

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.4459 OF 2014

New Delhi, this the 15th day of September, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Nathu Singh,
s/o late Sh.Ash Ram,
aged about 66 years,
Retired Principal KVS, Muzaffarnagar,
Resident of H.No. 470, Ramupuri,
Near Bharat Milap Chowk,
Distt. Muzaffarnagar 251001,
Uttar Pradesh

í í .. Applicant

(By Advocate: Mr.M.S.Ramalingam and Mr.C.Bheemanna)

Vs.

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

2. Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Dehradun Region,
Salawala, Hathibarkala,
Dehradun, Uttarakhand

í í í í í Respondents

(By Advocate: Mr.S.Rajappa)

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ORDER

Brief facts of the case of the applicant are as follows:

A. The applicant is a retired Principal of Kendriya Vidyalaya Sangathan (hereinafter referred to as -KVSØ). He joined as a direct recruit

Principal Grade I on 1.1.1990. He served as Principal in various Kendriya Vidyalayas. During the last leg of his service, he was posted as Principal, Kendriya Vidyalaya (hereinafter referred to as KV), Muzaffarnagar, in July 2004. Barely two months before his retirement, he was placed under suspension, vide KVS office order dated 30.5.2008, by respondent no.1, stating that disciplinary action was contemplated against him. Soon thereafter, he superannuated from service on 31.7.2008. After obtaining sanction under sub-clause (i) of clause (b) of sub-rule (2) of Rule 9 of the CCS (Pension) Rules, 1972, respondent no.1 issued Memo dated 14.5.2010 proposing to hold an inquiry against him in accordance with the procedures laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965. The statements of articles of charge, and of imputations of misconduct in support of each article of charge, and lists of documents and of witnesses were enclosed with the said Memo dated 14.5.2010.

B. The Articles of charge against the applicant were as follows:

Article I – He while functioning at KV Muzaffarnagar during the year 2006, 2007 and 2008 transferred a portion of the KVS land measuring about 2300 Sq.Mts. on yearly lease basis to Sh.Dharamvir Singh for the purpose of private business through Nursery development at different rates for which no provision exists in the KVS. Sh. Nathu Singh entered into a contract with the said party Sh.Dharamvir Singh without taking the approval of the KVS. Not only this but he did not even bother to intimate the same to the Regional Office deliberately with mala fide intentions for his gainful purpose.

He vide letter No.F VMS/KVN/2005-06 dated 27.12.2005 got an approval of the VMC to give a portion of KV land for one year contract to any firm/person for growing flowers. Accordingly a letter No.F.Q.VVN.KVN/2005-06 dated

27.12.2005 was written to the Editor of local Daily Newspaper "Muzaffarnagar Bulletin" by Shri Nathu Singh notifying the same without specifying clearly calling the quotations or tenders.

Again in the Audit Report for the year Jan. 2007 to Feb.2008 conducted from 15.3.2008 to 18.3.2008 it was pointed out that the follow up be done to obtain the formal administrative orders from Regional Office in relation to providing piece of land to Shri Dharamveer Singh, i.e., M/s Uttam Nursery for the purpose of Nursery @ Rs.600/- p.m. (60.50 X 30 =2300 sq.mts. Approx.)

He intentionally offered and leased out the portion of KVS Land (KV Muzaffarnagar) measuring about 2300 Sq.Mts. to a particular person of his choice illegally for which there is no provision in the KVS. Shri Nathu Singh repeatedly for three consecutive years 2006, 2007 and 2008 entered into an agreement with Shri Dharmvir Singh misusing his powers and signing contracts for which he is not competent at all. He has not only kept the KVS authorities in dark about the signing of the agreements with a private person for leasing out a portion of the Vidyalaya land but also misled the Chairman, VMC, Muzaffarnagar for getting approval for the said act. His intention is clearly reflected from the process he has adopted in involving the Vidyalaya teachers and members of the VMC for his gainful purpose. It has been observed that Shri Nathu Singh intentionally avoided to put up the proposal for the year 2008 to the present Chairman, VMC who is the DM of Muzaffarnagar with the fear that his illegal actions of leasing out a Govt. land to a private person would be exposed.

He failed to seek any clarification from the AC KVS RO Dehradun on the said matter but made direct correspondence with the KVS (Hqrs.) for regularizing the provisions vide which he had leased out the land knowing very well that such provisions do not exist in KVS.

The mala fide intention of Sh. Nathu Singh is also clearly reflected from the fact that he has not bothered to take note of the audit objections raised by the Internal Audit Party of Regional Office, Dehradun year after year.

Article II – He while functioning at KV Muzaffarnagar during the year 2005, 2006, 2007 and 2008 rented out the Vidyalaya rooms to Mahila Samkhyia Muzaffarnagar, a private organization for conducting various activities without taking the approval of the KVS. Not only this but he did not even bother to intimate the same to the Regional Office deliberately with mala fide intentions for his gainful purpose.

He vide his letter F.VMC/KVM/2005-06/1656 dated 14.11.2005 and letter No.F.VMC/KVM/06-07 dated 26.12.2006 recommended the proposal of Mahila Samkhyia, Muzaffarnagar, to the Chairman, VMC, KV Muzaffarnagar stating that Mahila Samakhyia, U.P. is under the Min. of HRD, Deptt. of Education, Govt. of India, N.Delhi and is organizing some activities towards the welfare of the women.

He intentionally put up a wrong proposal projecting a Pvt. Organization as a functionary of M/HRD, G.O.I. for getting the approval from the Chairman VMC KV Muzaffarnagar for renting out the Vidyalaya rooms even during working days.

As per CS 12 in Misc.Receipt Book 8 w.e.f. 15.4.2004, 16.10.2006 and Receipt Book No.3 w.e.f. 2.11.2006 to 21.5.2008 the rooms have been rented out to Mahila Samkhyia, Muzaffarnagar.

The rooms were provided to Mahila Samkhyia, Muzaffarnagar from time to time during the year 2005 to 2008 in violation of Accounts Code Article 72A (XII).

Article III - He while functioning at KV, Muzaffarnagar during the year 2007, an advertisement was notified in the Muzaffarnagar Bulletin for filling up the future vacancies for the session 2007-08 on part time basis and conducted the interviews for different categories of teachers vide letter F.Appoint-Trs/KVM/07-08/495 dated 07-06-2008. The interviews were conducted and teachers were selected.

A complaint was received from Sh.Bhoopal Singh, Additional Commissioner, Income Tax, Range I, Muzaffarnagar to refer to the difference in the signatures of the candidates on the attendance sheet of the application form in r/o Ms.Alka Rani, M/s Nalini Sharma & Ms.Geeta Verma.

On going through the documents and as per approved list of the selected candidates of the interviews for Contractual Part Time teachers held on 24.4.2007 Ms.Geeta Verma existing at Serial No.4 is selected and approved whereas the offer of Appointment letter No.Cont.APPT/KVM/2007-08 dated 3-06-2007 shows that Ms.Geeta Baliyan has been appointed on contractual basis but the name of Ms.Geeta Baliyan does not figure in the list of candidates appearing for interview on 24.04.2007 and 26.6.2007. Also the signatures of the candidate in her acceptance letter, agreement letter (Annexure B Item 6(C-3) L.No.Cont.appt./KVM/2007-08 dated 30.6.2007 attendance sheet with Annexure C-I are different from that of the application form Annexure C-2 Acceptance letter 2.7.2008.

As per approved list dated 24.4.2007 of selected candidates for the post of Primary Teachers candidate at Serial No.6 namely Ms.Neeru Sharma who stands first in the panel of selected candidates, Ms.Nalini Sharma at No.2 and Ms.Alka Rani at No.3 letter No.Cont. appt./KVM/2007-08 dated 30.6.2007 Acceptance Dated 30.6.2007. However, the offer of appointment and the agreement for contractual appointment has been made with Ms.Neeru Sharma who was figuring first in the panel and Ms.Alka Rani who is third in the selected panel. Letter No.Cont.appt./KVM/2007-08 dated 30.6.2007 and Acceptance letter dated 2.7.2008 of Neeru Sharma. The offer of appointment to Ms.Nalini Sharma who is second in the selected panel has been ignored.

Sh.Nathu Singh while exercising his duty as Principal and conducting and giving appointment deliberately issued offer of appointment to Ms.Alka Rani by ignoring the right of appointment of Ms.Nalini Sharma

C. On denial of the charges by the applicant, Inquiring Authority and Presenting Officer were appointed for conducting the inquiry. Upon conclusion of the inquiry, the disciplinary authority passed order dated 30.9.2013 imposing on applicant the penalty of 20% (twenty per cent) cut in pension permanently.

D. The applicant filed OA No.2741 of 2014 challenging the penalty order dated 30.9.2013. The Tribunal, by its order dated 25.8.2015, quashed the said order of penalty, and remitted the matter back to the disciplinary authority to pass fresh order. It was also directed by the Tribunal that restoration of pension of the applicant would await and abide by the outcome of the fresh speaking order to be passed by the disciplinary authority.

E. Throughout the pendency of the post retirement disciplinary proceedings, the respondents withheld the amount of Leave Encashment payable to the applicant. The respondents, vide office order dated 24.2.2014, sanctioned payment of Rs.4,31,980/- to the applicant towards leave encashment, and the cheque for the said amount was received by the applicant on 19.3.2014.

F. The applicant, vide his representation dated 20.3.2014, requested the respondents to pay him interest for the period of delay in disbursement of leave encashment. There being no response, the applicant filed the present O.A. on 12.12.2014 seeking the following reliefs:

- õ(i) Direct the respondents to submit all the records of the case.
- (ii) Hold and declare that the Applicant was entitled for payment of interest on delayed disbursement of Leave Encashment.
- (iii) Direct the respondents to pay interest at the rate of 18% p.a. or at such other appropriate rate, on the delayed payment of Leave Encashment for the period from 01st August 2008 to 18th March 2014.
- (iv) Considering the fact that the applicant has been forced to seek the indulgence of this Honøble Tribunal for availing

his legitimate entitlements, award the cost of the litigation.

- (v) Grant any other relief which the Honøble Tribunal may deem appropriate.ö

2. In the above context, the applicant has contended that when Rule 39 of the CCS (Leave) Rules, 1972 mandates the competent authority to, *suo motu*, issue an order granting cash equivalent of leave salary at the credit of the Government on the date of his/her retirement on attaining the normal age prescribed for retirement, and when no order was passed expressing the satisfaction of the competent authority to the effect that there was a possibility of certain amount of money becoming recoverable from the applicant on conclusion of the disciplinary proceedings initiated against him, the withholding of his leave encashment amount from the date of his retirement till 18.3.2014, i.e., the date preceding the date of payment of the leave encashment amount, is bad and illegal and, therefore, the respondents are liable to pay interest @ 18% per annum on the leave encashment amount for the aforesaid period. The applicant has also contended that as none of the charges levelled against him pertained to causing loss to the State/KVS, there was no likelihood of any recovery from the dues payable to him, and, therefore, the respondents acted illegally and arbitrarily in withholding payment of his leave encashment from the date of retirement till 18.3.2014, i.e., the date preceding the date of payment of the leave encashment. In support of his contentions, the applicant has also referred to the circular No.C-14010/2/2010-Ad.V, dated 18.1.2011, issued by the Central Board of Excise & Customs to all Director Generals, Chief Commissioners of

Customs of Central Excise & Service Tax Zones, Narcotics Commissioner, and Directorate of Publicity & Public Relations, and has invited my attention to paragraph 3 of the said circular, which reads thus:

õ3. It is clear from the provisions of Rule 39(3) of CCS (Leave) Rules, 1972, as further clarified by DoPT, that leave encashment should not be withheld in respect of a retiring employee because of pendency of a departmental proceeding etc. as a matter of course. The charges against the officer should be carefully considered before deciding whether withholding of the amount of leave encashment due to the employee is necessary keeping in view the nature of charges against the individual. Such charges should refer to or imply a specific loss to the public money because of embezzlement or other acts of misconduct of the officer. Further, where it is proposed to withhold the leave encashment at the time of retirement till the pending proceedings are finalized, the amount of leave encashment to be withheld should not exceed the amount of possible recoveries from the charged retiring officer on finalization of the proceedings.ö

3. In their counter reply, the respondents have stated, inter alia, that the retiral benefits of the applicant were withheld due to ongoing disciplinary proceedings against him, and after finalization of the disciplinary proceedings on 30.9.2013, all his retiral benefits were released to him on 27.12.2013, i.e., within three months of finalization of the disciplinary proceedings as per the CCS (Pension) Rules, 1972 and there is no delay at all. Therefore, the question of payment of interest on the leave encashment does not arise, and the O.A. is liable to be dismissed.

4. The applicant has filed a rejoinder reply wherein he has reiterated more or less the same plea as in his O.A. Along with the rejoinder reply, the applicant has filed a copy of the order dated 25.8.2015 passed by

the Tribunal in OA No.2741 of 2014, which has already been referred to in the preceding paragraph of this order.

5. I have carefully perused the records, and have heard Shri M.S.Ramalingam, the learned counsel appearing for the applicant, and Shri S.Rajappa, the learned counsel appearing for the respondents.

6. In support of the case of the applicant, Shri M.S.Ramalingam, the learned counsel appearing for the applicant, placed reliance on the decisions of the Honøble High Court of Delhi in **Government of NCT of Delhi Vs. S.K.Srivastava**, W.P. (C) No. 1186 of 2012, decided on 29.2.2012; **Delhi Police Vs. Balwant Singh**, W.P. (C) No. 1227 of 2012, decided on 13.3.2012; and **Harjinder Singh Bhatia Vs. Government of NCT of Delhi and another**, W.P. (C) No.3660 of 2012, decided on 1.5.2013.

6.1 In **Government of NCT of Delhi Vs. S.K.Srivastava** (supra), the Honøble High Court of Delhi has held that interest would be payable on delayed payment of the leave encashment amount where the delay is on account of no fault on the part of the employee.

6.2 In **Delhi Police Vs. Balwant Singh** (supra), the Honøble High Court of Delhi has upheld the Tribunal's decision directing the petitioner to pay to the respondent interest at the rate of 9% per annum on delayed payment of leave encashment.

6.3 In **Harjinder Singh Bhatia Vs. Government of NCT of Delhi and Another** (supra), the gratuity and leave encashment of the petitioner

were withheld by the respondent on account of pendency of departmental proceedings against the petitioner at the time of his retirement. In the departmental proceedings, the petitioner was exonerated of the charges. Though in terms of the Government of India instruction dated 10.1.1983 the petitioner was entitled to be paid interest on the gratuity, yet there is no rule or any Government of India instruction entitling the petitioner to interest to be paid on belated encashment of the leave. The Honøble High Court held that the equitable principle contained in the Government of India instruction dated 10.1.1983, *ibid*, pertaining to interest on belated payment of gratuity to be paid to a Government servant upon being exonerated could be extended to payment of interest when leave is not encashed due to same reason, i.e., the date when the Government servant superannuated from service he was facing a departmental inquiry. Accordingly, the Honøble Court directed the respondents to pay interest to the petitioner both on gratuity and leave encashment at such rate as was prescribed from time to time in accordance with the instructions issued by the Government of India relating to gratuity.

7. I have carefully considered the facts and circumstances of the case, and the rival contentions of the parties.

8. Rule 39(3) of the CCS (Leave) Rules, 1972 reads thus:

õ(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against

him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.ö

Considering the nature of accusations levelled against the applicant in the disciplinary proceedings, it could safely be concluded that there was possibility of some money becoming recoverable from the applicant on conclusion of the said disciplinary proceedings. Therefore, the provisions contained in Rule 39(3) of the CCS (Leave) Rules, 1972 were clearly attracted to the case of the applicant, and the authority competent to grant cash equivalent to earned leave in the case of the applicant could withhold the leave encashment payable to the applicant under the said provisions because of the disciplinary proceedings instituted and pending against him at the time of retirement. It is not stipulated in Rule 39(3) of the CCS (Leave) Rules, 1972 that the competent authority has to withhold the leave encashment only after passing an order to that effect. On the facts and in the circumstances of the present case, it has to be inferred that as the competent authority was of the view that there was a possibility of some money becoming recoverable from the applicant on conclusion of the disciplinary proceedings initiated against him, the leave encashment of the applicant was withheld by the competent authority until conclusion of the said disciplinary proceedings. Although the competent authority did not pass an order, which is not explicitly prescribed in Rule 39(3) of the CCS (Leave) Rules, 1972, yet, in my considered view, the withholding of leave encashment of the applicant, on the facts and in the circumstances of the present case, cannot

be said to be vitiated because of absence of an order being passed by the competent authority to that effect.

9. Now it is to be seen as to whether there was any delay in payment of the leave encashment to the applicant. Admittedly, in the disciplinary proceedings, final order was passed by the disciplinary authority on 30.9.2013, and the leave encashment amount was paid to the applicant on 19.3.2014. It is, thus, clear that the leave encashment was paid to the applicant after five months and eighteen days from the date of passing of the final order in the disciplinary proceedings. The respondents have not explained as to why they took five months and eighteen days for making payment of the leave encashment to the applicant. However, considering the fact that some time might have been taken by the respondent-Department to sanction and disburse the leave encashment amount to the applicant, I hold and declare that the applicant is entitled to be paid interest @ GPF rate on the leave encashment amount for the period of delay of five months.

10. Accordingly, the O.A. is partly allowed. The respondents are directed to pay interest to the applicant at GPF rate on the leave encashment amount for the period of delay of five months. The respondents shall comply with the direction contained in this order within a period of ninety days from the date of receipt of copy of this order. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

