

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of January 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Administrative Member.

Original Application no. 16 of 2002 (U).

K.P. Dubey, TGT (Maths.) Kendriya Vidyalaya, No. 2, NHPC,
Banbasa, P.O. Chandani,
Distt. Champawat. Uttranchal.

... Applicant

By Adv : In person

Alongwith

Original Application no. 17 of 2002 (U).

G.S. Srivastava, PGT (Chemistry), Kendriya Vidyalaya no. 2
NHPC, Cahmpus Banbasa, P.O. Chandani,
Distt. Champawat (Uttranchal).

... Applicant

By Adv : In person

Versus

1. Kendriya Vidyalaya Sangathan,
through the Commissioner, K.V.S.,
18, Shaheed Jeet Singh Marg, (Industrial Area),
NEW DELHI.
2. Assistant Commissioner, Thro' Shri M.M. Swamy,
Regional Office, K.V.S.,
Salawala, Hathibarkala,
Dehradun (Uttranchal).
3. The Principal, Thro' Shri G.S. Mehta,
Kendriya Vidyalaya No. 2 NHPC,
Banbasa, P.O. Chandani,
Distt. Champawat (Uttranchal).
4. Shri H.M. Cairae,
Commissioner Kendriya Vidyalaya Sangathan (Hqrs),
18, Saheed Jeet Singh Marg, (Industrial Area),
NEW DELHI.

... Respondents
(in both the OAs)

By Adv : Sri N.P. Singh (in both the OAs)

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O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member A.

The facts in both the OAs, filed under section 19 of the A.T. Act, 1985, are more or less the same. The relief claimed in both the OAs are ^{similar} the same, therefore, both the OAs are being decided by a common order. The leading case being OA no. 16 of 2002.

OA 16 of 2002.

2. In this OA, the applicant has challenged the charge sheet dated 19.9.2001 (Ann A1) and the suspension order dated 25.9.2001 (Ann A2) and has prayed that both these orders be quashed and the applicant be reinstated with all consequential benefits.

3. The facts, in short, are that the applicant was working as T.G.T (Maths) at Kendriya Vidyalaya (in short K.V.) Banbasa. As per applicant, he is the senior most teacher amongst the TGTs and is involved in the school activities. During the performance of his duties, he discovered ^{many} ~~many~~ irregularities committed by Shri V.K. Jain, the then Chief Engineer of NHPC Banbasa in the capacity of Chairman of Vidyalaya Management Committee (in short VMC) and the chairman of Parents Teachers Association (in short PTA). As per applicant, Sri V K Jain finding the applicant inconvenient in his plan in purchase of Computers, ACs and other assessories including furnitures etc. ~~By~~ ^{By} violating rules of KVS ⁱⁿ managed ⁱⁿ an article in Amar Ujala Daily on 31.8.2000 against the school and its functioning. The applicant wrote a letter to the editor of Amar Ujala Daily to clarify the facts. The editor Amar Ujala Daily clarified subsequently that the subjected news had been published on the basis of letters of PTA. The applicant has alleged that Shri V.K. Jain, the Chief Engineer of NHPC conspired with the Commissioner KVS (Respdt no. 4) and Shri G.C. Bist the then

Principal of KV Banbasa was transferred in the first week of September 2000 and one Sri V.K. Agarwal joined as Principal during the second week of September 2000. The applicant has stated that due to the efforts of another senior most PGT, Shri G.S. Srivastava (applicant in OA no. 17 of 2002) the evil designs of Shri V.K. Jain in making money out of purchases for K.V. Banbasa were thwarted. Within a period of four months respondent no. 04 Shri H.M. Cairae transferred Sri V.K. Agarwal from Banbasa to Haridwar in the last week of December 2000 and the charge of the Principal was taken over by Sri G.S. Srivastava PGT (Chem) as a stop-gap arrangement. The applicant sent a representation dated 31.1. 2001 to the Commissioner KVS, New Delhi bringing out the behaviour and conduct of Sri V.K. Jain and also requesting for a C.B.I. probe into the matter regarding illegal purchases, but no action was taken by the respondent no. 4. Meanwhile, respondent no. 4 and Sri V.K. Jain conspired and Sri A.K. Chaturvedi, Principal of KV Banbasa Cantt. (which is ^{at a distance of} about 10 Kms from KV NHPC Banbasa) was ordered to take over the charge of Principal, KV NHPC Banbasa from Sri G.S. Srivastava on 15.3.2001. Aggrieved by this/the applicant sent representations dated 21st and 23rd April 2001 to Dr. M.M. Joshi, the Hon'ble HRD Minister, New Delhi for an early investigation in the aforesaid purchases. The applicant also protested against the illegal admissions being done at the instance of Sri V.K. Jain by misusing powers of the Chairman of the Executive Committee of the Vidyalaya and also opposing the holding of additional charge of Principal KV NHPC Banbasa by Sri A.K. Chaturvedi. The applicant has stated that when he approached Principal Shri A.K. Chaturvedi and submitted his representation on 25.4.2001 disclosing plan of Sri V.K. Jain for ousting the applicant from Banbasa, he was advised to submit the representation to Commissioner K.V.S. which he did on 26.4.2001. The applicant alongwith Sri G.S. Srivastava, met respondent no. 4

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i.e. Commissioner K.V.S. at New Delhi on 27.4.2001 and narrated the entire episode. The school was closed for summer vacation from 5.5.2001 to 24.6.2001, ^h ^h On resuming his duties on 25.6.2001, he came to know about the suspension of Sri G.S. Srivastava on 13.6.2001 by abetting Sri S.C. Jain, the then Assistant Commissioner, K.V.S. Dehradun region at the behest of respondent no. 4 and Sri V.K. Jain. The applicant sent a representation on 28.6.2001 to Assistant Commissioner Dehradun region (i.e respondent no. 2) for proper inquiry and also the C.B.I investigation in the matter of misconduct and offences committed by Sri V.K. Jain. The representations dated 21st and 23rd April 2001 sent to Hon'ble HRD Minister were not actioned properly. By memo ~~by sending~~ dated 22/25.6.2001 of Asstt. Commissioner KVS Dehradun region, the applicant was directed to submit the original documents related to the complaint made to Hon'ble HRD Minister especially when all the records were available in the office of Principal KV NHPC Banbasa, ^h ^h This shows malafide on the part of respondent no. 2 also. The applicant was forced to explain as to why he had sent the representations dated 21st and 23rd April 2001 to H.R.D. Minister directly. When the applicant requested the Principal NHPC Banbasa to supply the required documents listed in his representation dated 29.6.2001 to enable the applicant to submit his reply to the Asstt. Commissioner Dehradun region, the principal Shri G.S. Mehta, who was appointed on deputation for only one year, refused to provide the documents. However, the applicant sent his reply on 10.7.2001 to Asstt. Commissioner i.e. respondent no. 2. The memo dated 5/6.7.2001 was received by the applicant on 12.7.2001 the reply of which was sent by the applicant on 16/18.7.2001. Shri S.C. Jain, the Asstt. Commissioner KVS, Dehradun directed Sri P. Singh the Education Officer to investigate into the matter. Shri P. Singh gave a ^h question-naire ^h to the applicant

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on 10.7.2001. The applicant replied the ^h questionnaire and Education Officer Sri P. Singh after visiting class 9A for hardly 5 minutes when the applicant was teaching Maths on 11.7.2001, called the applicant to the office of Principal and gave him a format 'Check List for Teachers' for signature. The applicant protested against some irrelevant entries made therein by submitting a representation dated 11.7.2001 to Sri P Singh for getting guidelines and demonstration lessons from him. However, no such action was taken by Sri P Singh and he left Banbasa on 11.7.2001 itself. The applicant sent a representation to Asstt. Commissioner KVS, Dehradun on 6.8.2001 to permit him to approach the Competent Court in the matter of investigation regarding allegations ^{against} Sri V.K. Jain, conduct of K.V.S. officers and safety and security of his family. The Principal and the Asstt. Commissioner neither supported the applicant nor guided him. Shri M.M. Swamy, respondent no. 2 issued a memorandum of charge sheet dated 19.9.2001 which was received by the applicant on 24.9.2001. The applicant was suspended on 27.9.2001 by order dated 25.7.2001. Aggrieved by the same the applicant has filed this OA which has been contested by the respondents by filing counter affidavit and suppl. counter affidavit etc.

O.A. 17 of 2002.

4. In this O.A. the applicant has prayed for quashing of ^h impugned charge sheet dated 19.9.2001 and the suspension order dated 13.6.2001 and direction to the respondents to reinstate him with immediate effect with all consequential benefits.

5. The only difference in the facts of this case with that of O.A. no.16 of 2002 is that ^{as per h} the applicant ^h he being senior most PGT (Chem.) ~~as~~ was involved in all the activities and works

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of the school as second to Principal. As per the applicant, he also objected to undesirable activities of Sri V.K. Jain, Chief Engineer, NHPC, Banbasa regarding illegal computer purchases etc and also the irregular admissions. He alongwith Shri K.P. Dubey, Sr. TGT (Maths) (applicant in OA no. 16/02) sent various representations to various authorities, met respondent no. 4 personally yet nothing was done. The applicant was issued impugned suspension order dated 13.6.2001 during the summer vacation and his headquarters was changed from Banbasa to Dehradun. He was served with the charge sheet dated 19.9.2001. Challenging his suspension order dated 13.6.2001 and memorandum of charge sheet dated 19.9.2001, the applicant has filed this OA which has been contested by the respondents by filing counter affidavit and suppl counter affidavit etc.

5. Shri K.P. Dubey (applicant of OA 16/02) and Shri G.S. Srivastava (applicant of OA 17/02) appeared in person. Mainly Sri K.P. Dubey argued both the OAs. Sri K.P. Dubey submitted that though the charge sheet was issued on 19.9.2001 (received on 24.9.2001) giving him 10 days time to reply, the respondents without waiting for reply, suspended the applicant on 27.9.2001. It is a clear violation of principles of natural justice. Inviting our attention to para 8 of the counter affidavit which is an inquiry report against Sri G.S. Srivastava PGT (Chem.) and Sri K.P. Dubey, TGT(Maths), TGT KV Banbasa dated 19.7.2001 conducted by Sri P Singh, Education Officer, the applicant submitted that perusal of para 2 of the said inquiry leaves no doubt that the respondent's action are malafide to punish the applicants. The Education Officer in conclusion recorded in the said inquiry report has stated as under:-

"The statements of students, Parents, VMC members of

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KV, NHPC, Banbasa substantial the allegation given by them in respect of Shri K.P. Dubey, TGT (Maths) of KV, NHPC, Banbasa."

From the above it is clear that Shri G.S. Srivastava has not been held responsible for any mistake. If that be so why have the respondents ^{not} reinstated Sri G.S. Srivastava and dropped the charge sheet against him. It is crystal clear that the respondents are acting in a malafide manner. Commissioner KVS, who has been implicated by name as respondent no. 4 colluded with Sri V.K. Jain to punish the applicant as he raised his voice against the corrupt practices adopted by the Chairman VMC, Sri V.K. Jain.

6. Sri K.P. Dubey further submitted that when he wanted to approach this Tribunal, the principal did not supply him the documents, obviously, under the instructions of higher authorities. The impugned charge sheet is regarding violation of Rules of CCS (Conduct) Rules 1964 which is not applicable in respect of the teaching staff of Kendriya Vidyalaya. In fact they are governed by Education code which has been borrowed from Delhi Education Code. Sri K.P. Dubey also submitted that the charges levelled against him are not correct as in, charge no. 2 & 3 the mention of Rules and Govt. of India decision pertain to sexual harrasment, which has not been alleged from any quarter what so ever. The respondents, ^{in spite of} repeated request of the applicant did not call the parents meet and it was Sri G.S. Srivastava who while officiating as Principal issued such notice on 8.2.2001. The applicant also alleged that all the complaints of the parents against him which have been listed as list of documents from 7 to 14 alongwith charge sheet have been made only on 10.7.2001 and 11.7.2001. These have been engineered

by Shri V.K. Jain. Shri K.P. Dubey summing up of his arguments submitted that the events as narrated in the facts would reveal that the respondents were out to take action against the applicant out of vengeance and the entire action of the respondents is malafide, therefore, the suspension order dated 25.9.2001 (Ann A2) and charge sheet dated 19.9.2001 (Ann A1) are liable to be quashed. The respondents have not even reinstated the applicants inspite of the interim order of this Tribunal dated 27.5.2002 and have made no payment whatsoever after May 2002 ^{h & CCA132-A/02 in OA 17/02(U)} for which he has filed a contempt petition no. 132/02 in OA 16/02(U) which ^{h h} is still pending. In support of his arguments the applicant has placed reliance on number of judgments of which a few are given below :-

- i. STATE OF PUNJAB VS. V.K. KHANNA (2001) 2 SCC 330 in which it has been held that bias negates fairness and reasonableness and leads to arbitrariness and malafidies which is in violation of principles of natural justice.
- ii. UNION OF INDIA & ORS VS. J AHMED, AIR 1979 SC 1022 in which it has been held by Hon'ble Supreme Court that lack of efficiency, failure of attainment of highest standards of administrative ability etc would not constitute misconduct nor for the purpose of Rule 3 of the conduct as would indicate lack of devotion to duty.
- iii. SUNIL KUMAR TYAGI VS. U.P. KHADI AND VILLAGE INDUSTRY BOARD (1999) 2 UPLBEC 1118 in which it has been held by Hon'ble Supreme Court that order of suspension should not be passed merely on suspicion or on mere receipt of complaint.
- iv. TRANSPORT COMMISSIONER, MADRAS VS. A RADHA KRISHNA MOORTHY 1995 (1) SLR 239 (SC), the judgment of Hon'ble Supreme Court is in regard to vague charges.

7. The applicant has also cited number of cases decided by various benches of this Tribunal and also of various Superior Courts. Number of such cases are not relevant to the present controversy and hence are not being mentioned.

8. Shri N.P. Singh learned counsel for the respondents, resisting the claim of the applicant submitted that the applicant's contention that CCS (Conduct) Rules 1964 ~~are~~ not applicable on them is incorrect. The CCS (Conduct) Rules 1964 which were applicable in respect of non teaching staff earlier were adopted by the KVS on 10.2.1982 and were made applicable for teaching as well as non teaching staff. Shri N.P. Singh also submitted that CCS (CCA) Rules 1965 are mutis-mutandis are applicable on employees of KVS including teachers.

9. Learned counsel for the respondents further submitted that the applicant is most disputed teacher amongst the staff of Vidyalaya. ~~Both~~ ^{Both} the applicants in both the QAs are in habit of involving themselves unnecessarily ⁱⁿ the administration of Vidyalaya and also levelling false allegations against the higher officers in order to hide their poor performance in teaching work as well as misdeeds. The respondents in view of the observations made by Principal Bench of this Tribunal in their order dated 1.7.1999 passed in QA no.454 of 1999 did not consider the transfer as a remedy to discipline the ~~employees~~ and, therefore, disciplinary action was initiated. Learned counsel for the respondents also submitted that since the applicants were compelling the students for private tuitions etc, a resolution duly signed by 8 members of the VMC NHPC, Banbasa was passed on 21.4.2001 for the transfer of Sri G.S. Srivastava (applicant of QA 17/02)

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on administrative grounds and immediately, thereafter, the applicants of both the OAs started complaining against Sri V.K. Jain, Chairman of the VMC. An immediate complaint was filed on 21.4.2001, 23.4.2001 and 26.4.2001. No credence should be given to these complaints. Para 9 of the Principal Bench judgment dated 17.7.1999 passed in OA 454 of 1999 reflects the previous conduct of the applicant also. Placing reliance on the judgment of Hon'ble Supreme Court in Union of India & Ors Vs. Upendra Singh (1994) 3 SCC 357, the learned counsel for the respondents submitted that the scope of judicial review of this Tribunal is limited in examining correctness of the charges particularly at the stage of framing of charges. It has been held by the Apex Court that it is beyond the jurisdiction of the Tribunal. A similar view has been taken by Hon'ble Supreme Court in Govt. of A.P. and another Vs. B. Vasanta Rao and another (1999) 5 SCC 183. Sri N.P. Singh has also challenged the maintainability of the OAs on two grounds, firstly, the allegations are against Sri V.K. Jain and he has ^{not been} made party and secondly, the Joint Commissioner of K.V.S. has to be made necessary party which has not been done. Sri N.P. Singh, finally submitted that the applicants have been paid subsistence allowance upto May 2002. Thereafter, no payment has been made to them as they refused to give non-working certificate.

10. We have heard the applicants in person and Sri N.P. Singh, learned counsel for the respondents, carefully considered their submissions and closely perused records.

11. The applicant has narrated about the incidence of 1986 and 1990, while he was working in Assam and Manipur, his transfer, suspension etc and the litigation thereof which

in our view has no relevance to the present controversy. The applicant has tried to establish malafide on the part of respondent no. 4 on various grounds and has also levelled allegations about the transfer of a few Principals in collusion with Sri V.K. Jain, Chairman, VMC, NHPC, Banbasa. Much has been argued against the charge sheet and the various charges levelled against the applicant. We are not inclined to record any finding as it may prejudice the case of the parties before Enquiry Officer and the Disciplinary Authority. However, from the perusal of charges levelled against the applicant ^{with} ~~prima-facie~~ appears that the charges are not so serious as to award penalty of dismissal/removal from service. Therefore, the order of suspension is not tenable. ^{with the above} Keeping in view this Tribunal ~~wide~~ order dated 27.5.2002 passed the following order :-

"Considering these aspects, we are of the view that the applicant is entitled for protection. Consequently, we direct that all the proceedings in pursuance of the memo of charge dated 19.9.2001 shall remained stayed till the next date. We further provide that the impugned order of suspension dated 25.9.2001 shall also remain stayed. The applicant shall be reinstated and shall be allowed to discharge his duties as Teacher and shall be paid salary. However, the payment of arrears shall be subject to final orders passed in this O.A."

The applicant should have been reinstated immediately after the interim order dated 27.5.2002 was passed. We do not appreciate the ⁱⁿ _{in} inclination of respondents in by-passing or not complying with the direction of the Court. The respondents have to abide by rule of law. The order of the Court has to be respected and complied with unless it is set aside/stayed by superior Courts.

12. We find force in the submission of respondents that ^{not} Court should not interfere at this stage of charge sheet. The legal position is well settled that the Tribunal should not interfere at the stage of framing of charges unless and until it has been established beyond doubt that the charges have been levelled out of ^{or against rule} malafide, which, in our opinion, is not the case in the present OAs. The Chairman, KVS is fully empowered to order for transfer in respect of employees of KV including Principals and Teachers in

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interest of management of Kendriya Vidyalayas overall/administration and the allegations of the applicant that the transfer of Principals of KV, NHPC has been done because of conspiracy between respondent no. 4 and Chairman, VMC, Sri V.K. Jain is unfounded.

13. In the facts and circumstances and our aforesaid discussions the OAs are finally disposed of with the direction to the respondents that the applicants will be deemed to be reinstated w.e.f. 27.5.2002, the date the interim order was passed by this Tribunal. The respondents shall take action to make the payment of salary of the applicants w.e.f. 27.5.2002 within a period of one month from the date of communication of this order. The applicants will be allowed to discharge their duties as Teacher and shall be paid salary as and when due. The respondents may proceed with the finalisation of the disciplinary proceedings initiated against the applicants and such proceedings shall be finalised within a period of six months. The applicants are directed to cooperate with the respondents in early finalisation of inquiry and the disciplinary proceedings.

14. With the above the aforesaid OAs i.e. OA no. 16 of 2002 and OA no. 17 of 2002 are finally disposed of with no order as to costs.



Member (A)



Vice-Chairman

/pc/