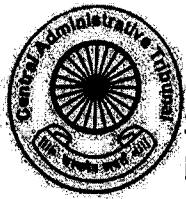


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

Original Application.No. 100/255/2018
This the 07th day of August, 2020

THE HON'BLE MR. JUSTICE L.NARASIMHA REDDY, CHAIRMAN
THE HON'BLE MR.MUKHOPADHAYA, ADMINISTRATIVE MEMBER



P.S.Jaya Sankar, aged about 54 years
S/o Shri P.Sankaran Unny
PS to Director, D-4/2
Indira Gandhi Rashtriya Uran Akademi Colony
Fursatganj, Amethi – 229 302 (U.P.) ... Applicant

(By Advocate : Mr.Praveen Kumar)

Vs.

1. Union of India, through Scretary
Ministry of Civil Aviation
Chairman, IGRUA Governing Council
Rajiv Gandhi Bhavan, Safdarjung Airport
New Delhi – 110 003.

2. The Director
Indira Gandhi Rashtriya Uran Akademi
Fursatganj Airfield
Amethi – 229 302 (U.P.)

3. Chief Instructor
Indira Gandhi Rashtriya Uran Akademi
Fursatganj Airfield
Amethi – 229 302 (U.P.) ... Respondents

By Advocate : Mr.Yogesh Chandra Bhatt)

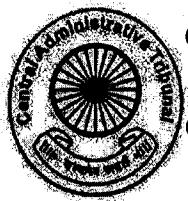
ORDER

{As per Hon'ble Mr. Justice L Narasimha Reddy, Chairman}



The applicant was employed as Personal Secretary to the Director in the Indira Gandhi Rashtriya Uran Akademi (IGRUA – for short) – the 2nd respondent herein. Charge memorandum dated 29.04.2017 was issued to him with 3 articles of charge. The applicant did not submit any explanation to that. An inquiry officer was appointed and, there again the applicant did not participate. The inquiry officer gave his findings. Based upon that the Disciplinary Authority i.e. the 3rd respondent, issued a show cause notice to the applicant on 11.12.2017 leaving it open to him to submit a representation vis-a-vis the findings of the inquiry officer. The applicant filed OA.397/2017 before this Tribunal challenging the notice dated 11.12.2017. During the pendency of the OA, the DA has withdrawn the notice dated 11.12.2017 and issued a fresh notice dated 14.03.2018, enclosing the copy of the report of the inquiry officer. The applicant submitted his representation to that. The DA has passed an order dated 31.03.2018 imposing the punishment of removal from service from the Academy. Appeal preferred by the applicant to the Director of the Academy was rejected through order dated 28.06.2018. This OA is filed with a prayer to quash the order of removal dated 31.03.2018 and the order of Appellate Authority dated 28.06.2018 as being ultra vires then *AD*

byelaws of the Akademi and to compensate the applicant for the personal and financial loss said to have been suffered by him.



2. The applicant contends that the very initiation of the disciplinary proceedings against him was untenable and motivated. He contends that the officer holding the post of Chief Instructor who acted as a DA was appointed on contractual basis and was not competent enough to initiate disciplinary proceedings. It is also his case that the inquiry officer was biased and in that view of the matter, he did not participate in the proceedings. It is pleaded that once the DA issued a notice dated 11.12.2017 and OA.397/2017 was filed challenging the same, there was absolutely no basis or justification for the DA to revoke the notice dated 11.12.2017 much less, to issue a fresh notice. According to the applicant this act of the DA amounts to violation of the orders passed in OA.397/2017. The applicant further contends that the officer holding the post of AA was just on additional charge and he too was not competent to discharge the functions of AA. Reliance is placed upon certain precedents.

3. On behalf of the respondents, detailed counter affidavit is filed. It is stated that the applicant has resorted to various acts and omissions that constitute misconduct and accordingly the charge memo was issued. They contend that the applicant has neither filed explanation nor participated in the disciplinary inquiry and in that view of the matter, it is not open for him to challenge the outcome thereof. It is also stated that

APD

while on realizing that the copy of the report of the inquiry officer was not enclosed to the inquiry report dated 11.12.2017, corrective steps were taken and another notice was issued on 14.03.2018 duly enclosing the copy of the report. It is stated that on receipt of the same, the applicant submitted a representation on 24.03.2018 and on a consideration thereof, the order dated 31.03.2018 was passed imposing penalty of removal from service. The plea of the applicant that the DA was not competent is flatly denied. According to the respondents the bylaws of the Akademi provide for appointment was through various methods including the one on contractual basis, and in that view of the matter, the appointment of the 3rd respondent cannot be treated as defective nor his competence to act as DA can be doubted. It is also pleaded that the Vice Chancellor of Aviation University which too is under the Civil Aviation Department was kept on additional charge of the post of Director of the Academy with full powers, and the plea of the applicant in this behalf is untenable.

4. The OA was initially filed by the applicant in person and upto certain stage he pursued the proceedings. Thereafter, he engaged Mr.Praveen Kumar, learned counsel. Today we heard detailed arguments of Sri Praveen Kumar, learned counsel for the applicant and Mr.Yogesh Chandra Bhatt, learned standing counsel for the respondents.

5. The applicant was functioning as Personal Secretary to Director in the Akademi. Disciplinary proceedings were initiated against

him by issuing a charge memorandum dated 29.04.2017. Six charges were framed and the memorandum read as under :

"1. The undersigned proposes to hold an inquiry against Shri P.S.Jaya Sankar, PS to Director under disciplinary & Conduct rules of IGRUA. The substance of the violation of rules, disclosure of information related to the Akademi business to an unauthorized person, imputations of misconduct in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure 1). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II).

2. Shri P.S.Jaya Sankar is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is further informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri P.S.Jaya Sankar is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of rules or orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Shri P.S.Jaya Sankar is invited to IGRUA discipline & conduct Rules, under which no employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service in the Akademi. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri P.S.Jaya Sankar is aware of such a representation and that it has been made at his instance and action may be taken against him for violation of IGRUA conduct & discipline Rules.

6. The receipt of the memorandum may be acknowledged."

6. The allegations are mostly as regards the violation of confidentiality and lack of integrity. They are mostly borne out by the record. For reasons best known to him, the applicant did not choose to submit any explanation to the charge memo. Having waited sufficiently, the DA appointed the inquiry officer on 20.06.2017. At that stage also the applicant was informed that he can avail the service of an employee of the Akademi, in the disciplinary proceedings. The only response from him was on 07.07.2017, wherein he expressed lack of confidence in the inquiry

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officer. Promptly enough, the inquiry officer informed the applicant that he can approach the DA in this regard. Thereafter the inquiry was posted on nearly 15 occasions and the applicant did not turn up. Ultimately the inquiry officer concluded the proceedings on 06.12.2017. Discerning some findings from the communication of the inquiry officer, the DA issued notice dated 11.12.2017 leaving it open to the applicant to submit representations. The applicant filed OA.397/2017 challenging the notice by raising several grounds. One of these was that the copy of the report of inquiry officer was not enclosed with the notice. During the pendency of the OA, the DA realised that, and has withdrawn the notice dated 11.12.2017. A Miscellaneous Application was filed in the OA informing of this development. The Tribunal took note of the same and made an observation to the effect that OA.397/2017 became infructuous, once the notice dated 11.12.2017 was withdrawn. After hearing both the parties, we passed an order today itself dismissing OA 397/2017 as infructuous.

7. There is no specific answer from the applicant as to why he has not chosen to file an explanation to the memorandum of charge. For all practical purposes, he permitted the charges levelled against him to be taken as proved, or at least not denied. Whatever may have been the circumstances under which the applicant could not submit his explanation to the charge memo, at least he could have participated in the departmental inquiry and put forward his contention. Even that was not done by the applicant. In matters of this nature, hardly anything survives



for adjudication. An employee cannot be permitted to plead for the first time before the Tribunal, against the charges framed against him, once he did not choose to file explanation and to participate in the inquiry. The only exception is where the very initiation of the proceedings or the imposition of the penalty was by an officer not vested with the power under the relevant rules. It appears that the applicant wanted to make an effort in this behalf.

8. According to the applicant Sri V.K.Khorana, the Chief Instructor was appointed only on contractual basis and in that view of the matter he was not competent to act as DA.

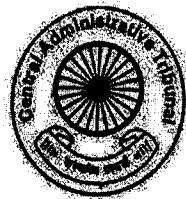
9. In the hierarchy of the Akademi the post of Chief Instructor occurs immediately after the post of Director. The post of Personal Secretary to Director is at Sl.No.10. Under the byelaws / rules framed by the Akademi, the Chief Instructor is the DA for the post of Personal Secretary and the Director is the AA.

10. It may be true that the appointment of Sri. V.K.Khorana is Chief Instructor was on contractual basis. Obviously because the duties attached to the post are highly technical in nature, provision is made for appointment on contractual basis also. Sri V.K.Khorana was accordingly appointed and his term was being extended from time to time. The attention of the applicant was drawn to Bylaws 5(b) which provides for

appointment on contractual basis and he has no answer for this. An attempt is made to advance arguments as regards the emoluments of the Chief Instructor. There again much would depend upon the method of appointment. If a person is appointed through direct recruitment, he would be placed on a scale of pay. On the other hand, if a retired officer is appointed, his salary will be either consolidated or would be fixed duly taking into account, the pension drawn by him. All these aspects are not matters of concern for an employee who faced disciplinary proceedings.

11. We may add that in case the applicant had any reservation or objection on this aspect, he was supposed to raise the same as soon as he received the memorandum of charge. Having not done that, he has acquiesced in the competence of the officer. Even where an objection was otherwise available, it is deemed to have been waived. Therefore, the contention of the applicant in this behalf cannot be accepted.

12. Another plea of the applicant is that the officer who held the post of Director was only on additional charge. He is a Vice Chancellor of the Aviation University. The University on the ~~one~~ ^{one} ~~other~~ ^{AD} hand and the Akademi on the other hand are directly under the control of Ministry of Civil Aviation. When the Director retired, an arrangement was made by assigning additional charge of that post. The orders in this behalf are clear to the effect that, he shall be entitled to discharge all the functions of Director.



13. The applicant has relied upon certain precedents. Those are the cases in which a distinction was maintained between the look after charge or an in-charge of a superior office, given to an officer of lower category. For instance if the post of a Chief Engineer in an Organization becomes vacant, the officer in the rank next below is made to look after that office, only for the limited and restricted purpose of ensuring that the superior office is not left unattended to. The law in this regard is fairly well settled. Except that he attends to some routine matters, the officer holding the look after or in charge will not be entitled to discharge the regular functions of such office. In the instant case it is an additional charge. The appointing authority has made it abundantly clear that the incumbent shall be entitled to discharge all the functions. Therefore, the objection raised by the applicant cannot be countenanced. Even otherwise the only benefit which the applicant can get on acceptance of such a plea is that he has to wait till the regular appointment is made to the post of Director, for the disposal of his appeal. Beyond that the order of punishment passed against him does not get vitiated.

14. Throughout the arguments of the case, we did not notice any attempt on the part of the applicant, to deal with the charges framed against him. A sensitive organization like the Aviation Academy cannot afford to have a Personal Secretary to the highest functionary who is in the habit of leaking the confidential matters and defying the very norms of

functioning. The Personal Secretaries happen to be the close confidants of the officer and any deviation from confidentiality on the part of the Secretary, would certainly become detrimental to the very interest of the organization. The charges against the applicant are indeed grave and it cannot be said that the punishment is in anyway disproportionate.



15. We do not find any merit in this OA and the same is accordingly dismissed. There shall be no order as to costs.

(DIVOKHOPADHAYA)
MEMBER (A)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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