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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1342/2001

New Delhi, this the 28th day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Shankar Prasad, Member(A)

Ajay Kumar Acharya
1/33, Refinery Nagar
Mathura .. Applicant
(Shri D.N. Sharma, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Human Resources Development
Shastry Bhavan, New Delhi
2. Commissioner
Kendriya Vidyalaya Sangathan
10, Institutional Area
Shaheed Jeet Singh Marg, New Delhi
3. Assistant Commissioner (Regional Office)
Kendriya Vidyalaya Sangathan
Sector 'J', Aliganj, Lucknow
4. Principal
Kendriya Vidyalaya
Refinery Nagar, Mathura .. Respondents

(Shri S. Rajappa, Advocate)

ORDER

Shri Shankar Prasad

The applicant, who is an ex-PGT of Kendriya Vidyalaya Sangathan (KVS, for short), has preferred this application against the order dated 15.4.2002 passed by the Commissioner, KVS dismissing his appeal against the order dated 11.4.2001 passed by Asstt. Commissioner, KVS, Regional Office, Lucknow by which the services of the applicant were terminated. Applicant had earlier filed OA 1342/2001 against the said order dated 11.4.2001 and the same was disposed of with the direction that the appeal preferred by the applicant will be disposed of within two weeks from the date of receipt of a copy of that order.

2. The applicant was appointed as a Primary teacher in KVS in the year 1981 and was substantially appointed in May, 1990. He was posted at Kendriya Vidyalaya (KV, for short), Refinery Nagar, Mathura where he had taken ill on 28.10.97 and had to seek leave on medical grounds. He submitted his leave application to the Principal of the said school. He has further stated that he was transferred from KV, Refinery Nagar, Mathura to KV, Mathura Cantt. on 27.10.1997 and was relieved of his duties w.e.f. 28.10.1997. He was never informed about rejection or otherwise of his leave application. He had received letter dated 7.12.2000 from Asstt. Commissioner, KVS, Lucknow that no application for leave etc. was received. He had been instructed by the said letter to report for duty from 25.12.2000 and that if he does not report to the office for duty from 25.12.2000 it shall be presumed that he is not interested in the work and his services shall stand terminated by 26.12.2000 and no communication in this regard will be considered. This letter also referred to a letter sent by Asstt. Commissioner, KVS, Gwalior on 11.11.1998 asking him to resume duty. The said letter was never received by him. Applicant submitted a representation in this regard and finally by order dated 11.4.2001 his services were terminated. It has been contended that the applicant is a permanent employee and accordingly entitled to protection of Article 311(2) of the Constitution. No departmental proceeding was held and the case is not covered by the exceptions. This order is essentially penal in nature.

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3. The case of the respondents, on the other hand, is that applicant was transferred from KV, Mathura Refinery to KV, Mathura Cantt vide order dated 27.10.97 and he was relieved from KVS, Mathura Refinery w.e.f. 28.10.97. However, instead of joining at KV, Mathura Cantt the applicant absented himself and did not report for duty at KV, Mathura Cantt. He has also not submitted any application for leave. A notice was served on the applicant by the KVS, Regional Office, Gwalior vide memo dated 11.11.98. KVS, Regional Office, Lucknow vide letters dated 1.9.2000 and 7.12.2000 asked the applicant to report at its office by 25.9.2000 and 26.12.2000 respectively with the condition that if the applicant did not report for duty by 26.12.2000, it will be presumed that he was not interested in service in the KVS and his services would be terminated w.e.f. 26.12.2000 AN. As the applicant failed to report for duty, after the expiry of 3 months notice period, his services were terminated vide order dated 11.4.2001. The employees of KVS are governed by CCS(CCA) Rules.

4. It is the further case of the respondents that as per the terms and conditions of appointment order read with explanation (viii)(c) of Rule 11 of CCS(CCA) Rules, 1965 applicant could have been terminated after giving three months notice. They have further argued that if it is accepted for argument's sake that departmental enquiry was necessary, then as per the decision of the Supreme Court in the case of Aligarh Muslim University & Ors. Vs. Mansoor Ali Khan etc. 2000(5) SLR 67, the action of the respondents is justified.

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5. We have heard the learned counsel for the parties and perused the records.

6. The most important question for consideration by this Tribunal in the present case is whether the applicant is entitled to the protection of Article 311(2) of the Constitution and whether the veil can be lifted to ascertain if the same is penal in nature.

7. KVS is a Society. Thus protection of Article 311(2) is not available to its employees. They are, however, governed by CCS(CCA) ~~Pension~~ Rules. Rule 19 of CCS(CCA) Rules is similar to Article 311(2).

8. Explanation (viii)(c) to Rule 11 of CCS(CCA) Rules, 1965 stipulates as under:

The following shall not amount to a penalty within the meaning of this rule, namely:-

(i) to (vii)

(viii) termination of the services-

(a) & (b)

(c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

9. A copy of the terms and conditions of appointment order has not been enclosed. However, it was asserted by the learned counsel for respondents that services can be terminated by three months notice on either side even in case of a permanent employee as mentioned in para 5 of the reply filed by KVS and as mentioned in the

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termination order dated 11.4.2001. The applicant has subsequently filed a ~~rejoinder~~ ^{rejoinder}. He has not controverted the same.

10. Accordingly, it is clear from the above that termination of services is not a penalty. Thus, the question of carrying out a full-fledged departmental enquiry in the instant case does not arise. Thus the contention of the applicant to the contrary is not tenable and is rejected.

11. The applicant has not challenged the terms and conditions of the appointment order as being violative of the Constitution.

12. It was nowhere the case of applicant that he had proceeded on leave with prior approval. Even as per the applicant, the leave applications were submitted to the Principal of the School from which he had been relieved. He did not report back for duty to Regional Office, Lucknow. Leave cannot be claimed as a matter of right.

13. We, therefore, find no merit in the present application and the same is accordingly dismissed. No costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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