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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.590/2004

Wednesday, this the 10th day of March, 2004

- Hon'ble Shri Justice V.S.Aggarwal, Chairman
- Hon'ble Shri S.K.Naik, Member (A)

Shri Krishna Kant Sharma
s/o late Shri O.P.Sharma
r/o 12A, IInd Floor
Village Karkardooma
Delhi-92

..Applicant

(Applicant in person)

Versus

1. Govt. of NCT through
Chief Secretary
Delhi Secretariat, IP Estate
New Delhi-2
2. Director of Education
Govt. of NCT Delhi
3. Deputy Director of Education
Distt. East, Rani Garden,
Geeta Colony, Delhi

..Respondents

O R D E R (ORAL)

Justice V. S. Aggarwal:-

The applicant - Shri Krishna Kant Sharma - was a Trained Graduate Teacher (for short 'TGT') at Shahdara. He had applied for the post of Principal in DAV Inter College Budhana. It appears that he joined the post of Principal at Budhana. He had requested for the retention of his lien which was permitted upto 31.7.1994. Thereafter, the lien had not been extended but the applicant had not even joined his duty as TGT in Delhi Administration.

2. Resultantly, he was charge-sheeted under Rule 14 of Central Civil Service (Control, Classification & Appeal) Rules. The inquiry had been conducted ex-parte.



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Afterwards an impugned order was passed dismissing him from service. His appeal failed. He preferred a review petition which was dismissed by the Chief Secretary on 6.3.2003.

3. The applicant has appeared in person. He submits that:

- a) his lien should have been retained, and
- b) the disciplinary proceedings had been conducted and in this regard no notice had been issued to him.

4. We, after careful consideration of the submissions of the matter raised before us, find that so far as the retention of the lien is concerned, at his request, it had been extended upto 31.7.1994. Afterwards, the request had been made by the applicant but there was nothing on record to indicate that the lien had since been retained. No person has a right to insist that lien must be permanently retained and once the period for which the lien had been retained came to an end, the applicant should have reported back for duty. He did not do so. Therefore, the said contention must fail.

5. As regards the second argument that no notice had been served on the applicant, perusal of the record clearly showed that repeatedly the applicant had been sent the notices but he did not take part in the same. We are aware of the decision of the Supreme Court in the

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case of Aligarh Muslim University & others v. Mansoor Ali Khan, 2000 SCC (L&S) 965. Therein, the Supreme Court pressed into service the principle of "useless formality" in issuing the notice. The Apex Court held:-

"24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L.Tripathi v.State Bank of India, (1984) 1 SCC 43 Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn. pp.472-75), as follows: (SCC p.58, para 31)

"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K.Sharma, 1996 SCC (L&S) 717. In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P., (1996) 5 SCC 40.

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C.Mehta, (1999) 6 SCC 237 referred to above. This Court surveyed the views expressed in various judgements in

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England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J.etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H.Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

However, a word of caution was further added:-

"34. We may add a word of caution. Care must be taken, wherever the court is justifying a denial of natural justice, that its decision is not described as a "preconceived view" or one in substitution of the view of the authority who would have considered the explanation. That is why we have taken pains to examine in depth whether the case fits into the exception."

6. In the present case, though we are of the opinion that notice had been served to the applicant as is indicated from the order referred to above, but even in the facts the principle of "useless formality" when the applicant did not intend to join back as TGT and continued serving as Principal for years after 1994 would come into play.

7. Resultantly, the petition must fail and is dismissed in limine.

S. K. Naik

(S. K. Naik)
Member (A)

/sunil/

V. S. Aggarwal

(V. S. Aggarwal)
Chairman