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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1420/2004

New Delhi, this the 20th day of December, 2004

Hon'ble Shri S.K. Naik, member(A)

Tilak Ram
10/49, Shanker Gali
Vishwas Nagar, Shahdara, Delhi .. Applicant

(Shri Devi Dayal Sharma, Advocate)

versus

Government of NCT of Delhi, through

1. Chief Secretary
IP Estate, New Delhi
2. Director of Education
Block 10, Old Secretariat, Delhi
3. Dy. Director of Education
Rani Garden, Delhi .. Respondents

(Shri Ajesh Luthra, Advocate)

ORDER

The applicant Shri Tilak Ram was due for superannuation on the 30th November, 2003. However, by order dated 27.11.2003 (Annexure A-2) he was placed under suspension. He submitted an application on 9.12.2003 before Respondent No.3 for the release of retiral benefits which was followed by legal notices on 29th January, 2004 and 4th February, 2004. It is only thereafter that respondents released provisional pension on 22.5.2004.

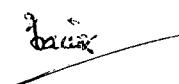
2, The applicant is aggrieved on the ground that he was placed under suspension only four days before his date of retirement without giving him any show cause notice. Learned counsel further contends that no charge-sheet has been served upon the applicant as yet even though more than a year has passed since he was placed under suspension. In the absence of any charge-sheet having been served upon him, the learned counsel contends that the respondents cannot take the plea that departmental proceedings are pending against him. Even otherwise, as per OM dated 7.9.1965 and DoPT instructions dated 16.12.1972, in case of officer under suspension the charge-sheet should be filed within six months as a rule. If the investigation is likely to take more time it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. He has

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gone on to say that departmental proceedings should not ordinarily exceed six months. Since the respondents have failed to issue any charge-sheet after placing the applicant under suspension, they have violated their own instructions on the subject.. The counsel has further referred to the order of the Central Administrative Tribunal in OA No.833/1986 decided on July 20, 1988 in which it has been held that proceedings commence when charge-sheet or challan is filed and has contended that since no charge-sheet has been served, the order of suspension should be quashed and set aside. Further, a direction should be issued to the respondents to sanction regular pension with effect from 1.12.2003.

3. Learned counsel for the respondents has opposed the application. Referring to Rule 9 of sub-rule 6 of the Pension Rules, the learned counsel has contended that as would be clear from this provision, departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the government servant or pensioner or if the government servant has been placed under suspension from an earlier date, on such date. The counsel further argued that since the applicant was placed under suspension, his case has rightly been treated as a case in which departmental proceedings are pending irrespective of whether any charge-sheet has been issued or not. With reference to the reliance placed by applicant's counsel in OA 833/1986 which was decided in 1988, counsel for respondents submits that the Government have amended the provision in the pension rules vide notification dated 23.8.1991 according to which the suspension by retiring employee has to be treated as a case of pending departmental proceedings and therefore would be hit by Rule 69 of the CCS (Pension) Rules. As per this Rule, his regular pension and gratuity have been withheld but provisional pension has already been allowed to him. On the point of revocation of suspension order, learned counsel contends that since the applicant stood superannuated on 30.11.2003, the question of revocation of suspension is misplaced and therefore does not arise. The point of how to treat the period of suspension upto the date of his superannuation shall be decided on the conclusion of departmental proceedings. The counsel further contends that charge-sheet to the applicant is being issued shortly and the department would take expeditious action to have the same concluded and decided at the earliest.

4. I have considered the arguments advanced by the learned counsel for the parties. Learned counsel for the applicant has sought two reliefs: (a) suspension be revoked and (b) the respondents be directed to release to the applicant full pension with effect from 1.12.2003.



5. In so far revocation of suspension is concerned, as has been pointed out by respondents' counsel, since the applicant stood superannuated on 30.11.2003, question of revocation of suspension does not arise.

6. In so far as second relief is concerned, I am in agreement with the arguments advanced by respondents' counsel that the suspension of the applicant prior to his retirement has to be treated as a case of pending departmental proceedings against him under sub-rule 6 of Rule 9 of CCS (Pension) Rules. Reliance placed by the applicant on the DoPT instructions and Tribunal's judgement in OA 833/1988 (supra) would not render him any assistance because the amendment made in the CCS(Pension) Rules were incorporated later during 1991 and the amended provision would hold the field in the case of the applicant.

7. Under the circumstances, I find no merit in the present OA and the same is accordingly dismissed.


 (S.K. Naik)
 Member(A)

/gtv/