

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 156/2012

Reserved on : 09.07.2020
Pronounced on : 14.07.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

M.K. Mitra Son of Shri V.K.Mitra aged about 39 years, Resident of 131, Shiv Ram Colony, Jagatpura, Jaipur. Last employed as Post Graduate Teacher (PGT) Physics, Kendriya Vidyalaya Avika Nagar/ Zawar Mines.

...Applicant.
(By Advocate: Shri C.B.Sharma)

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110602.
2. Joint Commissioner (Administration), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110602.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.
4. Shri N.K.Bhardwaj, Education Officer & Inquiry Officer, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.

...Respondents.
(By Advocate: Shri Hawa Singh)

ORDER**Per: Dinesh Sharma, Member (A):**

In the instant OA, the applicant has prayed for the following reliefs:

- "i) That respondents, may be directed to produce entire record relating to the case and after perusing the same suitable directions be issued to the respondents to reinstate the applicant in service by quashing appellate order dated 14/02/2012 with the punishment order dated 23/02/2010 (Annexure-A/1 & A/2) with all consequential benefits including pay & allowances, seniority etc.
- ii) That the charge memo dated 05/03/2008 (Annexure-A/3) be quashed and set side with the inquiry proceedings, as the same not justified as per facts & circumstances with the procedure.
- iii) That respondents may be directed to refund Rs.2544/- along with interest since July 2009 till payment recovered from the applicant on account of journey performed from Zawar Mines to Bikaner and back for inspection of documents as paid in the month of January 2009.
- iv) Any other order/directions of relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case."

2. The grounds seeking in this O.A. are mainly as follows:

- i) The actions are arbitrary, illegal, unjustified and against the rules.
- ii) The charge memo is not specific and is based on preliminary inquiry where allegations regarding tuition

(3)

were not proved and hence the same deserves to be quashed.

- iii) The applicant had requested for changing the Inquiry Officer on ground of bias. However, this request was not allowed nor the conduct of inquiry was stayed as provided under the instructions below Rule 14. According to which, such proceedings should be stayed when a complaint is made.
- iv) The applicant was transferred during the inquiry and it reflects malafide attitude.
- v) The applicant was not supplied the inquiry report and what was supplied to him was in fact not an inquiry report.
- vi) The whole inquiry was conducted in a manner which reflects bias since his requests for changing the inquiry date and the place etc. were not accepted.
- vii) The appeal preferred against the punishment of removal has been decided very late and after receiving directions from this Hon'ble Tribunal, the rejection is on grounds which are nowhere relevant for deciding the appeal and hence the appellate order is not sustainable.

(4)

On the above grounds, the applicant has prayed for quashing punishment order dated 23.06.2010 (Annexure A/2), appellate order dated 14.02.2012 (Annexure A/1), charge memo dated 05.03.2008 (Annexure A/3) and for grant of all consequential benefits.

3. The respondents have denied the claim made by the applicant. It is stated that the applicant indulged in conducting private tuition which was contrary to the explicit instructions about conduct of teachers and the Education Code for Kendriya Vidyalayas. Hence, the chargesheet was issued against him and inquiry under the relevant provisions of KVS Rules was conducted. The applicant's request for appointing Shri Ram Babu Gupta to act as his Defence Assistant was not allowed since he was not a KVS employee. There was no request by the applicant about change of date of hearing and he had only requested to inform the applicant about whether the date of hearing on 06.02.2009 had been notified or not and the Inquiry Officer informed him the scheduled date, time and venue. The applicant did not submit any list of additional documents or a list of witnesses till the date fixed. He also did not submit the consent of the employee who he wanted to act as his Defence Assistant. The applicant was given enough opportunity to inspect the documents listed in Annexure A/3 of the chargesheet. Regarding the complaints of bias, the representation of the applicant along with

(5)

the comments of the Inquiry Officer were examined by the disciplinary authority and he came to the conclusion that the allegations made by the applicant were baseless and not substantiated by any proof in support thereof. It is stated that the notices were served upon the applicant for examination/cross-examination/re-examination of the witnesses on 25.03.2009 and the applicant did attend the said inquiry on 25.03.2009. Further, notice was again served upon the applicant to attend the inquiry scheduled on 16.04.2009 but the applicant opted to remain absent. Thus, ample opportunity was provided to the applicant to defend himself and his charges of bias against the respondents are baseless. The inquiry has been conducted as per the laid down procedure and a copy of the inquiry report was provided to the applicant with letter dated 16.07.2009. The applicant submitted his representation on the inquiry report vide his representation dated 04.08.2009 and thus his statement that the Inquiry Officer submitted the inquiry report on 02.04.2009 is factually incorrect. With all these grounds, the respondents have prayed for dismissing the O.A.

4. A rejoinder has been filed in which the applicant has denied the contents of the written statement and reiterated the claims made in the OA. He has again stated that it was the duty of the Inquiry Officer to make him available photocopy of the listed documents and to provide Defence Assistant. A failure to do so

(6)

amounts to bias against him. It is further stated that after his having made allegations of bias against the Inquiry Officer, conduct of inquiry and concluding it by taking statement of witnesses in one day, in the absence of the applicant, is not sustainable in the eyes of law. The applicant has also mentioned that not accepting his request to postpone inquiry proceedings as the applicant was working far away from Jaipur and is physically handicapped shows that the respondents acted to keep the applicant away from proceedings and completed inquiry *ex parte*.

5. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The learned counsel for the applicant mainly argued that there was bias against the applicant. A conduct of inquiry despite his allegations of bias against the Inquiry Officer vitiates the whole procedure and is against the stated instructions under the rules of conduct of such disciplinary proceedings. He also argued for considering the proportionality of punishment with respect to the seriousness of the alleged dereliction of duty. The learned counsel for the respondents stated that the pleadings about non receipt of the inquiry report was an afterthought and was based on a typographical error in the covering letter. The applicant has himself accepted receipt of inquiry report and made a representation against it. The conduct of private tuition is an act of breach of trust and is to be discouraged with exemplary

(7)

punishment to stop such practice which goes against the interest of students. The allegations of bias against the Inquiry Officer were totally unsubstantiated and therefore the conduct of inquiry cannot be found fault with only because the applicant made such unsubstantiated allegations.

6. After going through the pleadings and hearing the arguments, it is clear that the case of the applicant is mainly based on allegations of bias against the Inquiry Officer and the alleged denial of proper opportunity to defend himself during the inquiry. Though he has also alleged non receipt of inquiry report, we do not find merit in that allegation since he has filed a representation against the inquiry report. Mentioning of the wrong date (02.04.2009), in the punishment order - Annexure A/2), appears to be a typographical error. The request of the applicant for changing Inquiry Officer alleging bias against them was also seen by us. We find that he has made various allegations including that the inquiry officer is having pecuniary interest and personal interest in the result of the inquiry. However, he has apparently not provided any basis or evidence to support his allegations. His other complaints about Inquiry Officer not knowing the rules and not allowing his request for postponement/original documents were all considered by the disciplinary authority who found these allegations to be not correct/serious enough to change the Inquiry Officer. The order

(8)

of the appellate authority (Annexure A/1) is a detailed and reasoned order in which he has reproduced all the issues raised by the applicant in his appeal petition. And after going through the appeal, inquiry report, penalty order and all other related documents, he has come to the conclusion that the inquiry has been conducted as per the laid down rules while giving opportunity to the appellant to defend his case effectively. The order of the appellate authority discussed in detail the arguments raised by the applicant and has given his findings agreeing with the decision of the disciplinary authority to impose penalty of removal from service. The appellate authority has made some general observations (like about teaching being a noble profession and payment of handsome salary by the KVS) but, this alone cannot be a reason to make the order of the appellate authority illegal on grounds of extraneous considerations. We also find that the order of the disciplinary authority, which is based on the inquiry report that was provided to the applicant and which is after considering the representation made by the applicant, is also a detailed and reasoned order. This order mentions all the issues raised by the applicant including those about bias of the Inquiry Officer and conduct of inquiry in an arbitrary manner. The disciplinary authority did not agree with the charges and has given reasons about why he agrees with the findings of the inquiry report which was based on clear evidence

(9)

given by students who were provided private tuitions by the applicant.

7. On perusal of all these records, we find that sufficient opportunity has been provided to the applicant to defend himself and he has not been able to come out clear in an inquiry. He has tried to evade the outcome by throwing unsubstantiated charges against the Inquiry Officer/procedure. We do not find any substantial denial of opportunity to the applicant to defend his case. The orders challenged in this OA are sufficiently well reasoned. For all those reasons, there is no need to substitute our judgment for the judgments of the disciplinary authority and the appellate authority in this case. The applicant has also not given any proper justification for considering his case for lighter punishment. Hence, we do not see any reason to intervene with the quantity of punishment also. The O.A. is therefore dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/