

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-4385/2015**

**Reserved on : 02.02.2017.**

**Pronounced on : 13.02.2017.**

**Hon'ble Mr. Shekhar Agarwal, Member (A)**  
**Hon'ble Mr. Raj Vir Sharma, Member (J)**

Sh. Hukam Chand,  
S/o Late Sh. Naval Kishore,  
R/o Flat No. 46, Pragati Apartments (SFS),  
Club Road, Paschim Vihar,  
New Delhi-110063.

..... Applicant

(through Sh. S. Rajappa, Advocate)

Versus

1. Govt. of NCT of Delhi through  
The Chief Secretary,  
5<sup>th</sup> Floor, Delhi Sachivalaya,  
Govt. of NCT of Delhi.
2. Director,  
Directorate of Education,  
Old Secretariat, Delhi,  
Govt. of NCT of Delhi.
3. Additional Director of Education (Vig.),  
Directorate of Education,  
Old Sectt. Delhi.
4. Lieutenant Governor of Delhi,  
Raj Niwas, Rajpur Road,  
Delhi-54.

..... Respondents

(through Sh. Anmol Pandita with Sh. Vijay Pandita, Advocate)

## O R D E R

### **Mr. Shekhar Agarwal, Member (A)**

The applicant while working as ad hoc DANICS in the Directorate of Education was placed under suspension on 18.12.2014. On the same day, he was issued a charge sheet. Thereafter, his suspension was extended from time to time vide orders dated 17.03.2015, 15.05.2015, 14.08.2015 and 12.11.2015. His subsistence allowance, which was 50% at the commencement of suspension, was increased to 60%. He has filed this O.A. seeking the following relief:-

“(i) quash and set aside the impugned orders dated 18.12.2014, 17.3.2015, 15.5.2015, 14.8.2015 and 12.11.2015 placed at Annexure A/1, A/2, A/3, A/4 and A/5 respectively along with all consequential benefits or

(ii) if relief (a) is not granted, then pass appropriate directions towards enhancement of subsistence allowance up to 75%, w.e.f. the date of expiring of initial 90 days of suspension and the release thereof along with arrears and interest @ 15% per annum.

(iii) award costs of the proceedings and

(iv) pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of an justice in favour of the applicants.”

2. The contention of the applicant is that the suspension order had been passed without application of mind as the order says that he has been suspended due to contemplated disciplinary proceedings whereas actually since the charge sheet was also

issued to him on the same day, the proceedings were no longer contemplated but had actually commenced. He has further submitted that now there cannot be apprehension of the applicant causing any hindrance in the enquiry or influencing the witnesses or tampering with the evidence since he has been transferred to a different position. Therefore, he has submitted that there is no justification for prolonging his suspension. He has also prayed for enhancement of his subsistence allowance to 75% in case his prayer for rejection/quashing of the suspension is not allowed.

3. In their reply, the respondents have submitted that enquiry has been initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1965 and at this stage this Tribunal does not have jurisdiction to interfere in the proceedings as laid down by Hon'ble Supreme Court in the case of **UOI Vs. Upendra Singh**, (1994) 3 SCC 357. The O.A. was also barred by Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985 and is liable to be dismissed. The respondents have further submitted that the applicant was placed under suspension as the nature of charge against him was grave. He was also issued a charge sheet on the same day i.e. 18.12.2014. Thereafter, as required under Rules, his suspension has been periodically reviewed and extended vide orders dated 17.03.2015, 15.05.2015, 14.08.2015 and 12.11.2015. The respondents have also submitted that his suspension allowance has since been increased to 75% vide order

dated 10.02.2016. The enquiry in this case has been entrusted to one Sh. Manjit Rai Arora, DANICS, JAG-II (Retd.)

4. We have heard both sides and have perused the material placed on record. Learned counsel Sh. S. Rajappa arguing for the applicant submitted that in OA-2810/2016 filed by the same applicant, a Co-ordinate Bench of this Tribunal vide order dated 20.08.2016 has stayed further proceedings in the departmental enquiry initiated against the applicant vide Memorandum dated 18.12.2014. In view of the aforesaid, Sh. Rajappa prayed that no substantial progress in the enquiry will be possible and, therefore, the order of suspension be revoked. In this regard, he relied on the judgment of Apex Court in the case of **State of H.P. vs. B.C. Thakur(SC)**, 1994 SCC (L&S) 835 wherein finding that no substantial progress was being made in the disciplinary proceedings, the Apex Court upheld the order of the Tribunal setting aside the suspension order of the respondents. Sh. Rajappa further relied on the judgment of Apex Court in the case of **UOI & Anr. Vs. Ashok Kumar Aggarwal**, (2013) 16 SCC 147 wherein also the same view has been reiterated.

4.1 We have considered the aforesaid submissions. It is clear from the arguments advanced by the applicant's counsel that the applicant was seeking revocation of the suspension at this stage rather than quashing of the suspension order itself. No cogent

reasons have, in fact, been advanced for quashing of the suspension order. Applicant's counsel argument that since the charge sheet was issued on the same day as the suspension order, the suspension order which has been issued on the ground that proceedings have been contemplated against the applicant, deserves to be quashed. In our opinion, this is a mere technicality and cannot be accepted as a ground for quashing of the suspension order. No other ground for quashing of the suspension order was pressed before us.

4.2 Learned counsel Sh. S. Rajappa had argued that since the enquiry has been now stayed by a Co-ordinate Bench of this Tribunal, it is likely to be indefinitely delayed and, therefore, the applicant should be reinstated in view of the judgments of Apex Court in the cases **B.C. Thakur** (supra) and **Ashok Kumar Aggarwal** (supra)

4.3 Learned counsel Sh. Vijay Pandita, on the other hand, had submitted that it was the applicant himself, who had approached this Tribunal challenging the charge sheet issued to him and had obtained stay order thereby contributing to the delay in conduct of enquiry. Thus, stay of the enquiry proceedings by the Tribunal at the behest of the applicant cannot be a ground for revocation of suspension.

4.4 We find merit in this argument of the respondents. If the applicant had been interested in early completion of enquiry, he would not have pressed for stay of the same before another Bench of this Tribunal. Thus, he himself is now responsible for the delay in the enquiry. In any case, it would be incorrect to presume that the enquiry will remain stayed indefinitely. As soon as OA-2810/2016 is decided by the Tribunal, the stay will get vacated. It is also possible that this Tribunal may itself vacate the stay during pendency of the OA as well if such a request is made by the respondents therein. Therefore, under the present circumstances, we are of the opinion that the Apex Court's judgments relied upon by the applicant cannot be of any help to him since the present case is clearly distinguishable inasmuch as the applicant is himself contributing to delay in the enquiry.

4.5 As far as enhancement of subsistence allowance is concerned, the respondents have stated in their counter that the same has been increased to 75%. Hence, this grievance of the applicant does not survive.

5. In view of the above discussion, we do not find any merit in this O.A. and dismiss the same. No costs.

**(Raj Vir Sharma)**  
**Member (A)**

**(Shekhar Agarwal)**  
**Member (J)**

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