

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 32/2000

NEW DELHI THIS... 31st.....THE DAY OF MARCH 2004

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

H.L. Sonar
Ex. PGT (History), KVS
S-31, H Block Saket,
New Delhi - 110017

.....Applicant

(By Applicant in person)

VERSUS

1. Kendriya Vidyalaya Sangathan,
through its Jt. Commissioner (Admin)
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi - 110016
2. Chairman Kendriya Vidyalaya Sangathan, & Minister of
HRD, Shastri Bhawan,
New Delhi - 110001.
3. Asstt. Commissioner (DR)
Kendriya Vidyalaya Sangathan,
New Mehrauli Road,
New Delhi - 110016

.....Respondents

(By Shri S. Rajappa, Advocate)

O R D E R

BY HON'BLE SHRI KULDIP SINGH, MEMBER (J)

The applicant who was working as a PGT Teacher in the Kendriya Vidyalaya School has filed this OA against KVS and others. The applicant in this OA has assailed order 25.4.95 whereby a major penalty of compulsory retirement was imposed w.e.f. 27.4.95 and a cut of 5% out of the amount of pension admissible to him. The applicant also assailed order dated 9.4.97 whereby respondent No. 1 has rejected the Review Petition filed by the applicant

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ignoring applicant's please made in his Review Petition.

The applicant was proceeded departmentally on the following article of charges:

(30)

Article-I

That Shri H L Sonar, PGT (History) , while working in KV, INA Colony, New Delhi, during the year 1991 was selected for the post of PGT (History) and was posted at KV, Moscow. Shri Sonar drew an advance of Rs.1,21,700/- towards TA/DA. He neither joined at the said Vidyalaya nor refunded the aforesaid advance till date. The aforesaid act on the part of Shri Sonar which amounts to misappropriation and constitutes a misconduct, which is violative of Rule 3(1)(i), (ii) & (iii) of the CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

Article-II

That the said Shri H L Sonar while working in the aforesaid capacity made statement to the press and indulged in criticism of Sangathan and the Govt. policies and authorities of the Sangathan as in apparent from the published material in the National Dailies, Hindustan, the Statement, Jansatta, Rashtriya Sahar and "Indian Express" dated 15.1.94. The aforesaid act constitutes a misconduct, which is in violation of Rule 9 (1)(iii) of the CCS (conduct) Rules, 1964 as extended to the employees of the Sangathan.

Article-III

That the said Shri H L Sonar while working in the aforesaid Vidyalayta during the said period is in the habit of addressing correspondence to the Prime Minister and Cabinet Ministers and also political figures directly by passing the office channels. In the letters written to these political figures, he has also used intemperate language against the authority of the Sangathan.

The aforesaid act constitutes a misconduct, which is in violation of Rule 20 and 3(i) (iii) of the CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

Article-IV

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That the said Shri Sonar while working as such incited the feelings of regionalism among the teaching community. He has acted against the objective of National Integration set forth by the Sangathan. He has thus conducted himself against the interest of the Sangathan and has violates Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

(31)

2. Thereafter an enquiry was held in which the applicant was found guilty of charge 1,2 and 3 but exonerated in charge No.4. Consequent upon the report submitted by the Enquiry Officer the impugned order of punishment was passed on 25.4.95 (Annexure-1) by disciplinary authority and the review order has been passed by the respondent No. 1 .

3. In grounds to assail the impugned orders as mentioned in the application are that the charges framed against the applicant are the result of prejudice of the respondents against applicant particularly the second and third respondent bear malafide intentions of the respondents as such the applicant has been singled out for victimisation . The applicant also alleges that the charges framed against him were frivolous, concocted and baseless.

4. Further the enquiry was vitiated by denial of reasonable opportunity to defend against the charges levelled in as such as the applicant was not allowed to have the documents needed for his defence nor was he allowed to lead defence evidence and witnesses in his support, thus he has been denied reasonable opportunity to defend himself.

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5. The applicant further alleges that as regards the article of charge concerning misappropriation of advances drawn by him is concerned, it is submitted that the charge of misappropriation is wrong because it is the respondents who withheld his pay and allowances for full 9 years, hence the charge of misappropriation has to be credited to the respondents and not to the applicant. As regards other charges contained in Article 3 to the fact of writing to the Prime Minister and Minister of HRD the applicant points out that this correspondence was made by him in the capacity of the Chief Executive of the Teachers Association and the Confederation as also alleged criticism of the Govt. in the newspaper was made on behalf of the said association. Therefore that he had acted as office bearer of the Association like other 9 office bearers who offered to be proceeded against for the alleged wrongs as stated in the charge sheet but the respondents had singled out the applicant for punishment.

(32)

6. Further it is alleged that the applicant was not given opportunity to cross examine the PW Shri A S Mazumdar, the inquiry is vitiated and the order has been issued by taking into consideration extraneous factors. Thus the applicant prayed that the impugned orders are liable to be quashed.

7. Respondents are contesting the OA. Respondents in their written reply reiterated the charges against the applicant and submitted that the Enquiry Officer had conducted the Inquiry in accordance with the rules and the Enquiry Officer held that charges framed in Article 1, 2 and 3 are proved and charge No. 4 is not proved. The copy of the report was sent to the applicant and the disciplinary

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authority after taking into consideration the report of the Enquiry Officer and submissions of the charged officer imposed penalty and thus there is no violation of principle of natural justice nor violation of any rules and it cannot be held that reasonable opportunity has not been given to the applicant to defend himself. They also submitted that impugned orders were passed after due consideration and cannot be quashed.

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8. We have heard the applicant who argued the case in person and counsel for the respondents. At the outset we may mention that when the matter was taken up initially for argument a objection was taken that the OA is barred by time so the court in its order dated 4/8/2000 held that the O.A. is time barred because this court has taken a view that since the orders passed on the review petition and confirmed by the reviewing authority was passed on 9.4.97 the applicant remained silent and he filed this OA only on 3.1.2000 so the OA had become barred by time. The applicant had gone before Hon'ble Hon'ble High Court. The Hon'ble High Court allowed the Writ Petition and Tribunal was directed to decide the original applicant of the petitioner on merits afresh.

9. When the matter was taken up for arguments after the same had been remanded back by the Hon High Court the learned counsel for respondents still insisted that the OA is barred by time because in the OA the applicant had challenged the order passed by the Disciplinary authority on 25.4.95 whereas Reviewing Authority's passed its order on 9.4.97.

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10. The learned counsel for the respondents further submitted the orders passed on 9.4.97 under Rule 29(9) of CCS(CCA) Rules which is a review order and the same has been passed without issuing notice to the respondents by the reviewing authority. Thus the order of 25.4.95 remain intact so the applicant was to challenge the order of 25.4.95 itself and filing the OA after a period of about 5 years is barred by time.

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11. In our view to appreciate the contention of the respondents we have to see that whether Review petition is in continuation of the litigation from the stage of passing of the order by the authority of the first instance or not ? The order dated 25.4.95 was passed by the disciplinary authority i.e. the authority at the first instance. The applicant instead of preferring any appeal against the said order straightaway filed Review Petition. Though the applicant adopted unusual course by straightaway filing the review petition which should not have been done in ordinary course, the applicant was first to file a regular appeal and only thereafter he could have filed the review petition. However, the respondents submitted that in case the applicant raised the issue that he had not filed appeal to the appellate authority as the appellate authority and the Revisionary authority were enemy no. 1 of the applicant and he had no faith in them and they were prejudiced against him in those event he could have filed the so called review petition directly to the Reviewing authority. In support of his contention learned counsel for the respondents had referred commentary on the subject written by Shri O P Sharma wherein it is mentioned that if the applicant has not filed appeal as he had in faith in the appellate authority so he could by pass the authority

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so we find that the proceedings from the date of order passed by the disciplinary authority till the orders passed by the Reviewing Authority were continuous proceedings and the applicant has a right to challenge both the orders on merits before this Tribunal that is why the High Court while remanding the case to the Tribunal also directed the Tribunal to decide the original petition of the petitioner afresh.

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12. Now coming to the merits of the case the applicant pointed out that he had made an application for supply of documents which may be relevant for his defence evidence. But the enquiry officer instead of passing the order for supply of documents without any reason observed that documents are not relevant. In order to support his contention he referred the order in the judgement on CWP No.274/97 decided by the Hon'ble High Court of J&K in similar situation the documents were not supplied and the applicant filed the WP for direction to the respondents to supply the copies of documents to the petitioner on the ground that these are not relevant for the purpose. However, the court observed that the petitioner is demanding these documents for her purposes, which she knows better. Copies of the documents cannot be denied to a Citizen even, though are not relevant unless privilege is claimed. The respondents were directed to supply copies of the documents to the petitioner.

13. In this case also we find that the Enquiry Officer had denied to make available those documents to the applicant. The applicant further submitted that vide office Memo. dated 4.2.95 the applicant was informed that request in respect of each and every document and record in

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connection with the defence of his case and the list of defence witnesses and found the grounds of justification untenable, and irrelevant because of lack of specificity, vagueness and in some cases having no bearing on the specific charges hence his request for access to these additional documents cannot be complied with. The applicant further submits that vide memo dated 4.2.95 the CO was requested to attend the hearing and argue his case of defence, fixed on 14th and 15th Feb. 95. But due to his indisposition he could not attend the hearing on 14th and 15th Feb. 95 and he had submitted a medical certificate issued by a Medical Officer who was on the panel of the respondents besides that his defence assistant was also not available as he was busy somewhere else and despite that the case was not adjourned and Inquiry Officer had taken the decision not to postpone. The applicant then referred Rule 14 of CCS(CCA) which are applicable to the applicant. As per Rule 14(16) when the case for the disciplinary authority is closed, the government servant shall be required to state his defence orally or in writing as he may prefer. If the defence made orally, it shall be recorded and the Government servant shall be required to see the record but in this case no such option was given to the applicant to make his defence. As per Rule 14(17) the government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the govt servant shall then be examined and shall be liable to witnesses, re-examined and examined by the IO. But such opportunity was also not given to the applicant. The enquiring authority had also not examined the witnesses and simply adjourned the case asking the applicant to submit the argument in writing which is in violation of Rule 14 sub rule (16), (17) and (19). The the applicant submitted that

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the entire enquiry had been held in hurried manner in order to punish the applicant. The applicant also submitted that he made an application to the Disciplinary Authority for change of Enquiry Officer as the Enquiry Officer was biased against him and in support of his contention he also referred the commentary on the Central Civil Services (CCA) Rules 1965 by Shri O P Sharma that where the Govt servant concerned moves an application alleging bias on the part of the inquiry officer, the inquiry officer should stay the proceedings and refer the matter along with the relevant records to the appropriate reviewing authority for passing suitable orders thereon, and it is for the appropriate authority to decide whether the allegation of bias against the inquiry officer has basis and therefore whether it is necessary to appoint another Enquiry Officer. But in the meanwhile the proceedings should be stayed. Although the Enquiry Officer was informed that applicant made an application for bias but still proceedings were not stayed. The applicant has then referred to a order passed by Jt. Commissioner instead of disciplinary authority. The applicant further submitted that Jt. Commissioner was enemy No. 1 who had woven the administrative conspiracy therefore he did not prefer an appeal to him and instead preferred a Review Petition. Thus the entire proceedings conducted against the applicant in a biased manner and in violation of principle of natural justice.

14. On this aspect we called upon the learned counsel for the respondents to explain but the counsel could not support the case as to how an opportunity to lead the defence evidence was given to applicant or even after the close of the case the Enquiry Officer to seek the explanation on any of the aspect. Thus we are satisfied

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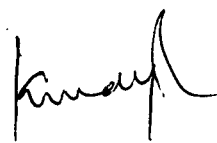
that the applicant had not been given fair opportunity to defend his case as he had not been given opportunity to lead the evidence in defence. The refusal for adjournment of hearing on medical grounds for which a medical certificate issued by the medical officer who was on the panel of the respondents also means denial of the fair and reasonable opportunity to the applicant to defend his case.

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15. Thus we find that from whatever angle we may examine the case and documents brought on the face of the record itself show that these impugned orders passed by the disciplinary authority as well as reviewing authority cannot be sustained and the same are liable to be quashed. Accordingly we hereby quash the impugned orders passed by the disciplinary authority. However we leave it open to the disciplinary authority that they may conduct the proceedings afresh in accordance with the rules and instructions on the subject, from the stage of supply of documents asked for by the applicant. In the meanwhile the applicant may be reinstated or kept under suspension as per rules, if not already superannuated.

16. O.A. is accordingly dispose of. No costs.


(S.A. Singh)
Member (A)


(Kuldip Singh)
Member (J)

Patwal/