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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3000 of 2001

New Delhi, this the 6th day of December, 2001

HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

P.K. Walia
S/o Shri Pratap Singh
Aged about 36 years
Resident of Village: Dagrauli
P.O. Paharpur,
District: Saharanpur.

And Employed as

Upper Division Clerk in
Kendriya Vidyalaya, Joshimath,
District Chamoli, Uttranchal.Applicant

By Advocate Shri B.B. Raval.

Versus

1. Kendriya Vidyalaya Sangathan
Through the Commissioner,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Salawala, Hathibarkala,
Dehradun.
3. The Principal,
Shri G.C. Nautial
Kendriya Vidyalaya, ONGC,
Inquiry Officer. Dehradun
UttaranchalRespondents

O R D E R

By Hon'ble Mr.Kuldip Singh, Member (Judl)

This is an OA filed under Section 19 of the Administrative Tribunal's Act, 1985 wherein the applicant has assailed an order dated 27.3.2001 whereby he has been issued a Memo No.F6-21/97/KVS/DDR/5608 vide which the charges framed against him had been forwarded along with the memo to the applicant. The applicant has also challenged the proceedings conducted against him in his absence with effect from 17.9.2001 and the applicant has

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been directed to submit his written brief within 10 days of issue of the impugned letter Annexure-B dated 20/24-9-2001 wherein the endorsement date of submission of written brief is extended.

2. The applicant has prayed for the following reliefs:-

(i) To quash the impugned Annexures "A" and "B" as being violative of the principle of natural justice and also not maintainable in the eyes of law as per the ration of the order and judgment of the Hon'ble Supreme Court of India in the matter of State of Uttar Pradesh Vs. Shatrugan Lal.

(ii) Award exemplary cost for this application with a further request to pass an other order/orders or direction/directions or grant any other relief/reliefs as deemed fit and proper in the light of the facts and circumstances of the case.

3. The facts as alleged by the applicant are that he joined the service of the KVS somewhere in the year 1988 at Guna, Madhya Pradesh from where he has been transferred to various stations and on 24.7.1989 while he was working at Moradabad he was placed under suspension. It is also stated that subsequent to that a charge-sheet was issued alleging certain misconduct on the part of the applicant for which an enquiry was initiated against the applicant. Presenting Officer and Inquiry Officer were appointed. The applicant also appeared before the

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applicant. Presenting Officer and Inquiry Officer were appointed. The applicant also appeared before the Inquiry Officer at Haridwar where he had demanded certain documents. Some orders were also passed and place of inspection of document was fixed and whenever the defence assistant of applicant raised any objection, the Inquiry Officer reverted back to the Inquiry Officer at Dehradun to seek clarification on the subject, who have been issuing illegal instructions as and when required.

4. It is further submitted by the applicant that after the Inquiry Officer and the Presenting Officers were appointed, the disciplinary authority becomes functus officio and is not required to issue instructions on their own whims as and when a clarification is sought by the Inquiry Officer.

5. It is further submitted that the respondents had been making changes in the charge-sheet without notice to the applicant. The changes have been made in the garb of correction in the charge-sheet which are not within the knowledge of even the present Assistant Commissioner.

6. The applicant further submits that even the list of witnesses had not been supplied to the applicant earlier and in fact the list of witnesses did not exist at all. The applicant had, therefore, sought to be informed as to whom he was to examine/cross-examine to

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wanted to know who will identify the documents and prove/produce the same on record in accordance with law, but no information was given.

7. It is further submitted that on 19.1.2000 the Principal, Kendriya Vidyalaya, Moradabad issued a relieving order with reference to the letter of Assistant Commissioner, Kendriya Vidyalaya Sangathan, Dehradun and applicant was relieved in absentia. Subsequent to that, the Inquiry Officer issued a summon on 19.1.2000 informing the applicant that he had been appointed as Inquiry Officer by the Disciplinary Authority and since certain modifications in the charge-sheet dated 1.10.1999 was made so he was again to hold preliminary hearing on 31.1.2000 at Haridwar to which the applicant replied that his earlier representation dated 10.1.2000 is held pending and in the absence of the disposal of the same, further enquiry was arbitrary. However, Shri G.C. Nautiyal, the Inquiry Officer issued a letter on 23.3.2001 fixing the date of preliminary hearing on 29.3.2001 at his office at Dehradun and this second preliminary enquiry which was sought to be conducted by the changed Inquiry Officer, in fact amounts to de novo enquiry which is not permissible except following the due process of law. Subsequent to that on 27.3.2001, the Inquiry Officer had written a letter reiterating that Annexure IV to the memo did not contain the list of witnesses but a copy of the impugned memo along with Annexure IV containing as many as 19 witnesses were appended and has been annexed along with impugned Annexure A. Thus the applicant has also a grievance that the earlier Inquiry Officer Shri Arya had categorically

stated that there is no list of witnesses in the form of Annexure -IV whereas the Inquiry Officer had given Annexure IV containing 19 witnesses. Thus addition of these 19 names which are sought to be added are irrelevant as it contains the name of those teachers who had to attend various classes and those teachers have nothing to do with the Ministerial work like the applicant. Thus the statement of those witnesses are irrelevant. The applicant had also made a representation that this letter dated 27.3.2001 should not have been taken on record.

8. In the meanwhile the applicant was transferred and he received a letter dated 22.6.2001 which contained a schedule of enquiry with regard to inspection of documents, submission of list of witnesses etc.

9. The applicant made a representation against the letter dated 22.6.2001 also detailing the earlier allegations about adding the list of 19 witnesses. Again another Presenting Officer was appointed vide order dated 3.7.2001 and another date was fixed for preliminary hearing and inspection of documents and enquiry was scheduled to be held on 17.9.2001 to 22.9.2001 at the office of the Principal, Kendriya Vidyalaya Sangathan, Moradabad and ultimately on 17.9.2001 the applicant did not reach there and ex-parte proceedings were held and applicant has a grievance now that the proceedings held by the Inquiry Officer should be quashed since his representation has not been decided and CCS (CCA) Rules have not been followed.

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10. We have heard the learned counsel for the applicant on the point of admission and gone through the record.

11. The main grievance of the applicant is with regard to the procedure followed by the Inquiry Officer and the disciplinary authority over the conduct of the enquiry. The applicant has also referred to list of witnesses which is at page 41 of the paper book and submitted that all these 19 witnesses are various teachers who are busy in taking classes and they have no connection with the working of the ministerial staff and thus are irrelevant witnesses for the purpose of enquiry and allegations levelled against the applicant.

12. The applicant has also a grievance with regard to the change of the Inquiry Officer and the Presenting Officer and also claimed that by adding the name of 19 witnesses there had been amendment in the charge-sheet which could not have been done until due procedure could have been followed or it should have been held as if de novo enquiry has been held which are bad in law so on this basis he wants that the ex-parte proceedings holding him guilty be quashed as well as charge-sheet issued to him be also quashed.

13. We have given our thoughtful consideration to the issue involved. Undoubtedly the enquiry had proceeded after the issue of memorandum of Charge-sheet and thereafter the applicant had been making various representations with regard to inspection of documents and supply of list of witnesses etc. and according to

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his own showing, some of the representations made by the applicant has been replied to and applicant had been afforded an opportunity to inspect the documents. The record would rather show that the applicant has been able to prolong the holding of the enquiry to a considerable length of time and ultimately when the final date was given to the applicant for holding the enquiry, it appears that he did not appear there and as such the ex-parte proceedings were held against him. The applicant claims on the strength of the judgment reported in 1998(5) SCALE entitled as State of U.P. VS. Shatrughan Lal and Another wherein it has been held that when the principles of natural justice are not followed during the departmental proceedings then the enquiry is vitiated and the same is liable to be quashed, hence the OA filed by the applicant be allowed.

14. We have considered this aspect but the fact remains that whatever enquiry has been held, the final order appears to have not been passed and unless any final order is passed, the applicant cannot have any grievance before this court that the enquiry is vitiated. The judgment relied upon by the applicant only shows that when the final order was challenged on the basis of not following of principles of natural justice the Hon'ble Supreme Court has held that since the principles of natural justice with regard to inspection of documents was not followed so on that score the enquiry was held to be vitiated, but in the present case no final order appears to have been passed so far. It appears that the applicant has rushed to this Tribunal in a hurried manner so that he may be able to avoid passing of the final

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grievance before this court that the enquiry is vitiated. The judgment relied upon by the applicant only shows that when the final order was challenged on the basis of not following of principles of natural justice the Hon'ble Supreme Court has held that since the principles of natural justice with regard to inspection of documents was not followed so on that score the enquiry was held to be vitiated, but in the present case no final order appears to have been passed so far. It appears that the applicant has rushed to this Tribunal in a hurried manner so that he may be able to avoid passing of the final order. Though in exercise of the powers of judicial review the Tribunal is suppose to address itself about the question of following due procedure during the departmental proceedings but when the proceedings are still pending and no final order has been passed by the disciplinary authority, it would be improper for the Tribunal to adjudicate the procedure which is being followed by the Inquiry Officer and the disciplinary authority and that would amount to prejudging the case of the applicant.

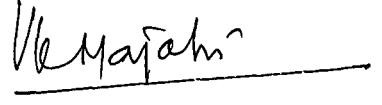
15. Upto this stage whatever grievances the applicant has, he can address the same to Enquiry Officer who is to record findings. The applicant has a right to make submissions in accordance with law and rules before the Enquiry Officer who is supposed to deal with submissions if any made before him and then to record findings. But for the purpose of this court it is only intermediary stage and the court should not interfere in

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17. In view of the above discussion, we think that the OA is devoid of any merit and the same is dismissed in limine.


(KULDIP SINGH)

MEMBER (JUDL)


(V.K. MAJOTRA)

MEMBER (A)

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