

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 10th day of April, 2002.

Original Application No.363 of 2002.

CORAM :-

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

Hon'ble Mr. AK. Bhatnagar, J.M.

B.N. Misra S/o Late Sri R.D. Misra,
R/o Village-Bharwalia, Post-Padrauna,
District Kushi Nagar.

(Sri D.P. Gupta, Advocate)

. Applicant

Versus

1. Assistant Commissioner Regional Office,
Kendtiya Vidyalaya Sangathan Sector-3,
Aliganj, Lucknow-226020.
2. Commissioner Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110016.

(Sri N.P. Singh, Advocate)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Maj. Gen K.K. Srivastava, A.M.

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 2-1-2001 imposing the penalty of compulsory retirement and the order dated 12-12-2001 passed by the Appellate Authority rejecting the Appeal. The applicant has prayed that the impugned orders dated 2-1-2001 (Annexure-A-1) and the Appellate order dated 12-12-2001 (Annexure-2) be quashed with direction to the respondents to reinstate the applicant in service immediately with all consequential benefits.

AK

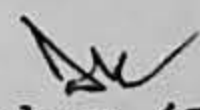
2. The facts, in brief, giving rise to this DA are that the applicant was working in the respondent's establishment as Physical Education Teacher (P.E.T.). He was served major penalty charge sheet on 15-2-1996. The enquiry was conducted and the punishment order of compulsory retirement was passed by the impugned order dated 2-1-2001. The applicant preferred appeal against the said punishment which has been rejected by the impugned order dated 12-12-2001. Sri DP Gupta, learned counsel for the applicant submitted that the applicant was served a charge sheet on 15-2-1996 on the basis of the complaint, received against the applicant dated 13-10-1995 and 16-10-1995, that the applicant during 1995-96 besides^{he} abusing gave severe beating to Shiv Shanker, a Group 'D' employee in the campus of Kendriya Vidyalaya, Kanpur Cantt on 7-10-1995 and 12-10-1995. Learned counsel submitted that nowhere the ^{Complainant} applicant has been involved as is clear from the perusal of Annexures-3 and 4 of the charge sheet. Even the findings of the Inquiry Officer is ^{Complainant} perverse because the applicant was not examined during the enquiry regarding correctness of the complaint because of which the charge sheet was served upon the applicant. Another ground on which learned counsel for the applicant has assailed the enquiry is that the statement of defence witnesses were not taken into account and no cogent reason has been shown^d for this. Another argument advanced by the learned counsel for the applicant is that the statements of prosecution witnesses are self-contradictory even then they have been relied upon by the Inquiry Officer, while giving his findings^{he}. Learned counsel for the applicant finally submitted that the disciplinary authority as well as the appellate authority ^{he} have not applied their minds and have passed ^a cryptic orders. The points raised by the applicant in his appeal ^{he} have not been discussed at all by the Disciplinary Authority and, therefore,

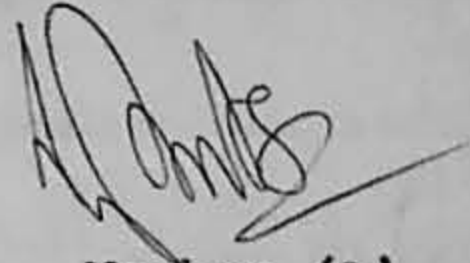
the order passed by the Appellate Authority suffers from error of law. Shri DP Gupta, also submitted that the documents demanded by the applicant were not supplied and hence the petitioner was denied the opportunity of defending himself effectively. Resisting the claim of the applicant, Sri NP Singh, counsel for the respondents pleaded that the action of the respondents is in no way arbitrary and illegal. Full opportunity was afforded to the applicant to defend himself. The appellate authority gave him an opportunity for personal hearing on 21-11-2001 but the applicant for reasons best known to him did not avail of that. He has also submitted that the course was open for the applicant to have approached the Appellate Authority for a fresh date for a personal hearing in case he was not able to present himself before the Appellate Authority on 21-11-2001. Sri NP Singh, counsel for the respondents further submitted that such action on part of the applicant did not behove on his status and also affects adversely the entire atmosphere of the school. It is expected of a teacher that he maintains highest standard of discipline which should be ^{with} emulating for his pupils.

3. We have considered the submissions of the counsel for the parties and have also perused the record. In our opinion the ^{Complainant} applicant was a necessary party who had to be associated in the enquiry for proving charges or otherwise which the respondents have failed to do. We find force in the submission of the learned counsel for the applicant that no weight ^{of} has been given to the defence statement and even disciplinary authority has failed to discuss the necessary fact in his punishment order. The applicant was the organising Secretary for National Games and on both the dates he was busy in the National Games. ^{It has been pleaded by the applicant that} On 12-10-1995 at about 5.30 P.M. he was 20 Kms. away in connection with

the closing ceremony of the National Games^{at} and, therefore, the charge is concocted and frivolous. We find force in the submission of the learned counsel for the applicant that the Inquiry Officer ought to have considered this aspect in depth but the enquiry report is silent on this aspect. In our opinion the enquiry needs to be conducted afresh to cover all aspects of the case by associating the complainant to establish whether the charges are proved or not.

4. In view of the aforesaid discussion, the OA is allowed. The punishment order dated 2-1-2001 (Annexure-1) and the appellate order dated 12-12-2001 as well as inquiry report dated 18-10-2000 are quashed. The case is remanded to the disciplinary authority to have the fresh enquiry conducted and finalise the disciplinary proceedings so initiated within a period of four months from the date of receipt of a copy of this order. It is also directed that the applicant at each stage will cooperate during the disciplinary proceedings. The applicant shall be reinstated and attached to the Regional Office, at Lucknow for completion of disciplinary proceedings and will not be treated under suspension till finalisation of the disciplinary case. There shall be no order as to costs.


Member (J)


Member (A)

Dube/