

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

O.A.No.391/2005

This the 19th day of March 2009

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Veena Chhotray, Member (A)**

Smt. Sangeeta Gupta, aged about 35 years
Daughter of Shri Harishanker Gupta
Resident of / at present working as Post Graduate
Teacher (Physics) Jawahar Navodaya Vidyalaya
Dailwara, District Lalitpur

..Applicant

(By Advocate: Shri P.K. Srivastava)

Versus

1. Union of India through its Secretary
Ministry of Human Resources, New Delhi
2. Director / Commissioner
Navodaya Vidyalaya Samiti
Administration Khand, Indira Gandhi Stadium
New Delhi
3. Deputy Director
Navodaya Vidyalaya Samiti
Sector 2, Vikas Nagar, Lucknow
4. Principal
Jawahar Navodaya Vidyalaya, Dailwara
District Lalitapur

..Respondents

(By Advocate: Shri Anurag Srivastava for Shri Anil Kumar)

O R D E R

Smt. Veena Chhotray:

The applicant at present working as Post Graduate Teacher (Physics), Jawahar Navodaya Vidyalaya (JNV), Dailwara, District Lalitpur has, through this OA, challenged the impugned order dated 31.5.2001 (Annexure A-1) regarding non-regularization of the period 16.6.1998 to 10.12.1999, i.e., from the date of transfer order



till her joining and non-payment of salary for the same. The appellate order dated 3.11.2004 (Annexure A-2) rejecting the appeal against the aforesaid decision has also been impugned. Besides quashing of the above impugned orders, the OA seeks directions for (i) payment of arrears of salary for the aforesaid period along with compound interest; and (ii) payment of annual increments alleged to have been withheld illegally w.e.f. 1.8.1998.

2.1 The factual background of the case is that the applicant had been placed under suspension vide order dated 21.5.1997, as the disciplinary proceeding was contemplated against her (Annexure A-3 with the OA). Subsequently, the order of suspension was revoked vide order dated 16.6.1998 (Annexure A-4 with the OA). The disciplinary proceeding initiated vide OM dated 30.11.2008 has been concluded vide Office Order dated 25.6.2004 (Annexure C-4 with the counter). Of the three articles of charges, charge No.3 pertaining to committing acts of serious insubordination and disobedience of the orders of her superior authorities by not reporting herself for duty in spite of repeated orders and thus committing the act of grave misconduct and insubordination punishable under CCS (Conduct) Rules, 1964, was held as proved. On consideration of the contentions made by the charged officer, the disciplinary authority imposed a minor penalty of 'Censure'. Further, vide Office Order dated 27.5.2005 (Annexure C-6 with the counter), the suspension period was regularized as duty for all purposes.



2.2 However, for the period 16.6.1998 to 10.12.1999 (18 months), the applicant has been denied her salary. Her representation for regularizing this period has been rejected by the order dated 31.5.2001 (Annexure A-1 with the OA); the appeal against the same was also rejected vide the order dated 3.11.2004 (Annexure A-2 with the OA). Both these orders have been impugned in the present OA.

2.3 The order dated 31.5.2001 states that the representation of the applicant to treat the period in question as on duty has been received as a carbon copy, though not through proper channel. It also states that since the applicant had not obeyed the order of transfer in time and it was done after much delay, there is no justification for treating this period as on duty and making a payment of salary for the same. The appellate order dated 3.11.2004 states that the appeal dated 22.9.2001 preferred by the applicant has been considered by the appellate authority in compliance of the Hon'ble C.A.T. Lucknow Bench's orders dated 19.7.2004. After careful consideration of all the records, the decision taken by the disciplinary authority towards non-regularization of the period from 16.6.1998 to 10.12.1999 and non-payment of salary for the same period is upheld.

3.1 As per respondents, their decision is in accordance with the provisions of the Fundamental Rule 17 (1). Para 2 (r) of the counter

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reply extracts the following relevant provisions in support of their decision:

"Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

3.2 This is the third in the series of the OAs on the subject. Initially, the applicant had filed OA-120/1999. While the OA itself was subsequently on 23.9.2004 dismissed in default for non-prosecution (Annexure C-5 with the counter); interim order was passed by the Tribunal on 14.10.2009 (Annexure A-14 with the OA). The Tribunal had directed the respondents for passing a specific order regarding payment of subsistence allowance during the period of suspension. Besides, payment of TA/DA as per rules had also been directed.

3.3 In pursuance of the directions of the Tribunal, a specific order regarding payment of subsistence allowance for the entire period of suspension has been passed by the respondents vide their order dated 30.10.2009 (Annexure A-15 with the OA). It is also admitted by the applicant that the TA / DA advance was also paid to her vide cheque dated 7.12.1999. Thereafter, the applicant joined the new place on 11.12.1999 (Annexure A-16 with the OA). However, as



the respondents took the view regarding not regularizing the period from 16.6.1998 to 10.12.1999 (18 months), applicant filed another OA-240/2004 challenging this decision of the respondents. Vide its order dated 19.7.2004, the said OA was disposed of in *limine* by a direction to the respondents to consider and dispose of the appeal preferred against the impugned order in accordance with law within a period of three months from the date of receipt of a copy of the order. As mentioned above, in paragraph 2.3, the appeal dated 22.9.2001 (Annexure A-22 with the OA) has been considered and disposed of by the appellate authority vide its order dated 3.11.2004.

4. The factual matrix relating to the present OA pertains to non-joining / delayed joining on the part of the applicant at JNV, Dailwara, District Lalitpur. At the time of suspension, the applicant, who was posted at JNV, Sarsaul District Kanpur Nagar, was ordered to be attached to JNV Dailwara, District Lalitpur as her headquarters during the period of suspension (order dated 21.5.1997 – Annexure A-3 with the OA). Subsequently, on revocation of the suspension vide order dated 16.6.1998, her transfer to JNV Dailwara, District Lalitpur was formally ordered (Annexure A-4 with the OA). However, instead of joining the new place immediately after the order of suspension on 21.5.1997 or the formal order of transfer following revocation of suspension, the applicant finally joined there only on 11.12.1999 after a prolonged lapse. The applicant's plea is that the onus for this delay was on the

respondents, as despite her repeated representations to different authorities, she was not sanctioned the TA/DA advance for going to the new place till the intervention of the Tribunal. The respondents' case, however, is that initially the applicant had only been attached to JNV Dailwara, District Lalitpur as her headquarters during the period of suspension for which TA / DA was not admissible and this was clearly communicated to the applicant vide their letters dated 11.7.1997 and 13.10.1997 (Annexures C-1 and C-2 respectively with the counter). It is further stated that the applicant had taken a defiant pretext and also repeatedly disobeyed the directions of the higher authorities,

5.1 While disclaiming any responsibility for non-compliance or delayed compliance of joining at the newly assigned place and putting the entire responsibility for the same on the respondents by way of non-payment of TA/DA advance, the OA raises a plea of violation of the principles of natural justice, as she had not been issued a show cause notice or afforded an opportunity for hearing before passing of the impugned order dated 31.5.2001. The appellate order is also assailed as being non-speaking and non-reasoned and not considering the submissions made in her representation. Paragraph 5 (g) of the OA evokes the settled principle of law that any action, which has a civil consequences and by which a person is going to be affected adversely, a decision must be taken after giving full opportunity to the person



concerned. It is averred that in the instant case this principle has been ignored.

5.2 The respondents have contended the OA as having no merit because the applicant had disobeyed the orders of the higher authorities and had not joined at the new place for a long time despite issue of several instructions. It is further stated that by following a properly constituted departmental proceeding, the charge of insubordination has been held to be proved against her, for which the penalty of 'Censure' has also been imposed. As an evidence of their fairness, the respondents have contended that the authorities have taken the decision of treating the suspension period as duty. However, since the applicant had not joined the new place for a long time, as per provisions of the Rules, she cannot be paid the salary or other benefits for this period.

6. It is not in doubt that after revocation of the suspension order on 16.6.1998, the period till 10.12.1999 before the applicant finally joined at JNV Dailwara, District Lalitpur is a vacuum not covered either by suspension or any other status. As per the respondents themselves, this is the period that the applicant has stayed away unauthorizedly from joining at the place assigned to her. Further, in accordance with the provisions of FR 17 (1), she is not entitled for drawl of pay and allowances unless one assumes duties. This general rule has been made subject to any exception specifically made in the rule. The proviso to FR 17 ((1) specifically forbids any



person, who is absent unauthorizedly to be entitled to any pay and allowances. Now the only issue remains where the pretext of her not joining the transferred place on ground of non-sanction of TA / DA advance when the same was not even clearly due as per the original order and despite the repeated instructions of the authorities constitutes a justifiable ground to condone this act on her part and make an exception is the issue. The respondents have not thought it an appropriate ground for making the condonation. We also would not like to step into the shoes of the administrative authorities to exercise substituted judgment in this field.

7. However, there are some procedural aspects that assume importance. Contrary to the directions of the Tribunal, the appellate order is found to be bald and non-speaking. It does not mention the specific submissions made by the applicant in her representation and the considered view of the authorities with regard to these. We also find that the applicant has not really been given an opportunity to show cause before this decision, which affects the settled principle of law that any action, which has civil consequences, decision must be taken after giving full opportunity to the person concerned.

8. The OA is, therefore, partly allowed and the Impugned appellate order is set aside. Matter is remanded to the appellate authority to treat the averments in the present OA as a representation and pass a reasoned and speaking order keeping

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in view our observations made in the body of the order, within a period of three months from the date of receipt of a copy of this order. No costs.

V. Chhotray
(Veena Chhotray)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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