

(3)

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ORIGINAL APPLICATION NO. 41 OF 2007

ALLAHABAD THIS THE 22nd DAY OF JANUARY, 2007

HON'BLE MR. K. ELANGO, MEMBER-J
HON'BLE MR. M. JAYARAMAN, MEMBER-A

Balvir Bahadur, S/o late Sri Jhumak Lal, R/o 259,
Teachers' colony, Bagh Guddar, District Bareilly.

.....Applicant

(By Advocate Shri K. Ajit)

V E R S U S

1. Union of India, through its Secretary, Human Resources & Development, New Delhi.
2. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi through its Joint Commissioner (Admn.)
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Salawala, Hathibarkala, Dehradun, Uttranchal.
4. Assistant Commissioner, Kendriya Vuidyalaya Sangathan, SCO no. 72-73 Sector 31-A, Chandigarh.
5. Enquiry Officer, Sri M.M. Lal, Assistant Commissioner (Retired) D-163, Ashok Vihar, Phase-I, Delhi.

.....Respondents

(By Advocate: Sri N.P. Singh)

O R D E R

By M. Jayaraman, Member-A

Heard Sri K. Ajit, learned counsel for the applicant and Sri N.P. Singh, learned counsel for respondents.

2. The short plea made by the applicant in this O.A. is to quash the appointment letter dated 19/21.12.2005 of the Enquiry Officer (in short E.O.) and subsequent proceedings for the simple reason that a retired public servant has been appointed as E.O. He specifically says that Sri M.M. Lal, retired Assistant Commissioner, KVS, who has been appointed as E.O. in this case is the same M.M. Lal, in whose case Guwahati Bench of this Tribunal had passed specific order holding that Sri Lal could not be appointed as E.O. in an enquiry proceedings. He also cites the decision of the Principal Bench of this Tribunal dated 19.4.2006 passed in O.A. no. 766 of 2006 wherein relying upon the decision of the Hon'ble Supreme Court in the case of **Ravi Malik reported in 2004 (13) SCC 427**, the Principal Bench of the Tribunal has held that a retired Government servant cannot be appointed as E.O. and accordingly set-aside such appointment.

3. Opposing the above pleas Sri N.P. Singh, counsel for the respondent, initially arguing the case on 18.1.2007 has submitted that the judgment of Guwahati Bench of the Tribunal has been set aside by the Hon'ble High Court at Guwahati and so it will no longer be applicable. Leave was granted to the counsel for the respondents to place a copy of that judgment for perusal of the Tribunal. Today, Sri N.P. Singh has filed a copy of the order dated 13.11.2006 passed by their lordships in Guwahati

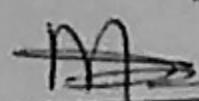


(5)

High Court in Writ Petition no. 6795 of 2005 wherein referring to the order and judgment dated 2.6.2005 passed by the Tribunal, the Hon'ble High Court has set aside the order of the Tribunal while allowing the Writ Petition. Therefore, he pleads that a retired officer could be appointed as E.O. As a matter of information, he also submits that based on this enquiry report, the respondents have already taken the action and passed the final order in the matter and so any order that may be passed here would be rendered infructuous. He also says that KVS has separate Code and accordingly it is permissible for the Sangathan to appoint a retired officer as E.O., unlike the CCS (CCA) Rules, which are applicable to the Central Government employees to whom only the cited judgment would apply.

4. We have given our careful consideration to all the pleadings made and we have also perused the citations.

5. The short question here is whether a retired officer could be appointed as E.O. in a disciplinary proceedings which has been challenged by the applicant. We find that in the cited case of Ravi Malik, which has been decided by the Hon'ble Supreme Court, it has been stated in explicit terms that a public servant means exactly what it means, namely, an officer must be a servant of public and is not a person who was a servant of the public. The Hon'ble



Supreme Court, therefore, ruled that a retired officer would not come within the definition of public servant for the purposes of Rule 23(2). *23(2)* Though the above decision ~~not~~ specifically refers to the Service Rules & Regulations 1982, in our view as held by the Tribunal in the cited case of **Sangita Ashok** by the Principal Bench on 19.4.2006 in O.A. no. 766 of 2006, all the provisions of CCS (CCA) Rules (in short Rules of 1965) would apply mutatis mutandis to the members and employees of the KVS and particularly in view of article 80 of the Education Code in KVS, which reads as under:-

"All employees of Kendriya Vyayalayas, Regional Office and the Headquarters of the Sangathan shall be subject to the disciplinary control of the Sangathan and the Central Civil Services (Classification Control and Appeal) Rules, 1965, as amended from time to time, will apply mutatis mutandis to all members of the staff of the Sangathan except otherwise decided."

Further, para 13 also makes it clear, which is
reproduced below:

"13. Applicability of the CCS (CCA) Rules - In matters falling under this Article and in those matters alone, the procedure prescribed for holding inquiry in accordance with the CCS (Classification, Control & Appeal) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan as also other provisions of the said rules which are not consistent with the provisions of the Article shall stand dispensed with."

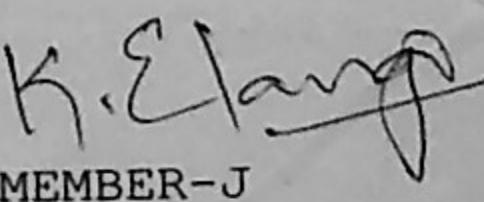
(7)

Further, as noted by the Tribunal in the cited case that nowhere in the KVS code except the procedure laid down in the CCS (CCA) Rules, 1965, there is any provision for appointment of a retired official of KVS as inquiring authority.

6. Respectfully following the ruling of the Hon'ble Supreme Court (supra), we have no hesitation in setting aside the impugned order dated 19/21.12.2005 of the K.V.S., Dehradun (Uttranchal) appointing Sri M.M. Lal, retired Assistant Commissioner, KVS Headquarters as E.O. Needless to say, any action taken by the respondents in pursuance of any report filed by this E.O. would automatically be set-aside. We make it clear that it is open for the respondents to appoint any serving public servant to hold the enquiry, if they so desire. It is also made clear that the enquiry will proceed from the stage it was before the appointment of E.O., which has been quashed herein.

6. The O.A. is accordingly allowed with no order as to costs.


MEMBER-A


K. Elang
MEMBER-J

GIRISH/-