

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/731/2019

Date of Reserve:29.11.2019

Date of Order:03.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Binaya Kumar Dash, aged about 58 years, S/o. Late Dinabandhu Das of Village-Chhamuja, PS-Jaleswar, Dist-Balesore, presently residing at Flat No.A-103, Moti Apartment, Satyanagar, PS-Kharvela Nagar, Bhubaneswar, Dist-Khurda, - presently working as Post Graduate Teacher (Chemistry) (Group-B) in KV No.2, Bhubaneswar, Dist-Khurda, Odisha.

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
C.Padhi

-VERSUS-

Kendriya Vidyalaya Sangathan represented through:

1. Commissioner, Kendriya Vidyalaya Sangathan, institutional Area, Sahid Jeet Singh Marg, New Delhi-110 016.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar Colony, Mancheswar, Bhubaneswar-751 017, Dist-Khurda, Odisha.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar Colony, Mancheswar, Bhubaneswar-751 017, Dist-Khurda, Odisha.
4. Principal, Kendriya Vidyalaya No.1 (2nd Shift), Unit-IX, Bhubaneswar, Dist-Khurda, Odisha-751 022.

...Respondents

By the Advocate(s)-Mr.H.K.Tripathy

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, applicant, presently working as Post Graduate Teacher (Chem.) in Kendriya Vidyalaya No.2, Bhubaneswar, has sought for the following reliefs:

- i) ... to admit the Original Application, call for the records and be further pleased to hold that Annexure-A/12 (memorandum of charges) when a representation is pending for consideration is not permissible in law and hence be quashed for the ends of justice.

- ii) ...to hold that the entire inquiry right from the office order dated 01.12.2016 (Annexure-A/1) to the stage of issuance of Annexure-A/12 is illegal and void for the ends of justice.
- iii) ...to quash the Annexure-A/12 in the interest of justice.
- iv) ...to allow any other relief to the Applicant or pass any other orders/directions as deemed fit in the circumstances of the case.

2. Short facts leading to filing of this O.A. are that the applicant had earlier approached this Tribunal in O.A.No.260/137/2017 challenging the decision of respondents to conduct summary inquiry during pendency of criminal case is not permissible with prayer for consequential reliefs. This Tribunal vide order dated 06.02.2019 disposed of the said O.A. as follows:

"13. As is apparent, in pursuance of the above decision of the Hon'ble Supreme Court, the DOP&T has issued Office Memorandum No.11012/06/2007-Estt.A dated 01.08.2007 regarding holding of departmental proceedings during pendency of the criminal case and from this, it is luculent that there is no bar in simultaneous proceedings of criminal case and the disciplinary proceedings though separately, subject to fulfilment of the ingredients as quoted in (ii) and (iii) of Para-12 above. At the same time, the whole purpose of resuming departmental during pendency of criminal case cannot be brushed aside. The purpose is that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest. Viewed from this angle, order dated 23.02.2017 (A/11) passed by the Respondent No.1 in pursuance of the direction of this Tribunal in O.A.No.41 of 2017 which is impugned in this O.A. calls for no interference".

3. Thereafter, the applicant filed R.A.No.06 of 2019 seeking review of the aforesaid order and this Tribunal, vide order dated 28.03.2019 disposed of the said R.A. While the matter stood as such, the applicant submitted a representation dated 18.04.2019 (A/9) to the Commissioner, KVS, (Respondent No.1) with a request for consideration of the points, which are extracted hereunder.

- (i) No gist of charges was provided to me which was admitted by the authority in the Tribunal, but the inquiry continued. Thus, it violates the mandatory provisions of circular dated 24.01.2002. Circular enclosed as Annexure-4.
- (ii) That the summary inquiry on the alleged offence of sexual abuse under Article-81(b) of Education Code cannot be clubbed up with the charge of private tuition which is an offence under Article-59 of code of conduct required to be dealt under CCS(CCA) Rules, 1965.
- (iii) Since the summary inquiry is altogether different from the regular departmental proceeding under CCS(CCA) Rules, it becomes a complicated question of law in terms of Captn. Paul Anthony case. When no gist of charge was provided to the applicant, the Hon'ble Tribunal held that it is for the departmental authorities to take a view on the issue. Paragraph 12 and 13 of the order dated 05.02.2019 is required to be considered by the authority as desired by the Hon'ble Tribunal. Hence the present proceeding is required to be stayed till the disposal of the criminal case.

4. Grievance of the applicant is that without considering his representation as aforesaid, Respondent No.1 issued show cause notice vide Memorandum dated 22.09.2019 (A/12), the relevant part of which reads as follows:

"Accordingly, Shri B.K.Das, PGT (Chemistry) is hereby provided the following documents:

- i) Charges and facts in support of the charges (Annexure-1)
- ii) Copy of statements recorded in the preliminary inquiry & summary inquiry.
- iii) Copy of reports of the preliminary inquiry and summary inquiry.
- iv) One video clip (CD).

Mr.B.K.Das, PGT (Chemistry) KVS No.5, Bhubaneswar (formerly working in KV No.1 (2nd shift, Bhubaneswar is hereby given an opportunity to submit his representation to this show cause notice as to why his services should not be

terminated under Article 81(B) of the Education Code for Kendriya Vidyaaya. Such representation, if any, shall be submitted to the undersigned not later than 15 (fifteen) days from the date of receipt of this memorandum. If Shri B.K.Das, PGT(Chemistry) fails to submit his representation within 15 (Fifteen) days of the receipt of this memorandum, it will be presumed that he has nothing to say and orders will be passed against him ex-parte under the provisions of Article 81(B) of the Education Code for Kendriya Vidyalayas”.

5. Aggrieved with the above, the applicant has approached this Tribunal seeking for the reliefs as referred to above.

6. On being noticed, the Respondents have filed a short counter on the question of admission of this O.A.

7. Heard the learned counsels for both the sides and perused the records. We have also gone through the citations relied upon by the parties. Admittedly before considering and disposing the grievance as raised by the applicant in his representation dated 18.04.2019 (A/9), Respondent No.1 has issued the impugned show cause notice of termination vide A/12. But as a matter of fact by that notice itself the applicant has been given an opportunity to make a representation. By this, his right to defend himself is well protected and therefore, nothing prevents him now, from urging those points as had been raised in his representation dated 18.04.2014 as well as in the present O.A. before the Respondent No.1/Competent Authority for consideration in response to show cause notice vide A/12. In view of the above, this Tribunal is of the opinion that there is hardly any scope of judicial review in the instant O.A. and therefore, interference by the Tribunal at this stage would tantamount to stepping into the shoes of the authorities competent to take decision in that behalf.

8. For the reasons aforesaid, we dispose of this O.A. with direction to Respondent No.1 that if the applicant makes a reply to the Memorandum dated 22.09.2019 (A/12) within a period three weeks from the date of receipt of this order, the latter shall consider and dispose of the same by passing a reasoned and speaking order in accordance with the extant rules and instructions on the subject, within a reasonable time frame. Parties to bear their own costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

