

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 613 of 2002

16th day this the 16th day of November, 2006

Hon'ble Mr. K. Elango, Member (J)

Ram Ajoy Maurya, Son of Late Shri Ram Adhar Maurya, resident of Village Dariba, Post Office, Zafarabad, Tehsil and District Jaunpur, at present posted as a Primary Teacher in Kendriya Vidyalaya, BSF Bandipur, Baramulla, Jammu and Kashmir.

Applicant

Inperson

Versus

1. Union of India through Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan (Jammu Region) Government Hospital Road, Gandhi Nagar, Jammu-180004.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan (Lucknow Region) Sector 'J', Aliganj, Lucknow.
4. Commissioner, Kendriya Vidyalaya Sangathan Head Office 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
5. Principal, Kendriya Vidyalaya, New Cantt., Allahabad.
6. Principal, Kendriya Vidyalaya, B.S.F. Bandipur, Baramulla, Jammu and Kashmir.
7. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
8. Shri P.K. Tiwari, Retired Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Residing at 99/60-E, Dalel Ka Pura, Allahpur, Allahabad.
9. Joint Commissioner (ADM), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi

Respondents

By Advocate Shri N.P. Singh

ORDER

The applicant through this O.A. prayed for the following relief: -

“To quash the impugned penalty order dated 16.08.2001, passed by Respondent no.2 (Annexure-3) and to grant all the consequential benefits held in abeyance.”

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(2) The applicant at the material point of time (June 1996) was functioning as Primary Teacher at Kendriya Vidyalaya School, New Cantt. Allahabad, when he was served with the charge sheet under Rule 16 of the CCS (CCA) Rules, 1965. The charges are as follows: -

- (i) That the said Shri R.A. Maurya misbehaved with Mrs. D. Marton, Ex-PRT, Kendriya Vidyalaya, New Cantt., Allahabad, thus committed misconduct under Rule 3 (i) (iii) of the CCS (Conduct) Rules, 1964,
- (ii) That the said Shri R.A. Maurya sent letter directly to D.M. Allahabad and Commissioner, Kendriya Vidyalaya School (Hq), New Delhi, thus, committed misconduct under Rule 3 (i) (iii) of the CCS (Conduct) Rules, 1964.
- (iii) That the said Shri R.A. Maurya marked his attendance on certain dates on which he was reported to be absent.

(3) The applicant, while denying the charges requested for making available certain documents relating to charges to plead his case in defence. Representation dated 03.07.1996 (Annexure A-8) refers. But the disciplinary authority issued a show cause notice dated 22.03.2001 alongwith enquiry report dated 24.01.2001 to the applicant for proposing penalty of reduction to the lower stage of pay Rs.4500-125-7000 for 3 years and asked for explanation. The applicant gave an explanation on 10.04.2001 (Annexure A-9) saying that the charges are not proved as per enquiry report dated 24.01.2001. Thereafter, the disciplinary authority passed the impugned order dated 16.08.2001, holding the applicant guilty of misconduct and imposing a penalty of stoppage of one increment for one year without cumulative effect. Against the said penalty order, the applicant moved an appeal on 20.11.2001 wherein, the applicant had taken a ground that the authorities took the period of 12 years time to complete the proceedings, by harassing him for such a long period and the Enquiry Officer reported that the charge no. I could not be proved and the other charges were inquired by another Enquiry Officer. Thus, no penalty can be imposed on the basis of charge which is not proved and the applicant prayed the appellate authority to quash and set aside the penalty order and requested for promotion. The appellate authority had not decided the appeal for a long time inspite of repeated reminders. Hence, this O.A.

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(4) The respondents have filed their counter, which is more conventional and customary in nature. They raised the ground of Jurisdiction for filing this O.A. As to the contention of the applicant that there has been breach of the principles of natural justice, all that the respondents stated in the counter that the action of disciplinary authority was within the provision of Rule and the delay of proceedings was due to administrative reasons. There was no representation from the applicant in changing the Enquiry Officer.

(5) Arguments were heard and the documents perused. Careful and anxious considerations are given. Applicant in person contended that his representation is not considered before imposing the penalty, then there is a clear violation of principles of natural justice. There was an inordinate delay of the period of 12 years to complete the proceedings and withholding the promotion is illegal.

(6) The applicant has relied upon the following Judgments in support of his contentions: -

- a) State of Madhya Pradesh Vs. Bani Singh & Others (A.I.R.) 1990 S.C. 1308.
- b) Ashok Kumar Vs. D.D.A. in W.P. No.3145/94 Delhi High Court.

These two citations have been referred to by the applicant in his favour. This inordinate delay of proceedings is contrary to these verdicts:-

- c) U.O.I. Vs. K.V. Jankiraman A.I.R. 1981 (SC) 2010.
- d) Sankarnath Mukhopadhyay Vs. U.O.I. (1997) 3 S.L.J. CAT 235

These two citations have been referred to by the applicant in his favour. The withholding of promotion merely because some disciplinary proceedings are pending in his case is contrary to these verdicts.

- e) Mahabir Prasad Vs. State of U.P. A.I.R. 1970 (S.C.)1302

This citation has been referred to by the applicant for recording reasons in support of the decision by the quasi-judicial authority is obligatory.

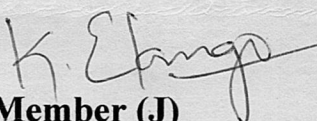
The aforesaid precedents fit in all the squares with the facts of the instant case.

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(7) On the other hand, the counsel for respondents reiterating the contents of the counter raised four points during his argument. First point is that the applicant has not impleaded the necessary party. Second point is that the applicant should file this O.A. in Jammu and Kashmir Bench of the Tribunal. Third point is that the applicant prayed for so many reliefs in this O.A. and fourth point is res judicata. He further contended that the penalty was imposed after the consideration of the representation of the applicant. The citations are not applicable to this case and further contended that all the averments in this O.A. are wrong and denied.

(8) I am of the considered view that the applicant has rightfully filed this O.A. in this Bench as per Section 6 (i) (ii) of the CAT Procedure Rules, 1987 and there is no res judicata. No other party is necessary to implead in this O.A. The inordinate delay of the period of 12 years to complete the proceedings is unnecessary harassment and might have created mental agony and this is contrary to the verdicts of Apex Court. The arguments of the counsel for Respondent, however, do not meet the decisions of the Tribunal and thus, the applicant has certainly made out a case in his favour.

(9) In view of the above, the O.A. succeeds. The impugned order dated 16.08.2001 (Annexure A-3 of Compilation No. I) is hereby quashed and set aside. The applicant is entitled to all consequential benefits including payment of withheld increment. If the applicant's promotion was either differed or denied on account of his penalty, he is entitled to such promotion. The payment of arrears of pay and allowances by releasing the withheld increment for one year shall be made within 3 months from the date of receipt of this order. No order as to costs.


Member (J)

/M.M./