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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1566/2004

New Delhi this the 5th day of January, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Pawan Kumar,
R/o H.No.147,
Vill Ghoga,
Delhi-39.

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. N.C.T. of Delhi through the
Chief Secretary,
New Sectt., New Delhi.
2. The Principal Secretary (Home),
5th Level, C Wing, Govt. of NCT of Delhi,
Delhi Secretariat, New Delhi.
3. The Chief Fire Officer,
Delhi Fire Service,
Head Quarters, Cannaught Place,
New Delhi.
4. The Head of Office,
Delhi Fire Service,
Moti Nagar Division,
New Delhi.

-Respondents

(By Advocate Shri S. Ahuja, proxy for Shri Ajesh Luthra, Advocate)

ORDER (ORAL)

Applicant impugns order dated 16.6.2004, whereby his suspension period from 13.7.98 to 6.3.2003 has been adjusted in so far as 175 days as earned leave and the remaining period of 1525 days has been treated as extraordinary leave (EOL, for short) on private affairs after imposition of a minor penalty.

2. Learned counsel for applicant states that on imposition of minor penalty in the light of DoPT OM dated 3.12.85 the suspension period can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should be paid full pay and allowances for the period of

suspension. The learned counsel relies upon the decision of the High Court of M.P. in **Deena Nath Tiwari v. Dr. Hari Singh Gour Vishwa Vidyalaya, Sagar**, 2004 (2) ATJ 130 to substantiate the aforesaid plea.

3. On the other hand, respondents' counsel vehemently opposed the contentions and stated that since the disciplinary authority has not treated the suspension period as spent on duty, against the concerned officer for recovery of old payment of subsistence allowance has been made.

4. I have carefully considered the rival contentions of the parties and perused the material on record. DoPT OM dated 3.12.1983 provides as under:

“(3) Period of suspension to be treated as duty if minor penalty only is imposed. – Reference is invited to O.M. No.43/56/64-AVD, dated 22-10-1964 [not printed], containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension, if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened.”

5. The High Court in **Deena Nath Tiwari** (supra) observed as under:

"5. The penalty of withholding of two increments by the order of the Vice Chancellor cannot be said to be excessive. But the order depriving the petitioner of salary for the suspension period was not proper. Such order as generally passed when a major penalty is imposed. The withholding of two increments is a minor penalty and in case of imposition of such penalty the employee is not to be deprived of his salary for the suspension period as that becomes more penal than the penalty which has been consciously imposed. This part of the impugned order is not a speaking order. No reasons have been assigned for depriving the petitioner of his salary for the suspension period. The Government of India has issued a circular dated 3.12.1985 stating therein that where departmental proceeding against suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R. 54-B and the employee concerned should therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B. The guidelines issued by the Central Government for its employees is just and reasonable and it should be followed by the State Government and its instrumentality. The University should also follow it."

6. If one has regard to the above on a minor penalty the period of suspension can be wholly unjustified and one is entitled to full pay and allowances.

7. Moreover, I find that before treating the period as EOL on private affairs no show cause notice was served upon applicant which is an infirmity which goes to the root of the matter.

8. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. The respondents are directed to treat the period of suspension from 13.7.1998 to 8.3.2003 as qualifying service for all purposes with entitlement of full pay and allowances to applicant to be paid to him within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)
5/1/05

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