

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1094/2014

New Delhi, this the 25th day of February, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Sh. Dharampal Singh Yadav,
S/o Late Sh. Ram Lal Singh Yadav,
Aged about 63 years,
R/o 197, Kot Gaon, Ghaziabad, UP
And retired as Principal, from East Delhi Municipal Corporation.

...Applicant

(By Advocate: Mr. S. S. Tiwari)

Versus

1. Commissioner, East Delhi Municipal Corporation,
419, Udyog Sadan,
Patparganj Industrial Area,
Delhi.
2. Director Education,
East Delhi Municipal Corporation,
419, Udyog Sadan,
Patparganj Industrial Area, Delhi.

...Respondents

(By Advocate: Ms. Sangita Rai)

ORDER (ORAL)

Mohd. Jamshed, Member (A):-

The OA has been filed by the applicant seeking following reliefs:-

- (i) *To set aside and quash the impugned order dated 02.04.2013 by which 5% cut in pension has been awarded for one year.*
- (ii) *To direct the respondents to restore the pension as it would be before the 5% cut in pension.*
- (iii) *Grant all the consequential benefits flowing from relief (a) & (b).*

The reliefs sought are primarily for setting aside and quashing the impugned order of the Disciplinary Authority for 5% cut in pension, for a period of one year imposed on the applicant and for restoring his pension.

2. The applicant has been working as Teacher in MCD (Education Deptt.) since 22.08.1974 and promoted as Principal w.e.f. 31.05.2004. The applicant was suspended pending disciplinary enquiry vide order dated 05.08.2009. This suspension was revoked by the respondents w.e.f. 07.04.2010. A charge sheet was issued with three major charges as under:-

- (a) *He used to make discrimination with the SC teachers of his school.*
- (b) *He failed to exercise proper control and supervision over Assistant Teacher, Sh. Mukesh Kumar, who on 23.07.2009 misbehaved with Kumari Manju, Assistant Teacher, who belongs to Scheduled Caste category and made discrimination with the teachers and students on the basis of caste.*
- (c) *He also protected Shri Mukesh Kumar, Assistant Teacher for his aforesaid misdeed and did not take any action in this regard.*

3. The inquiry officer submitted inquiry report on 10.02.2012 in which charges No. 1 and 3 were held not proved against the applicant. However, charge No. 2, i.e., lack of supervision was held proved against the applicant.

4. The applicant retired from service on superannuation on 31.03.2012. Vide letter dated 23.07.2012, he was given a copy of the enquiry report. The Disciplinary Authority vide letter dated 02.04.2017 (impugned order) imposed upon him the penalty of 5% cut in pension for a period of one year.

5. The applicant submitted a representation dated 04.12.2012 to the respondents stating that he has been wrongly charged as even in the enquiry report, no charges have been substantiated. It is also stated that the punishment imposed by the respondents is in violation of the extant rules and that as per CCS Rules, 1972, the UPSC was required to be consulted, before imposing any penalty, after retirement, and that the same has not been done in the applicant's case. He further prayed that, he should be exonerated of all the charges and the punishment of 5% cut in pension, imposed upon him, be set aside.

6. In the OA, the applicant has also stated that at one stage he had submitted a representation to the respondents dated 14.12.2012, through which he had withdrawn his earlier representation dated 04.12.2012, communicating to the

respondents, that he agrees with the action taken against him and that he was re-employed as per the extant policy for a period of two years which ended on 08.03.2014.

7. Respondents filed a counter affidavit opposing the OA. They submitted that despite having withdrawn his representation, the applicant has filed this OA once again, and that as per his own admission, the applicant had accepted the punishment and did not file any appeal against the order passed by Disciplinary Authority. The respondents have further confirmed that EDMC is competent Disciplinary Authority in respect of its retired officials and is within its rights to withhold the pension of the applicant in cases where departmental proceedings have been concluded.

8. In the inquiry report, it has been clearly established that one, Mr. Mukesh Kumar, working as a Teacher, when the applicant was Principal, was held responsible for misbehaving with a lady Teacher and for other instances where the said Teacher has been involved in discriminating with students and teachers on caste basis.

9. The charges No. 1 and 3 were not proved by the Inquiry Officer against the applicant. Evidently, the Teacher, Shri Mukesh Kumar is held responsible for discrimination and misbehaviour as he was working under the control of the applicant. However,

charge No. 2 is proved against the applicant for lack of supervision.

10. The applicant was given all opportunities for submitting his representation. Finally, the Disciplinary Authority imposed upon him the punishment of 5% cut in pension for a period of one year through the impugned order.

11. Learned counsel for the applicant reiterated the point that for only one of the charges proved against the applicant he has been awarded the punishment of cut in pension by 5% for a period of one year which is not commensurate with alleged supervisory failure of the applicant. Learned counsel for the respondents clarified that, CCS (CCA) Rules, 1965 does not apply to Municipal Corporation as the Delhi Municipal Corporation Act has been framed by the legislature and it is a local body and therefore consultation of UPSC is not required and, moreover, DMC Services (C&A) Regulations, 1959 is applicable in this case.

12. Heard the arguments of learned counsels for the applicant and respondents and perused the records.

13. In this case, the applicant on the basis of serious complaints was placed under suspension and a charge sheet was issued against him. The charges were of serious nature and were enquired into by the Inquiry Officer. The applicant remained

suspended from 05.08.2009 to 07.04.2010 and was also transferred to another school, in the interest of administration. Opportunities were given to him to submit his representation and finally the Competent Authority imposed upon him punishment of 5% cut in pension for one year.

14. The role of the Tribunal is primarily to look into the merits of the case and intervene if any judicial review is required. In the instant case, all required rules and procedures have been followed. In such matters the law is also very settled that while exercising power of Judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/ or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity. It is also pertinent to note here that, the applicant had submitted a representation dated 04.12.2012 against the impugned order, but vide another representation dated 14.12.2012, he had withdrawn his earlier representation dated 04.12.2012 and confirmed to respondents that he is satisfied with the proposed action. This has also been accepted in the OA. It is obvious that he has filed this OA after having completed his re-engagement period. If he was genuinely aggrieved by the action of the respondents, he should not have withdrawn his representation stating that he is satisfied

with the action being taken by the respondents of imposing 5% cut in pension for a period of one year. This action on part of the applicant is contradictory to his grievance stated through this OA.

15. In view of the above mentioned, we are of the view that the present OA does not merit consideration and the same is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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