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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1009/2004

This the 13th day of April 2005

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K.MALHOTRA. MEMBER (A)

Shri Bhoopal Singh, Ex. PGT (Hindi),
Kendriya Vidyalaya, IVRI Mukteshwar (Nainital),
S/o Late Shri Raghuvveer Singh,
R/o P-170/A, Sanjay Nagar, Sector-23,
Ghaziabad, U.P.
(By Advocate: Sh. A.N.Singh)

Versus

1. Union of India through Vice Chairman,
Kendriya Vidyalaya Sangathan/Secretary of
Education Department, Ministry of HRD,
New Delhi-110001.
2. Commissioner Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110016.
3. Joint Commissioner (Admn.),
Kendriya Vidyalaya Sangathan, (Vigilance Section),
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110016.
4. Assistant Commissioner
Kendriya Vidyalaya Sangathan, (Dehradun Region),
Salawala, Hathi Barkala, Dehradun.
(By Advocate: Sh. S.Rajappa)

ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant has been removed from service which shall not be his qualification for future employment under the Government as a penalty in the disciplinary proceeding conducted against him under Rule 16 of CCS (CCA) Rules, 1965 (in short Rules 1965) and the period during which he remained under suspension had been treated as not spent on duty and the pay and allowances for the said period were restricted to the subsistence allowance already paid to him. Applicant had filed this OA assailing the order of the

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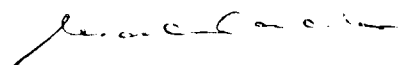
disciplinary authority dated 19/20.6.2003, Annexure A-1 (a) and the order of the appellate authority dated 7.1.2004 by which the orders of disciplinary authority was confirmed, Annexure A-1.

2. Briefly, the allegations are that the applicant was working as a Post Graduate Teacher in Hindi with the respondent Kendriya Vidyalaya Sangthan (KVS in short). He was posted at KV, IVRI, Mukteshwar, Nainital when on 20/22.3.2001, he was served a show cause notice as to why disciplinary proceedings be not initiated against him for submitting forged service certificate, certificate of pay etc. with a bank for securing housing loan.

3. Respondents refuted the imputation made in the notice issue to him. The Assistant Commissioner, KVS, the disciplinary authority thereafter placed the applicant under suspension in contemplation of the disciplinary enquiry by order dated 27.6.2001 (Annexure A-4). He also appointed an Inquiry Officer and a Presenting Officer for the conduct of the enquiry. After the enquiry was concluded, the enquiry officer submitted his report to the disciplinary authority recording a finding that the charges were proved against the charged official. The disciplinary authority thereupon passed the order, which was confirmed by the appellate authority, imposing penalty which is impugned in this OA.

4. Applicant has challenged the enquiry proceedings and the penalty imposed on diverse pleas with which we will deal at appropriate stage. Suffice to mention that his grievance, in brief, is that he was not provided copies of the documents asked for and has not been provided proper opportunity of hearing, so rules of natural justice have been violated. He has also not been provided Defence Assistant and the enquiry proceeding were held in violation of the Rules 1965 and the provision of Article 311 (2) of the Constitution of India etc. etc. The order of the appellate authority was also challenged on the ground that it was not in accordance with the requirement of Rule 27 of the Rules, 1965.

5. The respondents in the reply refuted the allegations of the applicant that the enquiry proceedings were not conducted in accordance with the Rules, 1965



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or that he was not provided copies of the documents asked for or that the enquiry proceedings suffer from material illegality or irregularity. It was submitted that not only the applicant was allowed the inspection of the document but he had also taken the extracts. Only those documents, which were not relevant in the enquiry were not produced before him. As regards defence assistant, it was submitted that he himself had stated that he would defend the proceedings in person. Other allegations were also denied.

6. In the rejoinder applicant reaffirmed his allegations.

7. We have heard the learned counsel for the parties and have also gone through the relevant record.

8. Learned counsel for applicant has assailed the validity and legality of the order of the disciplinary authority and the appellate authority imposing penalty of removal from service on the applicant on the ground that

- (i) applicant was not supplied the documents which were relied upon in support of the imputation of charge.
- (ii) applicant had asked for supply of certain other documents as mentioned in his letter dated 21.3.2002 (page 59) but the same were not supplied.
- (iii) applicant had requested for appointment of a Defence Assistant to assist him in the enquiry but his request was declined by the enquiry officer.
- (iv) the witnesses cited in the imputation of charge were not examined and;
- (v) the enquiry officer adopted a noval procedure and at the beginning of the enquiry he served a questionnaire on the applicant to be answered by him (page-68).

9. It is submitted that all these irregularities and illegalities have vitiated the enquiry proceeding as it would amount to not providing a reasonable

Learned Counsel

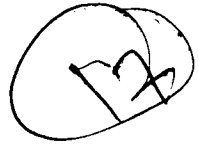
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opportunity to the hearing of the applicant. In other words, the principles of natural justice have been violated.

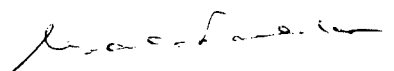
10. As regards the contention of the learned counsel for applicant that the applicant had asked for copies of certain documents vide letter dated 21.3.2002 (page 59) but the same were not supplied to him on the ground that they were not relevant suffice to mention that the list which is at page 60 of the OA would show that none of the documents which were asked for by the applicant was connected with the memo of charge or the imputation made against the applicant. The enquiry officer has rejected them as not relevant to the enquiry. These documents are (i) TA bill of Mr. Khati, the Principal of KV Mukteshwar, (ii) order directing Mr. Khati to visit Ghaziabad, (iii) letter of Punjab National Bank, Ghaziabad delivered to Mr. Khati, (iv) forwarding letter of the bank addressed to Assistant Commissioner, KVS, (v) forwarding letter of Sh. Khati to the Assistant Commissioner, (vi) report by an employee of the school stating that the applicant was away from Headquarter from 5.7.2001 to 2.8.2001, (vii) the result of Board classes for the years 1998, 1999 and 2000, (viii) minutes of the Provident Fund Register for the year 1998, 1999 and 2000, (ix) Annual Confidential Report and (x) any other complaint made by guardian, students against the applicant in the year 1998, 1999 and 2000. Counsel for applicant found it hard to justify the demand of these documents by the applicant and their relevancy in the disciplinary enquiry. There is no illegality in rejection of this application by the enquiry officer.

11. As regards the supply of the copies of the judgments relied upon by the applicant in support of the charge, there is a letter of the applicant addressed to the Assistant Commissioner KVS dated 16.1.2002 whereby he sought permission to inspect the document with his Defence Assistant and supply of photostat copies of the documents listed at chargesheet No. 7 & 10. Applicant had written another letter to the Assistant Commissioner on 26.2.2002 requesting him to allow inspection of the document and stating that without it he

He is not a...



will not be able to defend the proceeding. The copy of the order sheet dated 21.3.2002 recorded by the enquiry officer would show that the enquiry officer had asked the presenting officer, "to show the list of documents as per Annexure-III and original documents placed at S.No.1 & 7 of the same to Sh. Bhoopal Singh.... The needful has been done. P.O. is further advised to procure the documents required by Sh. Bhoopal Singh..... as per list from 1 to 9 and put up before the I.O. to determine their relevancy and if at all found relevant, the same may be sent to C.O. Sh. BhoopalSingh well in time before the next date of hearing." The note sheet recorded on 21.3.2002 showed that after the applicant had denied the memo of charge the enquiry officer asked him whether he would require to inspect the documents already sent to him and submit a list of witnesses, if any, and also submit a list of additional documents, if he wished to do so and that the applicant had signified his willingness to inspect the document for which he had made request in writing that the list of documents Annexure-III regarding letter dated 27.2.2001 of the Branch Manager, Punjab National Bank, Indirapuram, Ghaziabad. He was shown Annexure-III, list of documents. Applicant had again requested to supply the documents listed at Sl. No.1 & 7 in Annexure A-III. He was shown the document. There is also a letter of the enquiry officer addressed to the applicant on 6.5.2002 with regard to the production of the documents. It shows that the enquiry officer had refused the request since the applicant had already examined the relevant documents in original on 21.3.2002 which included the documents relied upon in support of the charge. The proceeding sheet dated 27.9.2002 (page-81) also showed, as pointed out by the counsel for applicant, that during the cross examination of a witness a letter dated 15.3.2001 was produced and it was taken on record. The report of the enquiry officer at page-98 does not indicate that the copies of the documents relied upon by the department in support of the Article of Charge were supplied to the applicant although repeated requests were made by the applicant for it.





12. The question, as such, arises whether non-supply of the copies of the documents which were relied upon by the department for proving the charges had resulted in prejudice to the applicant in defence. The particulars of the documents are at page 99 and 100 of the application mentioned in the report of the enquiry officer. We need not reproduce them here. Suffice to mention that considering the nature of the charges against the applicant, supply of the copies of the documents was necessary and mere showing these documents to the applicant or the applicants taking extract of these documents will not satisfy the requirement of the rules. In *Sh. R.S. Sehgal vs. Director General, Posts and Telegraphs and others* 1983 (2) SLR 473 Hon'ble High Court held that if the charged official submitted an application for inspection of the documents in his defence and the request was disallowed, it would amount to denial of reasonable opportunity and would vitiate the enquiry proceeding. The Hon'ble Supreme Court in *State of U.P. vs. Shatrughan Lal and another* (1998) 6 SCC 651 has observed that if the charged official was not given the copies of the documents indicated in the charge sheet in spite of his request and he had at the same time called upon to submit his reply it could not be said that an effective opportunity was provided to the delinquent. It was further observed that if the department did not intend to give the copies of the documents it should be indicated to the respondent in writing that he might inspect those documents. In the case cited above, it was admitted that the copies of the documents were not supplied to the delinquent but it was stated that he could inspect the documents at any time. It was held that it was not sufficient. The Hon'ble Supreme Court in another judgment *Committee of Management, Kisan Degree college vs. Shambhu Saran Pandey & Others*. JT 1995 (1) SC 270 observed as under:-

“5. On the facts and circumstances, we are of the view that at the earliest the respondent sought for the inspection of documents mentioned in the charge sheet and relied on by the appellant. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the



principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent. If he seeks to cross-examine the witnesses examined in proof of the charge he should be given the opportunity to cross examine him. In case he wants to examine his witness or himself to rebut the charge, that opportunity should be given. In this case, at the earliest, the delinquent sought for inspection of the documents.

13. In the case of Kashinath Dikshita vs. Union of India AIR 1986 SC 2118, the Hon'ble Supreme Court held that the disciplinary authority ought to furnish to the delinquent copies of the documents and copies of the statement. It was also observed that the delinquent should be provided reasonable opportunity to meet the charges against him in an effective manner and that he could not effectively meet the charges unless the copies of the relevant statements and documents are made available to him. Hon'ble Court held in the absence of such copies how can the concerned employee prepare his defence, cross-examine the witnesses and point out the inconsistencies with a view to show that the allegation are incredible. It is difficult to comprehend that the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. The Hon'ble Court further held that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk.

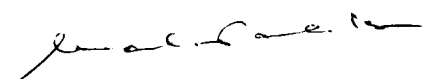
14. Examining the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court in the above cited case, we notice that the applicant at the beginning of the enquiry requested the enquiry officer to supply



the copies of the documents which had been relied upon in the charge sheet but the copies were not supplied. Indeed his request for inspection of documents and taking extract thereof was allowed but it could not be said that the applicant had been given effective opportunity to defend himself in the proceeding. It should be borne in mind that some of the documents relied upon were the documents which were alleged to be forged and fabricated by the applicant for securing housing loan from Punjab National Bank, Indirapuram, Ghaziabad.

15. In the totality of the facts and circumstances, therefore, we do not find any justification for non-supply of the copies of the documents mentioned in the charge sheet. As a result we hold that the principles of natural justice were violated and reasonable opportunity of hearing was not provided to the applicant, thus bring legal infirmity in the enquiry proceeding.

16. Another ground on which the orders of disciplinary authority is impugned is that although the applicant had asked for providing a defence assistant for defending him in the proceeding but defence assistant was refused to the applicant on flimsy ground that his request was not tenable "as it is time barred as well as not in accordance with rules" (page-62)". When his request was turned down the witnesses had not been examined. Applicant had filed a copy of the letter written to Sh. R.G.Nangia, Teacher in KV, S.P.Marg, New Delhi, Annexure A-15 (page-61). The letter is addressed to the applicant which shows that Mr. Nangia had given his consent to act as defence assistant in the disciplinary proceeding. The letter is dated 28.3.2002. It is not understood what inclined the enquiry officer to hold that the request was barred by time or it is not in accordance with the rules. Sh. Nangia was willing to defend the applicant in the proceeding as Defence Assistant. He was an employee of the KVS, therefore, it was not difficult to ensure his presence at the time of the enquiry. Counsel for respondents drew attention to the proceedings recorded by the enquiry officer on 21.3.2002 (page-56) which, inter alia, stated "Mr. Bhoopal Singh, C.O. stated that though he requires assistant but being remote





area and non-availability of defence assistant he will defend his case himself”.

It is argued that the respondent has undertaken to conduct his own defence in the proceeding therefore he cannot complain that a defence assistant was not provided to him. The argument is not tenable. The enquiry was conducted at Mukteshwar in District Nainital. In the notice dated 6.3.2002 the enquiry officer himself had asked the applicant to intimate the name, designation, address, qualification and place of posting and written consent of his defence assistant, if he was willing to engage him for his defence. On 21.3.2002, the proceedings were conducted at Mukteshwar, a remote place. The applicant might have decided to conduct the proceeding on that day himself as no defence assistant was available at that place but it did not mean that he at any other stage of the proceeding was estopped from asking for appointment of a defence assistant for him if it was available for conducting his defence. He did make a request and sent the name and consent of another employee of KVS to act as a defence assistant but his request was declined by the Enquiry Officer even prior to the statement of the witnesses was recorded. This amounted to denial of opportunity of hearing and violation of principle of natural justice which has brought legal lacuna in the proceeding. This view is fortified by the decision of the Hon'ble Supreme Court in Bharat Petroleum Corporation Ltd. vs. Maharashtra General Kamgar Union and others 1999 (1) SCC 626 wherein it was held:-

“27. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway Establishment Code provides as under :

“The accused railway servant may present his case with the assistance of any other railway servant employed on the same Railway (including a railway servant on leave preparatory to retirement) on which he is working.”

28. The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted



to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways.

29. Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, where too, an employee has been given the choice of being represented in the disciplinary proceedings through a co-employee.

30. In *N.Kalindi v. Tata Locomotive & Engineering Co. Ltd.* A three Judge Bench observed as under :

“Accustomed as we are to the practice in the courts of law to skilful handling of witnesses by lawyers specially trained in the art of examination and cross-examination of witnesses, our first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer, may be expected to examine and cross-examine witnesses with a fair amount of skill. We have to remember, however, in the first place that these are not enquiries in a court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only fall to be considered, and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing in the industry will be able to do will ordinarily held to elicit the truth. It may often happen that the accused workman will be best suited, and fully able to cross-examine the witnesses who have spoken against him and to examine witnesses in his favour.

It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the person accused of any misconduct his own case. Rules have been framed by the Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.

Our conclusion, therefore, is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance.”

31. In another decision, namely, *Dunlop Rubber Co. (India) Ltd. V. Workmen* it was laid down that there was no right to

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representation in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same.

32. The matter again came to be considered by a three-Judge Bench of this Court in *Crescent Dyes and Chemicals Ltd. V. Ram Naresh Tripathi and Ahmadi, J.* (as he then was) in the context of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971, as also in the context of domestic enquiry, upheld the statutory restrictions imposed on the delinquent's choice of representation in the domestic enquiry through an agent. It was laid down as under : (SCC p.124, para 11)

“11. A delinquent appearing before a tribunal may feel that the right to representation is implied in the larger entitlement of a fair hearing based on the rule of natural justice. He may, therefore, feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily it is considered desirable not to restrict this right of representation by counsel or an agent of one's choice but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry. Representation through counsel can be restricted by law as for example, Section 36 of the Industrial Disputes Act, 1947, and so also by certified Standing Orders. In the present case, the Standing Orders permitted an employee to be represented by a clerk or workman working in the same department as the delinquent. So also the right to representation can be regulated or restricted by statute.”

33. The earlier decisions in *N.Kalindi v. Tata Locomotive & Engineering Co. Ltd.*, *Dunlop Rubber Co.(India) Ltd. V. Workmen and Brooke Bond India (P) Ltd. V. Subba Raman (S.)* were followed and it was held that the law in this country does not concede an absolute right of representation to an employee as part of his right to be heard. It was further specified that there is no right to representation as such unless the company, by its Standing Orders, recognizes such a right. In this case, it was also laid down that a delinquent employee has no right to be represented in the departmental proceedings by a lawyer unless the facts involved in the disciplinary proceedings were of a complex nature in which case, the assistance of a lawyer could be permitted.”

18. The record of proceedings dated 19.5.2002 also showed that even before the witnesses cited by the department in the charge sheet were examined, the enquiry officers adopted a novel procedure by asking the applicant to answer a questionnaire. The copy of the questionnaire is at page 68. Such a course is not in accord with the procedure prescribed by Rules, 1965. A cursory look at the questionnaire would satisfy that examining the applicant by questionnaire even before examining the departmental witnesses cited in the charge sheet has

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caused prejudice to the defense of the applicant and it is a material irregularity and illegality in the enquiry proceedings.

19. Furthermore the proceeding sheet dated 10.9.2002 (page 77) showed that the enquiry officer had provided an opportunity to the applicant to cross-examine the material witnesses which were available with the Presenting Officer and the applicant had expressed his willingness to cross-examine the witnesses. The note sheet dated 27.9.2002 (page-78) also showed that both the cited witnesses Sh. K.S.Khati retired Principal of K.V.Mukteshwar and Sh. Rajesh Kumar, PGT of the said school were present but examination-in-chief of these witnesses was not recorded and the applicant was asked to cross examine them which the applicant did. It is argued on behalf of the applicant that in the absence of defence assistant and copies of documents the applicant could not effectively cross examine the witnesses. It was further argued that the examination-in-chief of these witnesses was also not recorded in support of the charge which is in contravention of the rules. Counsel for applicant also contended that during the cross examination of Sh. Khati, Principal a new document was admitted in evidence but the copy of that document was not supplied to the applicant still document had been taken into consideration by the enquiry officer while recording the finding on the charges. The procedure adopted by the enquiry officer in the conduct of the proceeding was not in accordance with the procedure provided in Section 14 of the CCS (CCA) Rules, 1965.

20. It is true that judicial review is the review of the manner in which the decision is arrived at and not the review of the decision itself. The power of judicial review is meant to ensure that the individual receives a fair treatment and not to ensure that the conclusion which the authority has reached was necessary and correct in the eye of the Court. In *Kuldip Singh vs. Commission of Police* 1999 (2) SCC 10 it was held that under the power of judicial review the High Court and the Supreme Court can interfere with the conclusion reached

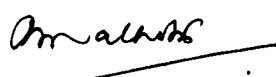
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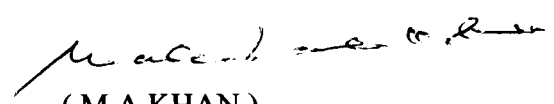


in the domestic enquiry, if there was no evidence to support the enquiry and enquiry, as such, could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a superior authority.

21. In the present case it is clear that the proceedings have not been conducted by the enquiry officer in accordance with the procedure prescribed by CCS (CCA) Rules, 1965 which is applicable on the employees of KVS. As a consequence it must be held that the procedure which was followed by the enquiry officer was violative of rules and natural justice. In other words, the procedure adopted has not provided reasonable opportunity to the delinquent causing great prejudice to him in his defence.

22. As a result of the above discussion, the OA partly succeeds. The orders of the disciplinary and appellate authority, impugned in the OA, are set aside. The case is remitted back to the disciplinary authority for holding the enquiry proceeding after the copies of all the documents which have been relied upon and cited in the article of charge are supplied to the delinquent in accordance with law. The enquiry proceedings will be conducted expeditiously and preferably within 6 months from the date on which the copy of the order is received by the disciplinary authority. For conducting the enquiry, the applicant need not be taken back in service but would be on deemed suspension during the period the enquiry is being conducted. His reinstatement or removal from service would be dependent on the final outcome of this enquiry. It will be open to the applicant to challenge the orders of the disciplinary authority passed on the conclusion of the enquiry after exhausting the statutory remedy in proper proceeding in accordance with law. However, the parties shall bear their own costs.


(S.K. MALHOTRA)
Member (A)
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(M.A KHAN)
Vice Chairman (J)