

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

ORIGINAL APPLICATION NO. 637 of 2003.

this the 20th day of Aug. 2004.

HON'BLE MR. JUSTICE S.R. SINGH, VICE CHAIRMAN
HON'BLE MR. S.C. CHAUBE, MEMBER(A)

B.N. Misra, S/o Late Sri R.D. Misra, aged about 52 years,
R/o Village Bharwalia, post padrauma, District Kushi Nagar.

... Applicant.

By Advocate : Sri S. Mandhyan
Versus.

1. Commissioner, Kendriya Vidyalaya Sangathan,
18 Institutional Area, Shaheed Jeet Singh Marg,
New Delhi.
2. Joint Commissioner (Administration), Kendriya
Vidyalaya Sangathan, Lucknow.
3. Assistant Commissioner, Regional Office,
Kendriya Vidyalaya Sangathan, Sector J, Aliganj,
Lucknow.

... Respondents.

By Advocate : Sri D.P. Singh.

ORDER

BY S.C. CHAUBE, MEMBER(A)

Through this O.A. filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has challenged
the order dated 13.3.2003 of the respondent no.3 imposing
the punishment of compulsory retirement as well as against
non-payment of salary due to him from 4.1.2001 to 12.6.2002.

2. Briefly, the facts, as per the applicant, disclosed
that he was appointed as physical Education Teacher by
Kendriya Vidyalaya Sangathan (hereinafter referred to as

S. Mandhyan

KVS) on 31.10.1979. He has been working as P.E.T., Kendriya Vidyalaya, Kanpur Cantt and was Organising Secretary of the National Games (KVS) for Kabaddi, Khe-Kho and Table Tennis on the relevant dates in the year 1995. The aforesaid National Game was to be held between 7.10.1995 to 12.10.1995. On 19.10.1995, the applicant was served with notice to the effect that he had abused and beaten one Sri Shiv Shanker Dwivedi, a Group 'D' employee of Kendriya Vidyalaya, Kanpur Cantt in the office of Kendriya Vidyalaya. A departmental enquiry was initiated against the applicant and thereafter the applicant was served with a chargesheet dated 15.2.1996 with the allegation that he had abused and beaten one Shri Shiv Shanker Dwivedi, a Group 'D' employee on 7.10.1995 and 12.10.1995 and thus, committed a gross misconduct. During the enquiry, the applicant placed three defence witnesses namely Sri L.X. Charan, Shri A.K. Tripathi and Sri Omer Khan though they were posted in different Schools, but were present in the campus of Kendriya Vidyalaya, Kanpur Cantt on the days of the alleged incident i.e. 7.10.1995 and 12.10.1995 in connection with the National Games. These three witnesses were assisting the applicant in managing the National Games as he was Organising Secretary. As stated by the applicant, he was extremely busy in the organisation and arrangements of National Games on 7.10.1995 and 12.10.1995. Thus, the complaint against the applicant is totally false and baseless. The applicant has further pleaded that during the course of enquiry certain documents demanded by the applicant has not been provided. The applicant has also pleaded that the report of the Enquiry Officer against him is wholly against the evidence on record. Further, he ignored the evidence on the evidence of defence witnesses only on the suspicion and presumption. Therefore, the enquiry report given by the Enquiry Officer is not correct and cannot be relied-upon for giving punishment to the applicant. The disciplinary authority too ignored the defence taken by the

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applicant in his defence note as well as representation dated 18.12.2000 and relied upon the findings of the Enquiry Officer in toto without paying any attention to the evidence on record and without applying his mind. Thus, the punishment order is wholly illegal, arbitrary and against the evidence on record. Thereafter, the applicant filed appeal against the punishment order before the Deputy Commissioner (Admn.), K.V.S. (HQ) on 7.2.2001. The appellate authority has also without applying his mind to the facts and evidence recorded during the enquiry, rejected the appeal of the applicant. The applicant has pleaded that the complainant Sri Shiv Shanker Dwivedi was neither examined, nor cross examined during the enquiry^{nor} his complaint was placed before the enquiry. Aggrieved by the aforesaid orders, the applicant preferred O.A. no. 363 of 2003, which was allowed by this Tribunal vide judgment and order dated 10.4.2002 at admission stage itself and remanded the matter to the Disciplinary authority to have fresh enquiry conducted and finalise the disciplinary proceedings so initiated within a period of four months from the date of receipt of copy of the order. The Tribunal further directed that the applicant shall be reinstated and attached to the Regional Office at Lucknow for completion of the disciplinary proceedings and will not be treated under suspension till finalisation of the disciplinary proceedings. Accordingly, the Enquiry Officer submitted his report on 20/21.2.2003. The disciplinary authority without applying his mind passed the order dated 3.3.2003 imposing the major penalty of compulsory retirement. The applicant has, further pleaded that no salary was paid to him from 4.1.2001 to 12.6.2002, which too^{was} malafide on the part of the respondents. Therefore, appropriate orders need to be passed regarding salary for the intervening period i.e. from 4.1.2001 to 12.6.2002.

3. The respondents have, on the other hand, stated that the applicant joined Kendriya Vidyalaya as P.E.T. on

30.10.1979. His performance from the very beginning was not found satisfactory and due to ^{his} aggressive and arrogant attitude, he indulged in uncalled for activities. They have further stated that he remained under suspension in Kendriya Vidyalaya Shakti Nagar, Kendriya Vidyalaya No.2, Chakeri, Kanpur, Kendriya Vidyalaya, Kanpur Cantt. and Kendriya Vidyalaya, Basti during the different periods. They have further stated that the applicant ^{had} used unparliamentary language against Shri Shiv Shanker Dwivedi and beaten him on 7.10.1995 and 12.10.1995 in the presence of teachers, employees and other staff of the Vidyalaya. Further, they have admitted that the fact relating to initiation of the disciplinary proceedings against the applicant, imposition of major penalty of compulsory retirement against the applicant and rejection of appeal by the appellate authority. The Tribunal vide its order dated 10.4.2002 quashed the punishment order, appellate order as well as Enquiry Officer's report and remanded the case to the disciplinary authority. According to the respondents, the applicant did not co-operate with the enquiry. However, the applicant was given full opportunity to defend his case. The disciplinary authority again vide order dated 3.3.2003 imposed the punishment of compulsory retirement on the applicant from the service of K.V.S. Against the said order, the applicant has not filed any appeal before the appellate authority under rule 23(11) of CCS (CCA) Rules. As such according to the respondents, the present O.A. is pre-mature and not maintainable. The allegations of bias and prejudice alleged by the applicant against the Enquiry Officer are false and not maintainable. According to the respondents, since the applicant has the remedy to file statutory ^{appeal} as provided under rule 23(11) of CCS (CCA) Rules, as such the present O.A. against the order dated 3.3.2003 is not maintainable. They have further stated that the applicant has committed a serious mis-conduct of abusing and beating a Group 'D' employee.

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As per the directions of the Tribunal, the complainant was associated with the de-novo enquiry. During the course of departmental enquiry for the incident of 7.10.1995 P.W. I and P.W. 4 Sri Sewa Ram Group 'D' and Sri S.B. Sinha, LDC respectively have tendered direct evidence in support of the prosecution case. Similarly for the incident of 12.10.95 Sri Shyam Sunder Group 'D' Sri Shee Sahai Lab. Asstt and Sri C.S. Dixit LDC ^{has} for consistently described the instrument and quantum of ^{beating} B.T. Sri Shiv Shanker Dwivedi Group 'D' by the applicant. According to the respondents, the charged official was provided very reasonable opportunity and relevant documents ^{for} ~~his case~~. Finally, the respondents have strongly pleaded that the punishment awarded is not at all disproportionate to the gravity of the charges levelled against the applicant and does not ^{call} ~~all~~ for any interference by this Tribunal. ^{by}

4. Learned counsel for the applicant has referred to the following case law in support of his contention :-

1.	2001	SCC (L&S) (1)	182-
2.	2003	JT (3) SC	183
3.	2004	ESC (1)	615
4.	1999	SCC (L&S) (1)	1299
5.	2003	LIC	2290
6.	2003	ESC (2)	649

These decisions, however, do not render any help to the applicant.

5. On the other hand, the learned counsel for the respondents has cited the following case law :-

1. (2003) 2 UPLBEC 1673 SC Lalit Popli Vs. Central Bank & Others
2. JT 1999 (6) SC 507 R.S. Saini Vs. State of Punjab & others.
3. JT 1995 (8) SC 65 B.C. Chaturvedi Vs. Union of India & others.

4. AIR 1999 SC 578 Sanchalakshri and others Vs. V.R. Mehtra & others.

6. We have heard the counsel for the parties and perused the pleadings.

7. We are unable to accept the plea of the applicant that the charges levelled against him are false and concocted. On the other hand, there is ample evidence to support the charges in relation to the incidents of 07.10.1995 and 12.10.1995 so far as abusing and beating Shri Shiv Shankar Dwivedi by the applicant is concerned. Similarly the plea of the applicant that the punishment of compulsory retirement is grossly disproportionate to the charges levelled against him. ~~That plea is~~ is not tenable as jurisdiction ^{of} to the Tribunal to re-appreciate the evidence as an appellate authority is highly circumscribed by the settled position of law laid down by the Apex Court. As a matter of fact, we are inclined to agree with the contention of the respondents that the serious misconduct committed by the applicant deserved severe punishment of compulsory retirement. In absence of any material ~~of~~ illegalities ~~of~~ procedural irregularities, there is hardly any room for the Tribunal to interfere in the present case.

8. The counsel for the respondents has relied upon the decision of the Hon'ble Supreme Court in the case of B.C. Chaturvedi and Lalit Popli (Supra) in which the Apex Court has held that the Court/Tribunal in its power of judicial review does not act as an appellate authority to re-appreciate the evidence. In other words judicial review is not akin to adjudication of the case on merits as an appellate authority. Similarly in the case of Apparel Export Promotion Council Vs. A.K. Chopra

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Shri. H. K. Sharma
(J.T S.C (1) 61) have clearly spelt out that so long the findings of the administrative authority are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural irregularities or illegalities which vitiate the decision making process, the Court cannot substitute its judgment to that of the administrative authority on a matter which fall squarely within the sphere of jurisdiction of that authority.

9. For the reasons and case law mentioned above, the O.A. is dismissed. No order as to costs.

Shankar
20.8.04
Member-A.

Shankar
Vice-Chairman.

GIRISH/-