

(OPEN COURT)

(10)
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 19th day of **February, 2008.**

HON'BLE MR. JUSTICE A. K. YOG, MEMBER- J
HON'BLE MR. K.S. MENON, MEMBER- A.

ORIGINAL APPLICATION NO. 296 OF 2007

Balvir Bahadur, S/o Late Sri Jhumak Lal,
R/o 259, Teacher's colony Bagh Guddar, Distt. Bareilly.

.....Applicant.

V E R S U S

1. Union of India through its Secretary, M/o Human Resourced and Development, New Delhi- 110011.
2. The Joint Commissioner (Admn.) Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahi Jeet Singh Marg, New Delhi- 110011.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Salawala, Hathibarkala, Dehradun.
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, S.C.O. No. 72-73 Sector 31-A, Chandigarh- 160030.

.....Respondents

Present for the Applicant:

Present for the Respondents :

Sri A.D. Singh
Sri N.P. Singh

X Corrected rule only
of date (d. 21/5/08) allowing
Concession Application (M.A. No. 870/08)
Menon *A.K.Yog* *21/5/08*

ORDER

BY HON'BLE MR. JUSTICE A.K. YOG, J.M.

Facts, in brief to appreciate the controversy, raised in this O.A, are that while the applicant/Sri Balvir Bahadur was posted as U.D.C in Kendriya Vidyalaya, C.R.P.F, Rampur, he was served with charge-sheet dated 30.04.2004 (Annexure- 1 to the O.A) and the applicant filed reply dated 18.5.2004 *X* *Am-18-4* (Annexure- 1 to the Compilation-**II** of the O.A); dated 4.5.2004 *Am* (Annexure 2 to the Compilation-**II** of the O.A);

appointment of Shri M. M Lal, retired Assistant Commissioner, K.V.S, HQ as Inquiry Officer was challenged by filing O.A No. 41/07 before this Tribunal with following relief(s): -

- i. *The Hon'ble Tribunal may be pleased to quash the office order dated 19/21.12.2005 issued by respondent No. 3 appointing respondent No. 5 as Enquiry Officer and also enquiry report dated 14.03.2006 submitted by the respondent No. 5 (Annexure No. 1 and 2 to this Original Application)*
- ii. *The Hon'ble Tribunal may be pleased to quash and set aside entire disciplinary proceeding being conducted by the respondent No. 3 on the basis of enquiry report dated 14.03.2006 submitted by the respondent No. 5 in the matter of charge sheet dated 30.04.2004 against the applicant in the present case*
- iii. *To issue any other suitable order as may deemed necessary under the facts and circumstances of the case*
- iv. *To award cost in favour of the applicant".*

2. Said O.A was allowed by means of order dated 22.01.2007/Annexure A- 12 to compilation No. 2 to the O.A. Relevant para 6 of the said order allowing O.A reads -

"..... 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 (Uttarakhand) 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..".

3. Writ Petition before High Court, Allahabad challenging aforesaid order of the Tribunal was dismissed. SLP filed before the Apex Court was also dismissed on 15.01.2008. It appears that while Writ/SLP were pending, the applicant filed a representation dated 09.2.2007 (Annexure

X. au. Drs

*X. Comptd vide order allowd
H.A No 870/08. A.K.B. 21/05/08*

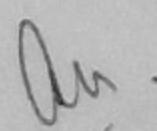
Jan 21.5.08

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A-13 to the Compilation II of the O.A.) praying for recalling and/or quashing chargesheet, when respondents failed to consider said representation, the applicant filed present O.A. No. 296 of 2007 seeking relief to quash chargesheet dated 30.4.2004. Vide order dated 09.02.2008, during pendency of this O.A.- one Sri Ombir Singh, Principal, Kendriya Vidyalaya, BHEL, Hardwar was appointed as Inquiry Officer. Inquiry Officer held enquiry and as a result thereof, the applicant has filed M.A No. 316/08 (in the present O.A. NO. 296/07) praying for dismissing said order dated 09.02.2008 (appointing Sri Ombir Singh as Enquiry Officer) as null and void. Interestingly, in the prayer clause of said M.A, it is contended that charge sheet merged in the dismissal order dated 12.01.2007, which has been quashed and, therefore, charge sheet should be deemed to be non existent.

4. Opposite parties filed CA denying the contentions of the applicant. We do not propose to dilate upon said contentions/arguments since this O.A can be decided on the basis of admitted/undisputed facts born out from undisputed document/record.

5. At the out set learned counsel for respondents has raised three preliminary objections. It is being contended that O.A is time barred. This argument is not available at this stage. This Tribunal-Bench vide order dated 23.03.2007 has allowed M.A No. 650/07 (for condonation of delay in filing O.A), relevant extract of said order reads - "....As there is no delay in filing the O.A, the M.A 650/07 is dismissed as infructuous..... After hearing learned counsel for the applicant we are satisfied that the applicant has made a prima facie case. Hence the O.A is admitted. Issue notice to the respondents to file their CA.....".



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Learned counsel for the respondents failed to show that said order was sought to be recalled earlier. In para 6 of the Counter Affidavit (sworn by Ms. R. Kalawathi) it is stated that the time consumed by the applicant in approaching the authorities for obtaining documents and filing of representation cannot constitute or provide extension of period of limitation.

6. Be that as it may, the respondents were noticed and they have filed their CA contesting the O.A on merits as well. Respondents do not dispute the factual explanation given by the applicant. The applicant contended that he had asked for certain documents and made representation, has not been denied in the CA. There is no apparent reason, which the applicant may be blamed or his bonafide be doubted, for delaying the matter. Moreover the parties have already exchanged their pleadings and the case can be decided on merits. We reject the submissions of dismissing the O.A on the ground of delay- at this stage.

7. Second preliminary objection is with regard to the relief(s) claimed in the OA- (i.e. quashing of the charge sheet dated 30.04.2004). The contention of the applicant that charge-sheet also merged in dismissal order cannot be sustained. But on the other hand, we are of the opinion that the relief claimed should suitably be moulded to avoid abuse process of court. Order dated 22.01.2007 (deciding O.A. NO. 41/07) clearly shows that main issue raised in this O.A was appointment of Shri M.M Lal as Enquiry Officer. Tribunal while passing order dated 22.01.2007 however, directed to initiate disciplinary proceedings by appointing Enquiry Officer in accordance with law. Right of the applicant to challenge the chargesheet and/or disciplinary enquiry on other

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grounds was not taken away- particularly when charge-sheet is the sole basis of initiation of disciplinary enquiry.

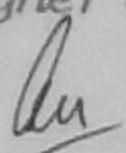
8. Part of the grievance of applicant appears to be that the charges framed against him are vague in absence of relevant particulars. In other words the applicant is not confronted with the particular charges so as to enable him to submit his Defence, refer to his grievance against Article III- expressed in his representation-Annexure 13 of Compilation II of the O.A. charge must be definite and specific. Non mentioning date and time render a chargesheet vague. The second objection is also overruled to the above extant.

8. Third objection is with regard to the order dated 23.03.2007 passed in this O.A fixing 11.04.2007. We find no force in the said objection inasmuch as assuming that Tribunal had postponed the date. The applicant fails to show any prejudice being caused and this objection also has no force.

9. Coming to the merits of the case, we may put on record that the applicant raised no objection of charge being vague with respect to charge/Article I, II and IV in his said representation. It is also to be appreciated that the ^{dear} ~~said~~ applicant raised no such grievance in his initial reply filed against charge-sheet (Annexure A-2 to Compilation II of O.A.) .

10. Article -III in the charge-sheet reads -

“ That the said Sri Balbir Bahadur, UDC(U/S), Kendriya Vidyalaya, Abohar (Ph) during the period 2003-2004 challenged the competency of higher authorities of KVS and



*Principal, K.V, Abohar and used un-parliamentary language
verbilly as well as in writing "*

In the said charge, we do not find mention of alleged un-parliamentary language, or the date and time when alleged incident took place. Relevant details are conspicuously absent and in view of it, the delinquent employee is not expected to defend himself as required under law. Purpose giving, "opportunity" in this respect is lost.

11. Learned counsel for the respondents submitted that relevant details, particular date, time and place, etc., can be gathered from the evidence relied upon in support of the charges. We do not appreciate this submission. Requirement of 'charge' being framed or 'lacuna in charge' cannot be made good/substituted by referring to 'evidence'- relied upon by the employer, it is to put cart before horse.

12. Taking into account entirety of circumstances of the case, we are of the view that charge sheet dated 30.04.2004 to the extent of charge III need to be reframed. Other contentions of the applicant, who has already submitted his reply without raising objection in his 'reply' or representation (Annexure 2 and 13 of Compilation II of O.A.), cannot be permitted to get the charge sheet quashed. Order appointing Inquiry Officer dated 09.02.2008 also does not suffer from illegality and cannot be interfered with. Prayer made in Misc. Application No. 316/08 is thus without merit and substance and fails.

13. In view of above discussion, the O.A is partly allowed by moulding the relief to the extent indicated hereinafter. Respondents are directed

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supply Suppl. Charge -sheet giving 'relevant particulars' with respect to Article III of charge. The respondents are directed to conclude the enquiry within six months of receipt of certified copy of this order. Further, considering nature of charges and that the applicant is being kept out of service for about last four years for no fault of his, we direct the respondents to permit the applicant to join his duties and pay his salary with effect from the date he joins the duties. It is made clear that applicant will not be entitled to arrears for the period he has not actually worked and the same shall be subject to the final orders passed on conclusion of enquiry. The applicant is also directed to co-operate with the enquiry.

14. With respect to other relief(s), the O.A is dismissed.

15. No costs.

Anand
AM.

Al. H.
JM.

/Anand/