given as to why the applicant

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himself could not apply for extension of leave indicating his compulsion to be kept away from his duties. If he was unwell, it ought to have been supported by the medical certificates. Rather than obtaining prior sanction of leave as is warranted as the conduct of a Government servant, he is trying to take advantage of non-communication of the rejection of the leave. The case of T. Subbarao (supra) will not come to the rescue of the applicant, as that was a case of absence on casual leave for one day only and has to be distinguished from the case. However, it is not for the Tribunal to go into the merits of the evidence produced by him before the inquiry officer but suffice it to say that an inquiry has been held and the applicant has been provided due opportunity to defend himself, the principle of natural justice has been fully complied with. The disciplinary authority has duly considered the report of the inquiry officer and complied with the procedure of forwarding a copy of the report to the applicant and considered his side of the story and only thereafter he has passed the final order. The question of delay of the charge-sheet is directly attributable to the conduct of the applicant and, therefore, cannot be held against the respondents. With regard to the delay, however, in passing the final order, there has no doubt been delay but that, in any case, has provided an opportunity to the applicant to remain in service. The point repeatedly made by the learned counsel for applicant that he had to make repeated representations for getting the final decision on the inquiry held against him, can only speak of his guilty mind and, in our view, does not prejudice the interest of the applicant in any way. A point had been raised by the learned counsel for the applicant with regard to extraneous matter, such as being habitual absentee having been taken into consideration by the disciplinary authority, which has the effect of vitiating the proceedings. We, however, do not agree as it has not prejudiced the case in any way.

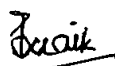
13. On the point of punishment being disproportionate to the misconduct, we are afraid, we cannot subscribe to the view. The disciplinary as well as the appellate authorities have after due consideration found it to be a grave misconduct and in their judgment have imposed the penalty of removal from service. As has been held by the Hon'ble Supreme Court in the case of Samarendra Kishore Endow (supra), the disciplinary authority and on appeal, the appellate authority being fact finding authorities have exclusive powers to consider the evidence. They are vested with the discretion to impose appropriate punishment keeping in view the magnitude or the gravity of the


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misconduct. It has also been held therein that the Tribunal, while exercising the power of review cannot normally substitute its conclusion on penalty. Having regard to the ratio laid down therein, we find no justification to interfere with the impugned orders.

14. In view of the aforesaid discussions, we find no merit in this OA, which is accordingly dismissed with no order as to costs.


(S. K. Naik)
Member (A)


(M. A. Khan)
Vice Chairman (J)

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