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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 1214 of 2000

this the 30th day of April, 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)
HON'BLE MR. S.C. CHAUBE, MEMBER(A)

Smt. Vibha Srivastava, C/o Sri S.C. Srivastava, R/o 29 H.I.G., Mumfordganj, Allahabad.

Applicant.

By Advocate : S/Sri S. Ahmad & S. Singh.

Versus.

1. Union of India through Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Lucknow.
2. Principal, Kendriya Vidyalaya Sangathan, Ordnance Clothing Factory (OCF), Shahjahanpur.

Respondents.

By Advocate : Sri N.P. Singh

O R D E R

PER MRS. MEERA CHHIBBER, MEMBER(J)

1. By this O.A., applicant has challenged the order dated 27.9.2000 (page 25) whereby applicant was imposed the penalty of compulsory retirement with recovery of Rs.7620/- Rs.67660/- already deposited by her.

2. The brief facts as alleged by the applicant are that she was served a chargesheet dated 19.5.98 on 5.9.1999 (page 21). She was sent a letter dated 27.8.99 (page 28) by the Enquiry Officer (In short E.O.) informing her that enquiry would be held on 5.9.1999 in the office of KVS, Aliganj, Lucknow, which was attended by her. The E.O. directed the presiding officer to serve a copy of the chargesheet on the applicant. The very next day, the applicant was relieved from Chakeri, Kanpur to O.C.F., Shahjahanpur, therefore, vide letter dated 9.9.1999 (page 35) she requested for one month time to file reply to the

chargesheet. Thereafter, she received another letter dated 14.12.1999 informing her that next date of hearing would be on 21,22, 23.12.1999. However, since she was sick and she received this letter on 21.12.1999 at 5.00 P.M.,naturally she could not appear before the E.O. She, therefore, sent an intimation to the E.O. on 22.12.99 (page 37) about her illness requesting the E.O. to have the enquiry after some time, yet E.O. proceeded with enquiry and sent another letter to the applicant dated 27.3.2000 calling upon her to give brief by 10.4.2000 by stating that brief given by Presiding Officer is enclosed, but in fact no such brief was enclosed, so she again informed vide her letter dated 4.4.2000 (page 41) the E.O. that no brief is enclosed and requested him to refrain from conducting the enquiry without giving her an opportunity. No reply was given to her and vide letter dated 22.6.2000 (page 44) the Asstt. Commissioner called upon the applicant to give her representation on the enquiry report enclosed.

3. It is submitted by the applicant that she gave her reply on 10.7.2000 (page 51 and 58) stating therein that the respondents have still not complied with the directions given by Hon'ble High Court of Allahabad inasmuch as they have still not decided the representation of the applicant and they have still not fixed the responsibility. It was at this stage that the applicant was informed vide letter dated 21.8.2000 (page 62) that her representation has already been decided on 22.6.98 (page 63). She replied but by the impugned order she was imposed the penalty as mentioned above(page 28). without considering her representation.

4. The applicant has challenged this order on the ground that she has been deprived of her right to defend as much as E.O. could not have conducted the enquiry when she had already informed the E.O. about her illness.

5. Respondents on the other hand have opposed this O.A. and have submitted that full opportunity was given to the applicant to defend herself, but she did not avail the opportunity, therefore, she cannot now complain of denial of principles of natural justice. They have taken preliminary objection to the maintainability of O.A. on the ground that applicant has approached the Court without exhausting the remedy inasmuch as no appeal was filed even through statute provides for it. As per Rule 80 C of Education Code, applicant could have filed an appeal to the Dy. Commissioner (Admn.) Personnel, therefore, the O.A. is barred by Section 20 of A.T. Act, 1985. They have also submitted that the O.A. is also barred by non-impleadment of necessary party because as per Education Code, Sangathan has to be arrayed through Jt. Commissioner (Admn.), KVS, Headquarters, New Delhi, but applicant has not even impleaded him as a party.

6. They have submitted on merits that the applicant had infact initially admitted the guilt in her letter dated 21.3.1998 and had deposited two instal-ments also, but lateron she has developed the case, as an after thought. More-over, applicant had not given intimation to the E.O. about her sickness as in spite of knowing fullywell that the enquiry was being held at Allahabad HQ. She purposely wrote the letter at Hinoo-Ranchi, therefore, she cannot say that she had informed the E.O. He submitted that since opportunity was given to the applicant and she had infact admitted the charge also initially, therefore, it calls for no interference. Counsel for the respondents relied on 2003(2) SC SLJ 88 in re. Jugal Chandra Saikia Vs. State of Assam.

7. We have heard both the counsel and perused the pleadings as well as original record produced before us by the respondents. Perusal of record shows that all efforts

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were made by the department to afford full opportunity to the applicant to defend herself e.g. a chargesheet had been sent to the applicant vide memorandum dated 22.5.1998 through Registered post at her residential address at Allahabad and at duty place i.e. Kendriya Vidyalaya No.1, Chakeri, Kanpur. But the said chagesheet had come back undelivered, hence it was published in the Rashriya Sahara and Sunday Times on 7th June & 14th June, 1998 respectively. Thereafter, chargesheet was again served on her on 5.9.99, on the direction of E.O. She was also given full opportunity to inspect the listed documents as per Annexure -3. It is, thus, clear that the chargesheet was duly served on the applicant.

8. It is further seen from the records that Sri Ram Nath Misra, Group 'D' has given a report on 19.12.99 that he had gone to the house of Smt. Vibha Srivastava on 18.12.99 at 4.00 P.M. to deliver the letter, but her relatives refused to take the letter on the ground that she has gone to the Doctor. He again went on 19.12.99, they said Smt. Vibha is on leave, therefore, she will not take the letter. He gave his report accordingly on 19.12.1999 and has proved it also in the enquiry by giving his statement. This intimation was given by the principal to the E.O. about her refusal to take the letter. Thereafter another Group 'D' employee Sri Om prakash was sent to the applicant's house with a letter dated 22.12.99 given by the E.O. for giving the intimation of enquiry to the applicant. He has also given the report that letter was delivered by him at her house, but her Bhabhi refused to give signature. He has has also been examined in enquiry and he has proved his report which is duly supported by peon Book also. It is also on record that E.O. had sent letter dated 14.12.1999 to the applicant informing her that enquiry would be held on day to day basis from 21.12.1999 to 23.12.99 at 10.00 hours in the office of principal, K.V. Bamrauli, Allahabad, therefore, she should attend the enquiry alongwith her defence Asstt. She was further informed that in case she does not turn-up, proceedings

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will be held ex-parte. According to the applicant, she received this letter on 21.12.1999 at 5.00 P.M., yet knowing fully well the venue of the enquiry at Bamraulli, Allahabad, she wrote the letter to the E.O. at his address of Hinoo Ranchi, which shows how clever applicant was trying to act. If she really had intentions to get the enquiry adjourned, she should have addressed the letter to the E.O. at Bamraulli, Allahabad as she was fully aware that enquiry was to be held from day to day basis at Bamraulli from 21st Dec. to 23rd Dec. 1999. We, therefore, hold that the applicant had not given any intimation to the E.O. about her illness because the letter addressed to the E.O. at Hinoo was received by the E.O. after he completed the enquiry and reached at Hinoo which is evident from the remark of E.O. on the said letter. Not only this, E.O. but efforts was made by the Principal also to serve the applicant about fixing of the date in enquiry as is explained above, but she refused to take the letters, therefore, now she cannot be heard of complaining that she was not given full opportunity to defend the case. At this juncture, it would be relevant to quote the view of the Hon'ble Supreme Court in the case of Ranjan Kumar Mitra Vs. Andhrew Yule reported in 1997 (10) SCC 386, it was held therein by the apex court that if employee choses not to participate in enquiry in spite of opportunity afforded, he cannot complain of violation of principle of natural justice, nor can it vitiate the termination. In view of the above facts and the view expressed by the apex court, we are satisfied that the applicant was given full opportunity to defend, but she decided not to participate in the enquiry as per her own voilation, therefore, now she cannot complain about violation of right to defend. It is further seen that when the applicant had requested the E.O. to grant her extra time due to her transfer on 6.9.99, the E.O. did extend the period by one month as per her request made vide letter dated 9.9.99. She was given the time upto 4.10.99 for scrutiny/inspection of documents, for giving

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the name of defence Asstt. It is, thus, seen that her valid request was duly considered by the E.O., which shows enquiry was held in a fair manner. E.O. had written another letter on 21.12.1999 to Smt. Vibha informing her that she had not appeared on 21st, but should appear on 22.12.1999 at 10.30 A.M. alongwith defence Asstt. and witnesses. She was further informed that in case she does not come, enquiry will be held ex-parte. Even a telegram was sent to the applicant. All these clearly show that full effort was made by the E.O. to afford opportunity to the applicant, but she decided not to participate.

9. Not only this, it is seen from records that initially when Principal had issued a memorandum dated 21.3.98 to Smt. Vibha to the following effect :

> "A special Audit has been conducted by the Internal Audit party in the Vidyalaya from 18.3.98 to 21.3.98. & Some irregularities/ shorts deposits of Fees & Fines in SF and PF have been pointed-out.
>
> An Short amount of Rs.65,450 (S.F. Rs.2620/- PF Rs.62830) have been deposited in the bank as per records of DCB and class Attendance Register. Smt. Srivastava, LDC the dealing hand is hereby directed to deposit the above mentioned amount on 23.3.98 with the office of the Vidyalaya so that the same may be deposited in the concerned heads."

She had herself given in writing that the amount mentioned in the letter dated 21.3.98 shall be deposited by her in 3 months time as she is not in a position to deposit the same by 23.3.98.

10. It is relevant to note that lateron the applicant stated that this letter was written under duress and she denied the allegations, but the fact remains that not only she had written this letter in her own handwriting addressed to the Principal, duly signed by her, but she even admitted that she had committed a mistake, and assured that she would not do it in future and had also requested to be pardoned. More-over, she had admittedly deposited two instalements of Rs. 2620/- on 3.4.98 and Rs.5000/- on 7.4.98 also which clearly shows that

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she had admitted the charge and subsequent development is only an after thought. In these circumstances, her contention that she had admitted the guilt under duress cannot be accepted and is rejected. At this juncture again the views expressed by the Hon'ble Supreme Court are relevant. In the case of Arcot Ramaswamy Madaliar Educational Institute Vs. Educational Appellate Tribunal & Another reported in 1999 (7) SCC 332 the Hon'ble Supreme Court held that no enquiry is required where charge is admitted. Similarly in the case reported in 2000 (3) AISLJ SC 128 the Hon'ble Supreme Court reiterated the view that since the guilt was admitted, there was no need to hold the enquiry.

11. In view of the judgments mentioned above, if the applicant's own letter dated 21.3.98 is seen coupled with the fact that she purposely did not participate in the enquiry to defend herself, we are satisfied that no case for interference has been made-out by the applicant. The conduct of the applicant itself shows that she is herself not a fair person.

12. Counsel for the applicant then tried to submit that depositing of fee was not a part of her duties, but we are afraid, that stage has gone. If applicant wanted to defend herself, she should have placed the evidence to defend herself before the E.O. which chance she has foregone voluntarily. We cannot sit as as E.O. at this stage to appreciate the evidence because Hon'ble Supreme Court has repeatedly held that in disciplinary matters, the Tribunal should not re-appreciate the evidence as the scope of interference in such matters is very limited. Infact, Hon'ble Supreme Court has held that so long there is even some evidence on record, the proceedings should not be interfered and what punishment should be awarded, should be left to the disciplinary authority. In the instant case, it is seen that 3 audits AISLJ 2000(3) SC 151 in re. U.O.I. & ors. Vs. Narain Singh. were held. Ist it came to the notice of eternal audit that

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that fees and fines collected by the applicant was not deposited full in the Vidyalaya Account. Hence, a special audit was conducted from 18.3.98 to 21.3.98 by the eternal audit team of the Regional Office, Lucknow in respect of fees and fines collected in Kendriya Vi-dyalaya, Old Cantt, Allahabad by the applicant. Thereafter, during the special audit conducted by the special audit team, it was found that an amount of Rs.65450/- was short deposited in the Bank during the session 1994-95 to 1997-98 by changing the figures of collection in Daily Fees Collection Register. However, the K.V.S. (Headquarters) now in Delhi, had also sent a audit the whole account of Vidyalaya. The said Audit team after going through the records found that an amount of Rs.67660/- was short deposited in the bank during the aforesaid period. Since applicant was doing the job independently and she never put the Daily fee and Fine Register before the principal or Upper Division Clerk of the Vidyalaya for checking, she was asked by the Principal to deposit the said embezzeled amount to which applicant agreed immediately and gave statement that the said amount will be deposited within a period of three months from 21.3.98. The applicant even deposited a sum of Rs. 2620/- on 3.4.98 and Rs.5000/- on 7.4.98 and the witnesses have deposed in the enquiry that all this work of depositing the amount and filling the form etc. was being done by Smt. Vibha Srivastava, therefore, since evidence is already on record, we do not think it proper to interfere in this case at all, as it is a serious matter and the charge stands proved against her in the enquiry.

13. Counsel for the applicant next argued that respondents did not comply with the directions of Hon'ble High Court of Allahabad inasmuch as respondents did not fic the responsibility /

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about mis-appropriation of the amount.

14. We have seen the judgment dated 25.5.98 passed in Writ petition no. 16215 of 1998. By the said W.P., applicant had challenged the order dated 21.3.98 issued by the Principal whereby the applicant was directed to deposit a sum of Rs.64450/-. She had also challenged her transfer order. After hearing both the counsel, Hon'ble High Court of Allahabad gave liberty to the applicant to file objection to the audit report which was required to be supplied to the applicant and the respondent no.2 was directed to dispose of the objection by examining as to who was responsible for the amount misappropriated. It was made clear that till the disposal of representation, the applicant shall not be liable to pay the amount as claimed by the respondents by way of impugned order. No interference was made as far as the transfer order was concerned.

15. Now, counsel for the applicant submitted that the respondents should first have fixed the responsibility and then alone could have proceeded with the issuance of chargesheet, but since respondents did not fix the responsibility as directed by the Hon'ble High Court, the issuance of the chargesheet itself is bad in law. We cannot accept such a contention because for fixing the responsibility, it was necessary to hold an enquiry. Accordingly, the applicant was informed vide letter dated 22.6.98 that chargesheet has already been issued for fixing the truth (page 63) and copy of the audit report had already been supplied to her in compliance with the Hon'ble High Court's judgment. Infact, by issuing chargesheet, applicant was given a better opportunity to defend herself as she could even defend herself by leading evidence, therefore, it is wrong to say that the directions given by the Hon'ble High Court was not complied with. This contention of the applicant is accordingly rejected.

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16. Counsel for the applicant next argued that lot of delay has taken place in deciding the matter which has caused prejudice to the applicant, therefore, the impugned order is liable to be quashed on this ground alone. It is seen that the Hon'ble High Court had passed the judgment and order dated 25.5.1998, thereafter full opportunity was given to the applicant to defend herself, but since she herself avoided to take chargesheet or various letters written to her informing about the fixing of the date of the enquiry, naturally it took time, ultimately the final order was passed on 27.9.2000, we do not think that this can vitiate the orders passed by the respondents. Since serious allegations have been made against the applicant, which stood proved in the enquiry on the basis of evidence which came on record, we are of the opinion that no case has been made out by the applicant for interference by this Tribunal.

17. Though counsel for the respondents had taken a preliminary objection to the maintainability of the O.A. on the ground that the applicant had not exhausted the statutory remedy and has not impleaded Joint Commissioner (Admn.) as respondent, but since we have heard the matter at length and have also looked into the record, we feel it better to dispose off the case on merits rather than going on preliminary objections. No other point was raised by the applicant's counsel except that this is a hard case. In view of the charge made against the applicant, the evidence which has come on record and looking at the conduct of the applicant, it cannot be said to be a hard case specially keeping in view the observations made by Hon'ble Supreme Court in 2003 SCC (L&S) 363.

18. In view of the above, we find no merit in the O.A. The same is accordingly dismissed. No costs.

MEMBER(A) MEMBER(J)

GIRISH/-