

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

original Application No. 1150 of 1999

Allahabad this the 06th day of August, 2004

Hon'ble Mr. Justice S.R. Singh, V.C.
Hon'ble Mr. D.R. Tiwari, Member (A)

Sri P.N. Singh Son of (late) Sita Ram Singh, Resident
of 63/132, Chhoti Piari, Varanasi, U.P.

Applicant

By Advocate Shri M.Prasad

Versus

1. Union of India through the Kendriya Vidyalaya Sangathan, through its Commissioner, Institutional Area, Sheesh Jeet Singh Marg, New Delhi.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Officer at Belly Road, East of Canal Post Office, P.V. College, Patna.
3. Principal, Kendriya Vidyalaya, B.H.U., Varanasi.

Respondents

By Advocate Shri N.P.Singh

O R D E R (Oral)

Hon'ble Mr. Justice S.R. Singh, V.C.

Impugned herein is the order dated 28.03.94 (annexure-1) whereby the applicant's pay who has been working as Head Clerk, has been reduced by five stages from Rs.1850/- to Rs.1640/- in the time scale of pay of Rs.1400-40-1800-EB-50-2300/- until he attains the age of superannuation on 31.01.1997 from the date of issue of the order. This was given cumulative effect ^{2 in 4th} and it was directed that applicant would not earn increments of pay during the period of reduction and that on the

expiry of the period, the reduction will have the effect of postponing his future increments of pay. In addition to the said punishment, recovery of Rs.13,225/- allegedly caused to the K.V.S. by negligence of duty alongwith interest as per rules from December, 1975, has also been ordered to be recovered from the applicant in lump-sum.

2. The challenge to the validity of the order is mainly on the ground that the applicant was ~~exonerated~~ of the charge twice and the disciplinary proceedings initiated on third time against the applicant, was not maintainable.

3. Shri N.P. Singh, learned counsel for the respondents has raised a preliminary objection that the O.A. is barred by time and further that the applicant had alternative remedy of appeal, which he has failed to avail.

4. Having heard the counsel for the parties, we are of the view that delay in filing the O.A. deserves to be condoned. It is not disputed that against the order impugned herein, the applicant under wrong~~for~~ legal advice, had filed a Suit in the Court of Munsif, Varanasi and thereafter instituted a writ petition bearing no.21979 of 1996 in the Hon'ble High Court, which came to be dismissed as not maintainable with liberty reserved to the applicant to approach the Central Administrative Tribunal for redressal of his grievance. In our opinion, therefore, the time spent in prosecution of the case, should be excluded while computing the period of limitation.

:: 3 ::

The M.A.4471/99 seeking condonation of delay in filing the O.A. has already been allowed vide order dated 17.02.2000 and the delay in filing the O.A. has been condoned. Therefore, the first objection raised by by the learned counsel appearing for the respondents, is rejected.

5. So far as the second objection as to ~~non-~~
~~maintainability of the O.A. due to availability of~~
~~alternative remedy~~, suffice is to say that availability
of alternative remedy is not ^{an} absolute bar. Section 20
(1) of the Administrative Tribunals Act, 1985 provides
that the Tribunal shall not 'ordinarily' admit an appli-
cation unless it is satisfied that the applicant had
availed of all the remedies available to him under the
relevant service rules as to redressal of grievances.
The O.A. was already admitted on 26.05.2000 and is
listed for hearing today. The word 'ordinarily' used
in Section 20(1) of Administrative Tribunals Act, 1985
clearly gives ample discretion to the Tribunal to
entertain an application even if the applicant has
not exhausted alternative remedy available to him under
the service rules. By virtue of Sub Section (4) of
Section 19 of the Administrative Tribunals Act, 1985
~~the~~ Tribunal would be justified in entertaining the
O.A. as after admission of the O.A., no appeal or
representation in relation to such matter can be
entertained by the departmental authority. In the
circumstances, therefore, we find no justification
to dismiss the O.A. on the ground of availability
of alternative remedy.

Rey

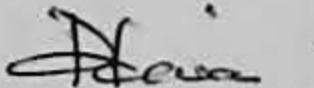
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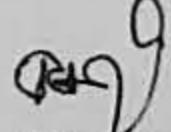
6. So far as the merits of the case is concerned, we find that the applicant was served with a charge memo vide memorandum dated 20.12.1976, and article 4 ,one of the five article of charges, ^{viz} ~~is~~ that the applicant while working as U.D.C. at Kendriya Vidyalaya, Varanasi had misappropriated a sum of Rs.13,225/-. According to statement of imputation of the charges, the applicant was alleged to have been received a sum of Rs.13,225/- from the proprietor, Pustak Niketan, Varanasi and handed over the railway receipts to him, and the proprietor took delivery of N.C.E.R.T. Books sent by the Business Manager. Sales Emporium, Publication Division, New Delhi but the applicant, it is further alleged, did not remit the aforesaid amount to the Business Manager, Sales Emporium, Publication Division, New Delhi, thus, he misappropriated the aforesaid amount. The Inquiry Officer in his report annexed as annexure-4 to the O.A. held the charges levelled against the applicant, not proved. The disciplinary authority by means of order dated 19.09.1997 accepted the findings recorded by the Inquiry Officer and exonerated the applicant of charges. It appears that the appellate authority ^{has} directed to hold a fresh inquiry. Consequently, a fresh inquiry was held but the Inquiry Officer again recorded his findings in favour of the applicant exonerating him of all charges. The disciplinary authority by its order dated 24.06.1998 again accepted the findings recorded by the Inquiry Officer and exonerated the applicant of all charges vide order dated 24.05.1998. The self same charges came to be levelled against the applicant vide memorandum dated 23.01.1987 and this resulted in imposition of punishment vide the order impugned herein.

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7. Having heard the counsel for the parties, we are of the considered view that the charge memo dated 23.01.1987 was not maintainable and the respondents were not justified in issuing the fresh charge memo and punishing the applicant in the face of the orders by which the applicant was exonerated on the same charge. The order impugned herein is, therefore, not sustainable.

8. Accordingly, the O.A. succeeds and is allowed. The impugned order dated 28.03.1994 is set aside. The applicant will be entitled to consequential reliefs. No order as to costs.


Member (A)


Vice Chairman

/M.M./