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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. ~~200~~²⁴⁶⁹/2003

New Delhi this the 18th day of May, 2004.

HON'BLE MR. ~~Shanker Raju, Member (J)~~
HON'BLE MR. ~~R.K. Upadhyaya, Member (A)~~

Smt. Santosh Verma

-Applicant

(By Advocate Shri A.K. Bhardwaj)

-Versus-

Kendriya Vidyalaya Sangathan and Ors.

... Respondents

(By Advocate Shri S. Rajappa)

1. To be referred to the Reporters or not? YES/~~NO~~ Yes

2. To be circulated to other Benches of the Tribunal? ~~NO~~ Yes

S. Raju

(Shanker Raju)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2469/2003

New Delhi this the 18th day of May, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. R.K. UPADHYAYA, MEMBER (ADMNV)

Smt. Santosh Verma,
W/o Sh. C.L. Verma,
R/o 7B, Mohini Road,
Dalanwala, Dehradun-248001.

-Applicant

(By Advocate Shri A.K. Bhardwaj)

-Versus-

Kendriya Vidyalaya Sangathan
through:

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
2. The Deputy Commissioner (Finance),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
3. The Assistant Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.

-Respondents

(By Advocate Shri S. Rajappa)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns memorandum dated 14.2.2002, initiating disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965, which are continued as a deemed proceedings after superannuation of applicant as well as order dated 8.5.2003, where the request of applicant for withdrawing the disciplinary proceedings is turned down.

2. The brief relevant factual matrix relevant for adjudication is that applicant joined as a Trained Graduate Teacher (TGT) in Kendriya Vidyalaya Sangathan (KVS). By an order dated 5.5.1994 applicant was transferred from KV-2

Ambala Cantt to KV Bandipur, Jammu & Kashmir. Applicant preferred several representations as she was not maintaining good health for leave on medical grounds on 22.11.1994. On 7.2.1995, applicant made a request giving option of various schools for the purpose of posting. On 19.5.95 the Hon'ble Minister concerned has passed an order staying the transfer. By an order dated 31.5.95 as a consequence of the above transfer of applicant was modified and applicant was transferred to Jhunjhunu (Rajasthan). During the period from 27.7.94 to 23.6.95 when applicant vacated the accommodation the aforesaid period has been stated to be unauthorised and as a result thereof the respondents proposed to impose damage charges on applicant as well as before the superannuation of applicant on 31.3.2003 the disciplinary proceedings for misconduct of unauthorised occupation in KVS accommodation were initiated for the allegations pertaining to the period 27.7.94 to 23.6.95.

3. The period of absence was later on regularised as leave of the kind due vide order dated 23.6.1999. Applicant preferred OA-2792/2002 where directions have been issued to the respondents to pass a reasoned order. Accordingly in compliance thereof an order was passed on 8.5.2003. CP-164/2003 was disposed of on 31.7.2003, giving liberty to applicant to assail the order in accordance with law. Hence the present OA.

4. Learned counsel for applicant states that applicant has made representations to respondents in pursuance of disciplinary proceedings to serve upon her copies of the documents and vide letter dated 9.7.2003 in so far as Allotment Rules are concerned, respondents have

furnished to applicant Kendriya Vidyalaya Sangathan (Allotment of Residence) Rules, 1976 (for short, Allotment Rules) being the Rules in vogue. In this conspectus it is stated that these are the only rules which are in vogue and have been applied to the case of applicant for alleging misconduct of unauthorized occupation. The learned counsel states that unauthorized occupation is not a misconduct and no disciplinary proceeding is contemplated in the rules. The only provision for taking a disciplinary proceeding is when the KVS accommodation is sub letted or shared unauthorisedly. Accordingly, it is stated that if the alleged conduct is not a misconduct holding of disciplinary proceeding is not justifiable.

5. The learned counsel further states that in so far as levy of damage charges is concerned, penal charges and the licence fee and its rates are not enumerated in the Rules. Rule XV of the Allotment Rules provides that in case of cancellation of accommodation and unauthorized occupation twice the standard licence fee to be paid without prejudice to the right of eviction from the accommodation. In this backdrop learned counsel stated that undisputedly applicant has tendered a cheque for the period of unauthorized absence of double the normal licence fee but was refused by respondents. To substantiate this, the learned counsel relies upon a decision of the Division Bench of the Principal Bench of the Tribunal in TA-17/2000, K.S. Baura v. KVS, decided on 10.11.2000 where the aforesaid anomaly has been held, while quashing the orders of recovery of damage charges.

6. Learned counsel further states by resorting to Rule 9 of the CCS (Pension) Rules, 1972 that even in a case where disciplinary proceedings are initiated during service tenure and continued against a KVS employee after superannuation the embargo of an event more than four years' old applies and the proceedings cannot be continued if the proceedings relate back to an event more than four years on the date of retirement. In this conspectus it is stated that the disciplinary proceedings were initiated on 14.2.2002 and on the date of retirement of applicant on superannuation, i.e., 31.3.2202 the allegation of unauthorized occupation relates to the period from 27.7.1994 to 23.6.1995. Accordingly, on an four years' old event no disciplinary proceedings can be continued. The learned counsel relies upon the decision of the High Court of Delhi in O.P. Gupta v. Union of India, 1981 (3) SLR 778, which has been followed by the Tribunal in OA-1065/2002 in D.N. Yohra v. Union of India, decided on 31.10.2003.

7. On the other hand, respondents' counsel Sh. S. Rajappa denies the contentions and states that the Allotment Rules of 1976 have been amended and accordingly a provision has been inserted in 1986 as to incorporate unauthorized occupation as a misconduct for which disciplinary proceedings are contemplated. According to him, the amendment has also brought damage charges in case of expiry of permissible period in case of transfer also.

8. The learned counsel further states that mere regularisation of period of absence would not confer any right upon applicant to stay in the accommodation beyond the permissible period of two months which has expired on

26.7.94 and as the vacation was ended on 23.6.1995, this interregnum should be unauthorised occupation for which damage charges are in accordance with the rules.

9. In so far as misconduct is concerned, it is stated that unauthorized occupant occupying accommodation without any authority and not following the direction of superiors to vacate the accommodation is unbecoming of a government servant, attracting Rule 3 (1) of the CCS (Conduct) Rules, 1964. According to him, unauthorised occupation of applicant has prevented another employee to be allotted the same accommodation.

10. On careful consideration of the rival contentions the following are the relevant issues for our consideration:

- i) whether the unauthorised occupation of KVS accommodation is a misconduct within the meaning of Allotment Rules, 1976?;
- ii) whether damage charges can be levied upon applicant for unauthorised occupation beyond the permissible period?; and
- iii) whether continued disciplinary proceedings after retirement can be sustained on an event more than four years' old?.

11. The learned counsel for respondents has produced before us KVS (Allotment of Residence) Rules, 1998 and stated that the old Rules of 1976 are superseded by necessary implication. On perusal of the rules we find that the rules have come into force at ones, i.e., in the year 1998, as per Rule 19, which is reproduced as under:

"Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residents remains or has remained in occupation of the

employees to whom it was allotted or of any persons claiming through him, such employee shall be liable to pay damages for use and occupation of the residences, services, furniture and garden charges etc. as may be determined by the Govt. or the Sangathan from time to time. This is without prejudice to the right of the competent authority to evict him from the residence and the disciplinary action that may be initiated against such defaulting employee."

12. If one has regard to the above, not only damages but a disciplinary action may be initiated against the defaulting employee. We have considered the above. It is trite that the statutory rules would be prospective in application unless it is provided in the rules but for its application from retrospective date. The unauthorised occupation of applicant pertained to the year 1994-95 when the old rules of 1976 were in vogue, where neither overstayal entailed any damage or misconduct to warrant any disciplinary action. Once the crucial date for ascertaining whether a particular act is misconduct or not the old rules are to be referred to, according to which a disciplinary proceeding was not provided. Stretching the application in retrospect would be against the law. The rules are prospective. Anybody who is found after cancellation of the accommodation in unauthorised occupation after promulgation of the rules is to be held liable for a disciplinary action and charge of damage. The respondents cannot wait till retirement on an inordinate delay to hold a disciplinary proceeding at the fag end of service which itself is indicative of the arbitrariness in the action. Accordingly, we hold that the rules of 1998 cannot be applied retrospectively to make applicant liable for a misconduct for an event of 1994-95 for damages and disciplinary proceeding. Moreover, the continued proceeding otherwise is not sustainable in the light of the decision of the High Court of Delhi in O.P. Gupta's case (supra).

13. As regards unauthorised occupation is concerned, we have to restrict the definition of misconduct and consequent action only on the statutory rules of KVS, i.e. Allotment Rules of 1976. The only provision for a penal action is provided under Rule xiii is for sub-letting the premises or sharing it without permission. Nowhere the rules provide misconduct on unauthorised occupation otherwise envisaging a disciplinary action. We cannot take resort to any other provision as the rules are statutory and cannot be supplanted by any other instructions. In this view of the matter having no provisions in the Rules we are constrained to hold that an unauthorised occupation beyond the permissible period is not a misconduct in so far as KVS accommodation is concerned. As regards damage charges are concerned, this Bench of the Tribunal in K.S. Baura case (supra) observed as under:

"4. We have given careful consideration to the arguments advanced on either side. It is not in controversy that the applicant is covered by the Allotment of Residence (KVS) Rules, 1976. Licence fee is defined in Rule II(f) as the sum of money payable monthly in respect of the residence allotted to an employee under the Rules and the same is liable to be recovered from the monthly pay bill every month. Under Rule VII, in case of transfer of an employee to another KVS in India the permissible period for retention of the residence is two months. Even an employee proceeding on deputation in India the period of retention of the quarter is two months. Rule XV reads as under:

"Where after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the employee to whom it was allotted or any person claiming through him/her such employee shall be liable to pay twice standard licence fee for use and occupation of the residence, at the rate as may be determined by the KVS. This is without prejudice to the right of the Principal to evict him from the residence".

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5. A casual reading of these rules makes it abundantly clear that if an allotment of a quarter was cancelled, and the employee continues to stay inn the said quarter, he is liable to pay twice 'standard licence fee' for occupation of the quarter at the rate as may be determined by the KVS. The learned counsel for the respondents, however, contends that as the standard licence fee was not defined under the Rules, the same could be looked into the instructions issued by the Government of India, vide OM dated 27.8.1987. But it pertains to the recovery of penal rent from the employees who are residing in the Government residential quarters and for the period during which they were found unauthorisedly occupied the said quarter. The learned counsel contends that though these instructions are not incorporated in the Rules framed by the KVS, whenever there is any lacuna in the Rules, it is always open to take guidance from the Government instructions. We do not agree. The applicant is governed only by the KVS Rules framed for allotment of residential quarters. Hence, the licence fee as defined under Rule XV of the KVS Rules alone is applicable. The O.M. is only applicable to the Government servants who are occupying the Government quarters. It is true that Rule XV speaks of standard licence fee but the same is not defined under the Rules and it is also not shown that the respondents had fixed any rates for the purpose of standard licence fee. In the absence of such rates, already fixed by the respondents, the definition of licence fee is applicable for the purpose of Rule XV as regards overstaying of a quarter. The applicant is therefore liable to pay twice the licence fee of Rs.142/- which was charged on him for the quarter. As the applicant only overstayed in his residence after he went on deputation, the impugned orders, directing the applicant to pay Rs.3548 per month is wholly arbitrary as not based upon the Rules and they are liable to be quashed. The OA therefore succeeds and the respondents are directed to recover the licence fee under Rule XV from 18.11.1995 to 8.6.1996 at twice the rates of licence fee. The OA is accordingly allowed with costs of Rs.5,000/-."

14. If one has regard to the above decision, to which we respectfully agree the only provision for levy of penal rent is provided under rule xv of the KVS Rules ibid, according to which on unauthorised occupation double the normal licence fee is recoverable. No damage charges can be levied. Applicant has already sent a cheque of the aforesaid amount but was refused by the respondents.

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15. As regards continuation of proceedings under Rule 9 of the CCS (Pension) Rules is concerned, if unauthorised occupation in KVS accommodation is not a misconduct there is no question of any disciplinary proceeding which is void ab initio and cannot be continued even after retirement, withholding of retiral benefits on that count cannot be justified.

16. Assuming the aforesaid is a misconduct, we find that the disciplinary proceedings were deemed continued as per Rule 9 (2)(a) of the CCS (Pension) Rules, 1972 but the sine qua non of continuation is that the disciplinary proceeding shall not be in respect of an event which took place more than four years before such institution. Though the aforesaid provision contained in Rule 2 (b) ibid is in respect of proceedings instituted post superannuation, but the ratio laid down by the Delhi High Court in O.P. Gupta's case (supra) mutatis mutandis applies to the present case, where the following observations have been made:

" 17. In other words is the deeming provision in R.9 so unbridled? Can the provision be used to keep the inquiry alive for any number of years or indefinitely? Can it be 'deemed' that even after 20 years the inquiry is still not concluded, as in the present case? Considering public interest and difficulties in Government administration, I am of the opinion that power to continue or to start a disciplinary proceeding after retirement may be necessary in certain cases. By itself the power is not arbitrary. It has a rational basis. But the power must be exercised, within a reasonable period and consistent with justice and public interest. In Mohambhai VS. Y.B. Zala 1980 (1) Ser L&R 324): Gujarat High Court held that starting of a departmental enquiry 1.1/2 years after the incident, was violative of natural justice. The court held that it was too much to expect that delinquent would be able to remember and narrate the old incident. We have here the

lapse of more than 20 years. If R.9 is to be saved from the attack of arbitrariness it must be read in a reasonable and just manner. A guideline is available in R.9(2)(b). A fresh inquiry cannot be started 'in respect of any event which took place more than 4 years before such institution'. This statutory limitation embodies sound principle of equity and justice. It also recognises the principle of finality and repose. I do not find any difference in principle from the point of view of public interest, 'in continuation of pending proceeding and starting a fresh proceeding'. I, therefore, hold that in case of an event more than four years old on the date of retirement, a department proceeding cannot be continued after retirement under R.9(2) of the Pension Rules, 1972. It is well settled that requirement of natural justice can be read in a Rule even if the Rule is silent about it, particularly, in a Rule concerning quasi-judicial proceeding. In this view of the matter I hold that the departmental proceeding, if any, pending against the petitioner after 30.3.1975 is bad in law. The same is hereby set aside".

17. If one has regard to the above, by reading requirement of natural justice in a rule when it is silent the embargo of an event more than four years old equally applies to a continued disciplinary proceedings after retirement under Rule 9 (2) of the Pension Rules, 1972.

18. On perusal of the memorandum which has been issued on 14.3.2002 the allegations pertained to the period 27.7.94 to 23.6.95 whereas applicant superannuated on 31.3.2002. From the aforesaid date the misconduct and its event is more than four years old, as such continued proceeding is not sustainable in the light of the decision of the High Court of Delhi in O.P. Gupta (supra).

19. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to forthwith release the due retirement benefits of applicant in accordance with rules and instructions on the subject, within a period of one month along with simple interest of 9% p.a.

20. In so far as damages for unauthorised occupation for the period 27.7.94 to 23.6.95 are concerned, the respondents shall charge double the licence fee and shall deduct it from the retiral benefits of applicant. The aforesaid exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.



(R.K. Upadhyaya)

Member (A)



(Shanker Raju)

Member (J)

'San.'