

18

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1436/2004

This the 18th day of March, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Harkesh Meena (Gayotawala)
S/O B.L.Meena,
R/O Vill. & P.O. Mondawari,
Lalsot Taluk, Distt. Dousa,
Rajasthan – 303504.

... Applicant

(By Shri N.L.Barera, Advocate)

versus

1. Union of India through
Secretary, Ministry of HRD
(Dept. of Education),
Shastri Bhawan, New Delhi.
2. Joint Secretary, Govt. of India &
Chairman, CTSA, Deptt. of Education,
MHRD, Shastri Bhawan,
New Delhi-110001.
3. Secretary, CTSA,
Ess Ess Plaza,
Plot No.1, community Centre,
Sector 3, Rohini,
Delhi-110085.

... Respondents

(By Shri Anil Srivastava, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Applicant has challenged Annexure A-1 (colly.) dated 5.3.2004 and 18.3.2004 whereby the appellate authority has revoked the major penalty of compulsory retirement imposed upon applicant in disciplinary proceedings against him and reduced his pay to the initial stage in the time scale with the right

15

to earn his future increments afresh from the initial pay, and that he would not be entitled to the payment of any salary for the period he remained under suspension from 9.8.2002 to 28.6.2003, i.e., the date of compulsory retirement, and further from 28.6.2003 until the date of joining. It has, however, been provided that these periods would be counted as service and added for benefits other than salary.

2. The learned counsel of applicant attacked the impugned orders and the punishment stated above on the following grounds:

1) Annexure A-1 (colly.) dated 28.6.2003 are the orders passed by the disciplinary authority in disciplinary proceedings against applicant without application of mind, without stating that he agreed with the findings of the enquiry officer and without recording his finding on the charges alleged against applicant. The learned counsel thus maintained that the disciplinary authority had not followed the requirements prescribed under rule 15 of the CCS (CCA) Rules, 1965.

2) While the enquiry officer had held only two charges out of five alleged against applicant as proved, the disciplinary authority had proceeded as if all the charges leveled against applicant had been established in the enquiry report.

3. The learned counsel of respondents explained that the appellate authority was required to pass two orders, i.e., one on 5.3.2004 and another on 18.3.2004 as in the first order the appellate authority had reduced the penalty of compulsory retirement to reduction of pay to the initial stage in the time scale but had not dealt with the second aspect of the orders of the disciplinary authority relating to the treatment of the period of suspension. Thus, the appellate authority passed the second order dated 18.3.2004 revising the earlier order dated 5.3.2004

U

reducing the punishment of compulsory retirement as also the treatment to be given to the period of suspension.

4. The learned counsel could not give any satisfactory explanation on the objection raised on behalf of applicant regarding violation of the procedure laid down under rule 15 *ibid* for being followed by the disciplinary authority. Rule 15 *ibid* deals with the action on the enquiry report. Sub-rule (2-A) of this rule reads as follows:

“(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).”

5. Perusal of the orders of the disciplinary authority dated 28.6.2003 establishes the contention raised on behalf of applicant, i.e., though the enquiry officer had held only three out of five allegations proved against applicant, the disciplinary authority proceeded on the assumption as if all the charges had been established against applicant in the enquiry. The disciplinary authority has not recorded its finding as required under rule 15 (2-A) of the CCS (CCA) Rules and proceeded to impose the major penalty of compulsory retirement against applicant. Such an order cannot sustain and is liable to be quashed and set aside. Accordingly, it is quashed and set aside.

6. The appellate authority has proceeded on the basis of the orders passed by the disciplinary authority and passed both its orders dated 5.3.2004 and 18.3.2004. The basic order of the disciplinary authority having been quashed and set aside, the appellate order based thereon has also to go as the same has no foundation available to stand on and as such the appellate orders dated 5.3.2004 and 18.3.2004 are also quashed and set aside. However, the disciplinary authority shall have liberty to pass fresh orders taking into consideration the enquiry report as also representation made by applicant thereon, and keeping in view the above

Ab

26

observations of this Court. He shall do so within a period of one month from the date of communication of these orders. It is also directed in view of the applicant having joined his duties w.e.f. 21.4.2004 that he shall be treated to be on deemed suspension from 9.8.2002 to 20.4.2004 with consequential benefits and further pay and allowances in the original time scale w.e.f. 21.4.2004, when he assumed his duties on reinstatement.

6. The OA is disposed of in the above terms.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

18. 3. 05

/as/