

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

(THIS THE 4th DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. D. C. Lakha, Member (A)

M.A. Nos. 4610 & 4611 of 2009

In

Original Application No.764 of 2000

Shri Ashok Kumar Gulati, Store Keeper, Jawahar Navodaya
Vidyalaya Babrala, District Badaun

..... Applicant

Present for Applicant: Shri I. Ali, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Human Resources Development, Department of Education, Government of India, New Delhi.
2. Director, Navodaya Vidyalaya Samiti, A-39 Kailash Colony, New Delhi.
3. Deputy Director, Navoday Vidyalaya Samiti, Regional Office, U.P. Lucknow.
4. Dr. U.C. Bajpayee, Deputy Director, Navodaya Vidyalaya Samiti, Regional Office, U.P.Lucknow.
5. Principal Jawahar Navodaya Vidyalaya Rabrala, District Badaun.

..... Respondents

 Present for Respondents : Shri S. K. Anwar, Advocate


ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

OA 579/2000 relating to grant of regularization of the applicant in the N.V.S. had been dismissed upholding the legal validity of order dated 17-05-2000 of the respondents whereby applicant's request for regularization had been rejected.

2. In the wake of the order dated 17-05-2000, the respondents had passed two more orders dated 22-05-2000 and 02-06-2000 whereby the applicant stood repatriated and relieved from the N.V.S. This OA was, in line with the other OA No. 579/2000 also dismissed vide order dated 08-07-2009.

3. The applicant had filed recall application in respect of the earlier order in OA No. 579 of 2000 and also recall application (under consideration here now) for recall of the order dated 08-07-2009. The recall application in OA No. 579 of 2000 was entertained and the O.A. was allowed vide order dated 29-10-2010. Consequently, the applicant had moved this application for a like order.



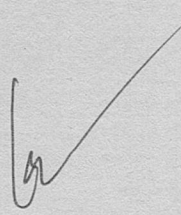
4. In OA No. 579 of 2000, the applicant sought regularization and the Tribunal has, vide order dated 29-10-2010 held as under:-

The applicant was earlier working in a school called D.P. Public School, NOIDA, UP when his wife was working as a T.G.T. (English) at Navodaya Vidyalaya, Dadri. On his making an application for the post of Storekeeper on the basis of his experience in the aforesaid D.P. Public School, he was inducted in the Navodaya Vidyalaya Samiti as deputationist for a period of two years, with a rider that the Samiti retains its right to repatriate the applicant at any time. He was initially posted at Dadri and thereafter even beyond two years his deputation continued and was transferred to Navodaya Vidyalaya at Bulandshahar and from there to Badaun.

2. The respondents had informed the applicant that the Absorption Committee of the Navodaya Vidyalaya Samiti had proposed to absorb the applicant vide Annexure 6 letter dated 30-05-1997 for which a no objection certificate was required and the applicant had to tender technical resignation from the parent school, i.e. D.P. Public School, NOIDA. In fact, the requisite No Objection Certificate was already issued by the School on 08-09-1995 and the resignation was accepted on 08-07-1997. As the applicant did not receive any communication in regard to the permanent absorption for a substantial period, he moved the CAT in OA No. 334/2000, which had directed the respondents to decide his representation, vide order dated 17-04-2000. By a communication dated 17-05-2000, the respondents have repatriated the applicant to his parent school, i.e. D.P. Public School, NOIDA. Hence this OA seeking the following reliefs:-

8(I) That the impugned order dated 17.5.2000 passed by the respondent no.3 be quashed.

8(II) That the respondents be directed to absorb the applicant permanently on the post of Store Keeper in Jawahar Navodaya Vidyalaya Samiti.



3. Respondents have contested the O.A. They have a different version to narrate. According to them, while the facts relating to his appointment on deputation, transfer etc., are not denied, in so far as his service in the previous school, they having received information that he had served only for a limited period from September 1991 to November, 1991 only, an inquiry was conducted and the Education authorities at Meerut were contacted, who have stated that the acceptance of resignation by D.P. Public School was obtained by applying pressure and that the Principal is not the competent authority to issue such letter of acceptance of resignation. Again, as to a communication purported to have been sent by the Zila Basic Shiksha Adhikari, G.B. Nagar, Ghaziabad dated 27-12-1999 was referred to the education authorities at Meerut, who had stated that in the absence of letter number and date, the issue of that letter is not without suspicion. Thus, by communication dated 25th May 2000, the applicant was repatriated after his representation disposed of on 17.05.2000.

4. The case was once dismissed for non prosecution; however on the applicant's filing an application for restoration, the same was allowed and the case listed for final hearing.

5. On the date of hearing, the counsel for the respondents was promptly present, while that of the applicant was absent. As such, the case was heard on merit, invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987.

6. The applicant has, vide his OA raised the following main ground of attack on the impugned order dated 17.05.2000:-

(a) Issue of impugned order without any show cause notice resulting in violation of principles of natural justice.

(b) Irrelevant and unreasonable grounds for repatriation, which cannot be sustained in law.

(c) Inquiry about the technical resignation, after 7 years appears not as a natural sequence but a targeted one, as the applicant has approached the Tribunal.

(d) Inquiry conducted was behind the back of the applicant which is impermissible.

(e) The certificates issued by the D.P. Public School are true and genuine.


(f) Promissory estoppel also goes in favour of the applicant.

(g) By virtue of the assurance given by the NVS he had changed his course, and had already resigned from the earlier institution.

7. In so far as the veracity of the documents is concerned, the same being disputed by the respondents, no finding can be given by the Tribunal and it is for the authorities to decide. However, the way in which they have come to a conclusion about the dubiousness of the document cannot be held to be valid as the applicant has not been given an opportunity to substantiate that the documents were genuine and not fabricated.

8. The inquiry conducted by the respondents is thoroughly behind the back of the applicant. Such an inquiry, if in the nature of preliminary enquiry, could well form the basic foundation for a regular inquiry in which there must be place for the applicant to participate and vindicate his stand. This has not been done. The preliminary inquiry itself has been taken as regular inquiry and without hearing the applicant the final decision has been taken. This is against the principles of natural justice. It is worth referring to the decision of the Apex Court in the case of *Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.*, (1999) 2 SCC 21, wherein the Apex Court has held as under:-

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be



treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee – even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.

9. Be it termination or probation, or repatriation, the above law holds good as any inquiry without giving an opportunity to the individual concerned is against the principles of natural justice. Thus, for this very reason, the impugned order has to be set aside.

10. If the matter is scanned a little deeper, certain other deficiencies in the action on the part of the respondents would surface. For example, in the matter of permanent absorption, it is the Absorption committee situated at the Headquarters that is the authority. It is that authority that has decided to permanently absorb the applicant. In this regard, reference is made to para 3 and 4 of Regional Office Memorandum dated 17-05-2000 which read as under:-

3. His consent and performance report was forwarded to the Samiti Headquarters for consideration of his case for permanent absorption in the Samiti.

4. The Absorption Committee constitution at the Samiti Headquarters had recommended his case for permanent absorption in the Samiti with effect from 1st July, 1996.

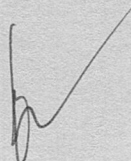
11. Thus, when the authority for deciding about the absorption is held with the Headquarters, the Regional office could at best recommend the repatriation of the applicant to the Headquarters for their approval, that too, after conducting a legally valid inquiry and not that it could take over the power of the Absorption Committee or headquarters. It is worth noting the fact that in none of their communication,

either while referring the matter to the Education authorities at Meerut or correspondence with any other authority, is there any inkling that the Headquarters has been made known of the action being taken by the Regional Headquarters.

12. The timing when the so called inquiry was conducted, when action was taken also is an indicator that the respondents have not acted with that sense of responsibility or bonafide, inasmuch as, there was a delay of 4 years from the date the absorption committee had decided to recommend the case of the applicant for absorption till any further action was taken in this regard. If any action was taken, that was sometimes in June/November, 1999, as could be culled out from the letter from the NVS Meerut addressed to the Regional Office, Lucknow, the same was in snail's pace. But, once the order of this Tribunal has been issued, in quick succession action was taken. Some communication from Regional office to NVS Meerut; from the latter to the Education authority at Meerut, and astonishingly, action by that authority within just two days, by deputing a person to NOIDA school, to obtain a letter from the Principal and immediate communication from NVS Meerut to Lucknow Regional Office and from Regional Office to the applicant. All without informing the Headquarters! Had these actions been taken prior to issue of order by the Tribunal, it would not raise any suspicion whereas, the timing in the action taken cannot raise a genuine doubt whether the respondents were bonafide in their action. Justification could be made taking the plea that time granted by the Tribunal is just four weeks and within the same all action had been taken. But all action taken without reference to the Headquarters does not support this proposition, as the Headquarters is also a party before the Tribunal and the authority to decide the repatriation must be with the headquarters.

13. The repatriation order scents punitive in nature and if the applicant's resignation had already been accepted by the parent school, the applicant is rendered nowhere.

14. Keeping in view the overall perspective, and in particular the fact that the applicant had not been given an opportunity in the matter of inquiry, we have no option but to hold that the impugned order dated 17-04-2000 suffers from



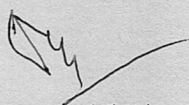
serious legal lacuna and is necessarily to be quashed and set aside. We order so.

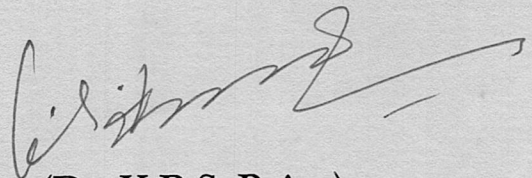
15 Accordingly, the OA is allowed. Respondents are directed to reinstate the applicant as a deputationist and they are at liberty to conduct a fresh inquiry after giving an opportunity to the applicant. The interregnum period from the date of repatriation till the date of reinstatement shall be treated as period of suspension and subject to proving that the applicant was not gainfully employed during this period, he shall be entitled to subsistence allowance for the said period.

16. Under the circumstances, there shall be no orders as to costs.

5. The above being the position, the consequential orders impugned in this OA have no legs to stand. Hence, this recall application is allowed, earlier order dated 08-07-2009 recalled. The OA is allowed and order dated 22-05-2000 and 02-06-2000 are hereby quashed and set aside.

6. No cost.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Sushil