

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4450 OF 2014

New Delhi, this the 15th day of September, 2015

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Dr.Dharmendra Singh,
Aged about 61 years,
s/o late Sh.N.P.Singh,
R/o Plot No.33, Gopal Nagar,
Dhansa Road, Najafgarh,
New Delhi 110043

í í ..

Applicant

(By Advocate:Mr.Subhash Gosain)

Vs.

The Commissioner,
Kendriya Vidyalaya Sangathan HQrs,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi 110016

í í ..

Respondent

(By Advocate: Mr.S.Rajappa)

í í ..

ORDER

I have perused the records and have heard Mr.Subhash Gosain, learned counsel appearing for the applicant, and Mr.S.Rajappa, learned counsel appearing for the respondent-KVS.

2. While the applicant was posted to KV No.2, Amritsar, he was issued Memorandum dated 17.02.1999 proposing to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965. The Statement of Articles of Charge framed against him was as under:-

Article-I That Dr. Dharmendra Singh while functioning as PGT (Phy) w.e.f. 12-12-96 to 20-11-97 in Kendriya Vidyalaya No. 2 A.F.S. Amritsar Cantt. did not take over the charge of Physics lab and stock ledgers along with stock in spite of office order and memorandum issued to him by the Principal Kendriya Vidyalaya No.2 Amritsar and instructions of Education Officer of Kendriya Vidyalaya Sangathan (Jammu Region) Jammu. Sh. S.D. Sharma to take over the charge, during preliminary enquiry held on 14-10-97 and he thus wilfully and deliberately disobeyed the lawful orders and instructions of his superiors which amounts to misconduct and dereliction of duty and thereby he contravened Rule 3(i), (ii) and (iii) of CCS (Conduct) Rules, 1964. He has therefore rendered himself liable to disciplinary action under CCS (CC&A) Rules, 1965.

Article-II That Dr. Dharmendra Singh while functioning as PGT (Phy) in the aforesaid Kendriya Vidyalaya is absenting from duty w.e.f 21.11.97 without any sanctioned leave. Thus such willful absence amounts to unauthorized absence from duty and thereby he contravened Rule 3(i) & (iii) of CCS (Conduct) Rules, 1964. He has therefore rendered himself liable to disciplinary action under CCS (CC&A) Rules, 1965.

Article-III That Dr. Dharmendra Singh while functioning as PGT (Phy) in Kendriya Vidyalaya No.2 Khetri Nagar entered into second marriage without divorcing his first wife. Thus he has violated CCS (Conduct) Rules 21(2) and rendered himself liable to disciplinary action under CCS (CC&A) Rules, 1965.

Thereafter, I.O. was appointed, and sittings of the enquiry were held, but the applicant did not appear in the enquiry proceedings. The IO concluded the enquiry *ex parte* and submitted his report on 05.7.1999 finding the charges as proved against the applicant. According to the KVS, a copy of the same was sent to the applicant at his latest known address, vide memorandum dated 06.09.1999, directing him to submit his representation, if any, on the enquiry report, but the applicant failed to submit any representation. Thereafter, the disciplinary authority passed the order dated 20.09.1999

removing the applicant from service with immediate effect. His appeal against the disciplinary authority's order was rejected.

3. Being aggrieved by the order of removal from service passed by the disciplinary authority and the order of rejection of his appeal by the appellate authority, the applicant filed OA No. 246/2002 before this Tribunal. The Tribunal, vide its order dated 5.9.2003, set aside both the orders passed by the disciplinary and appellate authorities, and directed KVS to reinstate the applicant in service forthwith. Liberty was given to KVS to proceed further with the enquiry, if so advised, by placing him under suspension and to resume the enquiry from the stage of furnishing him the enquiry report and leaving the intervening period for the purpose of service benefits including that of back wages to be decided by the KVS in accordance with the rules and instructions.

4. The KVS challenged the Tribunal's order before the Hon'ble High Court of Delhi, vide W.P. (C) No.8092/2003. But later on, the said writ petition was withdrawn by the KVS, and KVS agreed to comply with the directions of this Tribunal. Accordingly, the Hon'ble High Court of Delhi dismissed the said Writ Petition as withdrawn, vide order dated 06.04.2004.

5. In compliance with the Tribunal's order dated 5.9.2003 (ibid), the KVS reinstated the applicant, vide order dated 21.4.2004, and posted him to K.V. Mokama Ghat. It was also decided by KVS that benefits including back wages for the intervening period would be decided in accordance with

the rules and instructions and would be subject to the outcome of the orders to be passed on conclusion of the disciplinary proceedings.

6. Thereafter, the KVS proceeded with the departmental proceedings, and the Inquiry Officer submitted his report. Based on the aforesaid enquiry report, the disciplinary authority, vide its order dated 03.12.2004, again removed the applicant from service with immediate effect. The appellate authority also, vide its order dated 20.01.2006, upheld the order of the disciplinary authority.

7. The applicant challenged those orders of the disciplinary and appellate authorities before the Tribunal, vide OA No. 281/2006. The Tribunal, vide its order dated 27.7.2006, partly allowed OA No.281 of 2006 and set aside the impugned orders. The Tribunal further directed the KVS to reinstate him in service forthwith. The Tribunal also directed that the interregnum period from his earlier removal from service in 1999 till the date of reinstatement shall be treated as period of suspension with grant of subsistence allowance to the applicant. It was also directed that the KVS, if so advised, would be at liberty to proceed against the applicant from the stage of affording him an opportunity of defence and thereafter to complete the enquiry.

8. The KVS challenged the aforesaid Tribunal's order before the Honble High Court of Delhi, vide W.P. (C) No.16390/2006. The Honble High Court disposed of W.P. (C) No. 16390 of 2006, vide order dated 21.5.2007, the operative part of which reads thus:

öUpon hearing both the counsel and respondent, who is present in Court, the following consent order is passed:

- (i) The petitioners would within a week from today appoint an Inquiry Officer and also reinstate the petitioner.
- (ii) The evidence already recorded by the petitioners in the previous proceedings would be taken as evidence led for the purpose of inquiry. The respondent has no objection to the same.
- (iii) Respondent hereby withdraws all his legal and other objections to the inquiry being conducted and undertakes to co-operate fully in the inquiry proceedings.
- (iv) Respondent would be at liberty to cross-examine the witnesses of the petitioner. Respondent would lead and conclude its evidence within 2 months from the date of completion of the cross-examination of petitioners witnesses. Respondent would bring his evidence at his own responsibility. Petitioner would be entitled to lead evidence in rebuttal.
- (v) The Inquiry Officer shall issue notice for hearing to the respondent at the address contained in the petition. Learned counsel for the respondent states notice may be served through respondents counsel and the same shall be treated as proper service on the respondent for further proceedings.
- (vi) The petitioners shall reinstate the respondent within a week. The subsistence allowance, if not already paid to the respondent, shall be paid within a week. Entitlement to pay and allowances shall be decided by the disciplinary authority upon conclusion of the inquiry proceedings.
- (vii) The respondent has undertaken to strictly abide by the aforesaid consent terms and shall fully co-operate in the inquiry proceedings.
- (viii) The petitioners shall also give necessary leave, as required by the respondent, to defend his case as per rules.

The writ petition stands disposed of in the above terms.ö

9. In compliance with the above order of the Honble High Court, the KVS reinstated the applicant in service, vide order dated 04.06.2007, and posted him to KV No.2. Udhampur, with immediate effect.

10. The KVS, along with its letter dated 21.6.2007 (Annexure A/3), sent a cheque dated 21.6.2007 for Rs.7,60,042/- towards payment of

subsistence allowance in terms of the Honøble High Courtø order dated 21.5.2007(*ibid*) for the period from 21.9.1999 to 31.5.2007. By the said letter, the KVS intimated the applicant that out of the total amount of Rs.8,55,622/- payable to him, a sum of Rs.5,582.00 was deducted towards GIS, and Rs.1,00,000/-, already paid to him, vide cheque dated 16.6.2007, was adjusted therefrom.

11. The applicant, vide his representations dated 29.6.2007 and 9.7.2007, claimed that the KVS determined the aforesaid amount of dues of Rs.8,55,622/- without taking into account his annual increments of pay, HRA, CCA, Conveyance Allowance and Children Education Allowance, etc. According to the applicant, he was entitled to Rs.16,74,293/-, instead of Rs.8,55,622/-. Therefore, he claimed payment of balance amount of Rs.8,14,251/- in terms of the Honøble High Courtø order dated 21.5.2007 (*ibid*). When the balance amount of Rs.8,14,251/- was not paid to him, the applicant filed Cont.CAS (C) No. 99 of 2008 before the Honøble High Court of Delhi.

12. While the matter stood thus, in compliance with the Honøble High Courtø order dated 21.5.2007 (*ibid*), the respondent-KVS appointed IO to enquire into the charges framed against the applicant from the stage of cross-examination of the prosecution witnesses. The IO submitted his report finding the charges as proved against the applicant. The applicant made a detailed representation dated 6.7.2009 against the aforesaid report of the I.O. The Disciplinary Authority, after consideration of the IOø report as well as

the aforesaid representation made by the Applicant, dismissed him from service, vide order dated 11.8.2009. After the applicant's appeal and supplementary appeal against the disciplinary authority's order were rejected by the appellate authority, the applicant filed OA No.4079 of 2010 before the Tribunal.

13. While the matter stood thus, on the basis of the undertaking given by the respondent-KVS that all the three pending components of the subsistence allowance and any other amount admissible as per Rules shall be released to the applicant within four weeks from 21.10.2011, the Hon'ble High Court of Delhi disposed of the said Cont.CAS (C) No.99 of 2008.

14. The respondent-KVS, vide its letter dated 29.11.2011 (Annexure A/5), informed the applicant as follows:

1. That the payment of DA on Subsistence allowance for the suspension period, i.e., w.e.f. 21/9/1999 to 7/6/2007 has already been paid by this vidyalaya on 16/6/2007 and 21/6/2007 in the tune of Rs.860042/- (75% of Basic and DA admissible).
 2. That, CCA is not admissible at Udhampur station.
- | | | |
|-------------------|---|--|
| Total Payment Due | - | Rs.54170.00 |
| TDS 20% Deducted | - | Rs.10834.00 (due to non submission of PAN till date) |
| Net Paid | - | Rs.43336.00 |

Along with the said letter dated 29.11.2011 (Annexure A/5), the respondent-KVS enclosed a cheque dated 29.11.2011 for Rs.43,336/- towards the payment of HRA/CCA/DA or other allowances admissible during the suspension period, i.e., w.e.f. 21/9/1999 to 7/6/2007.

15. Thereafter, the applicant filed CM No. 1705 of 2012 in the disposed of Cont. CAS (C) No. 99 of 2008 (ibid) alleging non-compliance of the Honøble High Court's order dated 21.5.2007 (ibid). The Honøble High Court, vide its order dated 4.8.2014, observed that the very fact that substantial amount of money was paid as subsistence allowance to the applicant, that in itself shows that non-compliance of the order passed by the Court qua the payment of subsistence allowance to the petitioner cannot be termed to be willful, and that if the petitioner was still aggrieved regarding the differential amount which was payable to him on the basis of his own calculation, then he must file appropriate proceedings in a competent court to get his grievance redressed. Accordingly, the Honøble Court, vide order dated 4.8.2014, dismissed the said CM No.1705 of 2012 as withdrawn with liberty granted to the applicant to avail such appropriate remedy in law.

16. Hence, the applicant filed OA No.3469 of 2014 before this Tribunal. The Tribunal, while disposing of the said O.A., vide its order dated 8.10.2014, permitted the applicant to make an appropriate representation before the competent authority, and that on the applicant making such representation, the competent authority shall consider the same and pass appropriate speaking and reasoned orders thereon in accordance with law. In compliance with the Tribunal's order dated 8.10.2014, the applicant made representation dated 17.10.2014 (Annexure A/8), and the respondent-KVS, vide its order dated 30.11.2014/01.12.2014 (Annexure A/1), held that the applicant has already been paid the subsistence allowance

and other connected allowances, along with HRA, and there remained nothing to be paid to him, and, accordingly, rejected the applicant's representation dated 17.10.2014.

17. In the meanwhile, the Tribunal, vide its order dated 30.8.2013, allowed OA No. 4079 of 2010 (ibid) and set aside the report of the I.O. and the orders passed by the disciplinary and appellate authorities. The Tribunal also held that since the applicant had already attained the age of superannuation during the pendency of the said OA before this Tribunal, he shall be deemed to have been reinstated in service from the date he was dismissed from service and shall also be deemed to have retired from service on the due date with all terminal benefits as admissible under the rules. As far as the pay and allowances for the period between his date of dismissal from service and date of superannuation is concerned, the competent authority shall take appropriate decision in accordance with the rules.

18. Challenging the Tribunal's order dated 30.8.2013 (ibid), the respondent-KVS filed W.P. (C) No.2264 of 2014, which is still pending before the Hon'ble High Court of Delhi.

19. In the present O.A., the applicant has prayed for issuance of a direction to the respondent-KVS to pay him Rs.8,15,252/- towards HRA, CCA and other allowances to the applicant along with interest @ 12% p.a. with effect from 21.9.1999 till the date of actual payment.

20. It is contended by the applicant that he was paid subsistence allowance and HRA, etc, thereon at the rates admissible to employees posted

to Udampur during the period from 21.9.1999 to 7.6.2007, whereas he had not resided at Udampur during the said period. As per the direction received from the headquarters office of the KVS, he had reported to the Deputy Commissioner (Personnel), KVS, at headquarters office on 24.11.1997 and continued to remain in New Delhi from that date till 7.6.2007. Since he was physically present in New Delhi during the relevant period, the subsistence allowance, along with HRA, etc., as admissible to employees posted to New Delhi, should have been paid to him for the period from 21.9.1999 to 7.6.2007. According to the applicant, he was entitled to the balance amount of Rs.8,15,252/- towards subsistence allowance and HRA, etc., at the rate admissible to employees posted to New Delhi. In support of his claim that as per the direction of the headquarters office of KVS, he remained in Delhi from 24.11.1997 to 7.6.2007, the applicant has filed a copy of his representation dated 24.11.1997 and photocopies of some receipts showing some telephonic calls to have been made from telephones in New Delhi and some telephone calls to have been made by the applicant to some telephone numbers of headquarters office of KVS on 21.11.1997.

21. On the other hand, the respondent-KVS has refuted the above statement made by the applicant. It is contended by the respondent-KVS that no direction was ever issued by the headquarters office of KVS to the applicant over telephone. The documents furnished by the applicant in support of his claim to have been directed by the headquarters office of KVS to report to it are not acceptable. He has not produced any documentary

evidence in support of the said claim. The applicant might have resided/stayed in Delhi for his own cause, but this does not make him eligible for HRA, etc., at Delhi station rate.

22. I have carefully gone through the representation dated 24.11.1997 which is claimed to have been made by the applicant to the Deputy Commissioner (Pers.), KVS, New Delhi, and the copies of the receipts showing telephone calls purportedly received and/or made by the applicant (Annexure A/10 collectively). In the representation dated 24.11.1997 (ibid) the applicant has, inter alia, stated that he contacted on phone the Commissioner's office at KVS (HQ), New Delhi, and that PA to Commissioner talked to and advised him to report to the Dy. Commissioner (Pers.) personally. In the said representation, he also stated to have reported for duty at the KVS (HQ) in the afternoon of 24.11.1997. Save and except the copies of the said representation dated 24.11.1997 and receipts showing calls to have been received and/or made by the applicant on 21.11.1997, the applicant has not filed any contemporaneous document in support of his claim that as per the telephonic direction issued by the headquarters office of KVS, he reported for duty at the KVS (HQ), New Delhi on 24.11.1997 and continued to remain in Delhi till 20.9.1999. If at all any telephonic direction was received by the applicant to report for duty at the KVS (HQ) and he reported for duty at the KVS (HQ) on 24.11.1997 and made a representation to the Dy. Commissioner (Pers.), KVS (HQ), the consequential order ought to have been issued by the competent authority of KVS, Headquarters office,

at New Delhi, allowing the applicant to report for duty at the KVS(HQ), New Delhi. If at all no order permitting him to discharge his duty at KVS (HQ), New Delhi, was issued by the competent authority, the applicant ought to have made further representation requesting the competent authority to issue such order. The applicant has not produced before this Tribunal any document that there was any post of PGT (Phy.) available at the KVS (HQ), New Delhi. It is inconceivable that any post of PGT (Phy.) was available at the KVS (HQ), New Delhi. As regards the copies of receipts showing telephone calls made and/or received by the applicant, it is found that the applicant himself admitted in his purported representation dated 24.11.1997 that he contacted on phone the Commissioner's office at KVS (HQ), New Delhi. Thus, solely on the basis of the purported representation dated 24.11.1997 and receipts showing telephonic calls, it cannot be said that there was a telephonic direction issued by the competent authority of KVS (HQ) to the applicant to report for duty at the KVS(HQ), New Delhi, on 24.11.1997, or that the applicant ever reported for duty to the Dy. Commissioner (Pers.), KVS (HQ), New Delhi, on 24.11.1997 and thereafter continued to discharge any duty at KVS (HQ), New Delhi, till 20.9.1999 when he was removed from service on conclusion of the departmental proceeding initiated against him. The applicant having failed to substantiate his claim that he reported for duty and/or discharged duty at KVS (HQ), New Delhi, till 20.9.1999, his claim for payment of HRA, etc. at Delhi rates has rightly been rejected by the respondent-KVS.

23. In **Bagh Daman Singh v. Union of India and others**, 2012(2) SLJ 392, the petitioner was permanently attached and posted to the Directorate, EDP Cell, Delhi, in June 2000, and under orders passed by the competent authority, the petitioner continued to remain in Delhi till 24.9.2007, when formal orders relieving him from Delhi were issued by the respondents. Therefore, the Honøble High Court of Delhi set aside the order issued by the respondents to the extent it denied HRA, TPT and other allowances at Delhi rate and directed the respondents to consider his representation in accordance with the principle laid down in the decisions referred to in the judgment that HRA and TPT and other allowances are payable to the Government servant applicable at the rate where the Government servant is physically present. But in the case at hand, it is found that there was no order issued by the respondent-KVS posting the applicant to KVS (HQ), New Delhi, on 24.11.1997 and allowing him to discharge his duties as PGT (Phy.) at KVS (HQ), New Delhi, till 20.9.1999 when he was removed from service. Therefore, the decision in **Bagh Daman Singh**(supra), relied on by the applicant, does not come to his aid.

24. As regards Children Education Allowance (CEA), the applicant has not produced any material before this Tribunal that an employee is entitled to be paid CEA along with his pay or that an employee, who is dismissed/removed/compulsorily retired from service and is reinstated in service on the basis of orders passed by competent authority/Court/Tribunal and he is deemed to be placed under suspension from the date of his

dismissal/removal/compulsory retirement from service till the date of his reinstatement, is entitled to CEA along with subsistence allowance for the said period of suspension, without any claim being made by such employee for reimbursement of CEA. It is not the case of the applicant that he submitted his claim for reimbursement of CEA for the period from 21.9.1999 to 7.6.2007, but the same was not paid to him. Therefore, no fault can be found with the respondent-KVS for not paying him CEA during the period in question.

25. So far as the applicant's grievance with regard to deduction made by the respondent-KVS from the dues payable to the applicant for the period from 21.9.1999 to 7.6.2007 is concerned, I do not find any substance therein. Income tax is recoverable from subsistence allowance because under the Income Tax Act "subsistence allowance" and "DA" thereon are taxable under the head "salary". It transpires from the records that the drawing & disbursing officer, who deducted income tax from the dues of the applicant, has issued Form 16 Certificate to the applicant. If at all the amount of income-tax deducted by the said drawing & disbursing officer is not reflected in the 26AS, the applicant has to pursue the matter with the Income Tax Department, and he cannot be allowed to raise a grievance on that score in a proceeding before the Tribunal.

26. From a perusal of materials available on record, it is found that in compliance with the orders passed by the Hon'ble High Court, referred to above, the respondent-KVS has already paid subsistence allowance and

other allowances to the applicant. Thus, there is no infirmity in the order dated 30.11.2014/01.12.2014 (Annexure A/1) issued by the respondent-KVS rejecting the applicant's representation dated 17.10.2014 (ibid).

27. In the light of above discussions, I have no hesitation in holding that the applicant has not been able to make out a case for the reliefs claimed by him. The O.A. being devoid of merit is liable to be dismissed.

28. Resultantly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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