

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3920/2014
MA 1419/2016
With
OA 4029/2014

Reserved on: 3.12.2016
Pronounced on: 9.12.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Raj Kumar Anand, Age : 44 year
S/o Shri R.L. Anand
R/o 8/399, Sector-III, Rajinder Nagar,
Sahibabad, District – Ghaziabad (U.P.)
Pin Code – 201005
Presently working as TGT (Social Science)
GBSSS, Mandoli,
Delhi-110093

...Applicant

(Appeared in person)

Versus

1. Chief Secretary
Govt. of NCT of Delhi
New Secretariat, I.P. Estate
New Delhi
2. Director
Directorate of Education
Govt. of NCT of Delhi
Old Sectt., Delhi-54
3. Deputy Director of Education
Directorate of Education
Distt. North-East
B-Block, Yamuna Vihar, Delhi

...Respondents

(Through Shri Vijay Pandita, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

OA 3920/2014 and OA 4029/2014 are disposed of by this common order as they relate to the same applicant and involve the same question of law.

2. In OA 3920/2014, the applicant has challenged memorandum dated 21.02.2012 issued to the applicant on the ground that the same had been issued by the Deputy Director of Education, who is not the competent authority. Specific prayers made are as follows:

- a) This Tribunal is pleased to call for record and pass order in the interest of justice.
- b) To declare the Memorandum No.F.DE.52(75)/ DDE/ NE/ VIG/2012/731 dated 21.02.2012 **ANNEXURE – 1** null & void due to same is issued by the incompetent authority.
- c) To quash and set aside the Memorandum No. F.DE.52(75)/ DDE/ NE/ VIG/2012/731 dated 21.02.2012 **ANNEXURE – 1** and subsequent departmental proceeding initiated against the applicant.
- d) Cost of O.A. to be saddled on the respondents.

3. In OA 4029/2014, the applicant has challenged suspension order dated 9.12.2011 on the same ground that the order has

been issued by Director of Education, who is not the competent authority. In this OA, he has also raised additional prayers, which are as follows:

- b) To declare that the period spent by the applicant on suspension (9.11.2011 to 29.08.2012) should be treated as duty for all purposes in terms of F.R. 54-B.
- c) To direct the respondents to pay the applicant full salary for the period spent by the applicant on suspension (09.11.2011 to 29.08.2012) within (4) four week time.
- d) To direct the respondents to pay the applicant interest @ 10% per annum compound monthly on arrear of pay that is due to the applicant from the date the amount due.
- e) To direct the 1st respondent to order an inquiry into the conduct of 2nd respondent who has been legally misusing his position and conservations their power to harm the applicant.

4. The contention of the applicant is that the applicant is a Trained Graduate Teacher (TGT) drawing the Grade Pay of Rs.4600/- in Pay Band of Rs.9300-34800 and, therefore, according to Department of Personnel and Training (DoP&T) order dated 9.04.2009 (Annexure XX), his post is classified as Group 'B'.

5. It is further contended that as per notification dated 3.08.1976 by the Services Department of Government of National Capital Territory of Delhi (GNCTD) (Annexure XXI), for all Class II posts included in the Delhi Administration Ministerial/Executive Service, the Chief Secretary is the appointing authority and also the disciplinary authority, who is empowered to impose penalty and the appellate authority is the Administrator. It is contended that erstwhile Class-II is now called Group 'B' and, therefore, as per 1976 notification, the Chief Secretary is the competent authority to issue Show Cause Notice (SCN)/Charge Memorandum/Suspension Order.

6. The short case of the applicant is that since he is a Group 'B' employee as per classification of Government of India and the Chief Secretary is the appointing authority and the disciplinary authority for Class-II (Group 'B') employees according to 1976 Notification, both the impugned orders dated 21.02.2012 in OA 3920/2014 and dated 9.12.2011 in OA 4029/2014 should be set aside as they have been passed by authorities, who are not competent to pass such orders.

7. Learned counsel for the respondents relied on the judgment of the Hon'ble Supreme Court in **Union of India and others Vs. Upendra Singh**, (1994) 3 SCC 357, emphasizing the fact that the Tribunal has no jurisdiction to go into correctness of charges or truth of the charges and the function of the Tribunal is one of judicial review, the parameters of which are repeatedly laid down by the Hon'ble Supreme Court.

8. In their written arguments, the respondents have stated that although as per the Govt. of India, DoP&T OM No.11012/7/2008-Estt.(A) dated 17.04.2009, the posts of teachers i.e. (Primary Teachers, Trained Graduate Teachers and Post Graduate Teachers) are classified in the category of Class 'B' posts as per Grade Pays of their respective posts but it is pertinent to mention here that the aforementioned posts of teachers are non-gazetted, non ministerial, Grade III posts, which are distinguishable from Group 'B' gazette officers, ministerial staff posts held by the persons in the Directorate of Education, Govt. of NCT of Delhi for whom the appointing authority is the Chief Secretary of Delhi. The persons appointed in Group 'B' (gazetted), ministerial staff posts such as Office Superintendent, are empowered to control and are conferred supervisory authority over other ministerial staff Group 'C' posts in the concerned office where they are posted. Therefore, the position of the aforesaid teaching posts has not changed even after the aforesaid DoP&T order dated 17.04.2009 and the schedule mentioned above is applicable to these posts of teachers.

9. The respondents have also filed notification dated 11.12.1991, which is the Recruitment Rules (RRs) of TGT, where they have been shown as Group 'C' (Non-Gazetted, Non Ministerial). Similarly, notification dated 30.12.1992 has been filed, which is RRs for TGT (MIL), where they have again been shown as Group 'C' (Non-Gazetted, Non-Ministerial).

10. As regards the issue regarding competence of Deputy Director of Education to initiate the minor penalty proceedings against the applicant and to impose the penalty finally on him is concerned, it is submitted by the respondents that the Deputy Director of Education, Directorate of Education, Govt. of NCT of Delhi of the concerned district has been conferred with the power to impose the minor penalties in case of misconduct, on the delinquent charge officer holding the post of TGT like in the present case of applicant and the concerned Deputy Director of Education, in accordance with rule 13 (2) of CCS (CCA) Rules, 1965 and by virtue of the order of Govt. of India, Deptt. of Telecom, letter no.68/7/86-Vig.II dated 28.07.1987, and may also institute disciplinary proceedings against the applicant for the imposition of any of the penalties specified in clauses V to IX of Rule 11 of the said CCS (CCA) Rules.

11. Learned counsel for the respondents also relied on the following judgments to assert that it is not necessary that the disciplinary authority alone need be the authority to initiate the disciplinary proceeding against an employee:

- (i) **State of Madhya Pradesh Vs. Shardul Singh,**
(1970) 1 SCC 108
- (ii) **Transport Commissioner, Madras Vs. A. Radha Krishna Moorthy,** (1995) 1 SCC 332
- (iii) **Inspector General of Police and another Vs. Thavasiappan,** 1996 (2) SLR 47

(iv) **Director General, ESI and another Vs. T.**

Abdul Razak, (1996) 4 SCC 78

12. So far as the issue regarding competence of Director of Education, Directorate of Education, Govt. of NCT of Delhi, to make an order of suspension for the applicant, it is submitted that there is no infirmity in the order of suspension made against the applicant by the appointing authority i.e. Director of Education in accordance with the provisions of Rule 10 (1) of CCS (CCA) Rules, 1965, which reads as follows:

“the appointing authority or any authority to which is it subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order may place a government servant under suspension.”

13. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

14. It is seen that the RRs signify the applicant as TGT, Group 'C' and, therefore, the Director/ Deputy Director of Education is competent to put him under suspension or to start departmental proceedings. Therefore, the question of jurisdiction raised by the applicant is answered in the 'negative' and the impugned orders do not suffer from any legal infirmity. OA 3920/2014 is, therefore, dismissed and prayer for declaring suspension order dated 9.12.2011 as void ab initio in OA 4029/2014 is also

disallowed. As regards prayer (b) to (e) in 4029/2014, they will only arise after conclusion of disciplinary proceedings and, at this stage, these are premature. OA 4029/2014, therefore, also stands dismissed. There shall be no order as to costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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