

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT NAINITAL

Original Application No. 9 of 2003(U)

Nainital, this the 25th day of April 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER - J.

Dr. Virendra Singh Rathore,
s/o Sri S.L.Rathore,
r/o Type IV, Pracharya Niwas,
K.V.Upper Camp. Dehradun Cantt.

.....Applicant.

(Counsel for the applicant : Sri R.A.Gaur)

V E R S U S

1. Union of India, through Secretary,
Ministry of HRD Shastri Bhawan,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
New Delhi.
3. The Joint Commissioner (Administration)
Kendriya Vidyalaya Sangathan,
New Delhi.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan, Salawala,
Dehradun.

.....respondents.

(Counsel for the respondents: Sri N.P.Singh)

O R D E R (Oral)

By this O.A., applicant was working as principal,
Kendriya Vidyalaya, Upper Kendra, Dehradun, has challenged the
order dated 13.2.2002 (Annexure A-1) whereby the applicant has
been suspended under Rule 1 of Rule 10 of CCS (CCA) Rules 1965
(in short Rules of 1965). He has further sought a direction
to the respondents to reinstate the applicant on the post of
principal, K.V.S. Upper Camp, Dehradun alongwith consequential
benefits including the arrears of salary and increment and
if necessary to continue disciplinary proceedings, if permissible
under law.

[Signature]

2. The main grievance of the applicant in this case is that even though he was suspended as long back as on 13.2.2002, but till date neither any chargesheet has been served on him, nor there is any reason disclosing why he should be continued under suspension. The counsel for the applicant has submitted that no person can be kept under suspension in-definitely as otherwise it amounts to punitive order, apart from the fact that he is to suffer mental agony and torture. He has also relied on Government of India's instructions wherein the Govt. has stressed the need to review the cases of suspension after three months to see whether the officer concerned can be reinstated back in service or it is necessary to continue his suspension period. He has also submitted that since no chargesheet has been served on the applicant so far, the suspension order may be quashed and set-aside and he may be reinstated back in service with all consequential benefits. The applicant's counsel has also submitted that he is ready to face the enquiry, but there is no justification to keep him under suspension for such a long period. In support of his contention, he has relied on 1987 SCC (L&S) 400, judgment in the case of O.P. Gupta Vs. Union of India & Ors., 2001(3) ESC Alld. 1239 and 1999 (3) UPLBEC (SUM) 134. The applicant's counsel has also submitted that the applicant had given an appeal to the Commissioner with copy to Vice-Chairman, K.V.S., New Delhi also, but till date the same has not been decided. This was even followed by reminder dated 13.12.2002 (page 39 and 40 respectively), but till date they have not even considered his appeal.

3. The respondents have opposed this O.A. They have submitted that the applicant has committed number of irregularities relating to Vidyalaya Vikas Nidhi Fund and School Fund, details of which have been given in the Counter. According to them, applicant has indulged in number of financial irregularities for which a memorandum was also issued on 17/19.6.2002 (page 30)



and thereafter the matter is being processed for issuing a chargesheet to the applicant, but since he is a Group 'A' officer, they have to take the approval from CVC before issuing the chargesheet. Therefore, it is taking some time to issue chargesheet to the applicant, but since the allegations and irregularities committed by the applicant are ⁱⁿ ~~of~~ very serious nature amounting to Rs.1,99,364/- on account of unauthorised expenditure for constructing cemented road out of Vidyalaya Vikash Nidhi Fund, Rs.58,846/- for constructing boundary wall around his residence from the same fund, amount of Rs.7,107/- for purchasing Geyser at his quarter for his personal use, amount of Rs.26,218/- towards installation of Intercom system out of School Fund and an amount of Rs.39,000/- shown to have been spent for procuring the material, but no such material is taken on stock register of the Vidyalaya etc., therefore, his suspension cannot be revoked. Apart from it, they have also submitted that the applicant was given a penalty for committing the irregularities even at Kendriya Vidyalaya, Andal, while working as Principal, Kendriya Vidyalaya, Andal and number of other complaints had also been received from various quarters of the ~~vicinity~~, therefore, the chargesheet is going to be issued shortly. They have, thus, prayed that the O.A. may be dismissed with costs.

4. The applicant has reiterated his stand in the Rejoinder affidavit.

5. I have heard both the counsel and perused the pleadings as well.

6. While the respondents have tried to point-out the various irregularities committed by the applicant, the applicant in his O.A. as well as in the Rejoinder affidavit has given explanation and has tried to justify the expenditure and has submitted that most of the items were carried-out after taking approval of the competent authority. He has

also submitted that he spent the amount under Rule 197 of KVS Accounts Code. The relevant rule placed on record. However, I have not gone into the merits of the case as this case is pre-mature at this stage because that would be a subject matter of the enquiry, if the respondents ^{to decide} hold the same. Before me the question is very limited whether the suspension order of the applicant can be quashed or some other orders are required to be passed in this case.

7. The law is well settled that suspension is not a penalty and the department is free to suspend a person if they feel the circumstances so require^d. It is, however, correct that no person can be kept under suspension in-definitely or for a long period as even though it ^{is} not a penalty, but nonetheless it causes mental agony to the person, who has been suspended, that is why the Govt. of India has issued instructions that in case of suspension, efforts should be made to issue the chargesheet within a period of three months and in case it takes longer time to issue the chargesheet, atleast they should undertake the review of such cases to find-out whether it is still necessary to keep the officer under suspension or the suspension can be revoked. The officer concerned can be reinstated by putting him on some un-sensitive post, away from his present posting, so that he is not able to tamper with the evidence and is not in a position to influence ~~with~~ the witnessess. In the instant case, the applicant was given memorandum asking him to explain his conduct on 17.6.2002, which was replied to by the applicant on 23.6.2002 and 30.6.2002. From June, 2002, the respondents have not issued any chargesheet to the applicant till date. No-doubt, the allegations against the applicant are with regard to the financial irregularities and the department has every right to look-into the allegations made against the applicant, but in these circumstances when almost a year has passed, I think that it would be in the interest of justice to direct the respondents to review the case of the applicant to see

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whether it is still necessary to continue him under suspension or suspension can be revoked and he can be posted to some other place from where he may not be able to influence the witnessess or tamper with the records. These instructions are already issued by the Govt. of India and I am sure that the authorities would apply their mind to the facts of the case keeping in view the instructions as well as the judgments, referred to above, while reviewing the case of the applicant. This exercise shall be completed by the respondents within a period of three months from the date of receipt of copy of this order and the applicant shall be communicated the result thereof especially when the applicant had already given his appeal addressed to the Commissioner and Vice-Chairman of K.V.S.

8. With the above direction, the O.A. stands disposed off with no order as to costs.



MEMBER (J)

GIRISH/-