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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1423/2004

New Delhi this the 9th day of October, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri Lal Rikhuma Sailo,
R/0 2045, Type - IV,
Gulabi Bagh,
Delhi-7

..Applicant

(By Advocate Shri V.S.R. Krishna)

VERSUS

Government of NCT of Delhi Through :

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariate, Delhi.
2. The Secretary (Education),
Govt. of NCT of Delhi.
3. The Joint Secretary (Vigilance),
Govt. of NCT of Delhi,
Delhi Secretariat, I.P.Estate,
New Delhi.
4. The Director of Education,
Govt. of NCT of Delhi,
Old Secretariat, Delhi.

..Respondents

(By Advocate Ms. Simran proxy for Mrs.Avnish Ahlawat)

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ORDER

By this OA applicant has sought the following reliefs:

(a) to call for the records of the case and quash the order dated 01.07.2003 as passed by the Disciplinary Authority and as communicated by the respondents vide their letter dated 17.07.2003 (Annexure A-1) as illegal and void ab initio;

(b) to quash the Inquiry Report dated Nil as submitted by the Inquiry Officer (Annexure A-2) as perverse, illegal and void;

(c) to direct the respondents to treat the departmental proceedings initiated against the applicant vide memorandum of chargesheet dated 02.02.1988 as to have been dropped/abated in terms of the order passed by this Hon'ble Tribunal on 20.8.2002 and to grant all consequential benefits to the applicant such as promotions to the next grades, arrears of pay and allowances etc.; and

(d) to grant any other relief or reliefs as may be deemed fit and proper under the circumstances of the case”.

2. It is stated by the applicant that he was appointed as Principal on 7.10.1983 and posted in Govt. Sr. Sec. School, Model Town. He was placed under suspension vide order dated 30.10.1985 on the ground that disciplinary proceeding is contemplated against him (page 40). He was served with a belated chargesheet dated 2.2.1988 that Shri L.R.K.Shailo, Principal (now under suspension), GBSSS, No.1, Mode. Town, Delhi while working as Principal in the said school w.e.f. 7.10.1983 to 29.10.1985 did



not supervise the working of the school in a proper way as expected of a responsible Principal, which resulted in a number of discrepancies in accounts of the school e.g., embezzlement of Rs.56, 340.15/- and irregularities in maintenance of school accounts record. Simultaneously the Vice Principal of School Shri S.D. Yadav and Shri Kartar Singh UDC of same School were also chargesheeted for embezzlement of money and improper maintenance of Govt. accounts. After enquiry was ordered, however charges against other two were dropped as both officials died during the pendency of proceedings.

3. Even an FIR was lodged against all the 3 persons u/s 409/341 of IPC on charges of embezzlement of Rs.60,870.25 paisa in June 1987 but after investigation trial was started only against Shri Kartar Singh and Shri S.D. Yadav for embezzlement but that too was closed on death of Shri S.D. Yadav on 15.5. 1995 and Shri Kartar Singh on 3.5.1999. The inquiry against applicant was not being taken to a logical conclusion for a long time, therefore, he filed OA 1089/1998 seeking promotion to the next higher grade. The said OA was disposed off by directing the respondents to consider the applicant forthwith without taking into consideration the pendency of enquiry. In case, he is found fit, he should be promoted



immediately. This shall however, be subject to review after conclusion of enquiry.

4. Pursuant to said directions, applicant was promoted as Assistant Director of Education/Education Officer on adhoc basis for 6 months which was contrary to the directions of Tribunal. Thereafter another order was passed on 7.2.2002 by the Tribunal directing the respondents to complete the enquiry within 3 months. Despite this direction enquiry was not completed. He thus filed 2nd OA 759/2002 which was disposed off on 20.8.002 with a direction to complete the enquiry within 6 months, failing which proceedings would be deemed to have been dropped/abated (page 58). The respondents still did not complete the enquiry within 6 months. On the contrary, applicant's application for discovery of additional documents was rejected summarily by the Inquiry Officer on wrong ground that custodian of document was not mentioned, when it was clearly mentioned in the application itself that documents are in custody of the Principal of Govt. Sr.Sec.School No.1, Model Town, Delhi and even relevance was also shown. The I.O. hurriedly gave his report which was served on applicant alongwith CVC's advice dated 20.2.2003 calling upon him to file his representation.

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5. In reply applicant gave representation stating therein that since 6 months are over, submission of representation would serve no purpose as proceedings stand abated. Applicant thus had to file an MA 1735/2003 in OA 759/2002 but the same was dismissed without going into the merits of the case by giving liberty to the applicant to challenge the final order passed by respondents (Page 63). He has thus filed the present OA on amongst others the following grounds:

(i)) The disciplinary proceedings had already abated on expiry of 6 months as directed by order dated 20.8.2002.

(ii) Delay cannot be attributed to applicant. Till about 2002 respondents not even crossed the stage of inspection of listed documents, and Inquiry Officers were changed. The documents were not produced even after repeated directions. Not a single adjournment was sought by applicant.

(iii) Inquiry Officer acted in a biased manner.

(iv) Findings given by Inquiry Officer are totally perverse as his letters on record were not taken into consideration viz., the memo. torn by the UDC in applicant's presence, used abusive language towards applicant which was brought to the notice of Sr.Officers. The UDC did not bring the accounts books for inspection by applicant so applicant could not do anything in the matter.

(v) The order has been passed by disciplinary authority without application of mind.

6. Respondents have opposed this OA. They have submitted that charge No.1 was partly proved and charge No.2 was proved. The charge was with

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respect to embezzlement of an amount of Rs. 56,000/- approximately which was realised as fee fine under the DD0-ship of one Shri S.D. Yadav and the petitioner herein, the Principal, but the same was not deposited in the government account. The charge No.2 was with respect to Boys Fund which scrutiny of the records shows variation between the actual amount paid on various items and that charged in the cash book. It also reveals lavish expenditure on consumer items for further expenditure on conveyance etc. The third charge was scout fund wherein on a number of instances cash in hand on a particular date was not carried forward properly indicating short accounting of cash. Applicant had been making unnecessary applications to delay the proceedings, ultimately proceeded with the matter and in its finding, proved charge No.1 partly in the supervisory capacity and charge No.2 as proved. Central Vigilance Commission who advised imposition of minor penalty. A copy of the enquiry report along with copy of the CVC advice was given to the petitioner for making representation but he did not submit any representation, instead he submitted that in view of the judgment of the Hon'ble Central Administrative Tribunal dated 20.8.2002 to make any representation on the enquiry report would amount to contempt of court. The matter when referred to the Lieutenant Governor, the Lieutenant Governor



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again observed that in view of the principles of natural justice, the petitioner be given another opportunity to give his representation on the report. Accordingly, one more opportunity was given to the petitioner to make his representation or submission on the enquiry report. But he again did not make any representation. Thereafter on receipt of the advice, the disciplinary authority, the Hon'ble Lieutenant Governor imposed the penalty of reduction of pay by one stage in the time scale of pay by one stage in the time scale of pay for a period not exceeding one year without cumulative effect not adversely affecting his pension which order is commensurate with the charge against the petitioner. That against the order of the Hon'ble Tribunal dated 20.8.2002, applicant filed Misc. Application but the same was rejected by the Court wherein he had stated inquiry has already abated, therefore, it is not open to the applicant to raise this issue now.

7. They have explained that initially Shri R. Venkataraman, CDI was appointed Enquiry Officer vide orders dated 6.6.1990 but subsequently he was changed and Shri Amit Cowshish, CDI, CVC was appointed as Enquiry Officer vide order dated 7.1.1992. The enquiry proceedings were taken up by the Enquiry Officers from time to time but could not be finalized as the listed prosecution documents were in the custody of DCP

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(Crime & Railways) who were conducting the enquiry into the case of embezzlement. Subsequently, the Central Vigilance Commission had advised the respondents to appoint their own IO as Shri L.R.K. Sailo had alleged bias on the part of Shri Amit Cowshish, CDI. Therefore, Shri Rajiv Kale, Danics was appointed as Inquiry Officer vide order dated 14.12.1998. Shri D.S. Gehlot, Supdt. Who was appointed as Presenting Officer was also changed in view of his transfer to the MCD. Since Shri Rajiv Kale was transferred to Andaman and Nicobar and relieved from Delhi Government vide order dated 1.4.1999, the order of appointment of Shri KJR Burman, Inquiry Officer were issued on 28.5.1999 who completed the enquiry vide his letter dated 5.2.2003. Therefore, the main reasons for delay in completion in proceedings were beyond the control of the disciplinary authority. They have relied on order sheet dated 10.12.2002 passed by Inquiry officer to show that applicant had been delaying the matter. Respondents had even filed an application for this purpose but since final order was passed in the meantime, the said application was dismissed as infructuous.

8. They have further explained that the applicant was asked to submit list of additional documents along with relevancy of documents. This

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was as per the proceedings dated 3.8.2000 but applicant moved an application only on 30.9.2002 to the Enquiry Officer to summon additional documents but even at that stage, he could neither mention the relevancy of documents nor custodian of the same. Therefore, the Enquiry Officer observed that the application had been moved to stall the proceedings so that the timeframe prescribed by the court in finalizing the proceedings is delayed. They have thus submitted respondents had rightly passed the impugned order. The OA may, therefore, be rejected

9. I have heard both the counsel and perused the pleadings as well. Counsel for the applicant relied on the judgement of Hon'ble Supreme Court in the case of N. Radha Krishnan.

10. The main argument of counsel for applicant was that since charges against the persons who dealt with cash viz. the UDC and the Vice Principal were dropped, there was no justification to punish the applicant but on perusal of pleadings it is seen that charges against those two persons had to be dropped as both of them had expired during the proceedings. It is not as if respondents dropped the proceedings on their own but it had to be dropped as respondents could not have proceeded against dead persons, therefore, this contention is rejected. However, on

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merits, it is seen that it was UDC who was responsible for maintaining the accounts and the Vice Principal who was the DDO that is why even the Inquiry Officer has stated that it was the cashier and DDO who were responsible for maintenance of the cash book and deposit in the bank. If DDO and cashier did not do their work properly, can the applicant be punished for their lapses, is the question here. In normal course, one would say as Supervisory Officer, applicant should have overseen the proper functioning of school, but in the instant case it is seen that right from 9.8.1984 applicant had been apprising the authorities to transfer the UDC Shri Kartar Singh out of the school as he was not completing the cash book entries from April 1984 in spite of repeated verbal and written instructions, nor was he maintaining any discipline. He ^{and had} ~~was~~ incorrigible ^B bad habits of drinking etc. which is not good for the school (page 34). On 19.8.1984 applicant again informed the DDE that accounts of the office are not functioning properly due to bad element like Shri Kartar Singh UDC as he is not completing the cash book since April, 1984 (page 35). Applicant also asked the cashier and DDO to produce cash book with vouchers on 8.3.1985 for checking for the month of Feb., 1985 for checking vide his order dated 4.3.1985 followed by another letter dated 18.3.1985 stating therein that in

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spite of his earlier order cash book has not been produced yet he, therefore, asked them once again to produce the cash book positively every month by 10th of Calender month to verify and check the cash book (page 36). Applicant even called explanation from Shri Kartar Singh vide Memo. dated 7.5.1985 the UDC for not working properly and for not completing the cash book but the said UDC tore off the memo by using uncivilized words which was noted below (page 37) finally applicant informed the Deputy Director of Education, North District vide his letter dated 15.5.1985 about the whole incident and also informed that in case of any mishappening in school accounts, he shall not be responsible for it (page 38).

11. The above letters clearly show that as a supervisor applicant did try to mend the UDC and also apprised the higher authorities that accounts were not being maintained properly in the school by the said UDC. Even called his explanation, therefore, it cannot be said that applicant lacked supervision and monitoring his subordinates. In these circumstances, I do not think Inquiry Officer was right in observing that applicant was found to be lacking in supervision. In fact Inquiry officer has also stated that charged officer cannot be held directly responsible for the act but in his supervisor role he is

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found to be lacking. This finding according to me is not at all based on facts and has been arrived at in a general manner without giving any basis for it.

12. In this view of the matter the findings arrived at by the Inquiry Officer is not at all sustainable in law specially when Inquiry Officer himself states prosecution has not been able to prove any malafides intention of the charged officer. Apart from it, Inquiry Officer has also observed that there was lack of support from parent department so far as production of listed documents are concerned. Even the listed documents were not identified which itself shows the enquiry was completed in a shoddy manner even in the absence of documents. Most of the listed documents were not even produced.

13. Moreover applicant had clearly mentioned in his application for production of additional documents the custodian of such documents was the Principal, Govt. Sr.Sec. School No.1, Model Town (page 64) yet the Inquiry Officer rejected his request by stating that applicant did not give either the custodian of documents summoned nor showed the relevance whereas applicant had clearly stated in his application that he needs those documents for his defence in order to cross examine the state witness. Nothing could be more precise, therefore, Inquiry Officer rejected his request on wrong

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grounds which would amount to denial of his right to defend. Right to defence cannot be denied to a person as that amounts to violation of basic principles of natural justice, therefore, on this ground also Inquiry Officer's report and penalty order needs to be quashed.

14. It is also seen that though the chargesheet was issued on 2.2.1988, the enquiry could not be completed by respondents due to circumstances beyond their control as has been stated by them in Para 4.7 of the reply. It nowhere states that applicant was responsible for the delay. It is only at a subsequent stage that respondents have stated that applicant delayed by not giving his reply but it would be relevant to quote the various orders passed in OAs or MAs.

15. In the 1st OA filed by applicant i.e. 1089/1998 decided on 22.12.1998 Tribunal had observed in para 8 as follows:

"In the present case, we find there are no reasonable explanation whatsoever for the delay in concluding the enquiry proceedings all these years. No witnesses had been examined. The Presenting Officer did not present/submit his relevant documents before the enquiry officer. Relevant documents have not been shown to Commissioner of departmental enquiries. There is no report that the applicant at any stage tried to obstruct or delay the enquiry proceedings. In fact despite best of our efforts, we did not find any explanation worth consideration for causing such inordinate delays. How does the materials placed before us indicate any possibility of the present disciplinary proceedings getting concluding in near future".

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yet the chargesheet was not quashed by applying the balancing principles and respondents were directed to consider the applicant for promotion without taking chargesheet into consideration subject to review after enquiry is concluded (page 45 at 54).

16. The applicant then had to file 2nd OA in 2002 i.e. after 4 years as enquiry was still not concluded seeking direction to the respondents to complete the enquiry. This OA was disposed off vide order dated 20.8.2002 (page 56 at 58) by giving directions to the respondents "to complete the departmental proceedings and pass final orders in accordance with law and rules within a period of six months from the date of receipt of a copy of this order, with a stipulation, that if the enquiry is not completed within a period of 6 months and the applicant not being responsible for delay, the same shall be deemed to have been dropped/abated. In that event the applicant shall be considered for regular promotion to the next higher grade (s) from the date his so called juniors were promoted in accordance with the Rules. The applicant shall also be entitled for all consequential benefits as a result of such promotions. We do so accordingly".

17. Even at this stage it was observed by the Court that respondents have not given any convincing reasons for not completing the enquiry even after

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lapse of more than 14 years. It is thus clear that till 20.8.2002 delay could not have been attributed to the applicant and respondents ought to have completed the enquiry and passed final orders within 6 months from the date of receipt of a copy of the order failing which proceedings were to abate provided delay was not attributed to the applicant.

18. According to applicant proceedings were not completed within 6 months therefore, the proceedings abated as such he filed MA 1735/03 for this purpose. The said MA was opposed by respondents on the ground that applicant was not cooperating. After discussing the rival contentions applicant's MA was dismissed by giving liberty to the applicant to challenge the final orders wherein he can take this point also.

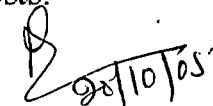
19. Now applicant has challenged the final order in present proceedings. Since Tribunal had left the point open whether delay was due to applicant or respondents, it would be relevant to refer to the application dated 30.9.2002 given by applicant whereby he demanded certain documents in order to confront the state witnesses with those documents for cross. In this application the custodian was mentioned in the 1st paragraph itself yet his application was rejected on the ground that custodian or relevance was not shown which is contrary to the facts, therefore, rejection of applicant's



application and the finding that applicant filed application to stall the proceedings is absolutely unwarranted. After all enquiry is not a futile exercise. Full opportunity is required to be given to the charged officer in order to defend himself but in this case since documents as claimed by applicant were not summoned, he has been denied opportunity to defend himself as well, therefore, the penalty order cannot be sustained.

20. In view of the above discussion and taking stock of all the points, I am convinced the penalty order cannot be sustained and set aside the same with all consequential benefits to be paid in accordance with rules on the subject. The consequential benefits shall be decided within 3 months from the date of receipt of a copy of this order.

OA is accordingly allowed. No order as to costs.


(Mrs. Meera Chhibber)
Member (J)

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