

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1012 of 2003

Wednesday, this the 3rd day of September, 2003

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

Hon'ble Mr. A.K.Bhatnagar, J.M.

K.P.Dubey,
S/o Shri M.B.Dubey,
aged about 48 years,
T.G.T.(Maths) in KVS,
presently dismissed from
the said post and residing
in Quarter No. E/2/21,
N.H.P.C. Colony, Banbasa,
P.O. : Chandani,
District : Champawat (Uttaranchal)

.... Applicant.

(By Advocate : Applicant in person)

Versus

1. Union of India,
through the Secretary,
In the Ministry of H.R.D.,
Department of Secondary and
Higher Education, Govt. of India,
Shastri Bhawan, New Delhi - 110001.
2. Joint Commissioner (Administration)
through : Shri D.S. Bist,
Kendriya Vidyalaya Sangathan (Hqrs.)
18, Institutional Area, Shaheed Jeet Singh,
New Delhi - 16.
3. The Asstt. Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Hathi Barkala,
Shalawala, Dehradun (Uttaranchal)- 248001.
4. Shri M.M.Swamy,
The Assistant Commissioner,
Kendriya Vidyalaya Sangathan
(Regional Office)
Hathi Barkala, Shalawala,
Dehradun (Uttaranchal)- 248001.

Tel. (Office) - 0135 - 2749510

Fax No. - 0135- 2749824.

5. Shri M.M.Lal, (Inquiry Officer)
D/163, Ashok Vihar, Phase-1
Delhi- 52.
Tel (Residence) - 011- 27252641.
6. The Principal,
Kendriya Vidyalaya No.2,
NHPC, Banbasa,
P.O. : Chandani,
District - Champawat (U.A.)Respondents.

(By Advocate : Shri N.P.Singh)

ORDER (ORAL)

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

In this OA, filed under Section 19 of A.T. Act, 1985, the applicant has challenged the order dated 28.7.2003 by which the applicant has been dismissed from the service and has prayed that the impugned order dated 28.7.2003 be quashed with direction to respondents to reinstate the applicant as T.G.T. (Maths) at K.V., N.H.P.C., Banbasa, District - Champawat (Uttaranchal). The applicant has also prayed for all the back wages and consequential benefits w.e.f. 25.9.2001.

2. The facts, in short, are that the applicant was employed as T.G.T. (Maths) at K.V., NHPC, Banbasa under the respondents' establishment. He was served with a major penalty charge sheet dated 19.9.2001 and was suspended on 25.9.2001. The applicant has filed OA No.16/O2 (U) challenging the charge sheet dated 19.9.2001 and also suspension order dated 25.9.2001. The OA was finally disposed of by order dated 14.1.2003. On conclusion

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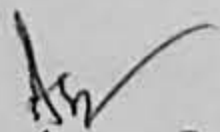
of the enquiry the impugned order dated 28.7.2003 dismissing the applicant from service has been passed by Disciplinary Authority i.e. Assistant Commissioner, Regional Office, K.V.S., Dehardun. Aggrieved by the same, the applicant has filed this QA.

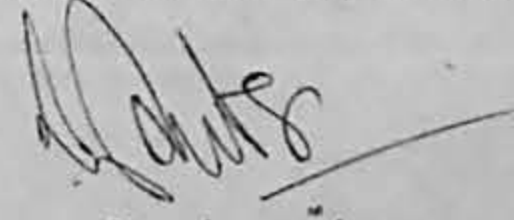
3. The applicant appeared in person and submitted that the order is illegal. In view of the observation of this Tribunal in order dated 14.1.2003, he invited our attention to para- ¹¹11, in which an observation was made that prima-facie it appears that the charges are not so serious as to award penalty of dismissal/removal from service. The applicant further submitted that he has filed a representation before Chairman, K.V.S., New Delhi through the Secretary, Ministry of H.R.D., Govt. of India on 29.7.2003. The applicant has also submitted that in case the impugned order is not stayed, he will be thrown out of the accommodation and under the circumstances, he alongwith the entire family shall be on road.

4. Shri N.P.Singh, appearing on behalf of the respondents raised the preliminary objections that the applicant has been dismissed by order dated 28.7.2003. Instead of filing the appeal of the said order, the applicant has filed a representation before the Hon'ble H.R.D. Minister i.e. Dr. M.M.Joshi on 29.7.2003. Besides, he has straightway approached the Tribunal without exhausting the departmental remedy available to him. The learned counsel for the respondents further submitted that as per Section 20 (b) of A.T. Act, 1985 one has to wait ^{for} six months from the date ^{of representation} appeal is preferred and ^{the applicant without waiting for} after the out come of the representation ^{has just} after one month ^{he} can approach ^{he} the Tribunal.

5. We have heard the applicant in person and the counsel for the respondents and perused the records.

6. We find substance in the submission of the learned counsel for the respondents that the application is not maintainable at this stage being pre-mature. The applicant has to approach ^{to} the Appellate Authority by filing an appeal and only if the appeal is not decided within the time prescribed, then he may approach this Tribunal. The applicant raised doubts as to who is the Appellate Authority in this case. We direct the applicant to file appeal if he so desires ^{he} within one month before ^{Joint} ~~Deputy~~ Commissioner (Administration) who is the Appellate Authority, as stated by the respondents counsel, who shall decide the same within two months from the date of receipt of the appeal. Keeping in view, the submission of the applicant that he may be allowed to retain the accommodation till his appeal is decided, we allowed the request of the applicant and the respondents may not take any action towards the the vacation of the quarter till the appeal of the applicant is decided. We have already observed that the applicant has to approach the Tribunal only after exhausting the ^{departmental} ~~appeal~~ remedy available to him, ^{the} The OA is pre-mature and not maintainable and therefore dismissed in limine. No costs.


Member-J


Member-A

RKM/