

CENTRAL ADMINISTRATIVE TRIBUNAL
AHLAHAZ BENCH
AHLAHAZ.

O.A. NO./T.A. NO. 1174/01 Alongwith O.A. NO. 28/02

Date of decision 03.06.03

Surendra Kumar Dwivedi Applicant(s)

Shri A.K. Gavde & Shri S. Mandhyan Counsel for the
Applicant (s)

VERSUS

U.O.T & Others. Respondent (s)

Shri N.P. Singh / Shri V. Ratan / Counsel for the
Shri S. Mukherjee. Respondent (s)

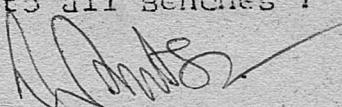
COURT

Hon'ble Mr. Gyan K.K. Srivastava M.E./Member (A)

Hon'ble Mr. A.K. Bhattacharya Member (J)

1. whether reporters of local papers may be allowed to see the judgement ?
2. to be referred to the reporters or not ?
3. whether their Lordship wish to see the fair copy of the judgement ?
4. whether to be circulated to all benches ?

AFR


signature

Manish/

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad, this the 3rd day of June 2003.

QUORUM : HON. MAJ. GEN. KK SRIVASTAVA, MEMBER (A)
HON. MR. A. K. BHATNAGAR, MEMBER (J)

Original Application No. 1174 of 2001

Surendra Kumar Dwivedi, son of Shri
Shreepat Lal Dwivedi, Resident of Type-II/12,
N. T. P. C. Dibiyapur, Auraiya

.....Applicant.

(By Advocate : Shri A.K.Gaur/ Shri S.Mandhyen)

Versus

1. Union of India through Ministry of Human Resources Development, (H.R.D.), New Delhi
2. Commissioner, Kendriya Vidyalaya, Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
3. Principal, Kendriya Vidyalaya, N.T.P.C., Dibiyapur, Auraiya.

....Respondents.

(By Advocate : Sri N.P.Singh/ Shri V.Ratan/ Sri S.Mukherjee)

ALONGWITH

Original Application No. 28 of 2002

Surendra Kumar Dwivedi, son of Shri
Shreepat Lal Dwivedi, Resident of Type-II/12,
N.T.P.C. Dibiyapur, District Auraiya....

....Applicant.

(By Advocate : Sri A.K.Gaur)

Versus

1. Union of India through Ministry of Human Resources Development (H.R.D.), New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
3. Dr. M.S. Verma, Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Sector-J, Aligarh, Lucknow-226 024.
4. Principal, Kendriya Vidyalaya, NTPC, Dibiyapur, District Auraiya.

.... Respondents .

(By Advocate : Sri N.P.Singh)

O R D E R

Maj Gen K K Srivastava, Member A.

since both the OAs have been filed under section 19 of the A.T. Act, 1985, by the same applicant and the reliefs claimed in both these OAs are inter-related, both these OAs are being decided by a common order. The leading OA being OA no. 28 of 2002.

OA no. 28 of 2002

2. The applicant has prayed for quashing the order dated 22.11.2001 (Ann A1) by which the applicant has been removed from service and direction to the respondents to reinstate the applicant and allow to join his duties at Kendriya Vidyalaya, NTPC, Dibiyapur.

OA no. 1174 of 2002

3. The applicant has prayed for quashing the order dated 24.8.2001 (Ann A1) by which the applicant was transferred from Dibiyapur to Dharangdhara (Gujarat). He has also prayed for direction to respondents to decide the applicant's representations dated 9.8.2001 and 29.8.2001 and not to compel

the applicant to vacate residential quarter no. II/12
NTPC, Dibiyapur, Auraiya.

OA no. 28/OF/2002.

4. In this OA the applicant has challenged the order dated 22.11.2001 (Ann A1) by which the applicant has been removed from service by respondent no. 3.

5. The facts, in short, are that the applicant joined the respondent's establishment as Primary Teacher at Missamari (Assam) on 11.9.1988. He was transferred to Dibiyapur in March 1991. From Dibiyapur he was transferred to Aligarh by order dated 14.11.2000, which was cancelled. The applicant was transferred to Dharangdhara (Gujarat) by order dated 21.6.2001. He filed representation on 6.7.2001 followed by another representation dated 9.8.2001. The representation of the applicant was rejected by order dated 24.8.2001 through which the representations of 76 other employees were also rejected. The applicant filed OA no. 1174 of 2001 and at the admission stage, the order of eviction of the applicant from the house allotted to him was stayed by the Tribunal's interim order dated 2.11.2001. A show cause notice/provisional order under Article 81 (d) (3) dated 1.11.2001 was served on the applicant on 20.11.2001. The show cause notice was stayed by an interim order dated 23.11.2001 passed by this Tribunal in OA 1174 of 2001. However, the order of removal under Article 81 (d) was passed by respondent no. 3 on 22.11.2001 on the ground of voluntary abandonment of service. This Tribunal on 16.1.2002 directed the respondents to decide the appeal and kept the OA pending. An appeal was preferred against the order dated 22.11.2001. The appeal of the applicant was rejected by order dated 31.7.2002. Hence this OA which has been contested by respondents by filing counter reply.

6. Sri S Mandhyan, learned counsel for the applicant submitted that the applicant was transferred to Aligarh vide order dated 14.11.2000 which was cancelled by order dated 14.11.2000 with clear stipulation that the applicant would not seek transfer on request for a period of 5 years. This condition of 5 years is equally applicable on the respondents and they could not transfer the applicant. The applicant was transferred from Dibiyapur to Dharangdhara by order dated 21.6.2001 which is more than 2000 Kms and also a hard station. The applicant has already worked at Missamari for full tenure, which is also a hard station and therefore, the action of the respondents in posting the applicant to another hard station smacks of malafide. Even the representation of the applicant was rejected alongwith the representations of 76 other employees by a non speaking order in routine manner.

7. The learned counsel for the applicant further submitted that this Tribunal while entertaining the OA no. 1174 of 2001 challenging orders dated 24.8.2001 and 21.6.2001 stayed the eviction of the applicant by order dated 2.11.2001. The respondents out of sheer vengeance issued a show cause notice on 1.11.2001 by antidating the same as dated 1.11.2001 as the Tribunal passed the order on 2.11.2001 in favour of applicant. The show cause notice dated 1.11.2001 was stayed by order dated 23.11.2001. Strangely again the respondent no. 3 passed an order on 22.11.2001 i.e. one day prior to the order of this Tribunal which leaves no doubt that this order was also antidated by which the respondent no. 3 confirmed the earlier order dated 1.11.2001 i.e. loss of lien on the post of Primary Teacher (PRT) under Article 81 (a) (6) of Kendriya Vidyalaya Education Code. The learned counsel for the applicant submitted that these antidated orders cannot sustain in the eyes of law, as the

matter was subjudice before this Tribunal.

8. Learned counsel for the applicant also submitted that the order dated 22.11.2001 is punitive in nature and by not giving opportunity to the applicant, the respondents have violated principles of natural justice. The applicant's counsel has also challenged the action of the respondents in passing the order dated 22.11.2001, specially when the show cause notice dated 1.11.2001 was received on 20.11.2001 and the same was stayed by this Tribunal's order dated 23.11.2001.

9. Learned counsel for the applicant further submitted that major punishment of removal from service for unauthorised absence is too harsh and disproportionate. No enquiry has been held nor the applicant has been afforded any reasonable opportunity. The unauthorised absence is to be termed as misconduct and in case the respondents were of the view that the applicant committed misconduct, they should have proceeded against him under Rule 14 of CCS (CCA) Rules 1965. Learned counsel for the applicant also submitted that the applicant had submitted an application for grant of leave and remained ⁱⁿ ~~absent~~ ⁱⁿ only due to ~~transfer~~ to a hard station which the applicant was ⁱⁿ agitating before this Tribunal, the respondents cannot justify their action of passing the order of removal.

10. Learned counsel for the applicant submitted that removal from service under Article 81 (d) on the ground of voluntarily adandonment of service is unheard of in any service regulation and is a draconian law, which requires to be quashed/set aside. It is settled proposition of law

that no order having serious civil consequences can be passed without affording proper opportunity. The learned counsel for the applicant has relied upon the following judgments :-

- i. JT 1993 (3) SC 617, D.K. Yadav Vs. M/s J.M.A. Industries Ltd.
- ii. JT 1998 (3) SC 47, Uptron India Limited Vs. Shammi Bhan & Ors
- iii. JT 1998 (6) SC 464, Basudeo Tiwari Vs. Sido Kanhu University & Ors
- iv. 1999 (1) ESC 490, Pancham Ram & Ors Vs. Chief Engineer (Elec/Mech) UP Jal Nigam, Lucknow & Ors
- v. 2000 (2) ESC 1142, U.P. State Spinning Mill Co. Ltd. Vs. N.K. Tripathi and others
- vi. 2000 (3) ESC 1625, Chandra Prakash Shahi Vs. State of UP and others
- vii. 2000 (3) ESC 2022, Prithipal Singh Vs. State of Punjab & Ors.
- viii. (2002) 2 SAC 213, Mirza Barkat Ali Vs. Inspector General of Police, Allahabad & Ors
- ix. 2000 (7) SLR 667, Ashok Kumar Pandey Vs. State of Uttar Pradesh
11. Resisting the claim of the applicant, Sri N.P. Singh learned counsel for the respondents, ^{in submitted} that the applicant has not made Joint Commissioner (Admn) as necessary party which is required under KVS Education Code. The applicant joined at Dibiyapur in March 1991 and has worked for more than 10 years. Therefore, the respondents have committed no irregularity in posting him to Dharangadhara. Service in KVS entails All-India liability and the applicant cannot and should not show any resistance in not complying the legal order of superior. The transfer order of the applicant has been issued under the provision of para 10 (1) of the Transfer Guidelines in respect of KVS employees. The applicant was relieved from KV Kibiyapur on 27.6.2001. The applicant has failed to join at KV Dharangadhara within stipulated period. The applicant has been provided number of opportunities to join at his new place of posting, but he abstained and,

therefore, the respondents have rightly taken action against the applicant under Rule 81 (d) of the KVS Education Code. Learned counsel for the respondents further submitted that the notice under Article 81 (d) has been passed after about 5 months when the applicant failed to join his new duty station.

12. Learned counsel for the respondents submitted that the applicant's transfer to Aligarh was cancelled on his own request and, therefore, in such cases one is debarred from making request for transfer for five years. This does not mean that the applicant cannot be transferred for five years. An employees can always be transferred in public interest under the transfer guidelines. The respondents counsel has argued that in para 18 and 19 of the OA, the applicant has deliberately not given any date of the receipt of the show cause notice dated 1.11.2001. He has not annexed any documents e.g. the cover of the envelope etc to prove his point that he received the show cause notice on 20.11.2001. The applicant is avoiding taking orders from the respondents and under no circumstances he is prepared to go to his new place of posting.

13. Sri Vivek Ratan and Sri S Mukherji appeared on behalf of respondent no. 4 i.e Estate Officer, NTPC and submitted that after the transfer, applicant could be allowed to retain the quarter for two months as per rules. The applicant has not vacated the said quarter even after the expiry of two months from the date he has been relieved and he has obtained interim order from this Tribunal on 2.11.2001 in OA no. 1174 of 2001 by not impleading respondent no. 4. The request has been made on behalf of respondent no. 4 for vacation of interim order dated 2.11.2001.

14. Shri N.P. Singh, learned counsel for the respondents further submitted that all efforts were made to serve the show cause notice dated 01.11.2001/ when the peon reached the residence of the applicant, his wife refused to take the delivery of the same and informed that the applicant was not present in the house. After several attempts on 02.11.2001, the show cause notice was pasted on the main gate of the residence of the applicant. A copy of the same was again sent to the applicant on 05.11.2001, /the wife of the applicant informed that the applicant was not present at home.

15. The learned counsel for the respondents placed reliance on the judgments of Chandigarh Bench of this Tribunal ^h (5669/11R/02) ^h in the case of ^h in O.A. No.5669/02 dated 10.12.2002, / Mrs. Jyoti Sharma Versus Kendriya Vidyalaya Sangathan and Others, O.A. No.511-CH/02 N.N. Rao versus Union of India and others and judgment of Hon'ble Delhi High Court in Civil writ petition no.4485/02 in the case of Prem Juneja Versus Union of India, 2003 IAD (Delhi)57/ submitted that the respondents have committed no error of law and action taken against the applicant under article 81(d) of Education Code is not violative of article 14 and 16 of the constitution.

16. We have heard counsel, carefully considered their submissions and closely perused records.

17. In these O.A.s two issues are involved. Firstly regarding the transfer of the applicant from Dibiyapur to Dharangdhara (Gujarat) and the second issue is about the legality of show cause notice dated 01.11.2001 under article 81(d) and also the confirmation order dated 22.11.2001 regarding

loss of lien of the applicant and consequently removal of the applicant from Kendriya Vidyalaya Sangathan.

18. As regards first point regarding transfer is concerned from Dibiyapur to Dharangdhara (Gujarat), we have no doubt in our mind that service under Kendriya Vidyalaya Sangathan carries all India/transfer liability. The contention of the applicant that since he had worked at Missamari which is a hard station, he could not be posted to another hard station, has no substance. What is important to be seen is that there is transparency in the action of the respondents. The applicant was posted at ~~Dibiyapur~~ in March 1991 and now after lapse of 10 years he was posted to Dharangdhara. One more point raised by the applicant is that since his transfer to Aligarh, ordered on 14.11.2000, was cancelled vide letter, at annexure-4 of O.A. No.1174/01, debarring from making any request for transfer for five years, the respondents were equally bound not to transfer the applicant for next five years. We do not find any force in this contention. Therefore, in our considered opinion, the respondents committed no illegality in transferring the applicant from Dibiyapur to Dharangdhara. The applicant, who is a teacher and who is supposed to maintain highest standard of discipline, should have dutifully carried out the orders of transfer dated 21.06.2001.

19. Now we come to the second question regarding the legality of the impugned show cause notice dated 01.11.2001 and also the order dated 22.11.2001. The main ground on which the applicant has assailed these orders is that these orders are punitive in nature and, therefore, denying the opportunity of defending himself, the respondents have violated principles of natural justice. As per applicant

the respondents were required to follow the detailed procedure laid down under rule 14 CCS (CCA) Rules 1965. The respondents, on the other hand, submitted that article 81(d) is intravires as held by this Tribunal as well as superior courts. The learned counsel for the applicant has placed reliance on number of cases in regard to violation of principles of natural justice, ~~the~~ enquiry to be held in ~~case~~ ^{case} the order is punitive, opportunity ^{is} ~~has~~ to be given to a person before dismissal or termination. The judgment cited by the learned counsel for the applicant will be relevant only in case ~~it~~ ^{it} is established that they are illegal. The order of transfer of the applicant is dated 21.06.2001. The applicant approached this Tribunal challenging the transfer order by filing O.A. No.1174/01. In O.A. No.1174/01 this Tribunal passed the interim order on 02.11.2001 to the effect that "in the meantime it is provided that respondents shall not compel to vacate the quarter in question." The transfer order was not stayed. The respondents have submitted that the applicant was relieved on 27.06.2002 and he was absent with effect from 28.06.2001. On perusal of records we find that the applicant has filed prescriptions and one medical certificate of June and other dated 02.08.2001. However, the applicant has not placed copy of his leave application on record, nor has he ^{been} able to substantiate that his leave had been sanctioned. Alongwith written arguments, the applicant has attached a medical certificate dated 13.07.2001 and also a copy of telegram dated 27.08.2001 for extension of his leave. These two documents are not part of record in either of the O.A.s. Therefore, the contention of the respondents that the applicant was absent unauthorisedly and did not join the place of his posting on his own volition appears to be correct and well-founded.

20. Since the applicant did not report for duty at Dharangdhara for more than four months, the respondents have pleaded that they had no choice but to issue a ^h show cause notice under article 81(d) of the Education Code. The applicant has pleaded that he received the notice dated 01.11.2001 on 20.11.2001. The perusal of the Peon Book produced by the respondents leaves no doubt that the respondents took adequate measures to serve the notice on the applicant on 02.11.2001 itself. A clear remark has been given that Smt. Bagh Devi wife of the applicant was present at the gate of the applicant's house at 6pm, when the show cause notice dated 01.11.2001 regarding loss of lien was ^h pasted on the main gate of the applicant's house. The applicant ^h ~~pleaded~~ that till 20.11.2001 he had no knowledge of such a notice. The respondents as ^h ~~in clear from the removal of the~~ ^h peon book, again ^h ~~tried~~ to serve the notice on 05.11.2001 but the wife of the applicant did not accept the letter and informed the bearer of the letter that the applicant was not present in the house. All this goes to prove that the applicant has not approached this Tribunal with clean hands and by hiding the facts the applicant has obtained the stay order on 23.11.2001.

21. In regard to the order dated 22.11.2001 the applicant's counsel has pleaded that the order is antidated. The learned counsel for the applicant submitted that once the Tribunal stayed the show cause notice dated 01.11.2001 by its order dated 23.11.2001 the respondents passed antidated order dated 22.11.2001 confirming the ^h ~~loss of~~ ^h lien and removal of the applicant from Kendriya Vidyalaya Sangathan. Perusal of CA-2 filed by the respondents establishes beyond doubt that the order under article 81(d) in respect of the applicant for



loss of lien was issued on 22.11.2001 itself. The same was dispatched to various people including the applicant by speed post dated 22.11.2001. The respondents have filed the photocopies of the receipts dated 22.11.2001.

22. The Chandigarh Bench of this Tribunal, in its order dated 10.12.2002 in the case of Mrs. Jyoti Sharma (supra), held as under:-

"In the result, we find that the applicant has been rightly removed from service from the date her unauthorised absence in accordance with the procedure prescribed under Article 81(d) of the Education Code. The impugned order does not suffer from any legal infirmity. The O.A., therefore, turns out to be devoid of any merits and substance. It is accordingly dismissed without any order as to costs."

The same bench on the same day in the same case of N.N. Rao (supra) has held as under:-

"In view of the above discussion, we find that the order of loss of his lien as well as that of removal of applicant from service with effect from 17.01.2001, the date from which he absented himself in an unauthorised manner, cannot be faulted on any ground whatsoever. Respondents, in the considered opinion of this court, have rightly invoked the provision of Article 81(d) of the Education Code. In the circumstances of the case, there was no escape from the conclusion that the applicant, by remaining absent in an unauthorised manner for a period of about four months, had voluntarily abandoned service. Though the order in question may have hit the applicant hard, but the fact remains that the course adopted by the respondents is in accordance with law. The O.A. turns out to be without any merits. It is, accordingly, dismissed, but without any order as to costs."

The Hon'ble Delhi High Court, in the case of Prem Juneja (supra), has clearly held that article 81(d) of Education Code is not violative of article 14 and 16 of the Constitution. This makes a provision for providing opportunity to an employee to show cause against the view of concerned authority that employee has lost his lien on the post on the ground of his unauthorised absence from duty. In case disciplinary

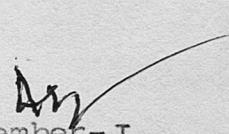


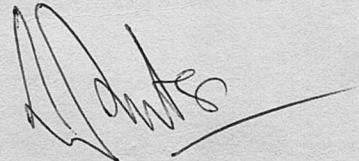
authority rejects his explanation he has right to file an appeal before appellate authority. In such cases there is no violation of principles of natural justice.

23. In the present case, we do not find that respondents have committed any illegality. There is no good ground for interference. The O.A.s are devoid of merit and are liable to be dismissed. Accordingly the O.A.s are dismissed.

24. The interim orders dated 02.11.2001 and 22.11.2001 stand merged with this order. The respondents may take action under law for vacation of government accommodation.

25. There will be no order as to costs.


Member-J


Member-A

/Neelam/