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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

O.A. NO.1854/2004

This the 23<sup>rd</sup> day of September, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)**

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Satish Kumar Singh S/O Lalan Singh  
C/O D.L.Ghosh, R/O No.1, Madhuban,  
Kalna, P.O.Kalna,  
Distt. Burdwan (West Bengal),  
Ex-PGT (Geo.), CST, Herburtpur,  
Dehradun, Uttaranchal.

... Applicant

( By Shri N.L.Bareja, Advocate )

Versus

1. Joint Secretary,  
Government of India  
& Chairman CTSA,  
Deptt. Of Education, MHRD,  
Shastri Bhawan, New Delhi-1.
2. Dr. M.S.Verma, Secretary,  
C.T.S.A., Ess-Ess Plaza, Plot No.1,  
Community Centre, Sector-3,  
Rohini, Delhi-110085.
3. Shri V.K.Singh,  
Principal, CST, Herburtpur,  
Distt. Dehradun (Uttaranchal).
4. Shri Arvind Kumar, UDC,  
CST, Herburtpur,  
P.O.Herburtpur,  
Distt. Dehradun (Uttaranchal).

... Respondents

( By Shri Anil Srivastava, Advocate )

**ORDER (ORAL)**

**Hon'ble Shri V.K.Majotra, Vice-Chairman (A):**

Applicant has challenged penalty of dismissal from service of Central Tibetan Schools Administration (CTSA), which shall ordinarily be a disqualification for future government employment, in disciplinary proceedings initiated against him under rule 14 of the CCS (CCA) Rules, 1965 vide memorandum dated 11.7.2002. The following charges were leveled against him:

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- “(i) Not attending his allotted periods during the session 2001-2003 even on the days he was present in the school, resulting in the loss of studies of the students for class IX, X, XI & XII;
- (ii) On transfer from CST, Herburtpur to CST, Dalhousie, he was directed by the Principal, CST, Herburtpur to handover the charge of computer lab to Shri Dawa Tashi, PGT (Tibetan) and Geography Lab to Shri Asit Katyan, PGT (History) but he did not comply with the order of the Principal to hand over the charge of both the Labs on one pretext or other.
- (iii) Marked the attendance in the Attendance Register Despite the fact that he was absent in the school on 07.09.2001.
- (iv) Tampering with records and over-writing in the office records.
- (iv) Irresponsible attitude and giving wrong information to the Authority of the School.”

2. The learned counsel of applicant contended that principles of natural justice were not followed by respondents in conducting the proceedings against him. The learned counsel pointed out that applicant was not provided proper opportunity of hearing inasmuch as the enquiry officer proceeded *ex parte* against applicant without sufficient reasons. The enquiry officer was biased against applicant and applicant had made a request to the Chairman of CTSA vide Annexure A-11 dated 24.2.2003 to change the enquiry officer Shri A.K. Varshney who was a close friend of Dr. M.S. Verma, Secretary CTSA, who had set up the enquiry against him. Both were working on the post of Assistant Commissioner in Kendriya Vidyalaya Sangathan. The Chairman did not decide his application for changing the enquiry officer.

3. The enquiry officer was to conduct enquiry on 24.2.2003. However, the date of enquiry was changed to 25.2.2003 without informing applicant and the proceedings were conducted *ex parte* against applicant.

4. The learned counsel further stated that applicant has been imposed a grossly disproportionate punishment of dismissal from service.



5. On the other hand, the learned counsel of respondents contended that full opportunity was provided to applicant, however, he did not avail of the full opportunity and remained absent during the enquiry despite full knowledge and efforts of respondents to serve notices upon him. Therefore, applicant cannot take the plea that full opportunity was not provided to him. The learned counsel further stated that the reasons given by applicant for allegation of bias and change of the enquiry officer are not sufficient and, therefore, it was not necessary to change the enquiry officer. The appellate authority had taken into consideration all the points raised by applicant in the appeal and approved the penalty of dismissal from service of CTSA.

6. We have considered the respective contentions raised on behalf of parties as also the entire record before us.

7. It is submitted on behalf of respondents that applicant had not applied for any kind of leave nor had he submitted any sickness certificate to the administration regarding his illness w.e.f. 18.5.2002. He also did not submit any fitness certificate thereafter. He never applied for any kind of leave nor informed the administration about his whereabouts during the concerned period. The administration had to publish information in the Hindustan Times (both English and Hindi) dated 12.8.2002 directing applicant to join duties within ten days from the date of publication of the notice. Applicant sent a fax on 20.8.2002 without disclosing his address stating that he was not well. Since applicant did not disclose his postal address, the administration directed him again through newspaper notice on 2.9.2002 to appear before the medical board which was to be constituted by the CTSA headquarters. Applicant was asked to inform the CTSA within 14 days from the date of publication of notice the date on which he would present himself before the medical board. Respondents sent various communications to applicant at various addresses given by applicant. Respondents have enumerated six such addresses in their counter affidavit.

Admittedly, applicant was available on different addresses and had not intimated respondent No.3 about his duration of stay at these addresses. Applicant did not inform the administration about his address after the expiry of summer vacations, i.e., after 30.6.2002. Respondents deputed a school peon Shri R.K.Pandey and woodcraft instructor Shri D.S.Bist to handover the envelope regarding the next date of the disciplinary enquiry, i.e., 25.2.2003. This date was also mentioned on top of the envelope that the enquiry would take place on 25.2.2003. Applicant refused to receive the letter. Applicant had not come to school to attend the hearing on 25.2.2003. A notice regarding the date of enquiry, i.e., 25.2.2003 was pasted on the gate of the school. The information regarding change in the date of hearing from 24.2.2003 to 25.2.2003 was sent to applicant by registered post at his known addresses. Two officials were sent to applicant's local residence at Herburtpur on 20.2.2003 to intimate him about the date of enquiry, i.e., 25.2.2003. Applicant refused to receive the envelope. The fact that enquiry would take place on 25.2.2003 and not on 24.2.2003 was also published in the newspaper Dainik Jagaran (which is widely circulated in the area) dated 22.2.2003. Since applicant did not participate in the proceedings on 25.2.2003 the same was conducted *ex parte*.

8. From the details and proof submitted by respondents regarding their efforts to serve letters and notices for hearings etc., it is clear that respondents made all out efforts to inform applicant to participate in the enquiry. Applicant in our view, had certainly been avoiding receipt of such communications and also ignoring the notices published in newspapers. In such an eventuality if the enquiry officer proceeded to conduct the enquiry *ex parte* against applicant, it cannot be said that applicant had not been provided full opportunity of hearing. The enquiry officer, in our view, was fully justified in proceeding *ex parte* against applicant.

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9. Applicant had submitted Annexure A-11 dated 24.2.2003, which is request for changing the enquiry officer being biased against him. This application was addressed to the Chairman, i.e., the appellate authority and not the disciplinary authority. Be that as it may, the reason for asking change of the enquiry officer that the disciplinary authority Dr. M.S.Verma and the enquiry officer Shri A.K.Varshney had been working on the post of Assistant Commissioner in Kendriya Vidyalaya Sangathan and that Shri Varshney has been appointed as enquiry officer in most of the cases of departmental enquiries, are no good reasons to establish that the enquiry officer was biased against applicant and ought to have been changed. Applicant did not submit this request to the disciplinary authority who was competent to take decision thereon nor did he provide sufficient reasons to establish bias of the enquiry officer against him. In this background if the enquiry officer was not changed, no fault can be found with this.

10. The last point for our consideration is whether the appellate authority had considered the aspect of proportionality of the punishment upon applicant vis-à-vis the charge proved against applicant. We have gone through the orders of the appellate authority. Under rule 27(2) of the CCS (CCA) rules, 1965 are prescribed the aspects which have to be taken into consideration by the appellate authority. These are as follows:

- “(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the Disciplinary authority are warranted by the evidence on record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;”

11. It has ~~been~~ <sup>h</sup> particularly been pointed out by the learned counsel of applicant that the appellate authority <sup>has not</sup> ~~h~~ considered the aspect whether the penalty is

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adequate, inadequate or severe. The appellate authority ought to have considered this and then passed orders of confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty. We have perused the impugned appellate orders dated 9.1.2004 (Annexure A-1). It is clear therefrom that the aspect of proportionality of the punishment vis-à-vis the charge established against applicant was not considered by the appellate authority at all. In this view of the matter, we quash and set aside Annexure A-1 dated 9.1.2004 and remand the case to the appellate authority to reconsider applicant's appeal in terms of rule 27 *ibid* and pass detailed and speaking orders, within a period of forty-five days of the receipt of these orders.

12. The OA is <sup>partly h</sup> allowed in the above terms.

S. Raju  
(Shanker Raju)  
Member (J)

/as/

V. K. Majotra  
(V. K. Majotra)  
Vice-Chairman (A)  
23.9.05